

NO. 48393-9-II

FILED
COURT OF APPEALS
DIVISION II

2016 AUG 2 AM 10:11

STATE OF WASHINGTON

BY DEPOSIT

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON

v.

TANYA JAMES-BUHL

Appeal from the Superior Court of Pierce County
The Honorable Brian Tollefson Pierce County Superior Court Cause No. 15-1-03708-2

RESPONDENT'S REPLY TO BRIEF OF APPELLANT

By
Barbara Corey
Attorney for Appellant
WSB #11778

902 South 10th Street
Tacoma, WA 98402
(253) 779-0844

TABLE OF CONTENTS

A. ISSUES PERTAINING TO APPELLANT’S ASSIGNMENTS OF ERROR4

B. STATEMENT OF THE CASE6

C. LAW AND ARGUMENT

1. THIS APPEAL MUST BE DISMISSED BECAUSE APPELLANT HAS FAILED TO ASSIGN ERROR TO THE TRIAL COURT’S DISMISSAL OF THIS CASE WITH PREJUDICE AS WELL AS THE CONCLUSIONS OF LAW THEREIN.....9

2. THE TRIAL COURT PROPERLY APPLIED THE RULES OF STATUTORY CONSTRUCTION TO RCW 26.44.030, WHICH IMPOSES REPORTING REQUIREMENTS ON NUMEROUS INDIVIDUALS IN ADDITION TO TEACHERS10

3. THE RULES OF STATUTORY CONSTRUCTION PLACE EQUAL OBLIGATIONS ON THE MANDATORY REPORTING REQUIREMENTS OF TEACHERS AND ADULTS RESIDING WITH CHILDEN.....15

4. AT THE TIME APPELLANT CONTENDS MS JAMES-BUHL WAS REQUIRED TO MAKE A MANDATORY REPORT, SHE DID NOT HAVE “REASONABLE CAUSE” TO BELIEVE THAT HER DAUGHTERS HAD SUFFERED ABUSE OF NEGLECT.....19

D. CONCLUSION23

TABLE OF AUTHORITIES

Cases

State

Harmon v. Dep't of Social & Health Servs., 134 Wn.2d 523, 542, 951 P.2d 770 (1998)15

City of Seattle v. Fontanilla, 128 Wn.2d 492, 498, 909 P.2d 1294 [1996].15

In re Custody of Smith, 137 Wn.2d 1, 8, 969 P.2d 21 (1998);15

Bour v. Johnson, 122 Wn.2d 829, 835, 864 P.2d 380 (1993)16

Leson v. State, 72 Wn. App. 558, 563, 864 P.2d 384 (1993)16

Burgess v. Crossan, 189 Wn. App. 97, 104; 358 P.3d 416 [2015]16

Christensen v. Ellsworth, 162 Wn.2d 365, 372-73, 173 P.3d 228 [2007]..... 16

State v. Faust, 93 Wn. App. 373, 376, 967 P.2d 1284 (1998) (citing *State v. Williams*, 62 Wn. App. 336, 338, 813 P.2d 1293 (1991))17

Faust, 93 Wn. App. at 376 (citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994))17

In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999) 17

State v. Padilla, 95 Wn. App. 531, 534 n.2, 978 P.2d 1113 (1999) (citing *In re Post-Sentencing Review of Charles*, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998))17

State v. Allen, 182 Wn.2d 364, 341 P.3d 268 [2015]..... 19

Rules and Regulations

RCW 26.44.030(1)(a)(c)	4
RCW 26.44.030(1)(d)	4,7,9,10,13,17,19,21,23
RCW 26.44.030	4,11,17,19
RCW 26.44	5,10,11,17
RCW 26.44.030(1)	5,14,18
RCW 26.44.030(1)(a)	5,6,7,9,17,19,21,23
RCW 26.44.010	10
RCW 26.44.030 (d)	13
RCW 28A.491.035	15
RCW 26.44.120.010.....	21
RCW 26.44.020	21

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. This court should dismiss this appeal where appellant has failed to assign error to the trial court's dismissal of the case with prejudice.
2. This court should dismiss this appeal where appellant has failed to assign error to the trial court's order of dismissal wherein the court finds "that RCW 26.44.030(1)(a)(c) do not apply to parents who reside with their children" because RCW 26.44.030(1)(d) imposes a mandatory reporting requirement on "any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse and is capable of making a report."
3. At the time, appellant contends Ms. James-Buhl was required to make a mandatory report, did she have "reasonable cause" to believe that her daughters had suffered abuse or neglect?
4. Where RCW 26.44.030 which imposes mandatory requirements upon identified individuals for the reporting of child abuse and neglect as well as criminal penalties for those who fail to do so, criminalizes the conduct of such a person who is both a teacher and a parent where the alleged abuse occurred in the home where the individual was acting as a parent and not a teacher?

