NO. 72941-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARIO A. ONTIVEROS,

Appellant.

BRIEF OF RESPONDENT

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COURT RULES

I. ISSUES

(1) The defendant offered expert testimony that certain interrogation techniques increase the likelihood of false confessions, but also increase the likelihood of true confessions. The proffered testimony did not provide any way to distinguish between true and false confessions. Did the trial court abuse its discretion in excluding this testimony as unhelpful to the jury?

(2) Does the exclusion of expert testimony for this reason violate a defendant's constitutional rights?

(3) During deliberations, the jury asked questions concerning matters outside the evidence. The court formulated answers to these questions after consulting defense counsel, but without the defendant being present in person. Did this proceeding violate the defendant's constitutional right to be present during trial?

(4) If the defendant's rights were violated, was the error harmless, where the court's answers told the jury that no further evidence would be introduced?

(5) The victim testified that the defendant's molestation caused her behavioral problems. The victim made similar statements to a therapist. Did the court abuse its discretion in admitting this evidence?

(6) During voir dire examination, the trial court precluded questioning about specific cases in which wrongful convictions had occurred. Did the court abuse its discretion in imposing that restriction?

II. STATEMENT OF THE CASE

A. FACTS OF THE CRIME.

The defendant, Mario Ontiveros (born July, 1986), was charged with four counts of first degree child molestation and one count of communicating with a minor for immoral purposes. 2 CP 971-72. The victim of these crimes was K.W. (born May, 1995).

K.W.'s parents were divorced. K.W. primarily lived with her mother. She visited her father every other weekend and holidays and some of the summertime.10/27 RP 19. In early 2006, K.W.'s father moved to a house in Everett. The defendant was living there. When she visited, K.W. slept in the bed in the defendant's room, while the defendant slept on the couch. 10/24 RP 14-15.

About a month after K.W. began visiting at this house, the defendant started tucking K.W. in at night. "He would grab very roughly at my sides, and he would put me in bed, and he would touch my breasts." 10/24 RP 16. He pressed on her breasts,

moved his hands to her side, and then moved them back to her breasts. This happened every night. 10/24 RP 17-21.

On one occasion, the defendant told her that he wanted to masturbate. She said that he could do whatever he wanted, but not in her room. He insisted that he couldn't do it unless she was there. He started stroking his penis through his pants. She left the room to get a glass of water. When she returned 7-10 minutes later, he was still doing the same thing, so she left again. 10/24 RP 22-25.

During August, 2006, K.W. and the defendant were at the home alone. The defendant came into her room and started playing with a small Swiss Army knife. He asked her if she had ever masturbated. She said no. He asked her if she knew how. She again said no. He then offered to show her how. At this point, the dog started barking. The defendant left to let the dogs out. 10/24 RP 28-29.

K.W. called her mother and asked to be taken home. When her mother picked her up, K.W. was very upset. She told her mother that the defendant had asked her about masturbating. K.W.'s mother told this to her father. 10/27 RP 31-34. The father confronted the defendant, who admitted having this conversation

with K.W. The father told the defendant that he could no longer live there. 10/27 RP 7-10.

Following these events, K.W. began having problems in school. When she was 15, she began cutting herself. 10/24 RP 33-34, 44-45. Her mother arranged for her to see a family therapist, Logan Roth. Therapy sessions began in June, 2011. K.W. told Ms. Roth about her self-harm and her problems at school. She also told Ms. Roth that a man who lived in her father's house had touched her breasts. She invited Ms. Roth to report this to C.P.S. Ms. Roth did not believe that she had sufficient information, so she did not report it. 10/27 RP 109-16.

K.W. ultimately reported the abuse to a school counselor, who reported it to police. 10/24 RP 47. On August 7, 2012, Det. Steven Martin of the Snohomish County Sheriff's Office conducted a phone interview with the defendant. The interview was recorded. 10/28 RP 119-20. Both the recording and a transcript were introduced into evidence. Ex. 23, 24.

In the interview, the defendant initially denied ever talking to K.W. about "sex stuff." He denied that she had ever seen him masturbating. He denied touching her breasts. After further questioning, the defendant admitted that K.W. had walked into the

room when he was masturbating. He admitted talking to her about masturbation. He said that he had "accidentally" touched her breasts while he was tickling her. He had become sexually aroused by this. He agreed that he had made a decision to touch her and then realized it was a mistake. Ex. 24.

