

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

COURT OF APPEALS
DIVISION II
12 APR 27 PM 1:41
STATE OF WASHINGTON
BY Bill
DEPUTY

<u>State of Washington,</u>)	
)	
Respondent,)	Court of Appeals Cause No. <u>42202-6-II</u>
)	
v.)	STATEMENT OF ADDITIONAL
)	GROUND FOR REVIEW
)	
<u>Jesse Scott Lake,</u>)	
)	
Appellant.)	

I Jesse Scott Lake, 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 I

ER403: "Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time." Although relevant, evidence may be excluded if its probative value is substantially out weighted by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of the cumulative evidence.

ER 404(b): Provides that; evidences of other crimes, wrongs, or acts are not admissible to prove the character of a person in order to show action in conformity therewith."

On March 7, 2011, PM Session (pages 414-415); the trial court allowed state witness J.L. Jr. to testify, under objection, to alleged name calling and insults.

- Q. Did you ever hear your father refer to the girls in any kind of –any kind of verbal abuse going on?
- A. Yes
- Q. Who would it be directed to?
- A. Both girls.
- Q. Ok, what would he say to both girls?
- A. Just your average insults.

The Defendant would like to bring forth this example of prejudicial v. probative testimonies. By allowing the state witness, J.L. Jr to testify of alleged name calling, the court further prejudiced the minds of the jury

toward the Defendant. The defense maintains that the states only motive was character assignation by allowing “evidences of other crimes, wrongs, or acts” to prove the character of the defendant. The states witness, J.L. Jr’s testimony about alleged name calling was allowed when it showed no propensity to commit a crime.

Additional Ground II

ER403: “Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.” Although relevant, evidence may be excluded if its probative value is substantially out weighted by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of the cumulative evidence.

On March 7, 2011, PM Session (Pages 446-450), the trial court allowed the state witness J.L. Jr. to testify, over defense objection, about a “black rubber circular thing” in the defendant’s sock drawer. The defense objected due to relevance. The trial court overruled. The state opened this line of questioning based on J.L. Jr doing laundry and putting away clothes in a “sock drawer”. J.L. Jr states that he saw this alleged item many years ago, did not know what it was, and never saw the alleged item again nor went looking for it.

As has been stated before in many cases, unfair prejudice is the result when evidence presented is more likely to arouse an emotional response rather than a rational decision by the jury. As in *State v. Stackhouse*, (90 Wn App 344,356 957 P. 2d 218, rev. denied 136 Wn 2d 1002, 966 P 2d 902(1998)), the trial court allowed into evidence prejudicial testimony by J.L. Jr that alluded to A.M.’s testimony on what she believed she saw in a drawer many years later (see March 2nd, 2001, pages 47-48). The defense made the argument that the items being described by each witness were not the same (March 7, 2011, page 447, Ln 18). The trial court overruled the objection, allowing the jury to become exposed to prejudicial testimony intended to elicit an emotional reaction. The prejudicial effect on the defense out weighed the probative effect of the evidence, thus denying the defendant a fair trial.

Additional Ground III

ER 801(c): “Hearsay, is a statement, other than one made by the declarent while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

ER403: "Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time." Although relevant, evidence may be excluded if its probative value is substantially out weighted by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of the cumulative evidence.

On March 8, 2011, Page 472-473, A.L. was asked about the defendant's opinion on their kids receiving counseling. The defense objected as to hearsay. The trial court overruled. The court further allowed this line of questioning to continue and allow A.L. to make the indication that the defendant was opposed to their child receiving counseling. Again defense objected and again the court overruled and allowed A.L. to respond.

The Defendant presents this as another example of prejudicial v. probative testimony under the guise of probative testimony with no grounds, thus depriving the Defendant of a fair trial.

Additional Ground IV

In State v. Sutherby, (No. 80169-0) the court noted, severance of charges is important when there is a risk that the jury will use the evidence of one crime to infer the defendant's guilt for another crime or to infer a general criminal disposition.

During the Omnibus Hearing, in the summer of 2010, Defense moved to separate the charges raised by A.M. from those made by S.L. arguing that the trials should be separated due to the prejudicial nature of the charges and the danger that the jury would use the evidence pertaining to one accuser to infer the defendant's guilt for charges pertaining to the other accuser or to infer a general criminal disposition. The State's argument against severance was based on an assertion that the two witnesses flying in would be testifying in both trials. If the charges were separated, the State would have to pay for these flights twice for the same witnesses to give the same testimonies. This was under the assertion by the state that both witnesses' testimonies would be needed for charges pertaining to both A.M. and S.L.. They further stated that the state did not want to spend the extra money to fly in both witnesses two different times.

The Defendant wishes to assert that a person should not be denied fair due process based on the lack of funds by the state. The state's argument could only have had a minimal amount of merit if the states witnesses, Trena Morris and Bret Howell had relevant testimony pertaining to both S.L. and A.M. This was the assertion made by the Prosecution. However, Trena Morris' testimony only pertained to A.M.

Brett Howell's testimony regarding S.L. , under repeated objection by the defense, was only concerning a phone conversation (March 7, page 246, Ln. 20 thru page 247, Ln. 18), in which it was claimed that S.L. indicated to Brett Howell that she believed the Defendant was committing crimes against A.M.