5. This court should affirm the trial court's dismissal with prejudice of the state's charge, based on RCW26.44.030(1)(a) where the trial court read RCW 26.44 as a whole to give effect to all of the language and to harmonize all of the "omnipresent" provisions, placing no undue emphasis on any section, thus requiring this dismissal without prejudice .
6. This court should affirm the trial court's dismissal with prejudice of Ms. James-Buhl where the trial court's application of the rules of the statutory construction avoided absurd or strained consequences.
7. This court should affirm the trial court's dismissal with prejudice of Ms. James-Buhl where the issue presented is one of statutory construction and not public policy.
8. Even assuming arguendo that appellant's argument is correct and that RCW 26.44.030(1), mandatory reporting requirement of teachers, applied in this case, at the time of the actual disclosure, as opposed to later times after the criminal investigation was complete, no violation of RCW 26.44.030(1) would have occurred from any failure to report.

B. STATEMENT OF THE CASE

1. Procedure.

The State of Washington, appellant, on September 16, 2016, charged Tanya James-Buhl, respondent, in Pierce County Superior Court No. 15-1-03708-2 with the three counts of the gross misdemeanor of failure to comply with the mandatory reporting law for not reporting sexual abuse alleged by her three daughters. CP 1-3. ~~ATT A~~

Ms. James-Buhl filed a motion to dismiss the charges. That motion was heard before the Honorable Brian M. Tollefson on December 2-3, 2015. Ms. James-Buhl and the State presented oral argument.

Ms. James-Buhl began her argument for dismissal by citing her teaching training. As a licensed teacher, she has been taught by the Washington Superintendent of Public Instruction that her duties as a mandatory reporter pursuant to RCW 26.44.030 (1)(a)¹ are limited to school

¹ **26.44.030. Reports -- Duty and authority to make -- Duty of receiving agency -- Duty to notify -- Case planning and consultation -- Penalty for unauthorized exchange of information -- Filing dependency petitions -- Investigations -- Interviews of children -- Records -- Risk assessment process.**

(1) (a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombuds's office [A> , or host home program <A] has reasonable cause to believe that a child has suffered abuse or neglect,

district employment. SUPP CP 8; RP 3,5-7. This obviously is different from RCW 26.44.030(1)(d). That statutory subsection imposes an omnipresent mandatory reporting on “any adults” in the home where a child has been abused. As such, it covers the parent-child relationship. Ms. James-Buhl did not violate RCW 26.44.030(1)(d). RCW 26.44.030(1)(d) ²defines the mandatory reporting requirement by the relationship between the reporter and the subject and also defines “abuse” for that statutory subsection. There are no time or place limitations to that reporting requirement.

Ms. James-Buhl was and is a licensed teacher in the State of Washington. CP 9-10. She is not an attorney. As part of her professional training, she has attended required training on the mandatory reporting law, including a PowerPoint presentation from the Washington Superintendent of Public Instruction. That training has taught her [and other educators in this state] how to fulfill their duties under RCW 26.44.030(1)(a). id.

he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

² (d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

During that PowerPoint, teachers are informed:

“Protecting students is one of our greatest responsibilities in public education. **All school district employees** – classified and certificated – **are required by law to report suspected child abuse**, regardless of the perceived source of abuse. Suspected means you have reasonable cause to believe abuse has occurred. You don’t have to be positive. Employees are reporters, not investigators.”

* * *

“Depending on the police in your district, employees may report suspected abuse directly to designated authorities, or may contact a supervisor or administrator and jointly make the report to CPS or law enforcement.”

* * *

“If the alleged abuser is an employee, reports are to be made to a supervisor or administrator, who will cause a report to be made to law enforcement if reasonable cause exists to believe that abuse has occurred. An **employee who fails to make such a report** violates state statute and is subject to discipline up to and including dismissal. Employees must **protect student confidentiality** and not discuss situations with other employees, students, or individuals. Id.

Through this training the Washington Department of Public Instruction informs teachers that their reporting requirement must be accomplished through a chain of command at school and is limited to information acquired at school. Id.

The trial court dismissed the case *with prejudice* on December 3, 2015. The lengthy Order contained numerous conclusions of law. CP 39-41. The State has not assigned error to these . See State’s opening brief, pages 1-2 .

The State thus has not assigned error to the trial court's legal basis for dismissing this case with prejudice. See State's opening brief, page Id.

