

No. 42202-6-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON,

Respondent,

Vs.

JESSE SCOTT LAKE

Appellant.

APPEAL FROM THE SUPERIOR COURT

OF PIERCE COUNTY

Cause No. 09-1-03264-7

REPLY BRIEF OF APPELLANT

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Table of Contents

TABLE OF AUTHORITIES.....3

I. STATEMENT OF THE CASE4

II. ARGUMENT4

A. Because Mr. Lake Properly Cited To The Record, This Court Should Decide Mr. Lake’s Appeal On The Merits.4

B. Because Mr. Lake Was Improperly Denied The Right To Testify As To Why He Gave An “Incomplete” Statement, This Court Should Reverse His Conviction.....5

C. Because The Trial Court Limited Defense Testimony By Erroneously Sustaining Hearsay Objections, This Court Should Reverse Mr. Lake’s Convictions.6

D. The Erroneous Admission Of Irrelevant Evidence Is Grounds For Reversal.....8

E. The Cumulative Errors Warrant Reversal.....8

III. CONCLUSION9

TABLE OF AUTHORITIES

Cases

State v. Gefeller, 76 Wn.2d 449, 455, 458 P.2d 17 (1969)6

Rules

ER 8017

I. STATEMENT OF THE CASE

Mr. Lake adopts the facts set forth in his opening brief.

II. ARGUMENT

A. Because Mr. Lake Properly Cited To The Record, This Court Should Decide Mr. Lake's Appeal On The Merits.

Respondent first suggests that this court should decline to consider the issues raised by Mr. Lake in his opening brief because the issues are not “supported by citation to relevant portions of the record.” Specifically, Respondent alleges that Mr. Lake failed to cite to the record as it relates to errors in sections B, C, and D of his opening brief. Because this is simply false, Respondent’s argument fails.

In section B, Mr. Lake discussed where Kathy Lake was prevented from testifying about her conversations with Brett Howell. This portion of the trial was specifically cited within the “Procedural History” portion of Mr. Lake’s Statement of the Case. See Brief of Appellant at 6-7. Similarly, in Section B, Mr. Lake discussed the portion of his trial where he was prevented from testifying about his knowledge and understanding of his Native American heritage. This portion of the trial was also cited within the “Procedural History” portion of Mr. Lake’s Statement of the Case. See Brief of Appellant at 7.

In section C, Mr. Lake addressed the portion of trial where the court allowed irrelevant testimony – first, testimony related to Mr. Lake’s alleged statement that A.M. “looked like her mother,” and second, that “Kathy Lake and her sister were sexually abused by their father.” These two instances of irrelevant testimony were also cited within the “Procedural History” portion of Mr. Lake’s Statement of the Case. See Brief of Appellant at 7-8.

Finally, in section D, Mr. Lake argued that the trial court erroneously admitted Mr. Lake's written statement. This "fact" was cited in within the "Procedural History" portion of Mr. Lake's Statement of the Case on page 7. See Brief of Appellant at 7.

Respondent's allegation that Mr. Lake failed to properly cite to the record is without merit as each of the issues raised is cited to the record in his Statement of the Case. As such, this Court should consider Mr. Lake's appeal on the merits.

B. Because Mr. Lake Was Improperly Denied The Right To Testify As To Why He Gave An "Incomplete" Statement, This Court Should Reverse His Conviction.

Respondent's second argument is two pronged. First, Respondent once again complains that Mr. Lake has not properly cited where in the record he was denied the right to testify that he had not been previously arrested. Because this is simply false, this argument is meritless. Second, Respondent suggests that, even "if the State extensively crossed the defendant on his incomplete statement to the police, presumably the defense could have argued that the State opened the door to the introduction of the fact that this was the defendant's first arrest and he didn't know what to say to the police." See Brief of Respondent at 15. Because this is precisely what happened to Mr. Lake, the State is conceding that the trial court erred in an extremely prejudicial manner.

As it relates to Mr. Lake's citation to the record, this Court need look no further than page 8 of Mr. Lake's Procedural History section of his Statement of the Case. Specifically, in that section, Mr. Lake cites to RP 808:6-21 as the portion of trial where, following the State's cross-examination of why Mr. Lake did not give a more complete statement to police, he was not allowed to answer questions regarding his reasons for not giving a full disclosure. See Brief of Appellant at 8; RP 808:6-21. Additionally, as it relates to the portion of the record where the State's motion in limine – preventing Mr. Lake from mentioning that he'd never been arrested

unless the door was opened by the State – was granted, on page 8 of his opening brief, Mr. Lake appropriately cites to 5/1/11 RP 5:1-7. Because Respondent’s claim that Mr. Lake has failed to properly cite his issues is meritless, this court should reject it.

Second, Respondent suggests that, even “if the State extensively crossed the defendant on his incomplete statement to the police, presumably the defense could have argued that the State opened the door to the introduction of the fact that this was the defendant’s first arrest and he didn’t know what to say to the police.” See Brief of Respondent at 15. Because this is precisely what happened to Mr. Lake, the state is conceding Mr. Lake’s argument, and this Court should reverse his convictions.

