

COURT OF APPEALS, DIVISION II,  
STATE OF WASHINGTON

JASON C. WILKS,  
APPELLANT

v.

STATE OF WASHINGTON,  
RESPONDENT

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Appeal from the Superior Court of Pierce County, Washington  
The Honorable Stanley J. Rumbaugh, Pierce County Cause No. 14-1-04908-2

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OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court's numerous evidentiary rulings denied defendant his constitutional right to present a defense.
2. The trial court denied the defendant his constitutional right to trial by jury when it declined to question a juror who appeared to have been sleeping during the proceedings.
3. The defendant is entitled to a new trial where the prosecutor committed misconduct during closing argument.
4. This court should dismiss these charges with prejudice because the State failed to prove beyond a reasonable doubt that defendant committed the crimes charged.
5. Defendant is entitled to relief under the cumulative error doctrine.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. A criminal defendant has the constitutional right to present a defense under the Fifth Amendment to the United States Constitution and the article 1, section 3 of the Washington Constitution. The trial court denied the defendant his right to a fair opportunity to defend against the State's accusations when it refused to allow him to adduce evidence of the alleged victims'

motives to fabricate the allegations against him where the seriousness and circumstances of those motives easily explained their conduct.

2. The trial court's denial of defendant's right to present evidence of the alleged victims' motives denied him a fundamental element of due process.
3. The trial court's failure to inquire into the matter of the sleeping juror denied defendant his right to trial by jury as guaranteed by the United States Constitution amend. VI and Wash. Const. art. I, § 22.
4. The trial court's failure to inquire into the matter of the sleeping juror denied defendant the protection of RCW 2.26.110 which requires the trial court to excuse from further jury service any juror, who the opinion of the judge has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention, or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service as well as the protection of CrR 6.5, stating "[i]f at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged." Thus, both RCW 2.36.110 and CrR 6.5 place a continuous

obligation on the trial court to excuse any juror who is unfit and unable to perform the duties of a juror. When the trial court refuses to conduct any inquiry, the trial court fails to perform its duties under the law and commits error as a matter of law.

5. The prosecutor denied defendant his constitutional right to due process and a fair trial during closing argument. The prosecutor violated his special duty to act impartially in the interests of justice and not as a heated partisan when he egregiously and repeatedly misstated the evidence, vouched for the credibility of the State's witnesses, expressed his personal opinion that the defendant was guilty and that justice equated to a guilty verdict, and argued for conviction based on passion and emotion.
6. The State failed to prove the charges beyond a reasonable doubt, thereby requiring dismissal with prejudice of those counts.
7. The defendant is entitled to relief under the cumulative error doctrine.

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C. STATEMENT OF THE CASE

1. Procedural Facts.

On December 9, 2014, the State of Washington charged Jason Craig Wilks, hereinafter defendant, in Pierce County Superior Court cause 14-1-049-8-2 with eleven counts of sexual assault, delivery of a controlled substance to person under the age of eighteen, and furnishing liquor to a minor for offenses committed against BS, MR, and LM (CP \_\_<sup>1</sup>) Appendix A.

On August 26, 2016, the State filed amended information upon which the case was submitted to the jury. (CP 225-231). In that amended information, the State alleged in Counts 1, 2, 3, 4, 5, 6, that the defendant committed numerous acts of child rape in the third degree, child molestation in the second degree, child molestation in the third degree, unlawful delivery of a controlled substance to a minor; and furnishing liquor to a minor against BS; in counts 7, 8 and 9, the State alleged that the defendant committed acts of unlawful delivery of a controlled substance to a minor and furnishing liquor to a minor to MR; in counts 10 and 11, the State alleged that the defendant committed acts of furnishing liquor to a minor to LM; in counts 12, 13, and 14, the State alleged that the defendant committed acts of unlawful

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<sup>1</sup> A supplemental designation of clerk's papers has been filed to add the original information to the record in this case.

delivery of a controlled substance to a minor and furnishing liquor to a minor to AB; in counts 15 and 16, the State alleged that the defendant committed the acts of furnishing liquor to a minor to RR. *Id.* The State also requested four special verdicts whether the defendant acted with sexual motivation. *Id.*

In its opening statement, the State alleged that the defendant over the course of two years gave teen-age girls alcohol and drugs at his residence and then waited for the opportunity to rape and molest them. RP 9/26/16 44. The State alleged that he had sexual contact with them when they were intoxicated, high, and/or unconscious. *Id.*

The alleged victims were BS, date of birth 3/24/99, RP 9/26/16 35; RR, date of birth 12/16/98, id; AB, date of birth, 11/25/98, RP 9/26/16 35-36; MR, date of birth, 10/1/98, RP 9/26/16 36; LM, date of birth 6/4/99, RP 9/26/16, *Id.*

In his opening statement, defendant informed the jury that he lived with his wife Katie and three children, Samantha, Jonathan, and Nathan. RP 9/26/16 45. Samantha's friends, MR, LM, and BS, the initial complainants, ran with a rough crowd but then they became friends with Katie. *Id.* At that time, they began visiting the Wilks home, a real home with a real family, that they found to be a refuge. *Id.*

In the fall of 2014, defendant discovered that MR and BS were engaged in conduct that he did not want Katie exposed to. RP 9/26/16 49-51. The girls that they could no longer have contact with the Wilks family. *Id.*

After being excluded from the Wilks residence, MR retaliated by spreading rumors that when she had been watching movies in with the Wilks family defendant was touching her, and that Samantha had a rapist for a father. R 9/26/16 53. Samantha's friends turned against her. *Id.*

Around this time, defendant and his wife caught LM with drugs out in his yard with Samantha. *Id.* He told her that he was going to tell her grandparents about this. *Id.* LM responded by telling people that defendant got kids high, got them intoxicated. *Id.* Consistent with statements of MR and BS, LM also alleged that defendant had touched her. *Id.*

Defense emphasized that MR's friend AB had no independent memory of being touched by defendant. RP 9/26/16 53-54. However, about a year after she had been talking to MR, she started having "flashbacks" to things she had not known, including an incident where defendant touched her. RP 9/26/16 54.

AB told RR about her flashbacks. RP 9/26/26 54. Then RR began having similar "flashbacks" and apparently flashed back to a touching by defendant. RP 9/26/16 54-55.

On November 1, 2016, defendant made a record that the juror who had been sleeping the day before and also that morning was juror no. 10. RP 11/1/16 47. The court responded that neither the court, counsel, nor staff had observed it. Id. The court noted because the only observations had come from individuals in the gallery, the court did not find cause “to inquire of the jurors whether they were sleeping or not, given that nobody directly involved with the case either saw it or brought it to the court’s attention.” RP 11/1/16 47.

Defense counsel asked to make a record with brief inquiry to the witnesses Katie Wilks and Ashlie Hager regarding their observations of the sleeping juror, but the court refused to permit defense to do so. RP 11/1/16 48.

