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COURT OF APPEALS

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

STATE OF WASHINGTON  
BY  \_\_\_\_\_  
CITY

STATE OF WASHINGTON,  
  
Respondent,  
  
vs.  
  
JAMES EARL WRIGHT,  
  
Appellant.

COA No. 40295-5-II  
  
APPELLANT'S STATEMENT OF  
ADDITIONAL GROUNDS FOR REVIEW  
PURSUANT TO RAP 10.10

I, James Earl Wright, Appellant, have received and reviewed the Appellant's opening brief prepared by appellant counsel James L. Reese, III. Presented below are THREE additional grounds for review that were not addressed or not adequately addresses by counsel for appellant.

G R O U N D S F O R R E V I E W

GROUND ONE:

THE COURT ABUSE IT'S DISCRETION WHEN IT EXCLUDED ELIZABETH MATHNEY, A DEFENSE WITNESS FROM TESTIFYING, THEREFORE VIOLATING WRIGHT'S RIGHT TO PRESENT A COMPLETE DEFENSE, AND A FAIR TRIAL.

Our State and Federal Constitutions grant everyone accused of a crime two separate rights: (1) the right to present evidence in one's own defense; and (2) the right to confront witnesses. U.S. Const. Amend. VI: state Const. Art. I §22; State v. Hudlow, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983) (citing State and Federal precedent). See also generally CRAWFORD v. WASHINGTON, 541 U.S. 36 (2004).

"[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trial".

UNITED STATES v. SCHEFFER, 523 U.S. 303, 308, (1998); see also CRANE v. KENTUCKY, 476 U.S. 683, 689-90 (1986); MARSHALL v. LONGBERGER, 459 U.S. 422, 438, fn.6 (1983); CHAMBERS v. MISSISSIPPI, 410 U.S. 284, 302-03 (1973); SPENCER v. TEXAS, 385 U.S. 554, 564 (1967).

This latitude however, has limits. "Whether rooted directly in the Due Process of the Fourteenth Amendment or in the Compulsory Process or Confrontation clause of the Sixth Amendment, the Constitution guarantees criminal defendants a **'meaningful opportunity to present a complete defense'**" CRANE, supra at 690 (quoting CALIFORNIA v. TROMBETTA, 467 U.S. 479, 485 (1984); citation omitted). This right is abridged by evidence rules that "infring[e] or 'disproportionate to the purposes they are designed to serve.'" SCHEFFER, supra at 308 (quoting ROCK v. ARKANSAS, 483 U.S. 44, 56, 58 (1987))).

HOLMES v. SOUTH CAROLINA, 547 U.S. 319, 324-25 (2006) (emphasis added). See also ER 102 (the Rules of Evidence "shall 1/ be construed to secure fairness in administration, ...and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings **justly determined.**") (emphasis added); CrR 1.2; IN RE WINSHIP, 397 U.S. 358, 362 (1970) (the **Rules of Evidence** were designed to be consistent with the standard of proof beyond a reasonable doubt).

There is no right to have irrelevant evidence admitted. Hudlow, supra at 15. The right to put on relevant evidence is counter balanced by the State's interest in seeing the evidence is not so prejudicial as to disrupt the fairness of the fact-finding process. I bid. If the evidence is minimally relevant it **may** be excluded if there is a compelling State interest to do so; that interest is to prevent the introduction of **unduly prejudicial** evidence

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1/ The word "shall" is presumptively imperative and operates to create a duty; it thus imposes a mandatory requirement. See e.g. Erection Co. v. Dept. of Labor & Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993) (explaining use of the word "shall" in interpreting status); State ex rel. Linn v. Superior Court for King Co., 20 Wn.2d 138, 146, 154 P.2d 543 (1944) (the use of the word "shall" as used in a constitutional provision is usually imperative or mandatory).

at trial. State v. Darden, 145 Wn.2d 612,615, 41 P.3d 1189 (2002) (citing Hudlow, supra at 16). Relevant evidence is "evidence having **any tendency** to make the existence of **any fact that is of consequence** to the determination of the action more ...or less probable than it would be without the evidence." ER-401 (emphasis added). All relevant evidence is admissible. ER-402. Further, state evidentiary rules may not be elevated over the Constitution. See HOLMES, 547 U.S. at 324-25.

