

FILED
COURT OF APPEALS
DIVISION II

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

STATE OF WASHINGTON

BY: 

DEPUTY

State of Washington,

Respondent,

vs.

Jeffrey A. Roetger,

Appellant.

No. 46082-3-II.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Jeffrey A. Roetger, have received and reviewed the opening brief prepared by 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.

1. DEFENDANT'S 6TH AMEND. TO THE U.S. CONST.; ART. 1, SEC. 22, OF THE WASH. STATE CONST. GUARANTEE HIM THE RIGHTS TO CONFRONT AND CROSS-EXAMINE ADVERSE WITNESSES, PRESENT TESTIMONY IN HIS DEFENSE, AND HAVE THE ASSISTANCE OF COUNSEL TO A FAIR AND IMPARTIAL TRIAL.

The Sixth Amendment to the United States Constitution and Article I, Sec. ²²~~ww~~ of the Washington Constitution guarantee the rights to confront and cross-examine adverse witnesses and to present testimony in one's defense. State v. Hudlow, 99 Wash.2d 1,14, 659 P.2d 514 (1983). The Sixth Amendment guaranties of compulsory process, confrontation, and the assistance of counsel

help ensure fair trials. See Faretta v. California, 422 U.S. 806, 818-21, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

These assurances safeguard the truth-seeking function of criminal trials. In putting the State to its proof, a defendant may call witnesses, cross-examine the state's witnesses, and have the assistance of counsel, thereby guarding against a wrongful conviction. See, e.g., Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 45 L.Ed.2d 593 [177 Wn.2d 3767] (1975) ("[P]artisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.").

The record supports Mr. Roetger sought to introduce evidence that one of his alleged victims, A.K. had been abused by her brother during the period between 2003 and 2004. The allegations against Mr. Roetger began allegedly around 2005. RP 35-54. The State during the pre-trial motion sought to exclude this same evidence citing the rape shield statute. Id.; RP 35-54.

A rape shield law must at times yield to the defendant's constitutional right to cross-examine witnesses and to present a defense; however, before being allowed to introduce relevant but otherwise excluded evidence, the defendant must make an offer of proof establishing that the prior act has clearly occurred, the act closely resembles those at issue in the instant case, the act is relevant to a material issue, the evidence is necessary to the defendant's case, and the probative value of the

evidence outweighs its prejudicial effect. In Interest of Michael R.B., 175 Wis.2d 713, 499 N.W.2d 641 (1993); State v. Hudlow, 99 Wash.2d at 14-16,19; 659 P.2d 514.

The test used to determine whether trial court's exclusion of proffered evidence under rape shield law violated defendant's due process right to fair trial is whether (1) testimony was relevant; (2) probative value of evidence outweighed its prejudicial effect; and (3) state's compelling interests in excluding evidence outweighed defendant's right to present relevant evidence supportive of his or her defense; under that test, appellate court will reverse a trial court's ruling only if there has been a clear abuse of discretion. U.S.C.A. 14.

The defense in this case sought to present evidence of A.K.'s abuse by her brother to rebut any evidence the jury would conclude that A.K.'s sexual knowledge was in any way connected to acts involving Mr. Roetger. Defense Counsel briefed the issue in argument during pre-trial motions. Id; RP 35-54. The Court denied the evidence from being introduced. RP 54.

The right to confrontation includes the right to elicit facts tending to show a witness's bias, but the scope or extent of cross-examination eliciting a witness's is within the discretion of the trial court. State v. Roberts, 25 Wash.App. 830,834, 611 P.2d 1297 (1980). If a trial court erroneously excludes evidence in violation of a defendant's constitutional rights to confrontation or to present a defense, "reversal is required unless

no rational jury could have a reasonable doubt that the defendant would have been convicted even if the error had not taken place." State v. Spencer, 111 Wash.App. 401,408, 45 P.3d 209 (2002).

The allegations in the case at hand involved several allegations from A.K. and A.C. regarding their own personal accounts of what transpired with the defendant Mr. Roetger. These alleged sexual acts varied which allegedly occurred when both of the girls were in elementary school. Here the jury was left with the presumption that the alleged victims in this case would have no knowledge of such sexual acts but for those acts committed by Mr. Roetger. The prejudicial effect left Mr. Roetger defenseless, where if the information was presented, the jury could have concluded that A.K. had been subjected to similar abuse by her brother and likely learned about these sexual acts from him.