The State used a PowerPoint presentation in its closing argument. RP 8-9, Exhibit 84, Appendices B, C, D, E. The deputy prosecutor began the State’s closing argument by alleging that defendant had taken advantage of the trust reposed in his family by the alleged victims, his daughter’s good friends. RP 11/3/16 41-43. He contended that the defendant encouraged a trust relationship with the alleged victims, provided them with drugs and alcohol, and then “while they are most vulnerable in a home under his control after their parents had no idea that he was growing or had marijuana on site or that was anywhere around, that is when he would strike.” RP 11/3/1643. The deputy prosecutor alleged that when the alleged victims were unconscious,

defendant would move their bodies, touch their bodies, touch their bodies, put his hands in their pants, penetrate their vagina. He would rape them. . .” RP 11/3/1643. The deputy prosecutor also stated that when the alleged victim came forward, the defendant would take steps to silence them, “threatening to call state officials on their parents.” RP 11/3/16 43. The deputy prosecutor characterized him as “very willing to threaten children with legal action and other leverages and levers of control and power. He did what he could do threaten and silence them, but they would not be silenced.” [emphasis added]. RP 11/3/16 43-44.

The prosecutor repeatedly misstated the evidence and maintained that the defendant had purchased MR an expensive bracelet for her 16<sup>th</sup> birthday. RP 11/3/16 60-61. In fact, Samantha wanted to purchase the bracelet for MR, her best friend, and her mother agreed that she could do so. RP 10/27/16 87-88, 89 The prosecutor also misstated the evidence when he argued to the jury “and so the Friday before her birthday they were going to celebrate, and they were celebrating with alcohol.” RP 11/3/16 61. The prosecutor again recounted for the jury how MR’s testimony was corroborated by the exhibit. RP 11/3/16 102. “The bracelet that the defendant bought her.” that is indeed that bracelet that is in the picture. I think it’s 37.” *Id.* Defendant had no role in the purchase of the “expensive bracelet” which the State so

often referred to as some sort of bribe he purchased for MR. *Id.* RP 11/3/16 102, 111.

Similarly, the prosecutor misstated the evidence when he argued that AB recalled that defendant touched her vagina repeatedly with his left hand and “then she blacked out again.” RP 11/3/16 67.

The prosecutor conceded that RR lacked any clear memory of what happened and that she thought it was a flashback or a dream. RP 11/3/16 71-72. He asked the jury to convict defendant based on RR’s assertion that her mind “wouldn’t have that clear of detail if it didn’t happen.” RP 11/3/16 71-72.

In closing argument, the prosecutor repeatedly and impermissibly vouched for the credibility of the alleged victims. See pages 56 – “The only conclusion supported by the evidence is that LM, BS, MR, AB, and RR are telling the **TRUTH**.” In closing argument, the State set forth its theory of the case, that is, that defendant took advantage of his daughter’s friends whom he identified to be from “homes that maybe only had one parent, so maybe he thought it would be easier to go undetected.” RP 11/3/16 42. The State argued that because one of the girls that a parent with a drug problem the defendant thought he would gain her trust. *Id.* The State argued that the defendant bought them “presents and food and things.” *Id.* The State argued that as the

defendant made the girls more comfortable with him, more comfortable with being on his bed with him, he introduced drugs and alcohol into the mix, thus increasing the fun the girls had at his house. *Id.*

The State argued that when the girls were intoxicated or unconscious, he would move their bodies, put his hands in their pants, penetrate their vagina. He would rape them. He would molest them.” RP 11/3/16 43. [emphasis added].

The State argued that the alleged victims had suffered after reporting being sexually touched by defendant. RP 11/3/16 112. “The way these girls suffered, innuendoes and suspicions and whispers behind their backs threats from the defendants.” *Id.* The State further argued to the jury that the victims would not have made up the allegations because of the demands of the criminal justice system: “The criminal justice process is uncomfortable at best. Recall them on the stand, how many times they’ve had to go through this, how many interviews, have many examinations. There is simply no credible evidence to support the conclusion that they made it up on their own.” *Id.* The prosecutor concluded this section of his argument by improperly vouching for the credibility of the State’s witnesses: “The only conclusion that remains is that they are telling the truth.” *Id.*

The State vouched for the credibility of its witnesses. RP 11/3/16 65. Regarding AB, the State argued, “You saw how she was a lovely personality on the stand . . .” *Id.* The deputy prosecutor referred to her “bubbly personality.” RP 11/3/16 67. In one portion of the argument, he referred to an exhibit [#81] that he had made during the testimony that was a chart of friend relationships according to Samantha only and in a self-congratulatory manner stated, “I think that’s one of my favorite exhibits.” RP 11/3/16 109. He used that exhibit to call Samantha a liar and expressed his personal opinion on the subject. *Id.*

The State urged the jury to convict for reasons other than that the State had proven its’ case beyond a reasonable doubt. For example, the State repeatedly attempted to induce sympathy for the alleged victims.

Despite that obvious fact that all victims have to go through the process of reporting crimes to the police, submitting to interviews, etc., the State presented this process as onerous, burdensome, and traumatizing. RP 11/3/16 101 [“when [BS] had to tell what had occurred to her to the police, she felt broken again”].

The deputy prosecutor also misrepresented the testimony of the defendant:

Remember his testimony where he couldn't admit even simple facts. 'Did you threaten these girls with a lawsuit?' 'I wouldn't say threatened.' 'Did you tell them that if something happened and they didn't --- if you wanted them to do something and they didn't, something bad would happen and they didn't, something bad would happen?' 'Oh, yeah, but that's not a threat.' 'Okay. What is it?' 'It's a deterrent.' So parsing out little things, fighting every question. RP 11/3/16 113.

Contrary to the prosecutor's argument, the State had not adduced evidence that the defendant "threatened these girls with a lawsuit", that if they didn't do what he wanted, something bad would happen.<sup>2</sup>

In closing, defense argued that this was a case of retaliation by girls who made false allegations against defendant after he began imposing consequences for bad behavior and violations of house rules. RP 11/3/16 121,

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<sup>2</sup> On cross-examination, defendant acknowledged that he threatened to take out a restraining order against RR and that he communicated this to her directly. RP 11/2/16 133. He did this because he wanted her to stop harassing his child. RP 11/2/16 134.

Defendant knew nothing about RR's family situation. RP 11/2/16 148. When he met AB's family, both of her parents were present. *Id.* He knew that LM lived with her grandparents and that her mother, whom she purported to hate, had drug problems. RP 11/2/16 89-90. She knew that BS was being raised by her mother. RP 11/2/16 147.

Re-direct

When defendant first heard that the girls were making allegations against him and CPS workers showed up the Wilks residence asking about alcohol and to see the children's bedrooms, he thought the girls were making false allegations about giving alcohol to minors. RP 11/2/16 156-158. He did not learn about the allegations by ML, LM, and BS until later than fall. RP 11/2/16 158. He did not learn about the nature of the allegations by RR and AB for another year. *Id.*<sup>2</sup>

123. Defense counsel noted that with their constant use of smart phones and almost constant picture taking, it was remarkable that the alleged victims did not have a single photo of any one with marijuana, alcohol, anyone with a drink in their hand, a photo of the alleged grow operation room, people playing a drinking game, any photos of bong, pipes etc. RP 11/3/16 122. Further, given all of the other kids and people who were present at the social events where the alleged victims said these activities occurred, there was not a single corroborative witness. RP 11/3/16 125.