The right to present evidence is a fundamental element of the due process." WASHINGTON v. TEXAS, 388 U.S. 14,19, (1967). A party also has a fundamental right to cross-examine a witness to reveal potential bias, prejudice, motive to lie, or financial interest. DELAWARE v. VAN ARSDALL, 475 U.S. 673 (1986); These matters are **always** relevant. DAVIS v. ALASKA, 415 U.S. 308, 316-17 (1974). This very right is guaranteed by the **Due Process Clause**, BAXTER v. JONES, 34 Wn.App. 1,3, 658 P.2d 1274 (1983), and further reinforced by the 6th Amendment right to confrontation. DAVIS, 415 U.S. at 315-18. It is also "fundamental" that a defendant should be given "great latitude" in cross-examination to reveal bias. State v. Roberts, 25 Wn.App. 830,835, 611 P.2d 1297 (1980). The more **essential** the **State's witness**, the more latitude the defense should be given to explore fundamental elements such as **motive, bias**, credibility, or foundational matters. Darden, 145 Wn.2d at 619.

The primary constitutional right to conduct a **meaningful** cross examination. Id. at 620. The purpose is to **test** the witness's perception, memory and **credibility**. Id. Confrontation thus helps to assure the accuracy of the fact-finding process. CHAMBERS, 410 U.S. at 295. Whenever the right to confront is denied, the integrity of the fact-finding process is called

into question. CHAMBERS, 410 U.S. at 295. As such, this right must be zealously guarded. Darden, 145 Wn.2d at 620. The exclusion of evidence a defendant has a constitutional right to present is an unreasonable exercise of discretion State v. Reed, 101 Wn.App. 704, 709, 6 P.3d 423 (2000).

During the cross examination of Samantha Jorge (SJ) (by Weaver) she was asked [Q] "Who is ELIZABETH MATHENY?" [A] "Um, a friend of his daughter, "I think. I don't know". [Q] Friend of whose daughter? A friend of Mr. Wright's daughter." L:18, [A] "I think so". (RP SAMANTHA JORGE - Cross at pg. 216, L:14 through L:20) (Attached as Appendix A )

A defendant's right to impeach a prosecution witness with evidence of bias or a prior inconsistent statement is guaranteed by the constitutional right to confront witnesses. DAVIS v. ALASKA, 415 U.S. 308, 316-18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); It is reversible error to deny a defendant the right to establish the chief prosecution witness's bias by an independent witness. State v. Jones, 25 Wn.App. 746, 751, 610 P.2d 934 (1980) (citing State v. Beaton, 106 Wash. 423, 180 P. 934 (1946) and State v. Eaid, 55 Wash. 302, 104 P. 275 (1909).

In State v. Dickenson, 48 Wn.App. 457,469, 740 P.2d 312 (1987) the court held: Any error in excluding such evidence is presumed prejudicial but is subject to harmless error analysis: 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. Johnson, 90 Wn.App. 54, 69, 950 P.2d 981 (1998). DAVIS, 415 U.S. at 318; State v. Fitzsimmons, 93 Wn.2d 436,452, 610 P.2d 893, 18 A.L.R. 4th 690 (1980); Dickenson, supra at 470.

For the reasons stated below, my State and Federal Constitutional right to present a defense, to cross-examination, to confrontation, to due process,

and to a fair trial were violated. U.S. Const. Amend's. V, VI, & XIV; Wash. Const. Art.1 §3, & §22.

(a) On October 27, 2009, while entertaining Motions in limine, the court ruled that SJ's Mother, Grandmother and the Defendant could not testify as to the reputation of SJ in the community.

(b) ELIZABETH MATHENY was an independent witness and did meet the foundational requirement, that being she is a "neutral and generalized community member" and she could have testified to the (1) the Reputation of SJ in the Community; (2) testified to the fact that she has known SJ for at least Five years prior to trial, and had in fact visited SJ quit often; (3) testify to the fact that most everything coming out of SJ's mouth is a bold face lie. Witness Matheny was and still is a neutral person in the community and could have made an objective assessment of SJ's truthfulness. (Ex."A", Declaration of Elizabeth Matheny).

Thus, the Court's ruling that Matheny's testimony had no relevance was error. As a result, appellant's fundamental State and Federal Constitutional rights to present evidence and a defense were violated.<sup>2/</sup> CRANE, 476 U.S. at 689-90; CHAMBERS, 410 U.S. at 302; WASHINGTON, 388 U.S. at 19-20.<sup>3/</sup>

(c) The following witnesses were on the Defense witness list, they to were also "neutral and generalized community members".