The State thereafter filed this appeal. CP 47

C. LAW AND ARGUMENT

1. THIS APPEAL MUST BE DISMISSED BECAUSE APPELLANT HAS FAILED TO ASSIGN ERROR TO THE TRIAL COURT'S DISMISSAL OF THIS CASE WITH PREJUDICE AS WELL AS THE CONCLUSIONS OF LAW THEREIN.

The State has not challenged the trial court's order of dismissal *with prejudice* to Ms. James-Buhl. State's Opening brief 1-2.

The trial court's reasoning is unchallenged in this appeal. The trial court correctly found that RCW 26.44.030 (1)(d) imposes upon "any adult" who resides in a home with a child a mandatory duty to report abuse. There are no limitations in this reporting requirement regarding time and place. Therefore, the mandatory requirement is every bit as "omnipresent" as appellant contends is RCW 26.44.030(1)(a). Specifically, in the order of dismissal with prejudice, the trial court made the following finding of fact: "Ms. James-Buhl was not required to make a mandatory report in this case because she did not have a teacher/professional school personnel relationship with

them [her minor daughters who resided in her home].” CP 40, lines 21-22. The court further found that Ms. James-Buhl had a mandatory reporting requirement under RCW 26.44.030[1][d], and that under the rules of statutory construction, giving meaning to each section and harmonizing the provisions as to avoid absurd results, RCW 26.44.030[1][d] applied to Ms. James-Buhl in this case. CP 40, lines 13-23.

The trial court then dismissed this case with prejudice. CP 41, line 3. Again, appellant made no assignment of error to this dismissal without prejudice.

2 THE TRIAL COURT PROPERLY APPLIED THE RULES OF STATUTORY CONSTRUCTION TO RCW 26.44.030, WHICH IMPOSES REPORTING REQUIREMENTS ON NUMEROUS INDIVIDUALS IN ADDITION TO TEACHERS.

In 1965, the Washington State Legislature enacted RCW 26.44, then entitled Abuse of Children and Dependent Persons. The Legislature’s intent was set forth in RCW 26.44.010:

26.44.010. Declaration of purpose.

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by

their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children. When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail. When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, the safety of the child shall be the department's paramount concern. Reports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions. This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

To accomplish the intent of RCW 26.44, the Legislature enacted RCW

26.44.030, identifying mandatory reporters and their duties:

26.44.030. Reports -- Duty and authority to make -- Duty of receiving agency -- Duty to notify -- Case planning and consultation -- Penalty for unauthorized exchange of information -- Filing dependency petitions -- Investigations -- Interviews of children -- Records -- Risk assessment process.

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, *professional school personnel*, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombuds's office, or host home program has **reasonable cause** to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040. [emphasis added]

***Although applicable to subsection [b], the Legislature provided the following definition of "reasonable cause" in 26.44.040[b][iii]:*

(iii) "**Reasonable cause**" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(d) The reporting requirement shall also apply to **any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report.** For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. [emphasis added]

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, . . .], who in the course of their representation of children in these actions have "**reasonable cause**" to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department

employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(3) Any other person who has "*reasonable cause*" to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040 section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

Pursuant to RCW 26.44.020[19], "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

Appellant incorrectly argues that teachers have an "omnipresent" duty to make a mandatory report that is not legislatively imposed on adults in RCW 26.44.030[d]. Simply put, adults who reside with children who have sustained the statutorily defined abuse likewise have an "omnipresent" duty to make a mandatory report.

Although the Legislature statutorily limited the reporting times for certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities to only those circumstances when the information is obtained during the course of their employment, the

Legislature clarified its' intent in a finding immediately following RCW 26.4.030 (1).³

In this case, the Superintendent of Public Instruction thus has altered current practices for mandated reporters such as teachers in a manner consistent with their ability to do so. *Id.* Further, should this court somehow find that the Superintendent of Public Instruction impermissibly altered its current practices, then the Washington Department of Public Instruction is at fault for providing misinformation to its education professionals, including teachers. Ms. James-Buhl adhered to her training and remains employed by the school district to this day. That speaks volumes about her compliance with the Washington Department of Public Instruction current practices for mandated reporters.

³ **Finding -- Intent -- 1996 c 278:**

"The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. **This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a).**" [1996 c 278 § 1.]

Appellant's reliance on RCW 28A.491.035, which requires teacher as part of their training to complete a class on the identification of physical and child abuse, is irrelevant to the issue before this court. This is so because this statute fails to address the mandatory reporting duties of teachers. At most, this statute exists to ensure that teachers have the ability to recognize physical and sexual abuse

3. THE RULES OF STATUTORY CONSTRUCTION PLACE EQUAL OBLIGATIONS ON THE MANDATORY REPORTING REQUIREMENTS OF TEACHERS AND ADULTS RESIDING WITH CHILDREN.