Other independent witnesses, Abigail Toomoth and Cheyenne Basher, spent the night at Samantha's and knew that Samantha's friends always slept in her room. RP 11/3/16 126. Defendant and Katie slept in their own room. Id. Cheyenne never saw any card games, roulette wheel, or alcohol at the house. Id. Patience Pruitt liked to go to Samantha's house because she liked being with her friend to watch movies, listen to music, and enjoy the bonfires. RP 11/3/16 128. She also remembered that at sleepovers, the girls slept in Katie's room or on the living room floor. Id. Defendant and Katie slept in their own bedroom. RP 11/3/16 128. Patience never saw any alcohol or marijuana or sexual inappropriateness. RP 11/3/16 129.

Defendant his wife both testified that they were upset when they discovered LM and Samantha outside smoking marijuana on the Saturday on homecoming. RP 11//3/16 135.

LM admitted hacking the defendant's phone. RP 11/3/16 139.

## 2. Sentencing

During its sentencing presentation, the state averred that the victims will “not now have to seek support that will continue for the rest of their lives.” RP 1/7/17 10. Again, there is no factual support in the record for this assertion. Defense counsel did not object to this assertion. *Id.*

The jury returned a not guilty verdict to count I (CP 327), and guilty verdicts to counts II – XVI (CP 328-342) as well as to special verdicts for Counts V, VIII, XIII, XVI (CP 343- 346).

The court imposed a sentence of 280 months, including 10 months on one of the misdemeanors to run consecutively to the time imposed on the felonies. RP 1/27/17 35, 37; CP 347-364.

The defendant thereafter timely filed this appeal. CP 391.

### 3. Testimony.

Samantha Wilks, daughter of defendant and Katie Wilks, had many girlfriends in middle school and high school. Her parents encouraged her to invite her friends to the family home because they preferred to know where she was and who her friends were. RP 10/31/16 82.

The parents paid attention to what their children did and were involved in their educations, afterschool activities, and internet use. RP 10/20/16 12. The children had chores, responsibilities and obligations. R) 10/20/16 13. Samantha lived with defendant, her mother, her grandfather Daniel Herzfeldt, and her two younger brothers Nathan and Jonathon. RP 10/20/16 18; RP 10/24/16 29; RP 10/24/16 81.

Her grandfather noted that as Samantha grew older and started high school, she had friends at the house, “sometimes so often [he] felt like they were moving in and staying.” RP 10/20/16 16. She had sleep-overs every weekend of the month. RP 10/20/16 18. In addition, there were birthday parties, Halloween parties, Fourth of July parties, back to school parties, and end of the school year parties, RP 10/20/16 26; 10/24/16 85-86. There were approximately 15-20 girls that Samantha regularly had as guests. RP 10/20/16 26, RP 11/1/16 49. The sleep-overs were “girls only” parties. Id.

The Wilks always invited parents to their get-togethers. RP 10/31/16 106.

Thus there were always other adults present. Id.

When Samantha had sleepovers, the girls slept in the living room so they were not split up. RP 10/24/16 105. If Samantha had just one or two friends spend the night, they slept in her bedroom. Id. Herzfeldt habitually walked through the house every night before he went to bed as part of a safety routine he and defendant had agreed on. RP 10/20/16 64. Herzfeldt's duty in the safety plan was to evacuate everyone from the three bedrooms in house proper. RP 10/20/16 64-65. Thus he wanted to know how many people were in the house and so he walked though it "pretty much" every night. RP 10/20/16 65. He thus knew who was present and where they were sleeping. Id. He never saw any minor, except Samantha, sleeping in the bed of defendant and Katie Wilks. RP 10/20/16 63/64.

Herzfeldt never observed any minor drinking alcohol at the residence, never saw anyone playing a drinking game, and never saw any minor smoking or otherwise consuming marijuana. RP 10/20/16 42-43.

Jonathon Wilks, the youngest child of defendant and Katie Wilks, was generally home when Samantha's friends were at the house. RP 10/24/16 29. He never saw any kids drinking alcohol or smoking anything at the house. RP 10/24/16 31.

Jonathon shared a bedroom with his brother Nathan. RP 10/24/16 33. They could see into their parents' bedroom from their bedroom. Id. Jonathon never saw any of Samantha's friends sleeping in his parents' bed. Id. Jonathon knew that when Samantha had sleep-overs, she and her guests either slept in her bedroom or the living room, depending on the number of guests. Id. He never saw his parents sleeping in Samantha's bedroom when she had friends over. RP 10/24/ 16 34.

Nathan Wilks, the middle child, was in 8th grade in 2014 and in 7th grade in 2013-2014. RP 10/24/16 81. He knew some of the many friends that often visited Samantha at the family home. RP 10/24/16 81-84. He recalled LM, BS, RR, Amanda, Peyton, Becca, and Jaden. RP 10/24/16 82. He remembered that LM visited a lot and then she stopped. 10/24/16 83. AB also was a frequent guest. Id. He knew that Samantha had lots of sleepovers. Id. Nathan never saw any containers of alcohol out when Samantha's friends were at the house. RP 10/24/16 93. He never saw either of his parents drink alcohol when Samantha's friends were at the house. RP 10/24/16 93-94. Nathan had never seen his parents consume marijuana or observed any supplies or smoking paraphernalia at the house. RP 10/24/16 94-95.

Defendant and Katie Wilks had medical marijuana cards. RP 10/20/16 48-49. Herzfeldt owned the residence and he and the Wilks parents agreed to

rules for the use of marijuana. RP 1-/20/16 51-52. They agreed that marijuana would not be used inside the residence. Id. Herzfeldt never saw anyone using marijuana inside the residence. RP 10/20/16 52.

Defendant grew marijuana at the home until it became legal to purchase, approximately in the summer of 2014. RP 10/20/16 95.

Katie Wilks was at home when her daughter had guests at the house. RP 10/25/16 18,42. Katie knew the girls – they included Cheyenne Basher and Patience Pruiett, RP 10/25/16 17-18, 19, 20; Abigail Toomoth, RP 10/25/16 22; MR, who visited from freshman year until she moved in with her grandfather and then resumed coming over sophomore year when she moved in with her mother, after which time she visited two to three days a week after school and also spent the night on many weekends, especially in September 2015, RP 10/25/16 23, 24, 25; BS, a friend from middle school until sometime during freshman year, RP 10/25/16 27; AB, a friend from spring 2014 until October 2014, RP 10/25/16 29-30; RR, a friend who came to the house only twice, the last time being the end of summer party in 2014, RP 10/26/16 31. Katie also knew LM, whom Samantha met in middle school. RP 10/25/16 36. The Wilks parents were aware that LM, RR, and BS had difficulties in their family lives. RP 10/31/16 19-21.

