COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )
)
Respondent, )
) No. 47693-2-II
v. )
) STATEMENT OF ADDITIONAL
PAUL A. GILMORE ) GROUNDS FOR REVIEW
(your name) )
)
Appellant. )

FILED
COURT OF APPEALS
DIVISION II
2016 JAN 14 AM 11:33
STATE OF WASHINGTON
BY
DEPUTY

I, PAUL A. GILMORE, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

SEE ATTACHMENT 1

Additional Ground 2

SEE ATTACHMENT 1

If there are additional grounds, a brief summary is attached to this statement.

Date: 1-10-16 Signature:

Form 23

NO. 47693-2-II

ADDITIONAL GROUND 1: IN STATE V. BELGARDE NO. 5355-6 110 WN. 2d 504; 755 P. 2d 174; (1988) WASH. THE SUPREME COURT OF WASH. THE COURT FOUND THAT THE PROSECUTOR'S REFERENCES TO THE DEFENDANT'S FAILURE TO MAKE A STATEMENT IMMEDIATELY UPON ARREST PENALIZED HIS EXERCISE OF THE RIGHT TO REMAIN SILENT AND DENIED HIM DUE PROCESS. IN THIS CASE IT WAS SAID BY THE STATE "IF YOU GOT A STORY AND YOU ARE INNOCENT, YOU TELL THE COPS. YOU DON'T TELL SOME DOCTOR". "BELGARDE CONTENDED THESE COMMENTS PENALIZED HIS RIGHT TO REMAIN SILENT AND DENIED HIM DUE PROCESS." THE SUPREME COURT AGREED. IN THE CASE AT BAR. SEE PG. 607-608 WHEN THE STATE SAID AND/OR COMMENTED ABOUT HOW I WAS ACTING AND BY ME NOT BEING VOCAL ABOUT MY INNOCENCE. BY THESE COMMENTS IT IS THE SAME AS IN THE STATE V. BELGARDE.

ADDITIONAL GROUND 2: IN STATE V. BRAHAM 67 WN. APP. 930; 841 P. 2d 785; (1992) WASH. NO. 27134-2-I. ALSO IN STATE V. PETRICH 101 WN. 2d 566; 683 P. 2d 173; (1984) WASH. NO. 49971-3, AND IN STATE V. MAULE 35 WN. APP. 287; 667 P. 2d 96; (1983) WASH. APP. NO. 11016-1-I.

A. DEFENSE ATTORNEY FAILED TO OBJECT TO THIS LINE OF QUESTIONING AND ALSO TO THE REPEATED USE OF IT IN CLOSING ARGUEMENTS BY THE STATE AND THE QUESTIONS BEING ASKED OF A WITNESS WAS INEFFECTIVE COUNSEL.

B. THE STATE USING THESE STATEMENTS IN CLOSING ARGUEMENTS WAS UNFAIRLY PREJUDICAL.

C. THE STATE ASKING A WITNESS ABOUT "GROOMING PROCESS AND/OR TECHNICS". BECAUSE THE WITNESS DID NOT HAVE THE PROPER TRAINING OR SKILLS, AND KNOWLEDGE TO MAKE THESE STATEMENTS. SEE PG. 594-595, 296-298.

BY ALLOWING THESE STATEMENTS DURING QUESTIONING OF A WITNESS AND AGAIN DURING CLOSING ARGUEMENTS IT WAS UNFAIRLY PREJUDICAL TO THE DEFENSE. AS STATED IN THE UNITED STATES V. GILLESPIE 852. F.2d 475; (1988) U.S. APP. NO. 87-5067 9TH CIR. THE STATES ATTORNEY AND THE STATES WITNESS ARE BOTH NOT TRAINED AND/OR CERTIFIED AS A CRIMINAL PROFILER OR AS A CHILD ABUSE PROFILER. IT IS NOT THEIR GIVEN TRAIT. SEE ER 404 & PG. 594-595, 296-298. OF THE COURT TRANSCRIPTS.