Under rules of statutory construction, the courts have a duty to harmonize statutes whenever possible. *Harmon v. Dep't of Social & Health Servs.*, 134 Wn.2d 523, 542, 951 P.2d 770 (1998). Thus courts read statutes as a whole to give effect to all of the language and to harmonize all provisions. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996). *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 [1996]. A statute must be construed as a whole so as to give effect to all language and to harmonize all provisions. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996).

The rule of statutory construction that trumps every other rule is that the court should not construe statutory language so as to result in absurd or strained consequences," *In re Custody of Smith*, 137 Wn.2d 1, 8, 969 P.2d 21 (1998); *Bour v. Johnson*, 122 Wn.2d 829, 835, 864 P.2d 380 (1993) statutes on the same subject matter must be read together to give each effect and to harmonize each with the other); *Leson v. State*, 72 Wn. App. 558, 563, 864 P.2d 384 (1993) (when two statutes appear to conflict, every effort should be made to harmonize their respective provisions). *Burgess v. Crossan*, 189 Wn. App. 97, 104; 358 P.3d 416 [2015].

An appellate court construes a statute to give meaning to legislative intent. *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 [2007]. A court finds the plain meaning of statutory language by looking at the "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the [statutory scheme as a whole." 162 Wn.2d at 373. A reviewing court harmonizes statutory provisions and rules. *Id.*

In construing a statute, courts look to the legislature's intent. *State v. Faust*, 93 Wn. App. 373, 376, 967 P.2d 1284 (1998) (citing

State v. Williams, 62 Wn. App. 336, 338, 813 P.2d 1293 (1991)).

While “[p]lain language does not require construction,” *Faust*, 93 Wn. App. at 376 (citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)), “a statute that is susceptible to two or more reasonable interpretations is ambiguous.” *Faust*, 93 Wn. App. at 376 (citing *State v. Sunich*, 76 Wn. App. 202, 206, 884 P.2d 1 (1994)). Under the rule of lenity, when a criminal statute is ambiguous and the legislative intent is insufficient to clarify it, the ambiguity must be resolved in favor of the accused. *In re Pers. Restraint of Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999); *State v. Padilla*, 95 Wn. App. 531, 534 n.2, 978 P.2d 1113 (1999) (citing *In re Post-Sentencing Review of Charles*, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998))

RCW 26.44 is a single chapter dealing with the abuse of children. In RCW 26.44.030, the statute sets forth the various individuals who are mandatory reporters. Neither 26.44.030[1][a] nor 26.44.030[1][d] have any time restriction on the individual’s mandatory reporting obligation. The reporter in RCW 26.44.030[1][a]’s actions are predicated on the “reasonable belief” standard. The reporter in RCW 26.44.030[1][d] actions are predicated

on “reasonable belief” that a child who resides with them has suffered severe abuse.

However, there is nothing in this subsection that prevents such adult from reporting “severe abuse” suffered by a child who resides with them even where the abuse has occurred, for example, at school, at day care, at a dental office, or anywhere in the community. This subsection imposes a duty on a parent or other adult with a child in home who has suffered “severe abuse.”

“Severe abuse” means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture or unconsciousness. This subsection imposes the duty upon adults who are able to make a report, thereby acknowledging, for example, that some adults may not have access to a means to reports, may be prevented from reporting by another person or circumstance. Of course, even professionals in RCW 26.44.030[1][a] may find

themselves in situations where they are unable to report due lack of access to report or other circumstance.

Application of the rules of statutory construction to RCW 26.44.030 mandates that all of the subsections be read in harmony and with intent to give effect to each purpose.

There is nothing less omnipresent, to borrow appellant's phrase, in the duty of the adult in RCW 26.44.030[1][d] than in RCW 26.44.030[1][a]. Likewise, the WDE's interpretation of RCW 26.44.030[1][a] is permitted by statute. Ms. James-Buhl complied with both RCW 26.44.030[1] and RCW 26.44.030[d].

4. AT THE TIME APPELLANT CONTENDS MS JAMES-BUHL WAS REQUIRED TO MAKE A MANDATORY REPORT, SHE DID NOT HAVE "REASONABLE CAUSE" TO BELIEVE THAT HER DAUGHTERS HAD SUFFERED ABUSE OF NEGLECT UNDER EITHER RCW 26.44.030[1][a] or [1][d]

Appellant contends that Ms. James-Buhl violated RCW 26.44.030[1][a].

However, appellant inserts the State's own subjective belief that in May, 2015, Ms. James-Buhl had or "should have had" a reasonable belief that her daughters were being sexual abused in her home.