LM became a very close friend to Samantha. RP 9/27/16 33-34. RP 9/27/16 41. They treated her like one of their own children. Id. They cared for her when she was ill, cooked her meals, allowed her to stay at their house and take showers. Id. LM considered them to be her second family and she called the defendant her “second dad.” RP 9/27/16 42. LM claimed that on October 23, 2014, LM and Sam went to a high school football game, returning to the Wilks residence afterwards. RP 9/27/16 44. With Sam’s parents, they drank shots of Fireball whiskey and also mixed drinks while playing a card game. RP 9/27/16 45. LM estimated that she had “like twelve” shots. RP 9/27/16 47. She felt dizzy and wanted to lie down. RP 9/27/16 54. The group went into the Wilks’ parents’ bedroom to watch movies on their 3D television and lie on the bed, which she asserted was common in the household. RP 9/27/16 54-55. LM fell asleep. RP 9/27/16 56. LM believed that she awakened to the defendant biting her ear and touching her inside her clothing on her butt. RP 9/27/16 56. LM fell back asleep “because I didn’t want to know what was going on. . . I didn’t want to have go through knowing what was happening to me. I just wanted to forget it.” RP 9/27/16 57-58. When LM woke up the second time that morning, she told the defendant that she was going to the bathroom but instead she walked out of the bedroom. RP 9/27/16 59. She walked into Sam’s bedroom and crawled into bed with Sam and her mother. RP 9/27/16 60. LM

noticed that her vagina felt wet consistent with being touched or having sexual activity. RP 9/27/16 61. After returning to her home later than day, she told her friend Angel about what had happened and together they told her mother. RP 9/27/16 62-63. LM and her mother agreed that LM would discuss the matter with LM's counselor at Greater Lakes Mental Health. RP 9/27/16 64. LM knew that the matter would be reported to CPS. Id. LM told her counselor Lynnsie Kramp that she was at a friend's house after the homecoming gam and that her friend's parents gave her and the other minors alcohol. RP 10/10/16 111. She said that, as they have in the past, they again offered her marijuana but that she declined. Id. She said that she got into bed with her friend and her parents and that she was lying between the defendant and the wall. Id. LM said that when she awoke in the middle of night she was drunk but she found defendant biting on her eat and rubbing her back. Id. She fell back asleep. Id. When she woke up, her pants were up but her underwear were lower to the middle of her thigh and "it felt like something had happened." RP 10/10/16 111. She did not tell her counselor that defendant had rubbed butt, touched her vagina, put his hands down her pants, taken her to a parking lot and told her he had a crush on her. RP 10/10/16 111, 114.

LM had been in counseling at Greater Lakes since she was fourteen and saw the counselor once a week, sometimes every other week. RP 9/28/16

78-79, 83-84. There was a reason she had been in counseling for this period of time. RP 9/28/16 79.

On October 12, 2014, LM hacked into the defendant's social media account by uploading a photo from Sam's phone, captioning it "hacked, baby" and then posting it. RP 9/27/16 66-67; RP 9/28/16 33. LM had access to all of the cell phones at the Wilks' residence. RO 9/28/16 33.

LM also called the nonemergency police line sometime in November and made a report. RP 9/27/16 70.

After she learned charges had been filed, LM felt happy. RP 9/27/16 72 This is because she wanted him to be where he belongs. RP 9/27/16 72. She was so happy that she put a post of the record oh defendant being booked into the Pierce County Jail on social media: "Getting what he deserves. Pervert." RP 9/27/16 73. LM's happiness continued unabated at the time of trial "because things are getting dealt with like the way they should be." RP 9/27/16 75.

On November 3, 2014, LM received a text from defendant. RP 9/27/14. On that date, had defendant been contacted by CPS or police. Id. That text, Plaintiff's Exhibit 17, talked about how "You were like a second daughter to us." RP 9/27/16 98. There was discussion about how the Wilkses made her soup [when she was sick], how they cared for her like one of their

daughters RP 9/27/16 97, 101. Defendant also told her that the things she was saying “about me and Mom are serious and you know they are not true.” RP 9/27/16 99. He reminded her that they not become involved in her family drama, such as not calling CPS on LM’s mother who was a meth user. RP 9/27/16 99-101. But he said that they would if that was what it takes. RP 9/27/16 101. He stated, “I don’t know what you’re trying to get out of this but I would appreciate it if you would stop.” RP 9/27 16 100.

LM’s statements to authorities were fraught with inconsistencies. LM had not told her counselor that the defendant rubbed her butt. RP 9/28/16 35. LM did not tell Deputy Stewart that the defendant put his hands down her pants. RP 9/28/16 35. LM did not tell her counselor or the police that she had been alone in the car with the defendant. RP 9/27/16 1109-110. LM did not tell anyone about the night when defendant supposedly told her that he had a crush on her until during the defense interview that occurred after the trial had started. RP 9/28/16 29. When LM was interviewed by PCSD Deputy Stewart, she did not disclose that defendant ever put his hand down her pants or rubbed her butt. RP 10/19/16 103-104. LM did state that defendant had rubbed her back. RP 10/19/16 104.

LM knew her conversations with her counselor and the police were important because she was providing information about impropriety with defendant. RP 9/82/16 36-37.

LM and Sam previously had a falling out before 10th grade and then became friends again. RP 9/28/16 30. LM knew that BS and MR had been visitors at Sam's house but that they were not welcome there anymore. RP 9/27/16 119.

Deanne Mansfield, mother LM, testified that on October 25, 2014, LM told her that she had been at the Wilks house where "there was some drinking with a bunch of friends." RP 9/28/16 51. She was not aware that LM had hacked a phone at the Wilks' residence. RP 9/28/16 60. She was not aware that defendant caught LM using drugs with his daughter in October 2014. Id. She did not know that on October 25, 2014, LM asked defendant to not tell anyone about this, RP 9/28/16 68.

BS met Samantha Wilkes when they were in the sixth grade. RP 9/28/16 107-108. She went over to Sam's house quite a bit and knew Sam's family, including her parents, grandpa and two brothers Nathan and Jonathan. RP 108. They often watched movies, either in Sam's bedroom, the parents' bedroom, or in the living room. RP 9/28/16 109. When they watched movies

in the parents' bedroom, they would all sit on the bed or sometimes someone would sit in the one chair. RP 9/28/16 109.

Police contacted BS at school in November 2013 after LM gave them information about her. RP 9/29/2016 146, 150. She had not previously told anybody what was going on because she did not want to lose her friendship with Sam. RP 9/28/16 147. She talked to the police about what happened with defendant and also talked with defense prior to trial. RP 9/28/16 147-148. The police had told her what had happened to LM. RP 9/28/16 150. LM told her what had happened to MR. RP 9/28/16 153.

BS first thought the touching was a nightmare, something that had happened only in her dreams. RP 9/28/16 172, 173. BS thought the touching started when she was in eighth grade and but she did not know when the last time was. RP 9/28/16 172. BS was not sure when the defendant used his fingers and put them a little bit in her vagina. RP 10/4/16 62-63. She did not know when the defendant first placed his finger in her vagina. RP 10/4/16 63. She did not know when the defendant tried to push his penis against her back. RP 10/4/16 65.

She did not know how old she was when any of these acts occurred. RP 10/4/16 65. She then recalled that she was in the seventh grade the first

time she was touched but she did not know whether it was in the summer of the school year. RP 10/4/16 66.

BS and Sam had a rocky friendship. *Id.* It was on-again, off-again. *Id.* Sam sometimes blocked BS from her Facebook and other social media. *Id.* They would not speak for period of time, including from eighth grade to ninth grade. RP 10/4/16 22-23. They reestablished contact in the fall of 2014. RP 10/4/16 23. Although BS started going to their house again, BS soon became unwelcome. RP 10/4/16 23-25. She was no sure whether this was 2013 or 2014. RP 10/04/16 83-84.

BS, LM, and MR all had contact with each other in the fall of 2014. RP 10/4/16 34-35. LM told BS what had happened between herself and defendant and also between MR and defendant. RP 10/4/16 35. BS told LM about her allegations against the defendant. RP 10/4/16 35-36. BS's first disclosure was to LM. RP 10/4/16 36.