ADDITIONAL GROUND 3: IN STATE V. BOLING 131 WN. APP. 329; 127 P.3d 740; (2006) WASH. APP. NO. 22910-6-III, AND IN UNITED STATES V. VAYNER 769 F.3d 125; (2014) U.S. APP. LEXIS 18922; 95 FED. R. EVID. SERV. CALLAGHAN) 802. NO. 13-803-CR. IN THIS CASE THE STATE COLLECTED EVIDENCE FROM THE DEFENDENTS COMPUTER OF A WEBSITE PROFILE FOR WHICH THE STATE COULD NOT PROVE WAS ACTUALLY THE DEFENDENTS WEB PROFILE. IN THE CASE AT HAND THE STATE COULD NOT PROVE THAT THE DEFENDENT CLICKED ON THESE WEBSITES IN THE COMPUTERS CACHE OR IF IT WAS SOMEONE ELSE, OR EVEN IF THEY WERE CLICKED ON JUST TO CLOSE THE WEBSITE/PAGE. (POP-UPS) DUE TO THESE WEBSITES BEING CLICKED ON 1-4 TIMES OVER THE LIFE OF THE COMPUTERS USE OF WHICH IS OVER 7 YEARS. SEEMS VERY UNLIKELY THAT THEY WERE VISITED/CLICKED ON

ON PURPOSE OR INTENTIONALY. SO ANY EVIDENCE COLLECTED FROM THESE WEBSITES DO NOT FALL WITHIN THE BEST EVIDENCE RULE (ER-1004). ALSO RULES 803, 901, 1000.2. HOWEVER IT DOES FALL INTO RULE 403, 402. ALSO IN STATE V. DAVIS 141 WN. 2d 798; 10 P.3d 977; (2000) WASH. NO. 66537-1, AND IN UNITED STATES V. TUCKER 305 F.3d 1193; (2002) U.S. APP. NO. 01-4150. THE COULD RULED/HELD THAT PRINTOUTS FROM THE INTERNET WERE INADMISSABLE HEARSAY.

ADDITIONAL GROUND 4: THE PROSECUTOR STEPPED OUTSIDE THE BOUNDS OF HER DUTIES, RCWA 36.27.020. BY COLLECTING EVIDENCE HERSELF OF PICTURES FROM WEBSITES WHICH SHE BELIEVED WERE MINORS ENGAGED IN SEXULEY EXPLICIT CONDUCT. THESE PICTURES WERE IRRELITIVE AND OF EVIDENCE STILL SUBJECT TO CHANGE.

A. EXPLORATORY SEARCHES PROHIBITED: SEARCHES OF THESE WEBSITES WAS IN THE HOPE OF FINDING SOMETHING ILLEGAL. ALSO BEING CONDUCTED BY THE PROSECUTING ATTORNEY AND DETECTIVE BAKER WHO BOTH ARE NOT/OR DIDNOT STATE THE TRAINING THEY HAVE HAD COLLECTING EVIDENCE FROM COMPUTERS/OR THE INTERNET. ALSO STATED BY WPST VOL. 12 PT I CH. 27 MCL 8.1 VIDEO, IMAGES, TEXT MESSAGES, CALLER ID, INTERNET NOT UP TO DATE, NOT PINPOINTED DIRECTLY TO SHOW WHAT WAS VIEWED ON THE COMPUTER/INTERNET. IN STATE V. MOBLEY 129 WN. APP. 378; 118 P.3d 413; (2005) WASH. APP. NO. 22965-3-III, AND IN UNITED

STATES V. TUCKER 305 F.3d 1193; (2002) U.S. APP. NO. 01-4150 "THE COURTS STATED THAT IF PICTURES FROM THE INTERNET WEBSITES HAD BEEN VIEWED THEY WOULD HAVE AUTOMATICALY SAVED/DOWNLOADED TO THE COMPUTERS HARD DRIVE OR CACHE." IN THE CASE AT BAR IN TESTIMONY IT WAS SAID THAT NO PICTURES OR VIDEOS OF ANY ILLEGAL MATTERS WERE FOUND ON EITHER THE HARD DRIVE OR THE COMPUTERS CACHE. ALSO IT WAS NOT SHOWN THAT THE WEBSITES IN THE CACHE THAT WERE VIEW/CLICKED ON HAD BEEN VIEWED LONGER THAN A FEW SECONDS. WHICH DOES NOT CONSTITUTE AN "INTERNET SESSION". ALONG WITH THAT THE SEARCH TERMS DO NOT CLEARLY STATE UNDER AGE OR MINORS. SO THE TERMS USED "DADDY, DAUGHTER, OR INCEST DO NOT MEET THE REQUIRMENT OF UNDERAGE AND/OR OF MINORS. ALSO NONE OF THE WEBSITES THAT WERE CLICKED ON OR IN THE COMPUTERS CACHE ARE KNOWN ILLEGAL SITES OR DID THEY SAY THAT THE CONTENTS IN THEM DEPICTED MINORS OR UNDERAGE PERSONS. IN THE PICTURES OR VIDEOS OF THE WEBSITES.