B. DEFENSE OFFER OF PROOF.

At trial, the defense sought to introduce testimony from a psychologist, Dr. Deborah Connolly. The defense submitted a report that analyzed the interrogation of the defendant. 2 CP 796-813. The report identified several interrogation techniques that can produce false confessions. The report acknowledged, however, that "these tactics are not uniquely associated with false confessions; they also produce true confessions." 2 CP 800. Dr. Connolly concluded that the defendant's confession "should be treated with great caution." 2 CP 806.

After lengthy discussion of this issue, the court excluded this testimony:

> [I]nterview techniques cannot make a confession false. That necessarily depends on whether the interviewee is guilty or innocent, and that is a condition that exists before the two people sit down to talk. Interview techniques can cause an innocent person to confess. And I will accept that that is what this science – and I'm going to accept that it's science

> – demonstrates. Studies have shown that. Perhaps experience has shown that. And I will accept that it is so.
>
> However, without knowing whether the person was innocent, it is impossible to know if that happened because a false confession would only be false if the person confessing were innocent. So testimony about confession techniques cannot do more than explain why an innocent person confessed falsely if the person was, in fact, innocent. That begs the question of whether he was, and the expert doesn't know the answer to that.
>
> So the testimony is only relevant if the person, in fact, was innocent. And that is, of course, the ultimate question for the jury anyway, and so it is not useful to the trier of fact.

10/23 RP 8-9.

C. JURY QUESTIONS.

During deliberations, the jury sent out seven questions. Five of the questions asked about specific facts related to the case. 1 CP 271-74, 276. The other two asked how the prosecutor came up with the specific number of counts. 2 CP 270, 275. Copies of the questions and the court's answers are attached to this brief.

The court discussed these questions with both counsel, but without the defendant being present. Counsel agreed with the court's answers. 10/31 RP 2-5. To the five questions about evidence, the court responded:

> Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

1 CP 272-74, 276. To the two questions about charging, the court responded: "The court cannot comment on charging decisions." 2 CP 270, 275.

D. VERDICT.

The jury found the defendant guilty of communicating with a minor for immoral purposes. It also found him guilty of two counts of first degree child molestation. On the other two counts, the jury found him not guilty of child molestation but guilty of the lesser offense of fourth degree assault. 1 CP 98-106.

III. ARGUMENT

A. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN EXCLUDING EXPERT TESTIMONY.

1. Since The Proposed Testimony Provided No Way To Distinguish Between True And False Confessions, The Court Properly Excluded It As Unhelpful To The Jury.

The defendant challenges the trial court's decision to exclude expert opinion on false confessions. When expert testimony is based on scientific principles, three requirements must be satisfied: "the expert (1) must qualify as an expert, (2) the expert's opinion must be based upon a theory generally accepted in the relevant scientific community, and (3) the testimony must be

helpful to the trier of fact." State v. Cheatam, 150 Wn.2d 626, 645, 81 P.3d 830 (2003). Application of these standards is reviewed for abuse of discretion. Id. at 646.

The trial court rejected the testimony because it was unhelpful to the jury. With regard to the defendant's confession, the jury's task was to determine whether the confession was true. The expert testimony shed no light on this. Rather, the expert would have testified that certain interview techniques increased the likelihood of confessions – both false and true. 2 CP 799. This testimony would have provided no way to distinguish between the two.

> So testimony about confession techniques cannot do more than explain why an innocent person confessed falsely if the person was in fact innocent. That begs the question of whether he was, and the expert doesn't know the answer that.

10/23 RP 9.

The unhelpfulness of the proffered testimony is shown by the expert's ultimate conclusion: "it is my opinion that this confession should be treated with great caution." 2 CP 807. A jury should not blindly accept *any* evidence. *All* evidence should be treated with caution. Expert testimony that says no more than this is essentially useless.

Based on similar concerns, this court upheld the rejection of similar testimony from Dr. Richard Leo, a psychologist who has studied false confessions.