The Defendant was denied due process based on two arguments by the State: 1) the lack of money by the state to conduct two trials and, 2) the state's assertion that Trena Morris and Brett Howell, would have pertinent testimony regarding the allegations of S.L., which never took place. The state's motivation to deny the severance of the charges was based on a tactical advantage rather than the truth of the matter alleged, thus denying the Defendant a fair trial.

Additional Ground V

In, PROTOCOLS AND TRAINING STANDARDS: Investigating Allegations of Child Sexual Abuse, By Roxanne Lieb with Lucy Berliner and Patricia Toth; *January 1997, for the Washington State Institute of Public Policy*, Document No. 97-01-4101, on page 19, the interview protocol specifies general considerations and identifies the components of the interview process, <http://www.wsipp.wa.gov/rptfiles/childwit.pdf>. "*1. General considerations. The presence of support persons is discouraged based on an assumption that their presence would compromise the integrity of the interview*" It is also procedure for an investigating officer to conduct interviews of all potential witnesses, whether they are present at the scene or not.

The investigation by Milton Police was incomplete and flawed. Detective Camden only interviewed: the alleged victims, A.M and S.L; Brett Howell, the boyfriend of A.M; and Adina Lake, the Defendant's ex-wife. However, no one from the Milton Police Department or the Prosecutors office even attempted to interview the other two adults actually living in the home when the alleged crimes took place: the Defendant's wife, Kathy Lake, and step-son, Franky McQuinn. This is despite the fact that both were in the Milton Police Office on 2/12/2009 to inquire about the charges being made against the Defendant. In fact, their presence was met with overt hostility from Detective Camden. Detective Camden indicated that interviews with A.M. and S.L., conducted on two different occasions, were not conducted with either video or audio recordings (page 129, Ln. 12-16 and page 150, Ln 11-20). The Detective also indicated that the initial interview of S.L. was conducted in the presence of A.M. (Page 157, Ln 12 thru page 158, Ln 3). This coupled with the Detective's own testimony that

she lacked training in non-leading interview techniques (page 141, ln. 1-3), calls to question the validity of the content of those interviews. Failure to interview all residence of the home where the alleged criminal conduct occurred resulted in a one sided investigation. This combined with Detective Camden's lack of training and use of basic interview techniques resulted in a flawed investigation bent on demonizing the Defendant instead of an attempt to uncover the truth of the matter alleged, thus depriving the Defendant of due process.

Additional Ground VI

Due to the incorrect application of the Hearsay rules, testimony that would have exonerated the Defendant was withheld from the jury. First there is the telephone conversation that occurred between Kathy Lake and Brett Howell concerning 566 text messages that appeared on A.M.'s cell phone bill for the month of December 2008. A.M. claimed to not know anything about them. Believing A.M. to be truthful, Kathy addressed the matter with their cell phone provider, in the South Hill location, who provided a list of numbers that the text messages were sent from. When discovering nearly all the text messages were from the same phone number, Kathy called the number to confront the sender about the matter of the charges incurred. The individual that answered the phone claimed to not know A.M. but then identified himself as Brett Howell. Kathy then recalled that this was the same person whom had invited A.M. to Homecoming the previous fall and, to Kathy's knowledge, A.M. had turned down. Still claiming not to know anything about the text messages, A.M. then begged Kathy not to say anything to the Defendant about them being from Brett Howell because she didn't want the Defendant to think she was lying and not trust her. Kathy told A.M. that she wouldn't say anything right away but that A.M. would need to have that discussion with the Defendant. Pursuant to testimony then given by both A. M. and Brett Howell, they were in fact dating and keeping it a secret from both Kathy and the Defendant. Less than a week before the accusations were made, Kathy reminded A.M. that she hadn't discussed the text messages with the Defendant yet and would need to do so soon or Kathy would bring it up. This situation is consistent with the defenses assertion that the allegations were fabricated to facilitate the relationship between Brett Howell and A. M.

Secondly, there was the conversation between Kathy and A.M. that took place almost two weeks after the allegations were made. During this conversation, Kathy asked A.M. questions regarding the

allegations she was making. Very specific questions were asked, by Kathy, regarding physical contact between the Defendant and A.M. A.M.'s responses to those questions indicated that there was no contact, by the Defendant, with A.M.'s vaginal area or between A.M. and the Defendants' genitals. A.M.'s only assertion to molestation, at that time, centered on the bed moving when the Defendant would give her massages and assumptions made by Brett Howell that the Defendant was masturbating between the boxed springs and mattress. However, two years later and just two weeks prior to trial, A.M. makes new allegations involving the Defendant massaging her vagina and the notion that the Defendant had A.M. suck on his penis. It is the Defendant's belief that these new allegations were generated by A.M. to facilitate a shocked response from the jury and insure a conviction. The addition of these new claims, coupled with the limiting of Kathy's contradicting testimony, resulted in the Defendants conviction of the 1st Degree Molestation charge.

Additional Ground VII

In conclusion, these types of incidents alone might seem harmless; however, they were repetitive throughout the whole trial, thus continuing to prevent the Defendant from receiving a fair trial. It is the hope of the Defendant that the cumulative errors will be given due weight and that the convictions, on all three counts, would be over turned with Prejudice.

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

Date: 4/24/12

Signature: Jose R. Lopez Jose R. Lopez