ADDITIONAL GROUNDS: IN STATE V. CARLSON 80 WN. APP. 116; 906 P.2d 999; (1995) WASH. APP. NO. 16948-7-II, AND IN STATE V. FITZGERALD 39 WN. APP. 652; 694 P.2d 1117; (1985) WASH. APP. NO. 13476-1-I, IT WAS HELD THAT THE STATE WAS AND DID GET AN EMOTIONAL REPONSE FROM THE JURY DURING THE STATES CLOSING ARGUEMENTS.

BY GETTING THE JURY TO GET THEIR EMOTIONS ON THE STATE'S CASE OR SIDE BY SWADDING THEM TO REACH A GUILTY VERDICT. BY TALKING ABOUT HOW THE VICTIM WAS ACTING DURING THEIR TESTIMONY ON THE STAND. DURING THE STATES CLOSING ARGUEMENTS WAS HELD/RULED BY THE COURTS TO BE IMPROPER. SEE PG. 599-603 FOR THE CASE AT BAR.

ADDITIONAL GROUND 6: IN STATE V. ALLEN S. 98 WN. APP. 452; 989 P.2d 1227; (1999) WASH. APP. NO. 22647-1-II, ALSO IN STATE V. CAROL M.D. 97 WN. APP. 355; 983 P.2d 1165; WASH. APP. NO. 15014-3-III & 15040-2-III, AND IN THE STATE V. R.L. ALEXANDER 64 WN. APP. 147; 822 P.2d 1250; (1992) WASH. APP. NO. 26589-0-I. IN THESE CASES THE STATE WAS ALLOWED OVER THE DEFENSES OBJECTIONS TO ASK THE VICTIM/CHILD WITNESS LEADING AND SUGGESTIVE QUESTIONS IN VIOLATION OF RULE 611(A)(3), AND RULE 611(C) WERE IT STATES THAT LEADING QUESTIONS TO A CHILD WITNESS CAN ONLY BE ASKED ON CROSS-EXAMINATION. BY THE COURT ALLOWING THIS LINE OF QUESTIONING MADE IT SO THE QUESTIONING WAS OVERLY PREJUDICIAL TO THE DEFENSE AND DERIVED THE DEFENSE A FAIR TRIAL. SEE PG. 321-356.

ADDITIONAL GROUND 7: IN STATE V. KARPENSKI 94 WN. APP. 80; 971 P.2d 533; (1999) WASH. APP. NO. 21431-8-II, ALSO IN UNITED STATES V. BINDER 769 F.2d 595; (1985) U.S. APP. NO. 84-1249. IT WAS HELD THAT IN THESE CASES THE VICTIM/CHILD WITNESS

WAS UNABLE TO DISTINGUISH TRUTH FROM FALSE HOOD, AND REALITY FROM FANASY. IN THE CASE AT BAR THE VICTIM/ CHILD WITNESS HAS A VIVID IMAGINATION AND THE INABILITY TO TELL THE DIFFERENCE BETWEEN FANTASY AND REALITY. AT THE CHILD WITNESS MADE CLEAR WHEN SHE SHOWED IN TESTIMONY ON PG. 36, 39, 41, 38, 32 OF THE FORENSIC CHILD INTERVIEW. THE MAIN STATEMENT BEING "EVERYTHING I'VE SAID I SAW ON THE COMPUTER". SO WITH THIS STATEMENT AND OTHER TESTIMONY IT IS CLEAR THAT THE CHILD WITNESS HAS THE APPEARENT INABILITY TO DISTINGUISH FACT FROM FICTION AND FANTASY FROM REALITY.