The State asserts that she was required as a teacher to make a mandatory report.

Of course, the “should have known” standard is not applicable in criminal prosecutions. *State v. Allen*, 182 Wn.2d 364, 341 P.3d 268 [2015].

Ms. James-Buhl spoke to her daughter MEB about her allegations of sexual abuse by her step-father in January 2015. In August 2015 MMB also told Ms. James-Buhl about some touching by her step father. BJ-K, another daughter reported that when she was 16, her step-father would get close to her and cuddle with her. This statement regarding an act of cuddling, without more, does not rise to the level of “reasonable belief” that *or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.*

However, Ms. James-Buhl did talk to Pierce County Sheriff’s Detective Tate on May 28, 2016. She told him that MEB had told her that her step-father touched her one time on her vagina and “made a motion toward her upper body.” MEB said that happened one time when they cuddled on the couch. Ms. James-Buhl was by no means certain whether she would have reported this had a student in one of her classes told her about this. However, she told the detective that she “probably” would have. She simply did not know if this ambiguous contact met the statutory definition. Moreover, that her decision this

time was different than her previous decision when mere cuddling was described is not insightful in any way about her understanding about mandatory reporting.

However, on August 6, 2015, Ms. James-Buhl called Det. Tate to tell him that MMB and KB had made some disclosures about their step-father touching them. Although KB contended that she had told her mother about this some 4-5 months before August, KB never wanted to discuss the details of the touching and so there is no means by which to ascertain whether Ms. James-Buhl should have made any report under with either RCW 26.44.030[1][a] or [1][d].

MMB stated that her stepfather twice rubbed her "butt cheeks" on the skin.

The nature of the contacts described by the young ladies, while inappropriate, do not necessarily meet the definition of "sexual contact" in RCW 44.120.010[2]. "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

Under RCW 26.44.020 (1) provides in pertinent part, "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's

health, welfare, or safety . . . An abused child is a child who has been subjected to child abuse or neglect as defined in this section.”

These contacts were brief in nature – a couple of seconds at most. There is absolutely no evidence that the contacts were for the purpose of gratifying the sexual desire of either party or a third party.

Ms. James-Buhl, knowing all the individuals, reasonably could have concluded that these acts were horseplay, albeit horseplay that crossed the line and offended her daughters.

Acting in her statutorily authorized as an adult residing in a home with child, she acted within her discretion.

Further, the statutory mandates aside, any person who suspects that a child has been inappropriately touched always may call law enforcement.

The trial court dismissed this case with prejudice. This court should affirm this dismissal.

D. CONCLUSION

The Washington Office of Public Instruction implemented a teacher training on RCW 26.44.030[1][a]. The program informed teachers that they needed to have a reasonable belief that child abuse had occurred before reporting it. The training also set forth the method for reporting abuse, which required it to proceed through school channels. This training thus reasonably compelled the conclusion that the reporting requirement did not apply, for example, during school breaks/vacations. Of course, RCW 26.44.030[1][d] imposed another mandatory reporting requirement on Ms. James-Buhl. There is no allegation that she violated that omnipresent reporting requirement.

///

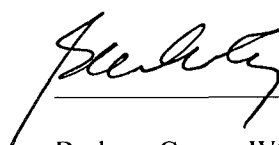
///

///

///

For the reasons set forth herein, Ms. James-Buhl respectfully asks this Court to affirm the trial court's dismissal with prejudice in this case.

DATED this 1st day of August, 2016




Barbara Corey, WSB #11778

I declare under penalty of perjury under the laws of the State of Washington that the following is a true and correct: That on this date, I delivered via ABC- Legal Messenger a copy of this Document to: Appellate Division Pierce County Prosecutor's Office, 930 Tacoma Ave So, Room 946 Tacoma, Washington 98402 and via USPS to Tanya James-Buhl at 14907 80TH Ave CT E. Puyallup WA 98375

8/1/16
Date



Signature

FILED
COURT OF APPEALS
DIVISION II
2016 AUG -2 AM 10:11
STATE OF WASHINGTON
BY 
DEPUTY

ATTACHMENT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

TANYA JAMES-BUHL,

Defendant.

CAUSE NO. 15-1-03708-2

MOTION TO DISMISS

A. ISSUE FOR TRIAL DECISION:

1. Where the State of Washington has charged Tanya James-Buhl, defendant herein, with three counts of failure to comply with the mandatory reporting law, contrary to RCW 26.44.030(1)(a)(c) and 26.44.080, neither of which apply, this court must dismiss this case.