> [T]he record before the trial court was silent as to any specific correlation—statistical or otherwise—between coercive interrogation methods and the likelihood of an unreliable or false confession in any particular case. Leo acknowledges that the same coercive interrogation methods that lead to false confessions also produce true confessions. And he does not claim an ability to estimate the percentage of confessions that are false or to identify specific interrogation techniques, either individually or in combination, that are more likely to result in false confessions than in true confessions. Finally, Leo has not developed any methodology based on his research that could assist in assessing the reliability of a particular confession.
>
> Defendants rely heavily on several cases in which the courts permitted expert testimony on the risk of false confessions. Each of these cases involved specific personality or mental attributes that rendered the defendant particularly vulnerable to coercive interrogation methods, including mental deficiency, personality disorder, debilitation resulting from extended drinking, a severe language disorder, recognized mental disorder, and low IQ. Defendants do not allege that Leo would have offered any insight into specific traits of the defendants that would have made them more susceptible to false confessions.

State v. Rafay, 168 Wn. App. 734, 786-87 ¶¶ 109-10, 285 P.3d 83 (2012) (footnotes omitted). The proffered testimony in the present case was heavily based on Dr. Leo's research. 2 CP 799-802. The offer of proof included nothing to solve these problems.

A Federal District Court has likewise rejected testimony from Dr. Leo:

> As Dr. Leo forthrightly admits, despite extensive research and review of false confession cases, his methodology cannot accurately predict the frequency and causes of false confessions. His theories cannot discern whether a certain interrogation technique, used on a person with certain traits or characteristics, results in a predictable rate of false confessions. In addition, he has formulated no theory or methodology that can be tested. While the Court is aware that some laboratory studies ... suggest that coercive interrogation tactics produce a significant rate of false confessions, such studies shed no light on real-world interrogation practices and results because they were not conducted by law enforcement, were not part of a criminal investigation, did not involve actual suspects, and did not present the students with a serious penalty. Moreover, as Dr. Leo testified at the Daubert[1] hearing, there is no way of knowing how frequently false confessions occur in the real world.

United States v. Deuman, 892 F. Supp. 2d 881, 886 (W.D. Mich. 2012) (citations omitted). Courts in other jurisdictions have likewise rejected expert testimony on false confessions. See, e.g., Commonwealth v. Alicia, 625 Pa. 429, 92 A.3d 753 (2014); People v. Linton, 56 Cal. 4th 1146, 1181-84, 158 Cal. Rptr. 3d 421, 302 P.3d 927, cert. denied, 134 S. Ct. 697 (2013); United States v. Benally, 541 F.3d 990, 993-96 (10th Cir. 2008), cert. denied, 555 U.S. 1146 (2009); Riley v. State, 278 Ga. 677, 681-83, 604 S.E.2d

488 (2004), cert. denied, 544 U.S. 1002 (2005). In light of these decisions, the trial court's ruling in the present case was not an abuse of discretion.

2. A Defendant Has No Constitutional Right To Introduce Unhelpful Expert Testimony.

The defendant also argues that the trial court's ruling abridged his constitutional right to present a defense. Rafay rejected this argument as well:

> The [U.S.] Supreme Court has repeatedly emphasized that the mere fact an evidentiary rule may reasonably exclude favorable evidence does not necessarily restrict the defendant from presenting a defense. Evidentiary rules impermissibly abridge a criminal defendant's right to present a defense only if they are "arbitrary or disproportionate" and "infringe[] upon a weighty interest of the accused." The Supreme Court has generally found such an abridgment only when the evidentiary ruling effectively prohibited the substantive testimony of the defendant on matters relevant to the defense or the testimony of a percipient witness.

Rafay, 168 Wn. App. at 796 ¶ 128, quoting United States v. Scheffer, 523 U.S. 303, 118 S.Ct. 1281, 140 L.Ed.2d 413 (1998). Similarly in the present case, the exclusion of unhelpful evidence did not violate the defendant's constitutional rights.

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[1] See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2708, 1256 L.Ed.2d 469 (1993).

B. THE ABSENCE OF THE DEFENDANT DURING A DISCUSSION OF JURY QUESTIONS DID NOT VIOLATE HIS CONSTITUTIONAL RIGHTS.

1. The Defendant's Constitutional Right To Be Present Does Not Extend To Discussions Of Legal Issues.

The defendant next claims that the trial court violated his constitutional rights by answering jury questions in his absence.

> A criminal defendant has a constitutional right to be present at every critical stage of the criminal proceedings against him. A critical stage is one where the defendant's presence has a reasonably substantial relationship to the fullness of his opportunity to defend against the charge. But in general, in-chambers conferences between the court and counsel on legal matters are not critical stages of the proceedings except when the issues involve disputed facts.