[1] JASON BODY, would have testified to: Witnessing on several occasions over the past 9 years, where SJ tells lies about neighbor kids in order to keep them from going on fishing trips. On other occasions SJ told

<sup>2/</sup> This also implicated my Constitutional Due Process rights. Washington, 388 U.S. at 19.

<sup>3/</sup> Because the court's ruling violated my Constitutional rights, there was an abuse of discretion. Reed, 101 Wn.App. 704,709.

lies in order to manipulate facts between James and Jennifer in order to break them up when SJ did not get her way.

[2] ROHNDA BODY, would have testified to: Witnessing on several occasions over the past 5 years while spending weekends with James, Jennifer and family, while on family get together's SJ would tell lies about everything to everybody. Rohnda would also testify to the fact, while at court the Judge ordered that Nobody was to talk to SJ at recess, yet during recess Rohnda watched and heard Karen Timbers, with the Sexual Assault Unit tell SJ that she needed to "cry & pour it on or she would loose the case". (Ex. "B", Declaration of Rohnda Body).

[3] TRACY RACINE-MARIN, would have testified to: Knowing James and Jennifer for at least 6 year, and that she had caught SJ and BM her own 13 year old daughter looking at pornography at her home. SJ lied and said they we not looking at it, that Tylor (Wright's son) & Jacob (Tracy's son) were, and they had found it on the computer. The boys got in serious trouble over that escapade. Later that day BM told her mother the truth, when Tracy found out, SJ was no longer, ever to return back for any reason to the Racin house. (Ex. "C", Declaration of Tracy Racine-Morin).

[4] JACOB RACINE, would have testified to: to knowing James, Jennifer and family for 6 years, that is a friend of Tylor Wright. He would have testified to the reputation of SJ as to her honesty, her truthfulness and her propensity to tell lies to get her way. (Ex. "D", Declaration of Jacob Racine). \* CONTINUED ON PAGE 6-A \*

A careful reading of the law indicates that no foundation is needed to impeach a witness's testimony with a prior statement as extrinsic evidence of bias.

Prior case law conflated two separate concepts: impeachment by evidence

- [5] SUSAN SKINNER, even though Susan did testify at trial, she would have testified too, had she been allowed to: all the bad acts SJ has done in the past, right up to this very day. She would have testified to the fact that her granddaughter has a very bad reputation in her neighborhood of telling lies, manipulating people in general to obtain what she wants, and for her benefit only. (Ex."F")
- [6] JENNIFER JORGE, even though Jennifer did testify at trial, she would have further testified to, had she been allowed: The state knows SJ' is the biological daughter of Jennifer. In SJ's short life time of, Jennifer has become fully aware just how evil her daughter can be. With that Jennifer Jorge stands by her testimony at trial and her Declaration dated 07/16/2010. (Ex."G")
- [7] BREHANNA MORIN, would have testified to: knowing Samantha Jorge for at least six years, and in that time Samantha introduced her to pornographic material Samantha found on computer web sites. When Samantha sets her eyes on something she wants, she does not care what she must do or say to obtain her desires. Throughout our neighborhood Samantha is well known as a liar, thief and instigator of trouble. (Ex. "H")

The facts clearly show the state's only evidence against defendant is SJ's testimony. The state knew defendant's only defense was to establish the complaining witness has a history of prior bad acts, which include dishonesty and exhibiting a manipulative personality throughout the neighborhood. The state implemented a 20 foot barrier wall around SJ thereby excluding the truth from the jury, these actions are unconstitutional and violates Wright's 6th Amendment right to present a complete defense.

of bias and impeachment by prior inconsistent statements. In Harman, our Supreme Court held that regardless of whether testimony was offered "for the purpose of impeachment or for the purpose of showing bias or prejudice of the witness," the witness should be asked about the former statements. State v. Harmon, 21 Wn.2d 581, 580, 152 P.2d 314 (1944).