///

///

///

1 B. FACTS RELEVANT TO MOTION:

2
3 The State has alleged that Ms. James-Buhl, failed to report to the proper law enforcement
4 agency or to the department of social and health services after there was reasonable cause to
5 believe that a child or adult dependent or developmentally disabled person had suffered abuse
6 neglect and was a practitioner, medical examiner, law enforcement officer, professional school
7 personnel, registered or licensed school nurse. Social service counselor, psychologist, guardian
8 ad litem, or court appointed special advocate, licensed or certified child care provider or
9 employee thereof, employee of the department or juvenile probation officer . . . Attached Copy of
10 Information. RCW 26.44.030(b).
11
12

13
14 The alleged abuse did not occur at a school or any other place where Ms. James-Buhl
15 works as a teacher. Rather, the alleged abuse occurred within the family residence where Ms.
16 James-Buhl is a parent.
17

18 The alleged victims in this case are her daughters and the alleged abuse occurred at the
19 family residence. Thus, Ms. James-Buhl had no contact with her daughters in her capacity as a
20 teacher. Her relationship with her daughters was that of a mother with her daughters.
21

22 The section of the mandatory reporting act that applies to teachers, *supra*, is different
23 from the mandatory reporting obligation that applies to parents.
24

25 The State failed to charge Ms. James-Buhl under the proper statute and, indeed, could not
26 charge under that statute because this case fails to meet the elements of that crime.
27

28 Therefore this court must dismiss this case.

29 ///

1 C. LAW AND ARGUMENT:

2
3 Washington's Mandatory Reporting Law, RCW 26.44, sets forth a comprehensive and
4 well-structured mechanism for the reporting of abuse and neglect of children and other
5 dependent persons. It imposes different reporting obligations on institutions and individuals.
6

7 When the plain language of a statute is unambiguous –that is, when the statutory
8 language admits of only one meaning – the legislative intent is apparent and the courts may not
9 construe the statute otherwise. *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 3200 (1994).
10 Statutes must be interpreted and construed so that all language used is given effect with no
11 portion rendered meaningless or superfluous. *Davis v. Department of Licensing*, 137 Wn.2d
12 957, 963, 977 P.2d 554 (1999)(quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537,
13 546, 909 P.2d 1303 (1996)). The court begins with the statute's plain language and ordinary
14 meaning while harmonizing its provisions with the statute as a whole. *King County v. Cent.*
15 *Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 546, 555, 560, 14 P.3d 133 (2000).
16
17

18 A reading that results in absurd results must be avoided because it will not be presumed
19 that the legislature intended absurd results. *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185
20 (1983).
21
22

23 In this case, Ms. James-Buhl is the mother of three daughters as well as a teacher. The
24 charged acts allegedly occurred in her residence where she resided with her daughters. Ms.
25 James-Buhl has never been a teacher to her daughters in any school or educational institution.
26 The State has averred that the victims reported alleged abuse to their mother in their home.
27
28

29 ///
30
31

1 The section of the mandatory reporting act that applies to parents is set forth in RCW
2 26.44.030(1)(d). It provides:

3
4 (d) The reporting requirement shall also apply to any adult who has
5 reasonable cause to believe that a child who resides with them, has suffered severe
6 abuse, and is able or capable of making a report. For the purposes of this
7 subsection, "severe abuse" means any of the following: Any single act of abuse that
8 causes physical trauma of sufficient severity that, if left untreated, could cause
9 death; any single act of sexual abuse that causes significant bleeding, deep bruising,
10 or significant external or internal swelling; or more than one act of physical abuse,
11 each of which causes bleeding, deep bruising, significant external or internal
12 swelling, bone fracture, or unconsciousness.

13
14 Because the alleged abuse occurred when Ms. James-Buhl was in her parental role in the
15 family residence, thereby satisfying the statutory language of "any adult who has reasonable
16 cause to believe that a child who resides with them, has suffered severe abuse and is able or
17 capable of making a report", she would face culpability, if any, only under that statute.

18 However, because there is no basis for any allegation of "severe abuse" within the statutory
19 definition, the State cannot charge Ms. James-Buhl under this statute.
20

21
22 ///

23
24
25 ///

26
27
28 ///

29
30
31 ///

1 Without consideration of the applicable statute, the State charged Ms. James-Buhl under
2 RCW 26.44.030(1)(a). This section of the mandatory reporting law provides:
3

4 (1) (a) When any practitioner, county coroner or medical examiner, law
5 enforcement officer, professional school personnel, registered or licensed nurse, social
6 service counselor, psychologist, pharmacist, employee of the department of early
7 learning, licensed or certified child care providers or their employees, employee of the
8 department, juvenile probation officer, placement and liaison specialist, responsible
9 living skills program staff, HOPE center staff, or state family and children's ombuds or
10 any volunteer in the ombuds's office has reasonable cause to believe that a child has
11 suffered abuse or neglect, he or she shall report such incident, or cause a report to be
12 made, to the proper law enforcement agency or to the department as provided in RCW
13 26.44.040.
14