State v. Sublett, 156 Wn. App. 160, 182-83 ¶ 42, 231 P.3d 231 (2010) (citations omitted), aff'd on other grounds, 176 Wn.2d 58, 292 P.3d 715 (2012). [2]

Washington courts have applied these principles to jury questions that sought clarification of instructions. Such questions involve purely legal matters. Consequently, the court can properly formulate answers to such questions in the defendant's absence. State v. Jasper, 158 Wn. App. 518, 538-39 ¶¶ 34-35, 245 P.3d 228 (2010), aff'd on other grounds, 174 Wn.2d 96, 271 P.3d 876

(2012);[3] State v. Brown, 29 Wn. App. 11, 16, 627 P.2d 132 (1981). In contrast, when a question concerned the possibility of jury deadlock, it was error (albeit harmless) to formulate an answer in the defendant's absence. State v. Burdette, 178 Wn. App. 183, 200 ¶ 36, 313 P.3d 1235 (2013).

In the present case, the jury's questions involved matters that were outside the evidence. A jury cannot properly decide the case based on evidence outside the record. See State v. Pierce, 169 Wn. App. 533, 553 ¶ 21, 280 P.3d 1158, review denied, 175 Wn.2d 1025 (2012) (prosecutor commits misconduct by urging jury to consider evidence outside record); State v. Cummings, 31 Wn. App. 427, 430, 642 P.2d 415 (1982) (new trial may be granted if jury considered matters outside the evidence). Since the questions here concerned such matters, the court's answer was dictated as a matter of law: it could not answer questions concerning matters outside the record. There was nothing that the defendant could do or say that would change this.

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[2] The defendants' petitions for review did not challenge this portion of this court's decision. Sublett, 176 Wn.2d at 68 n. 3.

[3] The Supreme Court "decline[d] to address" this issue, because the defendant had not "factually supported his claim." Jasper, 174 Wn.2d at 125 ¶ 58.

The defendant argues that had he been present, he could have urged the court to give additional instructions on the law. The same would be true of any discussion of legal issues. It is always theoretically possible that the defendant might be a better lawyer than his lawyer. That possibility is not enough to create a reasonably substantial relationship between the defendant's appearance and his opportunity to defend against the charge. Because the discussion of the jury questions involved purely legal issues, conducting that discussion in the defendant's absence did not violate his constitutional rights.

2. Since The Court's Answers Conveyed No Affirmative Information, Any Error Arising From The Defendant's Absence Was Harmless.

Even if there was a violation of the defendant's right to be present, that error was harmless. When error is shown, "the burden of proving harmlessness is on the State and it must do so beyond a reasonable doubt." State v. Irby, 170 Wn.2d 874, 886 ¶ 19, 246 P.3d 796 (2011). "Generally, where the trial court's response to a jury inquiry is negative in nature and conveys no affirmative information, no prejudice results and the error is harmless." Jasper, 158 Wn. App. at 541 ¶ 38; see State v. Russell, 25 Wn. App. 933, 948, 611 P.2d 1320 (1980); State v. Safford, 24 Wn. App. 783, 794,

604 P.2d 980 (1979), review denied, 83 Wn.2d 1026 (1980). Since the answers here provided no affirmative information, any error in formulating those answers was harmless.

The defendant now suggests that the answers could have repeated some of the language from earlier instructions concerning the definition of "reasonable doubt." In determining whether constitutional error was harmless, this court should presume that the jury followed its instructions. State v. Kalebaugh, 183 Wn.2d 578, 586 ¶ 16, 355 P.3d 253 (2015). The instructions here contained a proper explanation of the standard of proof. CP 280, inst. no. 2. There is no basis for assuming that the jurors forgot those instructions. Because the jury was properly instructed, any error in failing to consult the defendant on possible further instructions was harmless.

C. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING LAY TESTIMONY CONCERNING THE VICTIM'S TRAUMA RESULTING FROM THE ABUSE.

