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A. ARGUMENT

**The trial court deprived Mr. Mishkov of a fair trial by admitting evidence of his prior crimes.**

1. The trial court erred in refusing to accept Mr. Mishkov's stipulation to his prior convictions.

Indecent exposure is a felony if the person has previously been convicted of the offense. RCW 9A.88.010(2)(c).

[W]hen a defendant stipulates to a prior conviction the court must accept the stipulation and shield the jury from hearing evidence that led to the prior conviction.

*State v. Roswell*, 165 Wn.2d 186, 195, 196 P.3d 705 (2008) (citing *Old Chief v. United States*, 519 U.S. 172, 191, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997)).

Mr. Mishkov offered to stipulate to his prior convictions. Yet the court refused to permit him to do so. 6/5/12 RP 84. Pursuant to *Roswell*, the trial court was required to accept that stipulation and prevent the jury from hearing the facts surrounding the prior convictions. Instead the court specifically ruled the State was free to introduce the evidence of the prior offenses. That ruling is plainly, contrary to *Roswell* and *Old Chief*.

In response, the State's brief simply ignores Mr. Mishkov's efforts to stipulate to the priors. The State ignores Mr. Mishkov's

argument on appeal that the trial court was required to accept that stipulation. The State's brief ignores *Roswell* and *Old Chief*, never citing must less distinguishing either. The State's failure to address this claim should be treated as a concession of error. *See State v. E.A.J.*, 116 Wn. App. 777, 789, 67 P.3d 518 (2003). And in light of *Roswell* and *Old Chief*, such a concession is well taken.

2. This Court should reverse Mr. Mishkov's conviction.

Having never acknowledged the plain error that occurred in this case, the State nonetheless contends that there was no harm which flowed from it. Brief of Respondent at 13.

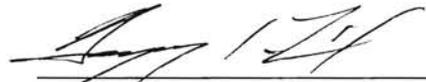
The disclosure of a prior conviction is inherently prejudicial when considered with a defendant's willingness to stipulate. *State v. Young*, 129 Wn. App. 468, 476, 119 P.3d 870 (2005). Indeed, the justification of *Old Chief* is that this inherent prejudice outweighs the probative value. 519 U.S. at 190. The prejudice is particularly acute where the prior offense mirrors the current charge. Here, that inherent prejudice was magnified by the court instructing it could use that evidence for a number of irrelevant purposes. CP 112.

The court's error very likely affected the verdict.

B. CONCLUSION

For the reasons above, and those set forth in his prior brief, this Court must reverse Mr. Mishkov's conviction and sentence.

Respectfully submitted this 22<sup>nd</sup> day of November, 2013.



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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69076-1-I
v.	)	
	)	
VLADIMIR MISHKOV,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 22<sup>ND</sup> DAY OF NOVEMBER, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2013.

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