ADDITIONAL GROUNDS: IN STATE V. FARR-LENZINI 93 WN. APP. 453; 970 P.2d 313; (1999) WASH. APP. NO. 21969-7-II. IT WAS HELD/RULED THAT LAY OPINION BY AN OFFICER HAS A GREATER POTENTIAL FOR PREJUDICE. SO IN THE CASE AT BAR WHEN DET. BAKER GAVE HIS OPINION ON THE AGES OF GIRLS DEPICTED IN THE PHOTOGRAPHS ADMITTED AS EVIDENCE IT WAS OVERLY PREJUDICIAL GIVEN HIS LACK OF TRAINING AND EXPERIENCE. I.E. RULE 602. ALSO SEE RCWA 9A.04.050 WERE IT STATES WHEN AGE IS IN QUESTION IT MUST BE DETERMINED BY A PHYSICIAN. IN STATE V. DOLAN 118 WN. APP. 323; 77 P.3d 1011; (2003) WASH. APP. NO. 28363-8-II. THE COURT HELD/RULED THAT EVERY OPINION MUST BE BASED ON PERSONAL KNOWLEDGE, PROPER EXPERT OPINION IS BASED ON

SCIENTIFIC, TECHNICAL, OR SPECIALIZED KNOWLEDGE. THE OPINIONS HERE ARE NOT BASED ON EITHER TYPE OF KNOWLEDGE, AND HENCE THEY ARE NOT ADMISSIBLE. IT IS THE SAME IN THE CASE AT BAR. SEE PG. 486-489, 492, 500, 504-505, 506.

ADDITIONAL GROUND 9: IN STATE V. ALEXANDER R.L. 64 WN. APP. 147; 822 P.2d 1250; (1992) WASH. APP. NO. 26589-0-I, THE FORENSIC CHILD INTERVIEWER FAILED TO ASK THE CHILD IF THEY KNEW THE DIFFERENCE BETWEEN TELLING THE TRUTH AND LYING. ALSO THEY FAILED TO TELL THE CHILD THEY HAD TO TELL THE TRUTH.. IN THE CASE AT BAR THE FORENSIC CHILD INTERVIEWER DID NOT ASK THE VICTIM IF SHE KNEW THE DIFFERENCE BETWEEN TELLING A LIE AND TELLING THE TRUTH. ALSO WHEN THE INTERVIEWER ASKED THE VICTIM TO TELL THE TRUTH THE VICTIM DID NOT SAY THAT SHE WOULD. SEE PG. 1 OF CHILD INTERVIEW TRANSCRIPTS.

ADDITIONAL GROUND 10: IN UNITED STATES V. BINDER 769 F.2d 595; (1985) U.S. APP. NO. 84-1249, THE WITNESSES WERE USED TO SAY THAT THE VICTIM COULD BE TRUSTED AND WOULD NOT TELL A LIE. THE WITNESSES WERE USED TO BUTTERESS THE WITNESSES TESTIMONY. THE COURT HELD/ RULED THAT THEIR TESTIMONY "IMPROPERLY BUTTRESSED" THE VICTIMS TESTIMONY. SO IN THE CASE AT BAR THE WITNESSES WERE ALSO USED IMPROPERLY TO BUTTERESS

THE VICTIMS TESTIMONY ALONG WITH THE VICTIMS CHARACTER.

ADDITIONAL GROUND 11: IN STATE V. CARLSON 80 WN. APP. 116; 906 P.2d 999; (1995) WASH. APP. NO. 16948-7-II, AND IN STATE V. DUNN 125 WN. APP. 582; 105 P.3d 1022; (2005) WASH. APP. NO. 22215-2-III, AND IN STATE V. FITZGERALD 39 WN. APP. 652; 694 P.2d 1117; (1985) WASH. APP. NO. 13476-1-I, AND IN UNITED STATES V. AZURE 801 F.2d 336; (1986) U.S. APP.; 21 FED. R. EVID. SERV. (CALLAGHAN) 801 NO. 85-5407 IT WAS HELD/RULED BY THE COURTS THAT THERE WAS NO EVIDENCE TO THE CHARGE OR ALLEGATIONS OF CHILD MOLESTATION. IN THE CASE AT BAR IT IS THE SAME, THERE IS NO MEDICAL AND/OR PHYSICAL EVIDENCE TO SUPPORT THE CHARGE OF CHILD MOLESTATION.