The defendant next argues that the trial court improperly admitted testimony concerning the victim's self-cutting behavior and problems in school. He contends that this testimony was irrelevant. "The determination of whether testimony is relevant is within the discretion of the trial court." State v. Turner, 29 Wn. App. 282, 289,

627 P.2d 1324, review denied, 95 Wn.2d 1030 (1981). The State may properly offer "evidence of emotional or psychological trauma suffered by a complainant after an alleged rape." State v. Black, 109 Wn.2d 336, 349, 745 P.2d 12 (1987). Because the evidence in the present case falls within this description, the trial court did not abuse its discretion in admitting it.

Black does bar expert testimony on "rape trauma syndrome." This is because such testimony from an expert "creat[es] an aura of special reliability and trustworthiness." Id. Here, the trial court specifically ruled that "there is no basis to admit any evidence through [the therapist] of an expert type." 10/20 RP 103.[4] This limitation was followed throughout the therapist's direct examination. The therapist's testimony concerning the victim's self-harm and school problems was limited to recounting the victim's statements. 10/27 RP 114-15, At one point, she did testify that the abuse was affecting the victim's sleep. Defense counsel objected, and the court sustained the objection. 10/27 RP 124. Thus, no

[4] The defendant's brief claims that "[t]he trial court ruled in limine that [the therapist] could offer testimony as an expert." Brief of Appellant at 39, citing 10/20 RP 103-04, 106-07. In view of the court's statement quoted above, this claim is incorrect.

expert testimony concerning the causes of the victim's behavior problems was admitted on direct examination.

On cross-examination, defense counsel asked the therapist about the causes of self-cutting behavior. 10/27 RP 167. The prosecutor then asked about this topic on re-direct. The therapist testified that she had not reached any conclusions about the causes of this behavior. She said that "[i]t's better to come directly from the person themselves." 10/27 RP 172-74. Since the defendant "opened the door," this testimony was proper. "[W]hen a party opens up a subject of inquiry on direct or cross-examination, he contemplates that the rules will permit cross-examination or redirect examination, as the case may be, within the scope of the examination in which the subject matter was first introduced." State v. Gefeller, 76 Wn.2d 449, 455, 458 P.2d 17 (1969).

In short, the State properly offered lay testimony concerning trauma resulting from the abuse. The jury was entitled to consider this evidence in deciding whether the abuse occurred. Black, 109 Wn.2d at 349. The prosecutor elicited expert testimony on this topic only after the defense "opened the door" – and even then, this testimony was minimal. The trial court did not abuse its discretion in admitting this evidence.

D. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN PRECLUDING VOIR DIRE EXAMINATION THAT WOULD HAVE INVITED SPECULATIVE COMPARISONS WITH UNRELATED CASES.

Finally, the defendant claims that the trial court improperly disallowed questions on voir dire examination. Although he claims that this claim implicates constitutional rights, that claim is not correct. The questions at issue would have involved specific cases in which innocent people had been wrongfully convicted. 10/20 RP 84-87. Such questioning would have no relevance to a juror's qualifications. At most, it might produce information that could influence counsel's decision to exercise a peremptory challenge. There is, however, no constitutional right to peremptory challenges. State v. Vreen, 99 Wn. App. 662, 668, 994 P.2d 905 (2000), aff'd, 143 Wn.2d 923, 26 P.3d 236 (2001); State v. Persinger, 62 Wn.2d 362, 365, 382 P.2d 497 (1963). Consequently, there can be no constitutional right to ask questions that might inform the exercise of such challenges.

Although constitutional rights are not involved, peremptory challenges are permitted by court rule. CrR 6.4(e). The rule also allows voir dire examination:

> A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for

> cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and counsel may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

CrR 6.4(b).

This rule gives the trial court discretion to control voir dire:

> The limits and extent of voir dire examination lie within the discretion of the trial court. However, the defendant should be permitted to examine prospective jurors carefully, and to an extent which will afford him every reasonable protection.

State v. Laureano, 101 Wn.2d 745, 757-58, 682 P.2d 889 (1984) (citation omitted).

Here, the court allowed a broad scope of voir dire examination. 10/22 RP 142-47, 152-71, 182-202. For example, defense counsel asked about jurors' hobbies. 10/22 RP 196-98. They asked about jurors' reactions to news articles concerning sex offenses. 10/22 RP 145-46. They asked about how a police officer should conduct an investigation. 10/22 RP 192-93. They asked whether it is more important to control crime or give defendants fair trials. 10/22 RP 194-95. They asked how thoroughly a parachute

should be checked before someone jumps out of a plane. 10/22 RP 199-202. There was no objection to any of this questioning.