BS testified at trial that defendant provided marijuana to all the kids but not she was not aware whether he provided alcohol to all the kids because 'I wasn't there when it happened.' RP 10/4/16 45.

However, in her pretrial interview, she was asked, "Would Sam's dad ever provide marijuana to any of the kids that came over to the house?" RP 10/4/16 46. BS answered, "All of them, and alcohol." *Id.* She continued,

“They would sit out there and get you shit-faced drunk until you were puking.” Id.

On one occasion when defendant reportedly touched BS in bed, BS woke up, freaked up, started crying and ran into the bathroom. RP10/4/16 41-42. Sam woke up. RP 10/4/16 41-42. BS could not remember how defendant had touched her. RP 10/4/16 73. No one saw defendant brush up against BS, rub her vagina or her boobs, lift her shirt, pull down her pants or try to kiss her. RP 10/4/16 42. No one saw her push defendant away or tell him, “Stop, don’t do that.” RP 10/4/16 42-43. Katie was also in bed when this supposedly happened. RP 10/4/16 43.

BS had been in counseling since 6th grade due to severe depression. RP 10/4/16 54. BS’s mother did not know when her daughter had started counselling and purported not to be aware that she had been in counseling prior to these allegations. RP 10/4/16 107-108.

RR, AB, ML, BS formed a “support group” at the suggestion of their school counselor, as she needed it for some kind of new degree that she was getting. RP 10/10/16 150.

MR testified that on one occasion when she spent the night at Sam’s house, they played a drinking game with her parents. RP 10/4/16127-129. They all went to bed in the parents’ room to watch a movie and MR claimed

that she woke up to find that the defendant had his left hand in her pants. RP 10/4/16 132, 134; RP 10/5/16 22. He touched her vagina on the outside. *Id.* MR could not remember whether defendant penetrated her vagina with his fingers. RP 10/5/16 89. The defendant and Katie got up. RP 10/4/16 133. MR and Sam got up and went into the bedroom. RP 10/4/16 135. MR claimed that she talked to Katie about this event a week after the event, just before MR's sixteenth birthday. RP 10/5/16 28. She said she also talked to the defendant about it. RP 10/5/16 28. The defendant reportedly told her that he had mistaken her for his wife when they were in the bed. RP 10/5/16 33.

MR did not tell her mother about what had happened. RP 10/5/16 39. Someone else told her mother. RP 10/5/16 40.

MR told her school counselor about what had happened on November 17, 2014, because she hoped that counselor would report it to the police. RP 10/5/16 40-41; RP 10/6/16 26-27. The counselor contacted police and PCSD Deputy Mehlhoff went to the school to interview MR. RP 10/6/16 25, 26-28. MR put up posts about this case after she spoke to the police. RP 10/5/16 46. On November 17, 2014, she posted. "Sorry. Not sorry. He gets what he deserves." *Id.*

MR noted that all of the girls who said defendant touched them talked about it because “we all have the same thing in common.” RP 10/5/16 51. She and LM talked about the allegations on the phone and on social media. RP 10/5/16 59. MR denied that she told AB that she had made up the allegations that defendant touched her inappropriately. RP 10/5/16 62. AB called her a liar. RP 10/5/16 92-93. MR also continued to communicate with Sam and her mother after she spoke to the police. RP 10/5/16 76, 86, 87.

MR told the police about LM and BS. RP 10/5/16 92. She knew that LM had already reported it. Id. However, she wanted to be sure the police knew about BS “because if she is a part of it, then she would help is to get him locked up, because he is a pervert.” RP 10/5/16 92.

MR discussed the allegations against defendant with Abigail three times in November 2014. RP 10/18/16 30. On each occasion, she affirmed that the allegations were not true. Id. On the first occasion, MR made this statement in class in the presence of another friend Amanda Brassfield. RP 10/18/16 31. MR was matter of fact about the topic and spoke in a loud tone. RP 10/18/16 32. She said that she was sorry and that the allegations were not true and she was trying to hurt Samantha Wilks. RP 10/18/16 33. Abigail was about several feet away from MR when she said this. Id. MR brought up the same subject the next day in the same classroom. RP 10/18/16 34. MR said

that she felt guilty and bad but it was what she needed to do. RP 10/18/16 35. Then, about two weeks later, ML approached Abigail in the lunch room and told Abigail that she was angry that Abigail was not interacting with her anymore. RP 10/18/16 37. She also asked if Samantha was angry with her. RP 10/18/166 38. MR again stated that the allegations were false. RP 10/18/16 37. MR also made indirect statements on Facebook and Snapchat that the allegations were false. RP 10/18/16 39-40.

AB, another girl who was in the circle of accusers, told her mother later sometime later what had happened. RP 10/6/16 84. She did so after she saw an article in the News Tribune about the case. RP 10/6/16 85. She wrote a letter to her mother and talked about having flashbacks. RP 10/6/16 91-92. Her mother called the police. RP 10/6/16 93.

AB told the police that she had talked to Sam for some time after the alleged touching because she had not had any of the flashbacks yet. RP 10/6/16 115. She told the police that the flashbacks started after she read the stories in the local paper. RP 10/6/16 118. However, at trial she adamantly denied that she ever had any flashbacks. Id. She acknowledged that she told police about the flashbacks even though she knew the importance of her conversation with police and that they were relying on the information she provided. RP 10/10/16 40.

AB knew Sam from school. RP 10/6/16 54. She went to her house and consumed marijuana and alcohol there. RP 10/6/16 62. Both of Samantha's parent's provided alcohol. RP 10/10/16 22. Samantha's mother provided the marijuana. RP 10/10/16 22. In the summer of 2014 she was at the residence with 10 to 15 other teenagers drinking alcohol and smoking marijuana. RP 10/6/16 67; RP 10/10/16 23. AB stayed the night after every party. RP 10/6/16 68.

AB made a police report after an incident that occurred the night of Katie's birthday. RP 10/6/16 75; RP 10/10/16 25-26. Samantha's birthday is June 20th. RP 10/10/16 24. Sam, Katie, defendant, and AB were playing a drinking game. RP 10/6/16 77. AB recounted "facts" similar to those reported by the other "victims". She remembered waking up in Katie and defendant's bed in between defendant and Sam. RP 10/6/16 79. AB thought that defendant was running his hands along her, "like caressing [her], trying to kiss [her], and his hands were in [her] pants." RP 10/6/16 79-80. AB believed that he touched her vagina more than once and she did not remember his finger or any part of his hand went insider her vagina. RP 10/6/16 80. AB believed that she passed out due to intoxication. RP 10/6/16 81. Her next memory was sitting out in the living room on the couch with Sammy. RP 10/6/16 82.

A week after this incident, on June 27, 2014, AB accompanied the family on a trip to the Ocean Shores. RP 10/10/16 24. She slept in a tent with Samantha and her parents on this trip. RP 10/10/16 43. She felt comfortable about sleeping with them. RP 10/10/16 46.

AB knew that ML was talking about the allegations against defendant at school. RP 10/6/16 112.