Specifically, as noted in his opening brief, during trial Mr. Lake adhered to pretrial rulings and did not testify to his lack of criminal history. He was then, however, extensively cross-examined about his failure to give complete statements when initially questioned. See RP 773:6-777:25; 789:19-793:24; 799;5-801:9; 807:10-808:2. In an attempt to demonstrate why Mr. Lake’s statement was seemingly incomplete – specifically the fact that it was his first arrest and the first time he’d ever been questioned by police and thus was unaware of the importance of a complete statement – defense counsel attempted to ask relevant questions but the trial court refused to allow them to be answered. See Brief of Appellant at 13; RP 808:6-15. Because this decision by the trial court was in violation of the precedent set forth in State v. Gefeller, 76 Wn.2d 449, 455, 458 P.2d 17 (1969), and the other cases cited by Mr. Lake in his opening brief, this Court should reverse.

C. Because The Trial Court Limited Defense Testimony By Erroneously Sustaining Hearsay Objections, This Court Should Reverse Mr. Lake’s Convictions.

Without specifically addressing whether the testimony Mr. Lake was seeking from Brett Howell or Kathy Lake was actually hearsay, Respondent makes a series of suggestions as to

what defense “could have done” or arguments defense “could have made” and then cites back to this court the trial court’s erroneous understanding of the hearsay rule. See Brief of Respondent at 23-24. Because the role of the appellate court is to evaluate whether the trial court made mistakes and whether the mistakes denied Mr. Lake a fair trial, respectfully, Respondent’s opinions and references to the trial court’s mistaken logic are essentially concessions that Mr. Lake was, in fact, denied his constitutional right to a fair trial. As such, this Court should, respectfully, reverse Mr. Lake’s convictions.

As is noted by both Mr. Lake and Respondent, a statement is not hearsay if it is not offered to prove the truth of the matter asserted. ER 801(C). Looking specifically to the record cited, it is clear that during defense counsel’s exchange with the trial court regarding the conversation between Kathy Lake and Brett Howell, counsel went to great lengths to instruct the court as to the basics of the hearsay rule. See RP 654:20-661:1-2; 258:23-259:17. Clearly defense counsel was not attempting to show the truth of the matter asserted: that Kathy Lake wanted Brett Howell to stay away from her daughter, or that he actually stayed away from her, or the “truth of the text messages,” but rather, the context of the conversations. This is specifically addressed by defense counsel. See 2-A RP 288:19-290:20. That defense counsel faced the same improper understanding of the rule in several other situations cited in Mr. Lake’s opening brief supports his argument that prejudice occurred. Because the trial court failed to understand this obvious evidence rule, Mr. Lake was denied his ability to argue his case: specifically that his daughters had motivations to lie about the abuse.

Moreover, because the State was able to present damaging character evidence, such as evidence that Mr. Lake was a liar for claiming to be Native American – and Mr. Lake was denied the ability to address this issue based on the trial court’s erroneous hearsay rulings – Mr. Lake

was prejudiced. In a case without physical evidence, where the credibility of the witnesses was paramount, the errors of the trial court could not have been more prejudicial to Mr. Lake's right to a fair trial. As such, this Court should, respectfully, reverse Mr. Lake's convictions.

D. The Erroneous Admission Of Irrelevant Evidence Is Grounds For Reversal.

Respondent claims that counsel did not object to testimony that Mr. Lake called his daughters "sluts" or "whores." Respectfully, this is erroneous, as this objection occurred at RP 214: 1-9. Respondent argues that this testimony had already occurred, without objection and thus, was relevant. This is incorrect. Specifically, at RP 178, A.M. testified generally about Mr. Lake's theory of fatherhood and that when fathers are distant, their daughters tend towards promiscuity. RP 178:8-24. She did not state that Mr. Lake "called them sluts or whores." The testimony from S.L. occurring at RP 213-214, however, was much different where the prosecutor asked, "would he ever call you or [A.M.] in front of you any derogatory names or anything like that?" To which S.L. testified that he would and the prosecutor followed up with "What names would he call you?" To which defense counsel objected before being overruled. RP 214:1-3. The elicitation of the "slut, whore" response, over objection, was intended for no other purpose than to assassinate Mr. Lake's character – as it had no tendency to prove an element of the crimes charged and was thus irrelevant under ER 401 and ER 403. Moreover, because no ER 403 balancing tests occurred, the trial court's admission was grounds for reversal.

E. The Cumulative Errors Warrant Reversal.

As has been demonstrated by Mr. Lake, he was subjected to numerous erroneous rulings that effectively eliminated the possibility of him receiving a fair trial. The State was allowed to present irrelevant evidence about Mr. Lake and tell part of the story; and when Mr. Lake attempted to address the character attacks or defend against the charges, his witnesses were

erroneously silenced by the trial court. In a case such as this, without physical evidence, the attitudes of the jurors hinged on their credibility determinations. As such, because Mr. Lake was rendered defenseless by the trial court and the jury only heard one side of the story, this Court must conclude that Mr. Lake did not receive a fair trial. As such, reversal is required.

III. CONCLUSION

Based on the above cited files and authorities, Mr. Lake respectfully requests this Court reverse his convictions and remand this case for new trial.

Respectfully submitted this 3rd day of July, 2012.

HESTER LAW GROUP, INC., P.S.
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By: 

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CERTIFICATE OF SERVICE

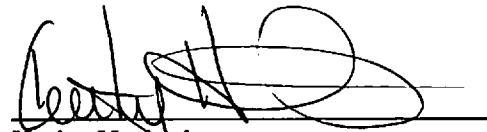
Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of the reply brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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Signed at Tacoma, Washington, this 3rd day of July, 2012.


Kathy Herbstler

HESTER LAW OFFICES
July 03, 2012 - 3:18 PM

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