The record supports that A.K. and A.C. were best friends suggesting that A.C.'s information could have come through A.K.'s confidence that these sexual acts occurred by her brother, not from the alleged incidents involved by Mr. Roetger. This exclusion of the sex abuse evidence denied the defendant Jeffrey A. Roetger his 6th Amend. to the U.S. Const.; Art. 1, Sec. 22, of the Wash. State Const. those Rights guaranteed to confront and cross-examine adverse witnesses, present testimony in his defense, and have the assistance of counsel to a fair and impartial trial. For the reasons stated herein, Mr. Roetger respectfully request this Honorable Court of Appeals to reverse his conviction and remand

back for a new trial.

2. CUMALATIVE ERROR DENIED JEFFREY A. ROETGER THE RIGHT TO A FAIR AND IMPARTIAL TRIAL, GUARANTEED UNDER THE U.S. CONST. AMENDS. 5,6, AND 14; WASH. STATE CONST. ART. 1, SEC. 3 AND 22.

Every defendant has the right to a fair trial, guaranteed by the Federal and State Constitutions. U.S. Const. Amends. 5,6; Wash. State Const. Art. 1, Sec. 3,22: Cumulative trial error may deprive a defendant of his right to a fair trial. State v. Coe, 101 Wn.2d 722,789, 684 P.2d 668 (1984).

The cumulative error doctrine protects a criminal defendants right to a fair trial and applies to instances when there has been several trial errors that standing alone may not be sufficient to justify reversal but when combined may deny a defendant a fair trial. State v. Williams, 137 Wn.App. 736, 154 P.3d 322 (2007)(Division 2). The combined effect of errors at trial, such as:

- (1) The prosecutor's misconduct on multiple occasions during closing and rebuttal arguments where several improper remarks were stated, bolstered the state's case of its key witnesses tilted the balance of fairness away from the defendant;
- (2) Defense counsel's ineffectiveness in handling the prosecutor's misconduct in his failure to object was not sound trial strategy prejudiced the defendant;
- (3) Defendant's right to confront and cross-examine adverse witnesses, present testimony in his defense, and have the assistance of counsel;

Denied defendant his constitutional right to a fair and impartial trial.

Mr. Roetger presents a cumulative effect of errors that

denied his a fair trial. See Killian v. Poole, 282 F.3d 1204,1211 (9th Cir. 2002)(The cumulative error doctrine in habeas recognizes that even if no single error were prejudicial, where there are several substantial errors, their cumulative effect may be so prejudicial as too require reversal).

This error by the Court, though not sufficient by itself to warrant a new trial, when combined with all the other errors in this trial, violated Mr. Roetger's U.S. Const. Amends. 5,6; Wash. State Const. Art. 1, Sec. 3,22, rights to a fair and impartial trial. Reversal is warranted and granting a new trial would serve the ends of justice.

CONCLUSION

Based on the above cited facts,files, and authorities, Mr. Roetger respectfully requests reversal of his convictions.

Respectfully submitted this 17th day of November, 2014.

Jeffrey A. Roetger #372101
Stafford Crk. Corr. Cntr.
191 Constantine Way
Aberdeen, WA 98520

I, Jeffrey A. Roetger, declare under the penalty of perjury under the Laws of the State of Washington, that the Statement of Additional Grounds, that I filed in the Washington State Court of Appeals for Division Two, is true and correct to the best of my knowledge.

Jeffrey A. Roetger #372101
Stafford Crk. Corr. Cntr.
191 Constantine Way
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DECLARATION OF SERVICE BY MAIL

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STATE OF WASHINGTON

I, Jeffrey A. Roetger, declare and say:

That on the 17 day of NOVEMBER, 2014, I deposited

following documents in the Stafford Creek Correction Center Legal Mail system, by First

Class Mail pre-paid postage, under cause No. 40082-3-II:

* Statement of Additional Grounds For Review;

addressed to the following:

Hester Law Group, Inc., P.S.
1008 South Yakima Ave., Suite 302
Tacoma, WA 98405

Washington State Court of Appeals
Division Two
950 Broadway Ste. 300,
Tacoma, WA 98402-3094

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 17 day of NOVEMBER, 2014, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature

Jeffrey A. Roetger

Print Name

DOC# 372101 UNIT# _____

STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520