RR met Samantha on Facebook and Instagram. RP 10/10/16 121. Samantha and her parents were to her house to meet her grandmother with whom she lived. RP 10/10/16 122-123. This occurred prior to RR's going to their house to spend the night. RP 10/10/16 13. Thereafter RR spent almost every other weekend at their house. RP 10/10/16 123. RR said they would smoke pot, drink, hang out, and occasionally have bonfires. Id. Samantha and her parents would be home as well as her two brothers and her grandfather. RP 10/10/16 124. Sometimes there would be a few other girls as well. RP 10/10/16 124. Samantha's parents provided the pot, which they grew in their bedroom. RP 10/10/16 124-125. Defendant "usually" provided the alcohol, rum, whiskey, Captain Morgan's, Fireball. RP 10/10/16 125. Both parents provided the alcohol and marijuana for Samantha's end of the school year party on June 17, 2014. RP 10/10/16 16. RR said she sometimes drank a lot. RP 10/10/16 127. She and Samantha played drinking games. Id. Likewise, she

and Samantha smoked marijuana together, “usually just one or two bowls full.” RP 10/10/16 128.

RR told AB’s mother what was going on at the Wilks house after AB returned from there with a huge scab on her nose from falling into the bathtub and hitting her nose on the faucet. RP 10/10/16 242. RR did not believe that it was safe for AB to continue to go over there. Id. No one else ever corroborated that AB had any scab on her nose. Passim.

RR lacked a clear memory of the defendant doing anything inappropriate to her. RP 10/10/16 141. She testified, “I don’t know for like a specific fact that it happened, but with the dreams and flashbacks, I would assume so.” Id. She did not know whether anything actually occurred. RP 10/10/16 142. She speculated that if something occurred, it occurred “like the second or third time [she] had gone over there, so February-ish.” RP 10/10/16 142. The alleged inappropriate contact was based on multiple dreams and flashbacks where she was in bed with defendant and Samantha. RP 10/10/16 143-144. In these dreams and flashbacks, she had inconsistent memories of whether defendant’s hand was inside or outside her underwear, whether he touched her vagina and, if so, he touched anything or if she had any other details regarding the touching. RP 10/10/16 144-145. She had these flashbacks when she was awake and also when she was asleep. RP 10/10/16 145.

RR discussed the flashbacks with AB “probably around August.” RP 10/10/16 147.

She told her counselor because her counselor would report it to police. RP 10/10/16 149. Prior to telling her counselor, RR, ML, and AB were a support group for each other. Id. The school counselor had suggested that they act as a support group for each other. RP 10/10/16 150.

At the time of trial, she still did not know for a specific fact that anything improper happened with defendant. RP 10/12/16 23, 25. She had no clear memory whether or not anything happened. Id. She has dreams and flashbacks but she does not know whether they pertain to things that really happened. RP 10//12/16 24.

Had defendant and his wife provided alcohol and marijuana to teenage guests at Samantha’s end of the school year party, the guests would have seen it. RP 10/12/16 16, 27, 28. RR changed her testimony to say that Katie usually provided the marijuana to the kids. RP 10/12/16 29.

RR never testified that defendant made any threats to her, including threatening to get a restraining order or to physically harm her. RP 10/10/16 2016 116-131,141-152; RP 10/12/16 12-32.

Defendant was home in the afternoons every other week. RP 10/17/16 55. Cheyenne Basher, a sophomore at Washington State University, was a

guest at Wilks home when she was in high school with Samantha in 2014 and 2015 as well as later on. RP 10/10/16 57, 59, 84; RP 10/17/16 28. Samantha had invited other friends to these events as well. RP 10/13/16 83-84.. LM and BS spent the night one of the nights that Cheyenne spent the night. RP 10/17/16 33. They, along with other that Cheyenne did not know, slept in Samantha's bedroom. RP 10/17/16 61. Cheyenne never saw anyone consuming alcohol at the Wilks residence. RP 10/13/16 88-89. She never knew the Wilks parents to take any kids, herself included, to the store to purchase alcohol. RP 10/13/16 89. She never saw the Wilks parents bring alcohol into the residence. RP 10/13/16 90. She never saw anyone smoking marijuana. RP 10/13/16 90. She never saw any kid who appeared to be high. RP 10/13/16 90-91. The Wilks parents never gave or offered anyone, herself included, marijuana pipes, bong, alcohol. RP 10/13/16 94-95, 96. She knew there was alcohol in the house because she had seen a cabinet in the kitchen with two or three bottles of alcohol in it. RP 10/13/16 98. However she had never seen anyone drink any of it. Id.

When Cheyenne spent the night, she slept in Samantha's bedroom with her. RP 10/13/16 106. On one occasion she slept on a couch where she had fallen asleep when watching a movie. Id. She never slept in the Samantha's parents' bedroom. Id; RP 10/13/16 113.

They always watched movies in the living room, no where else. RP 10/13/16 108-109.

When Samantha had multiple friends spend the night, they all slept in her bedroom. RP 10/13/16 106-107. Cheyenne never saw any kids going in and out of the parents' bedroom. RP 10/13/16 107.

Abigail Toomoth met Samantha when they were both freshman at Franklin Pierce, the 2013-2014 school year. RP 10/17/16 99-100, 102. Abigail first over to Samantha's house in October 2013 for the Halloween party. R 10/17/16 103. She continued going to the residence into the fall of 2014. RP 10/17/16 104. She usually went there every other weekend, usually staying over both nights. RP 10/17/16 105.

When she spent the night, she slept in Samantha's bedroom although on one occasion she slept on the living room floor. RP 10/18/16 70. She did that because Samantha had a lot of guests and was trying to give everyone else the bed and the couches. RP 10/18/16 70-71. She never slept in the parents' bedroom nor did she ever see any kids sleeping there. RP 10/18/16 71.

Samantha's mother never slept in Samantha's bedroom when Abigail was there. Id. The defendant never slept in Samantha's room nor was he ever on the the bed when Abigail was there. RP 10/18/16 72.

Patience Pruitt, also a friend of Samantha's, testified. RP 10/19/16 29-20. They met in the spring of 2014. RP 10/19/16 30-31. Patience and Abigail Toomoth had been best friends since they were five. RP 10/19/16 33. Patience also knew Cheyenne, MR, AB, and RR.. RP 10/19/16 32-36.

Over the summer of 2014, Patience visited Samantha's house "quite a few times", both on weekdays and weekends. RP 10/19/16 38. When she spent the night, she would spent either one or two nights. RP 10/19/16 39. She slept in Samantha's bedroom or in the living room, never in the parents' bedroom. RP 10/19/16 65. Defendant never slept in the Samantha's bedroom when she was there. Id.

On the rare occasion when Samantha and Patience watched television in the parents' bedroom, only Katie would be present. RP 10/19/16 68. They sat on the edge of the bed. Id. Sometimes, Samantha, Patience, Katies and the defendant watched "Walking Dead" on the television on the parents' bedroom while sitting on the bed or on the floor. RP 10/19/16 90-91, 94. They also sometimes listened to music from Spotify in there. RP 10/19/16 91.

Patience never saw anyone playing a drinking game or a game involving the consumption of alcohol or marijuana. RP 10/19/16 56. When she went to the store with Samantha's parents, they never purchased alcohol nor did the defendant ever show up at the house with alcohol. RP 10/19/16 57.