15 Thus the State elected to charge Ms. James-Buhl RCW 26.44.030(1)(a) which applies to
16 employees in their "professional or institutional capacity" for acts she did not commit in her
17 "professional or institutional capacity." That is, it imposes upon individuals performing certain
18 occupations to make mandatory reports of when they have reasonable cause to believe that a
19 person who meets the statutory class has suffered abuse or neglect.
20

21 This comports with the training provided by Washington school districts. Attached hereto
22 are relevant portions of PowerPoint presentations from the Department of Education. This
23 emphasize that "all school district employees – classified and certified – are required to report
24 suspected child abuse. . . .Employees are reporters, not investigators. [Responsibilities and Rules
25 view -1] Reporting policies may vary from district to district. [Responsibilities and Rules view -
26 2] Employees are required to make reports when reasonable cause exists to believe that an
27 employee is an alleged abuse. However, those reports must be made to a supervisor or school
28 administrator. [Responsibilities and Rules – view 3].
29
30
31

1 These requirements differ from those imposed upon parents or, as the statute terms it,
2 “any adult who has reasonable cause to believe that a child who resides with them . . .” In the
3 case of parents¹ who reside with the child, the parent presumably has a closer care-taking
4 relationship with the child and is in a superior position to determine whether the child in fact is
5 injured. Thus, the “severe abuse” requirement is not unreasonable. This requirement does not
6 prohibit a parent from calling 911 regarding concerns of other types of abuse. It simply defines a
7 clear threshold when such calls must be made by requiring the parent to report when there is
8 physical symptomology/“evidence” of trauma/abuse.
9
10

11
12 This legislative “brightline” rule informing parents/adults with children residing with
13 them provides necessary guidance and assurance to parents.
14

15 In contrast, mandated reporters in their “professional or institutional capacities are
16 required to report only upon “reasonable cause” to believe that a child has suffered abuse or
17 neglect. These reporters have no duty to investigate or make any determination regarding the
18 reasonableness of their beliefs. They are conduits of information. Any investigation of their
19 reports will be conducted by law enforcement or child protective services.
20
21

22 This section, RCW 26.44.030(1)(d) applies to parents and other non-state licensed
23 individuals such as foster parents who have children residing with them.
24

25 ///

26
27 ///
28
29
30

31 ¹ The term “parent[s] is used because Ms. James-Buhl is the mother of the alleged victims.

1 It is absurd to conclude that the Legislature would impose two different reporting
2 requirements on Ms. James-Buhl when she was not working as a teacher but rather was in the
3 family residence as a parent. Instead, the only reasonable interpretation of the law is that Ms.
4 James-Buhl's reporting requirements while she was a parent at home were defined by RCW
5 26.44.030(1)(d).
6

7
8 D. CONCLUSION:

9
10 For the foregoing reasons, Ms. James-Buhl respectfully asks this court to grant the relief
11 requested and dismiss this case.
12

13
14 DATED the 23rd day of November, 2015.
15

16
17 /s/Barbara Corey, WSB #11778
18 Attorney for Defendant
19 902 South 10th Street
20 Tacoma, WA 98405
21 Phone: 253-779-0844
22 Fax: 253-272-6439
23 E-Mail: Barbara@bcoreylaw.com
24
25
26
27
28
29
30
31

ATTACHMENT A

September 16 2015 9:54 AM

KEVIN STOCK
COUNTY CLERK

1
2
3
4
5
6
7 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

8
9 STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-03708-2

vs.

INFORMATION

10
11 TANYA D JAMES-BUHL,

(INF)

Defendant.

12
13 DOB: 10/03/1975

DOL#:

14 Sex: FEMALE

PCN#:

15 Race: WHITE

SID#:

16
17 COUNT 1

18 I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and by
19 the authority of the State of Washington, do accuse TANYA D JAMES-BUHL of the crime
20 of FAILURE TO COMPLY WITH MANDATORY REPORTING LAW, committed as follows:

21 That TANYA D JAMES-BUHL, in the State of Washington, on or between the 1st day
22 of January, 2015 and the 20th day of May, 2015, did unlawfully, knowingly failed to
23 make, or failed to cause to be made a report pursuant to RCW 26.44.030 and
24 26.44.040 to the proper law enforcement agency or to the department of social and
25 health services after there was reasonable cause to believe that a child or adult
26 dependent or developmentally disabled person, M.E.B. had suffered abuse or neglect
27 and was a practitioner, medical examiner, law enforcement officer, professional
28 school personnel, registered or licensed nurse, social service counselor,
29 psychologist, pharmacist, guardian ad litem or court appointed special advocate,
30 licensed or certified child care provider or employee there of, employee of the
31 department or juvenile probation officer, contrary to RCW 26.44.030(1)(a)(c) and
26.44.080, and against the peace and dignity of the State of Washington.