ADDITIONAL GROUND 12: IN STATE V. RAMIREZ 46 WN. APP. 223; 730 P.2d 98; (1986) WASH. APP. NO. 8562-3-II, AND IN STATE V. POWELL 62 WN. APP. 914; 816 P.2d 86; (1991) WASH. APP. 10777-9-III IT WAS HELD/RULED BY THE COURTS THAT THERE WAS NO EVIDENCE TO SHOW THAT TOUCHING WAS FOR SEXUAL GRADIFICATION. HOWEVER IN STATE V. HARSTAD 153 WN. APP. 10; 218 P.3d 624; (2009) WASH. APP. NO. 61734-6-I, AND IN STATE V. T.E.H. 91 WN. APP. 908; 960 P.2d 441; (1998) WASH. APP. NO. 40813-5-I, AND IN STATE V. PRICE 129 WN. APP. 193; 110 P.3d 1171; (2005) WASH. APP. NO. 29881-3-II. IT WAS HELD/RULED THAT THE TOUCHING WAS FOR THE PURPOSE OF SEXUAL GRADIFICATION

BECAUSE THE PHYSICAL AND/OR MEDICAL EVIDENCE SHOWED THERE HAD BEEN PROLONGED PERIODS OF RUBBING OR MASSAGING. ALSO THE VICTIMS HAD TESTIFIED SAYING THAT THERE WAS RUBBING AND/OR MASSAGING BY THE OTHER PERSON. BUT HOWEVER IN THE CASE AT BAR THE VICTIM IN HER TESTIMONY SAID THAT HE TOUCHED ME WITH THIS FINGER" AND SHE POINTED AT HER INDEX FINGER. SEE PG. 351 - 354 OF THE COURT TRANSCRIPTS. AND THERE WAS NO MEDICAL OR PHYSICAL EVIDENCE TO SAY THAT THERE WAS PROLONGED RUBBING OR MESSAGING OF ANY INAPROPRIATE AREAS. ALSO IN STATE V. PRICE IT WAS HELD/RULED THAT THE ACT OF TOUCHING IT SELF WOULD NOT CONSTITUTE THE CHARGE OF CHILD MOLESTATION. THERE HAD TO BE PROOF THAT THE TOUCHING WAS DONE FOR A PROLONGED PERIOD OF TIME. I.E. RUBBING OR MESSAGING, IN THE CASE AT BAR THERE WAS NO EVIDENCE OR TESTIMONY SAYING THAT THE TOUCHING WAS OTHER THAN WHAT MIGHT BE NEEDED FOR THE PURPOSE OF BEING A PARENT/CAREGIVER. SO THERE IS INSUFFICIENT EVIDENCE TO PROVE THAT ANY TOUCHING WAS FOR THE PURPOSE OF SEXUAL GRADIFICATION.

ADDITIONAL GROUND 13: IN STATE V. TARCIA 59 WN. APP. 368; 798 P.2d 296; (1990) WASH. APP. NO. 24143-5-I, AND IN STATE V. REICHENBACH 153 WN. 2d 126; 101 P.3d 80; (2004) WASH. NO. 74331-2. IT WAS HELD/RULED BY THE COURTS THAT THE DEFENSE

ATTORNEY WAS INEFFECTIVE DUE TO THEIR FAILER TO SUPRESS OR OBJECT TO EVIDENCE. AND ALSO TO BRING TO TRIAL OR TO PRETRIAL A MOTION TO SUPRESS EVIDENCE SEIZED OR FOUND BY EXPLORITORY SEARCHES BY THE STATE. IN THE CASE AT BAR THE DEFENSE ATTORNEY FAILED TO CHALLENGE THE ADMISSIBILITY OF THE EVIDENCE WITH A SUPRESSION MOTION OR TO OBJECT TO THE EVIDENCE ONCE IT WAS SHOWN AND/OR PROVEN THAT IT WAS TAINTED BY THE STATE AND THAT IT WAS IRRELEVENT, EVIDENCE THAT WAS COLLECTED BY THE STATES PROSECUTING ATTORNEY. DOING EXPLORITORY SEARCHES OF THE APPELLANTS COMPUTERS INTERNET HISTORY. BY THE FAILER'S OF THE DEFENSE ATTORNEY WITH REGUARD TO THE EVIDENCE COLLECTED AND AMITTED MADE DEFENSE COUNSEL'S PERFORMANCE INEFFECTIVE AND THERE BY MAKING THE CASE FOR THE DEFENSE PREJUDICAL. SEE PG. 478-506 OF THE COURT TRANSCRIPTS.