Patience never saw any kids drinking alcohol or consuming marijuana at the Wilks residence when she there. RP 10/19/16 58. She never saw any kid who appeared to be impaired in any way. RP 10/19/16 59-10. The Wilks parents never offered to provide or provided any kids either marijuana or alcohol. RP 10/19/16 63.

On Homecoming night in October 2014, LM spent the night with Samantha. RP 10/25/16 61-74. The next morning Katie could not find the girls. RP 10/25/16 70. When she went outside, she found them near the bonfire area where Katie was smoking marijuana from an e-cigarette and LM was smoking marijuana from a pipe. RP 10/25/16 70-71. She was “pretty disappointed” in her daughter. RP 10/25/16 71. The defendant was with her. RP 10/25/16 72. He became upset and Katie began to yell. Id. She threatened to tell LM’s parents. RP 10/25/16 73. LM asked not to go home. Id. Katie knew that LM would probably be going home that night and so she did not force her to go home immediately but Katie told LM that she was probably going to have to tell her mother or her grandmother. Id.

After the marijuana smoking incident, the Wilks parents did not like Samantha hanging out with LM but Samantha made the decision to stop hanging out with her. RP 10/27/16 54.

Samantha knew that LM had hacked her phone multiple times throughout 6th through 9th grades. RP 10/27/16 142. Everyone in the Wilks family had a smart phone except for the grandfather. RP 10/27/16 143.

When MR turned 16 [October 1, 2014], Katie and Samantha purchased a special gift for her – a bracelet with two charms, as well as a third charm saying “best friend” for Samantha’s bracelet. RP 10/25/16 90-91, 93-94. This purchase came to about a hundred bucks. RP 10/25/16 90. It had been Katie and Samantha’s plan to buy special gifts for her girlfriends when they turned sixteen. RP 10/25/16 92.

During the many times, MR spent the nights at the Wilks residence, she never slept in the parents’ bed or with the defendant. RP 10/25/16 94. She never went with Samantha, Katie, or the defendant into the master bedroom. Id. The four of them never smoked marijuana. Id. Neither Katie nor the defendant ever provided alcohol or marijuana to her. Id.

Katie noted that MR was emotionally moody and that her moods changed in a moment. RP 10/25/16 95. used the word “uncomfortable” a lot. RP 10/25/16 96-98. MR had said that other people around the Wilks house made her feel uncomfortable and she said that about defendant, too. RP 10/25/16 98. MR continued to come to the Wilks house after this conversation. RP 10/25/16 101. She spoke to defendant on these visits. Id.

Sometimes MR and/or her mom texted Katie to go to the transit center to give MR rides. RP 10/2/5/16 95-96.

Katie was present when the defendant sent LM a text referring to her mother's meth addiction, which LM had previously discussed with them and asked them not to report to authorities. RP 10/26/16 73-76. Defendant sent this message after learning that LM had made false allegations against him. RP 10/26/16 76. That message read, "I don't want to have call CPS on your family about your mom's meth use, but we will if that's what it takes." RP 10/26/16 76.

Samantha was not allowed to go to MR's home after one visit because her parents did not like the environment. RP 10/27/16 28. MR was upset about this decision. Id. MR "let it be known that she wasn't very happy that [Samantha] wasn't allowed to go over to her place . . ." RP 10/27/16 29. No one provided alcohol or marijuana to MR at the Wilks residence. RP 10/27/16 90-91. The Wilks parents did not consume alcohol in MR's presence. RP 10/27/16 91-92.

MR last was at the Wilks' house for the 2014 Halloween party. RP 10/27/16 99.

In 10th grade, the Wilks parents drove Samantha to MR's house to pick up some stuff for her because she had started to go to school with

Samantha. RP 10/27/16 52. Samantha noticed something in the items and brought it to the attention of her parents who were displeased. RP 10/27/16 53. At that point, Samantha was not allowed to have any further contact with MR. Id.

Samantha met BS when they were in 6th grade at Keithley. RP 10/27/16 31. They both went to different high school but had some contact before they had a fallout. RP 10/27/16 32-33. After that fallout, her parents let her know that she could try to rekindle that friendship if she wanted to. RP 10/27/16 55. They had some contact but then had at least one other conflict before stopping contact with her. RP 10/27/16 57.

After the 2014 Halloween party he forbade LM from coming to the house. RP 10/31/16 99. He had noticed objectionable material that LM had sent to Samantha on her cell phone. RP 10/31/16 137. They discussed this with Samantha. RP 10/31/16 138. When they found “significantly worse” objectionable material a second time they decided that Samantha could still have no more contact with LM because the offensive materials did not depict conduct by LM. RP 10/31/16 130. This happened the first or second week of November 2014. RP 11/1/16 14.

Defendant and his wife also had to cut off Samantha’s contact with LM. RP 11/1/16, They found inappropriate materials that she sent Samantha

on her phone. RP 11/1/1617-18, 27. These materials so frightened Samantha that she brought them to her parents' attention. RP 11/1/16 34-35. After reviewing these materials, the parents immediately removed BS from their house. RP 11/1/16 35.

Defendant also knew BS, whom he met at Samantha's 13th birthday party. Id. When BS went on to high school, she attended high school with ML. RP 10/31/16 100. Samantha and BS had "a rough friendship." Id. The Wilks always invited parents to their get-togethers. RP 0/31/16 106. Thus there always other adults there. Id.

Samantha had 15-20 friends that she regularly interacted with from 2011 to 2014. RP 11/1/16 49. Of this number, the Wilks had to impose a no contact rule regarding only four of them. RP 11/1/16 57. They were MR, LM, BS, and AB. RP 11/1/16 57, 58.

After LM made allegations against him, defendant sent her texts stating, "We have never done anything to harm you." RP 11/1/26 101. He also wrote, "The things you're saying about me and Mom are serious and you know they're not true." Id.

Defendant every allegation LM made. RP 11/1/16 106-107, 125. He denied every allegation MR made. RP 11/1/16 107113. He denied every allegation made by BS. RP 11/16 113-118. He denied every allegation made

by AB. RP 11/1/16 118-125. He denied every allegation made by RR 11/1/16 125-127.

D. LAW AND ARGUMENT.

1. THE TRIAL COURT'S NUMEROUS EVIDENTIARY RULINGS DENIED DEFENDANT HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE.

The Fifth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution guarantee that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” This right to due process includes the right to be heard and to offer testimony. *Rock v. Arkansas*, 483 U.S. 44, 51, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987) (quoting *In re Oliver*, 333 U.S. 257, 273, 68 S. Ct. 499, 92 L. Ed. 682 (1948)) The accused's right to due process “is, in essence, the right to a fair opportunity to defend against the State's accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

The right “to call witnesses in one's own behalf [has] long been recognized as essential to due process.” *Chambers*, 410 U.S. at 294. “Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own

witnesses to establish a defense. This right is a fundamental element of due process.” *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

A criminal defendant's right to present witnesses has limits. A defendant must “at least make some plausible showing of how [a witness's] testimony would have been both material and favorable to his defense.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S. Ct. 3440, 73 L. Ed. 2d 1193 (1982). A court does not violate a defendant's constitutional rights when the materiality of an absent witness's testimony is merely speculative or overwhelmed by uncontroverted evidence. See *United States v. Beyle*, 782 F.3d 159, 171-73 (4th Cir. 2015), *Beyle v. United States*, 136 S. Ct. 179, 193 L. Ed. 2d 144 (U.S., Oct. 5, 2015), writ of mandamus denied *In re Shani Nurani Shiekh Abrar*, 667 Fed. Appx. 400 (4th Cir., July 25, 2016), post-conviction relief denied at, in part, Post-conviction relief dismissed at, in part, request denied by *Beyle v. United States*, 2017 U.S. Dist. LEXIS 142147 (E.D. Va., Sept. 1, 2017).