The trial court imposed few restrictions on questioning, of which only one is challenged on appeal. The court precluded counsel from raising specific instances of wrongful convictions. Such questioning would inevitably invite comparisons between those cases and the present case. Those comparisons would be misleading without a close examination of the facts of the other cases. That examination would put even more irrelevant facts in front of the jurors. The court could properly bar such questioning that would create these problems.

Cases from other jurisdictions support the trial court's decision. In a number of cases, the defense at trial was based on mistaken identification. During voir dire, defense counsel sought to inquire about jurors' knowledge of or experience with specific instances of mistaken identification. When trial courts precluded such questioning, that restriction was held not to be an abuse of discretion. State v. Lutz, 334 S.W.3d 157 (Mo. App. 2011); Williams v. State, 744 So. 2d 1103, 1105-07 (Fla. App. 1999); People v. Bowel, 111 Ill. 2d 58, 64-65, 488 N.E.2d 995, 998 (1986). Similarly

in the present case, the trial court could properly restrict questioning about specific instances of wrongful convictions.

The defendant argues that the proposed questions would have assisted the defense in exercising peremptory challenges. The same could be true of virtually any line of questioning. If the court is required to allow any questions that might be relevant to peremptory challenges, than the scope of voir dire is essentially unlimited.

The trial court here allowed a broad scope of voir dire examination. It precluded questioning that would have invited speculative comparison with other cases that involved different facts. That restriction was not an abuse of discretion.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on February 29, 2016.

MARK K. ROE
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By: 

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Attorney for Respondent

CL16641897

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October 31, 20 14
SONYA KRASKI
COUNTY CLERK
By J McBilky
Deputy Clerk

SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontiveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY:
What kind of video games or shows did they watch by name.

PRESIDING JUROR'S SIGNATURE

10/30/14 16:30
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

JUDGE

DATE & TIME RETURNED TO JURY: 10-31-14 9:33 AM

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October 31, 2014
SONYA KRASKI
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SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontiveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: How did you come up with "4" counts of child molestation?

82
PRESIDING JUROR'S SIGNATURE

10/30/14 16:30
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: The Court cannot comment on charging decisions.

JUDGE

DATE & TIME RETURNED TO JURY: 10-31-14 9:33 AM

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SONYA KRASKI
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SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontiveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: Was is the curriculum for 8th grade flash in 2005?

[signature]
PRESIDING JUROR'S SIGNATURE

10/31/14
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

[signature]
JUDGE

DATE & TIME RETURNED TO JURY: 10-31-14 9:33 AM

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SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontiveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: Why was report not submitted by Logan Roth (Baxter)?

PRESIDING JUROR'S SIGNATURE

10/30/14 16:30
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

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SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontiveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: What is the significance of Kayla's development around the time of accusations?

PRESIDING JUROR'S SIGNATURE

10/30/14 16:30
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

JUDGE

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SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

State
vs
Mario Alberto Ontveros

NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: Why was ISP (Internet Service Provider) not contacted (subpoened for deleted emails?

PRESIDING JUROR'S SIGNATURE

10/30/14 1613
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: Questions about the facts of the case concern evidence. The parties having rested, no further evidence will be introduced.

JUDGE

DATE & TIME RETURNED TO JURY: 10-31-14 9:33 AM

SAVE – MUST BE FILED

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Deputy Clerk

SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

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vs
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NO. 13-1-00416-4

INQUIRY FROM THE JURY AND COURT'S RESPONSE

JURY INQUIRY: How did you come up with "1" count for communicating with a minor for immoral purposes?

STEVEN HOLMES
PRESIDING JUROR'S SIGNATURE

10/30/14 16:30
DATE/TIME

DATE AND TIME RECEIVED BY THE COURT: 10-31-14 8:45 AM

COURT'S RESPONSE: The Court cannot comment on charging decisions.

JUDGE

DATE & TIME RETURNED TO JURY: 10-31-14 9:33 AM

SAVE – MUST BE FILED

97

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

MARIO A. ONTIVEROS,

Appellant.

No. 72941-1-I

DECLARATION OF DOCUMENT FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 29th day of February, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Marla L. Zink, Washington Appellate Project, marla@washapp.org; and wapofficemail@washapp.org.

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

Dated this 29th day of February, 2016, at the Snohomish County Office.

Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office