ADDITIONAL GROUND 14: IN STATE V. THOMAS 109 WN. 2d 222; 743 P. 2d 816; (1987) WASH. NO. 53550-7 IT WAS HELD/RULED BY THE COURT THAT THE DEFENSES ATTORNEY WAS INEFFECTIVE BY THEIR FAILER TO OBJECT TO THE STATES EXPERT WITNESSES FOR THEIR LACK OF QUALIFICATIONS. IN THE CASE AT BAR THE DEFENSE ATTORNEY FAILED TO OBJECT TO THE STATES EXPERT WITNESSES I.E. THE STATES FORENSIC CHILD INTERVIEWER AND ALSO DETECTIVE BAKER FOR THEIR LACK OF

QUALIFICATIONS, SKILLS, TRAINING, ECT... WHEN IT CAME TO QUESTIONS AND THE ANSWERES THEY GAVE AND REVIEWED BY THE STATES PROSECUTING ATTORNEY. SEE PG. 296-297, 486-506 OF THE COURTS TRANSCRIPTS.

ADDITIONAL GROUND 15: IN STATE V. PITTMAN 134 WN. APP. 376; 166 P.3d 720; (2006) WASH. APP. NO. 55682-7-I IT WAS HELD/RULED BY THE COURT THAT THE DEFENSE'S ATTORNEY WAS INEFFECTIVE BY THEIR FAILER TO REQUEST A LESSER INCLUDED OFFENSE INSTRUCTION ON COUNTS. IT IS THE SAME IN THE CASE AT BAR.

ADDITIONAL GROUND 16: IN STATE V. SUTHERBY 138 WN. APP. 609; 158 P.3d 91; (2007) WASH. APP. NO. 34331-2-II, 35662-7-II, AND 165 WN. 2d 870; 204 P.3d 916; (2009) WASH. NO. 80169-0, IT WAS HELD THAT THE DEFENSE COUNSEL'S PERFORMANCE WAS INEFFECTIVE DUE TO THEIR FAILER TO MAKE TO SEVER THE CHARGES, WHICH WAS HELD TO BE OVERLY PREJUDICAL. IN THE CASE AT BAR THE DEFENSE'S ATTORNEY FAILED TO MOVE TO SEVER THE CHARGES, WHICH WAS PREJUDICAL TO THE CASE.

ADDITIONAL GROUND 17: IN STATE V. JURY 19 WN. APP. 256; 576 P.2d 1302; WASH. APP. NO. 2632-2, AND IN STATE V. WHITE 5 WN. APP. 283; 487 P.2d 243; (1971) WASH. APP. NO. 323-1, AND IN STATE V. BYRD 30 WN. APP. 794; 638 P.2d 601;

(1981) WASH. APP. NO. 7647-6-I. IT WAS HELD/RULED THAT DEFENSE COUNSEL'S FAILER TO CALL WITNESSES FOR THE DEFENSE WAS INEFFECTIVE ASSISTANCE OF COUNSEL. IN THE CASE AT BAR IT IS THE SAME, EVEN WHEN A WITNESS IS CALLED OUT IN PRETRIAL TESTIMONY BY THE VICTIM BY NAME. THIS MAKES THE DEFENSE COUNSEL'S PERFORMANCE TO BE INEFFECTIVE. AS TESTIMONY FROM THIS WITNESS WOULD HAVE TOLD THE COURT THAT THE VICTIM WAS LYING. OR HAS A HISTORY OF TELLING LIES, AND OF TELLING STORIES ABOUT THINGS THAT ARE NOT TRUE OR DIDNT HAPPEN.

ADDITIONAL GROUND 18: IN THE CASE AT BAR THE DEFENSE ATTORNEY FAILED TO OBJECT TO THE AUTHENTICITY OF EVIDENCE ADMITTED IN TRIAL. SEE RULE 404.32 BALANCING PROBATIVE VALUE AGAINST PREJUDICE. ALSO SEE RULE 402, 804/1.04. DUE TO THIS IT MAKES FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

ADDITIONAL GROUND 19: IN STATE V. ALEXANDER, R.L. 64 WN. APP. 147; 822 P.2d 1250; (1992) WASH. APP. NO. 26-589-0-I. IT WAS HELD/RULED THAT THE STATE WAS GIVING THEIR OPINION ON MATTERS THAT THEY DID NOT HAVE THE TRAINING, SKILL, OR PERSONAL KNOWLEDGE TO TALK ABOUT OR TO GIVE AN OPINION ABOUT. IN THE CASE AT BAR THE STATE DID THE SAME THING WHEN IT CAME TO THE VICTIMS STATEMENTS AND TO WHAT THE DEFENDENT TESTIFIED ABOUT, SEE CLOSING ARGUMENTS.