Juror's are the sole tries of fact, they have the burden of determining each witnesses credibility, veracity, specifically the complaining witness's truthfulness as to the facts of the case. Juror's should be given all the facts, not bits and pieces, partial truths. Had the jury heard testimony from Elizabeth Matheny, and other defense witnesses about SJ's reputation in the community as being a chronic liar, that none of the neighbor kids wanted anything to do with her due to her dishonesty and propensity to manipulate circumstances for personal gain. The above testimony would more likely than not have changed the entire out come of the trial!

As said prior, all relevant evidence is admissible ER-402, and Elizsabeth Mateny's testimony was highly relevant! Further, state evidentiary rules may not be elevated over the Constitution. See HOLMES, supra at 547 U.S. at 324-25. "The right of an accused in a criminal trial to Due Process is, in essence, the right to a fair opportunity to defend against the State's occasions" CHAMBERS v. MISSISSIPPI, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).

As recent as State v. Jones, 168 Wn.2d 713 2010, the court held a defendant's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony is basic in our system of jurisprudence. Id. "The right to confront and cross examine adverse witnesses is (also) guaranteed by both the Federal and State

Constitution." State v. Darden, 145 Wn.2d 620 (2002) (citing WASHINGTON v. TEXAS, 388 U.S. 14,23, 87 S.Ct.1920, 18 L.Ed.2d 1019 (1967)).

In this case the trial court clearly handcuffed defense counsel ability "meaningful opportunity to present a complete defense". Appellant's right to Due Process, Right to the Compulsory Process, Fourteenth Amendment along with the Confrontation Clause, Sixth Amendment has been violated by the state actions.

The State's entire case against appellant Wright stems completely around the sole words of Samantha Jorge to her school counselor Ted Fellin, which contacted Child Protective Services, soon there after SJ went in to the Sexual Assault Unit (SAU) and was interviewed by Karen Sinclair, Forensic Child Interviewer. Shortly thereafter formal charges were filed against Mr. Wright. Without SJ's statements there is absolutely no other evidence in the record that Mr. Wright committed any criminal act!

The state's interest in excluding prejudicial evidence must also "be balance against the defendants need for the information sought." Darden, 145 Wn.2d at 622. Relevant information can be withheld only "if the state's interest out weights the Defendant's need" Id. We must remember that "the integrity of the truth-finding process and [a] defendant's right to a fair trial" are important considerations. State v. Hudlow, 99 Wn.2d 1,14, 659 P.2d 514 (1983). The State Supreme Court has held that for evidence of High Probative Value "it appears no state interest can be compelling enough to preclude it's introduction consistent with the Sixth Amendment and State Constitution Art 1, §22" at 16.

Elizabeth Matheny was not allowed to testify, her testimony would have been significant and relevant evidence the trial court should have balanced

against the State's interest in excluding the evidence. Matheny's testimony would have been extremely valuable, it would have been a key part of Wright's entire defense.

As said above, Elizabeth Matheny's testimony would have establish the reputation of SJ in the community, her character of lying, and getting other's in trouble, kids in her own school classes simply do not want SJ around or anything to do with her.

Lastly, SJ's reputation is the same with all the local neighborhood kids as well, they want nothing to do with her for the same reasons. Since no State interest can possibly be compelling enough to preclude the introduction of evidence of high probative value, the trial court violated Wright's constitutional right when it barred such evidence. In a nut shell, the court prevented Wright from presenting a meaningful defense. This violated the 6th & 14th Amendment.

For the above reasons Wright's appeal should be granted, the conviction overturned. In the alternative, overturn the conviction, remand to trial court for a new trial with directions allowing all defense witnesses that are "neutral and generalized community members" to testify as to the reputation of SJ, thereby informing the jurors of all the facts. Appellant requests an evidentiary hearing to establish the facts that were kept from his jurors.

GROUND TWO:

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A  
VERDICT OF GUILTY BEYOND A REASONABLE DOUBT.

- (i) The evidence was insufficient to corroborate the crime of Child Molestation in the Third Degree.
- (ii) The evidence was insufficient to corroborate the crime of Rape of a Child in the Third Degree.
- (iii) The evidence was insufficient to corroborate the crime of Rape of a Child in the Third Degree.

In all criminal cases, conviction requires proof beyond a reasonable doubt. IN RE WINSHIP, 397 U.S. 358,364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). On review, evidence is not sufficient to support a conviction unless, after viewing the evidence in the light most favorable to the state, any rational trier of fact could find all of the elements of the crime charged beyond a reasonable doubt. State v. DeVries, 149 Wn.2d 842 at 849, 72 P.3d 748 (2003).