32
33 COUNT 2

And I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and

1
2 by the authority of the State of Washington, do accuse TANYA D JAMES-BUHL of the
3 crime of FAILURE TO COMPLY WITH MANDATORY REPORTING LAW, a crime of the same or
4 similar character, and/or a crime based on the same conduct or on a series of acts
5 connected together or constituting parts of a single scheme or plan, and/or so
6 closely connected in respect to time, place and occasion that it would be difficult
7 to separate proof of one charge from proof of the others, committed as follows:

8 That TANYA D JAMES-BUHL, in the State of Washington, on or between the 1st day
9 of January, 2015 and the 20th day of May, 2015, did unlawfully, knowingly failed to
0 make, or failed to cause to be made a report pursuant to RCW 26.44.030 and
1 26.44.040 to the proper law enforcement agency or to the department of social and
2 health services after there was reasonable cause to believe that a child or adult
3 dependent or developmentally disabled person, M.M.B. had suffered abuse or neglect
4 and was a practitioner, medical examiner, law enforcement officer, professional
5 school personnel, registered or licensed nurse, social service counselor,
6 psychologist, pharmacist, guardian ad litem or court appointed special advocate,
7 licensed or certified child care provider or employee there of, employee of the
8 department or juvenile probation officer, contrary to RCW 26.44.030(1)(a)(c) and
9 26.44.080, and against the peace and dignity of the State of Washington.

10 COUNT 3

11 And I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and
12 by the authority of the State of Washington, do accuse TANYA D JAMES-BUHL of the
13 crime of FAILURE TO COMPLY WITH MANDATORY REPORTING LAW, a crime of the same or
14 similar character, and/or a crime based on the same conduct or on a series of acts
15 connected together or constituting parts of a single scheme or plan, and/or so
16 closely connected in respect to time, place and occasion that it would be difficult
17 to separate proof of one charge from proof of the others, committed as follows:

18 That TANYA D JAMES-BUHL, in the State of Washington, on or between the 1st day
19 of January, 2015 and the 20th day of May, 2015, did unlawfully, knowingly failed to
20 make, or failed to cause to be made a report pursuant to RCW 26.44.030 and
21 26.44.040 to the proper law enforcement agency or to the department of social and
22 health services after there was reasonable cause to believe that a child or adult
23 dependent or developmentally disabled person, K.B. had suffered abuse or neglect
24 and was a practitioner, medical examiner, law enforcement officer, professional
25 school personnel, registered or licensed nurse, social service counselor,
26 psychologist, pharmacist, guardian ad litem or court appointed special advocate,

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1

licensed or certified child care provider or employee there of, employee of the department or juvenile probation officer, contrary to RCW 26.44.030(1)(a)(c) and 26.44.080, and against the peace and dignity of the State of Washington.

DATED: September 16, 2015

MARK LINDQUIST
Pierce County Prosecuting Attorney

PLACE: TACOMA, WA
PIERCE COUNTY SHERIFF
2700

/s/ ANGELICA WILLIAMS
ANGELICA WILLIAMS, WSB# 36673
Deputy Prosecuting Attorney

ATTACHMENT B

RESPONSIBILITIES AND RULES - NEW I

Child Abuse Reporting: RCW 26.44.030

Protecting students is one of our greatest responsibilities in public education. **All school district employees** – classified and certificated – **are required by law to report suspected child abuse**, regardless of the perceived source of abuse. Suspected means you have reasonable cause to believe abuse has occurred. You don't have to be positive. Employees are reporters, not investigators.



ATTACHMENT C

RESPONSIBILITIES AND RULES - VIEW 2

Child Abuse Reporting: RCW 26.44.030

Depending on the policy in your district, employees may report suspected abuse directly to designated authorities, or may contact a supervisor or administrator and jointly make the report to CPS or law enforcement.



ATTACHMENT D

RESPONSIBILITIES AND RULES -- VIEW 3

Child Abuse Reporting: RCW 26.44.030

If the alleged abuser is an employee, reports are to be made to a supervisor or administrator, who will cause a report to be made to law enforcement if reasonable cause exists to believe that abuse has occurred. An **employee who fails to make such a report** violates state statute and is subject to discipline up to and including dismissal. Employees must **protect student confidentiality** and must not discuss situations with other employees, students, or individuals.