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ADDITIONAL GROUND 20: IN STATE V. KORUM 120 WN. APP. 686; 86 P.3d 166; (2004) WASH. APP. NO. 27482-5-II, AND IN STATE V. LEE 69 WN. APP. 31; 847 P.2d 25; (1993) WASH. APP. NO. 27279-1-I. IT TALKS ABOUT "PROSECUTIONAL VINDICTIVENESS" IN THE CASE AT BAR THERE IS CAUSES TO SAY THERE WAS VINDICTIVENESS FROM THE STATE. FIRST SEE THE ORIGINAL INFORMATION WERE THE CHARGE IS ONLY CHILD MOLEST IN THE FIRST DEGREE DATED NOV. 24 2014, THEN SEE THE SUPERIOR COURT ARRIGNMENT TRANSCRIPTS DATED MAR 16, 2015 WERE THE STATE REFUSED TO GO TO TRIAL ON ONLY THE ORIGINAL CHARGE EVEN THOUGH THE DEFENSE WAS READY TO PROCEED TO TRIAL ON THAT CHARGE. BUT THE STATE DIDN'T WANT TO PROCEED UNLESS THEY FILED THE NEW AMMENDED INFORMATION. APON AT THE END OF THE HEARING THE STATE SAID THEY WOULD ONLY HOLD OFF ON THE AMMENDED INFORMATION FOR ONE WEEK. BUT THE STATE STILL HAD NOT SUBMITTED THE AMMENDED INFORMATION TILL AFTER THE CHILD 3.5 HEARSAY HEARING THEN ON THE FIRST DAY OF TRIAL THE STATE FILED THE AMMENDED INFORMATION. AS THE TRANSCRIPTS STATE THE STATE REFUSED TO GO TO TRIAL ON ONLY THE ORIGINAL CHARGE. THE STATE NEEDED THE AMMENDED INFORMATION TO SUPPORT THE ORIGINAL CHARGE. THEY NEEDED IT TO MAKE THEIR CASE LOOK LIKE "WHERE THERE IS SMOKE THEIR IS FIRE" SO TO SPEAK. IF THE STATE HAD GIVEN AN AMMENDED INFORMATION WITH A GREATER CHARGE THEN IT WOULDN'T HAVE BEEN

VINDICTIVE. BUT SINCE THE AMMENDED INFORMATION WAS OF LESSER CHARGES WITH ONLY ONE REASON TO ADD THE CHARGES IS THAT THEY NEED THEM TO SUPPORT THEIR CASE. OTHERWISE WHY NOT PROCEED TO TRIAL ON ONLY THE ORIGINAL CHARGE OR INFORMATION? SEEING THIS THE AVERAGE PERSON CAN ONLY SAY THAT IT IS VINDICTIVE IN NATURE. SECOND TO GO FURTHER TO PROVE THE VINDICTIVE NESS OF THE STATE DURING TRIAL, THE PROSECUTOR TAKING RANDOM SHOTS AT THE DEFENDENT DURING CROSS-EXAMINATION THAT HAD NO REASONING OTHER THAN TRYING TO GET AN EMOTIONAL RESPONSE AND TO AGRIVATE THE DEFENDENT TO TRY AND GET THE EMOTIONS OF THE JURY INTO THEIR DELIBERATIONS OR TRAIN OF THOUGHT. SEE PG. 548-566 THE STATES ATTORNEY EVEN WENT AS FAR AS TELLING THE JURY DURING CLOSING ARGUMENTS THAT THE DEFENDENT WAS NOT TELLING THE TRUTH AND LYING ABOUT EVERYTHING THAT WAS TESTIFIED TO. BUT I WAS NOT IN SO MANY WORDS. WHICH WAS INVADING THE PROVINE OF THE JURY MEMBERS. GIVEN ALL OF THESES MATTERS IT IS OBVEIOUS THAT THE STATE WAS BEING VERY VINDICTIVE IN THEIR TRYING OF THE CASE.