The criminal law may not be diluted by a standard of proof that leaves the public to wonder whether innocent persons are being condemned. DeVries, at 849. The reasonable-doubt standard is indispensable, because it impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue DeVries, at 849.

Where the evidence is insufficient to support a conviction, the Double Jeopardy Clause requires reversal and remand for dismissal with prejudice, State v. Brown, 137 Wn.App.587, 592, 131 P.3d 905 (2007). Although a claim of insufficiency admits the truth of the state's evidence and all inferences that can reasonably be drawn from it, DeVries, at 849, this does not mean that the smallest piece of evidence must be sufficient to convince a rational jury beyond a reasonable doubt.

Since the reasonable doubt standard is the highest standard of proof, review is more stringent than in civil cases. In other words, the **proof must be more than mere substantial** evidence, which is described as evidence sufficient to persuade a fair-minded, rational person of truth of the matter. (citing Rogers Potato v. Countywide Potato, 152 Wn.2d 387, 391, 97 P.3d 745 (2004); State v. Carlson, 130 Wn.App. 589, 592, 123 P.3d 891 (2005); Northwest Pipeline Corp. v. Adams County, 132 Wn.A.pp. 470, 131 P.3d 958 (2006), quoting Davis v. Microsoft Corp. 149 Wn.2d 521, 531, 70 P.3d 126 (2003).

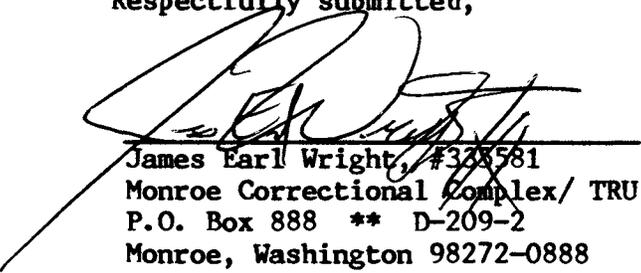
It must be more than clear, cogent and convincing evidence, which is described as evidence "substantial enough to allow the tiers of fact to conclude that the allegations are 'highly probable.'" State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); JACKSON v. VIRGINIA, 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct. 2780 (1979).

**C O N C L U S I O N**

For the above reasons Wright's appeal should be granted, the conviction overturned. In the alternative, overturn the conviction, remand to trial court for a new trial with directions allowing all defense witnesses that are "neutral and generalized community members" to testify as to the reputation of SJ, thereby informing the jurors of all the facts.

SIGNED and DATED this 27 day of July, 2010.

Respectfully submitted,



James Earl Wright, #328581  
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1 Q Wouldn't it have been easier to close the door?  
2 MR. HULL: Objection, Your Honor.  
3 Argumentative.  
4 Q (By Mr. Weaver) Did you close the door?  
5 A No.  
6 Q Could you have closed the door?  
7 A Yes.  
8 Q Could you have left?  
9 A Yes.  
10 Q Mr. Wright wasn't keeping you there.  
11 A No.  
12 Q And your grandmother was in the house.  
13 A Yes.  
14 Q Who is Elizabeth Matheny?  
15 A Um, a friend of his daughter, I think. I don't know.  
16 Q A friend of whose daughter? A friend of Mr. Wright's  
17 daughter?  
18 A I think so.  
19 Q Is she a 17-year-old girl?  
20 A I think so.  
21 Q Do you recall Elizabeth Matheny and her mother being  
22 involved in a car accident in September of 2008?  
23 A Yes.  
24 MR. HULL: I object at this point and ask that  
25 we address this issue outside the presence of the jury

APPENDIX **A**

1 in terms of relevance. There may be an offer of proof  
2 that will be necessary.

3 THE COURT: All right. We'll take a short  
4 recess for the jury.

5 (The jury retired to the jury room.)

6 THE COURT: Should Ms. Jorge remain here?

7 MR. WEAVER: Apparently he wants an offer of  
8 proof.

9 MR. HULL: Actually, what I would like to do  
10 is inquire with the court outside the presence of the  
11 witness. I think that would be better.

12 THE COURT: Ms. Jorge, do you want to step  
13 outside. Thank you.

14 (The witness left the courtroom.)

15 MR. HULL: Your Honor, Mr. Weaver disclosed on  
16 his witness list Elizabeth Matheny. I believe it's  
17 Mr. Weaver's intent to call her as a witness in regards  
18 to a conversation that Ms. Jorge had with her shortly  
19 before this incident was reported on September 10th, and  
20 so I guess, A, I don't know that it will be relevant in  
21 regards to that conversation, and B, the inquiry about  
22 any particular car accident, again, I don't know that  
23 that's going to lead us to any relevant material as  
24 well. So we may want to do an offer of proof with  
25 Ms. Jorge, but I wanted to state my objection outside of

1 her presence.

2 MR. WEAVER: Your Honor, the relevance of the  
3 car accident is it helps establish the time line.  
4 Ms. Matheny is not able to give -- Ms. Matheny's  
5 recollection of the conversation is in reference to the  
6 accident. I don't think that the details of the  
7 accident are relevant at all and I don't intend to get  
8 there, but Ms. Matheny can testify that she knows that  
9 the conversation occurred on September 9, 2008, because  
10 that's the date the car accident happened. What happens  
11 is she is in a car accident with her mother, my client  
12 and Ms. Jorge go over basically to console the family,  
13 and during that contact Ms. Matheny and Ms. Jorge have a  
14 conversation about sexual matters.

15 Given the court's earlier ruling, I don't intend to  
16 go into much detail about the conversation, but I do  
17 believe that it's relevant that during the conversation,  
18 that the conversation was a free-flowing discussion  
19 about sexual matters, and that Ms. Jorge never disclosed  
20 to Ms. Matheny that she was being sexually molested by  
21 Mr. Wright. That's the extent of what I intend to get  
22 into.

23 MR. HULL: Your Honor, I think if Mr. Weaver  
24 wants to ask Ms. Jorge, Samantha, if she disclosed to  
25 Ms. Matheny about any sexual abuse, he can do that. A

1 generalized conversation about sexual matters, though,  
2 is not relevant to this case unless there's some  
3 connection to the defendant, so the prosecution would  
4 object to testimony about any kind of conversation she  
5 had with Ms. Matheny that is generally sexual in nature.

6 MR. WEAVER: Again, I don't intend to get into  
7 the details, but I think it's important for the jury to  
8 know that this was a discussion about sexual matters, so  
9 if Ms. Jorge was going to make a disclosure, it would  
10 have fit within the context of the conversation. This  
11 wasn't a discussion about, you know, Schindler's List.  
12 This was a discussion about sex, and the timing I think  
13 is particularly important because this is the day before  
14 she goes to the school counselor.

15 MR. HULL: That's a pretty big presumption,  
16 Your Honor. I think the fact she is discussing  
17 something sexual in nature to this individual, who she  
18 obviously doesn't know very well -- she was struggling I  
19 think even to recognize the name when Mr. Weaver gave it  
20 to her -- the fact she had that conversation and chose  
21 not to disclose what was going on between her and the  
22 defendant isn't relevant, and it's a presumption that  
23 she would have mentioned it to her had it actually  
24 happened. That kind of logic I think fails in light of  
25 the fact there wasn't a conversation about the defendant

1 specifically.

2 THE COURT: It strikes me as speculative that  
3 she would have disclosed to this person. I don't know  
4 what kind of relationship she has with Elizabeth  
5 Matheny. Mr. Hull seems to think it's not a very close  
6 relationship.

7 MR. WEAVER: I wasn't going to get into it  
8 given the court's earlier ruling, but during the  
9 conversation Ms. Jorge bragged to Ms. Matheny that she  
10 was a virgin and she intended to stay that way until she  
11 was married, and I think that given that brag, it's  
12 particularly interesting that the very next day she goes  
13 in and tells law enforcement, a school counselor, and  
14 then ultimately Karen Sinclair, that she has had oral  
15 sex with my client.

16 THE COURT: I still don't see the relevance of  
17 what she told Elizabeth Matheny. It's speculative.

18 MR. WEAVER: I don't think it's speculative.

19 THE COURT: The fact she was going to be a  
20 virgin or not.

21 MR. WEAVER: I guess, it's a very strange brag  
22 for someone who has apparently given oral sex to a man.

23 THE COURT: I guess Exhibit 10 and 11 are  
24 pretty strange, too, relevant to what happened in '08.

25 MR. WEAVER: I will retract the word