Additionally, the defendant's right must yield to “established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Id.*

Washington courts have broad authority under ER 611 to control trial proceedings: (a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

However, the existence of ER 611 may not be applied to impair defendant's right to present a defense. Such application is an abuse of the trial court's discretion. This is so because the constitutional right to present a complete defense limits the "broad latitude" the government has to establish rules excluding evidence from criminal trials. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) (quoting *United States v. Scheffer*, 523 U.S. 303, 308, 118 S. Ct. 1261, 140 L. Ed. 2d 413 (1998)).

Defendants have a right to present only relevant evidence, with no constitutional right to present irrelevant evidence. *State v. Gregory*, 158 Wn.2d 759, 786 n.6, 147 P.3d 1201 (2006). "[I]f relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." *Darden*, 145 Wn.2d at 622. The State's interest in excluding prejudicial evidence must also "be balanced against the

defendant's need for the information sought,” and relevant information can be withheld only “if the State's interest outweighs 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 courts have held that for evidence of high probative value “it appears no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. art. 1, § 22.” *Id.* at 16. In *Hudlow*, we made a clear distinction between evidence of the general promiscuity of a rape victim and evidence that, if excluded, would deprive defendants of the ability to testify to their versions of the incident. *Id.* at 17-18. In that case, evidence of past general promiscuity could be excluded, but the clear implication was that evidence of high probative value could not be restricted regardless of how compelling the State's interest may be if doing so would deprive the defendants of the ability to testify to their versions of the incident. *Id.* at 16-18.

Evidence rules that “‘infringe[e] upon a weighty interest of the accused’ and are ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve’” abridge this essential right. *Holmes*, 547 *U.S.* at 324.

Court rules may not prevent a defendant from presenting highly probative evidence vital to the defense; “no state interest can be compelling

enough to preclude its introduction consistent with the Sixth Amendment and Const. art. 1, § 22.”” *Jones*, 168 *Wn.2d* at 723-24 (quoting *State v. Hudlow*, 99 *Wn.2d* 1, 16, 659 *P.2d* 514 (1983)).

The United States Supreme Court has held that per se rules excluding an entire class of testimony may violate a defendant's constitutional right to present a complete defense. *Washington v. Texas*, 388 *U.S.* 14, 15-16, 87 *S. Ct.* 1920, 18 *L. Ed. 2d* 1019 (1967), involved a state statute that prohibited persons charged as principals, accomplices, or accessories in the same crime from testifying on behalf of one another. The Court held that this statute “arbitrarily denied [a defendant] the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense.” 388 *U.S.* at 23. The Court noted that the Sixth Amendment was designed in part “to make the testimony of a defendant's witnesses admissible on his behalf in court.” 388 *U.S.* at 22.

The fact finder has the responsibility to assess the credibility and weight of the testimony. *Id.*

In *Chambers v. Mississippi*, *supra*, the Court invalidated state hearsay and “voucher” rules because they abridged the defendant's right to present witnesses in his own defense. The trial court had excluded the testimony of a

person who had repeatedly confessed to the murder with which Chambers was charged. The Court reversed Chambers's conviction, holding that state evidence rules that conflict with the right to present witnesses “may not be applied mechanistically to defeat the ends of justice” but must meet “traditional and fundamental standards of due process.”

In *State v. Jones*, *supra*, the Washington Supreme Court held that the trial court violated the defendant's right to present a defense when it excluded “essential facts of high probative value” related to the circumstances surrounding an alleged rape. The court held that even if the state rape shield statute applied, “it cannot be used to bar evidence of extremely high probative value per the Sixth Amendment.” “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 accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

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 constitutions.” *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002)

*(citing Washington v. Texas, 388 U.S. 14, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967)).*

In Jones, the Court reversed defendant's rape conviction where, *inter alia*, the trial court failed to permit defendant to present evidence that the alleged victim had consented to sex during an all-night, drug-induced sex party. 168 Wn.2d at 720. The Court held that on the facts of the case, where consent was the issue, "This is not marginally relevant evidence that a court should balance against the State's interest in excluding the evidence. Instead, it is evidence of extremely high probative value; it is Jones's entire defense. Jones's evidence, if believed, would prove consent and would provide a defense to the charge of second degree rape. Since no State interest can possibly be compelling enough to preclude the introduction of evidence of high probative value, the trial court violated the Sixth Amendment when it barred such evidence." *Id.*

This is exactly the situation presented by this case. Wilks contended that his accusers had fabricated their allegations because he and his wife had told them individually and on separate occasions that they were no longer welcome to visit at the Wilks residence. RP 11/3/16 123, 146. Their daughter Samantha was a popular high school girl and held many parties and sleepovers at her home which was a welcoming and safe place. RP 11/3/16 122-

123, 128. The alleged victims, who in fact knew each other, retaliated against their exclusion in a variety of ways, including bad-mouthing Samantha and ultimately asserting that defendant had sexually touched them all in the same way under the same circumstances at sleepovers where there other guests who saw nothing, heard nothing. RP 11/3/16 123,. LM was excluded because she had been observed smoking marijuana in the yard, contrary to the rules of the Wilks' rules and also because the Wilks repeatedly observed objectionable material on her cell phone. RP 11/3/16 135. Sam noted that BS was not allowed in her parents' bedroom because she had stolen from Katie as well as from Sam. RP 10/27/16 136. AB brought alcohol. RR ++. MR was excluded because defendant and his wife found some objectionable and "extremely inappropriate" texts about her on Facebook that were on a backup of Samantha's phone. RP 11/1/16 11-14. They also prohibited Samantha from going to MR's residence. RP 11/1/16 15-16. LM had also stolen. RP 10/27/16 136

The trial court's exclusion of the reasons for the decision by defendant and his wife to exclude the girls failed to permit the jury to evaluate the defendant's defense because it could not appreciate whether he had legitimate basis for his decision. Further, the jury could not evaluate whether the defendant's reasons were likely to warrant the over-the-top allegations that the

girls made. Considering that the one of the girls had been caught smoking an illegal drug and did not want her parents to find out, that another girl had been caught in possession of the Wilks' property, these serious allegations could cause such reaction. Further, when defendant told RR to stop harassing Samantha or he would seek a restraining order, RR retaliated by fabricating these allegations. AB had previously provided alcohol to Samantha.

RP10/27/16 148. Absent the context for the Wilks' exclusion of the girls from their residence the jury could not consider whether the alleged victims were credible in their testimony about what happened at the Wilks residence.

Absent the ability to put on any evidence of these incidents the defendant could not explain that the alleged victims had compelling reasons to fabricate misconduct on his part in order to explain their exclusion from the Wilkes residence.

The trial court's refusal to allow the defendant to adduce this evidence of motive denied defendant his ability to put on evidence of motive. Bias and interest are always relevant to the credibility of a witness. *State v. Whyde*, 30 Wn. App. 162, 32 P.2d 913 (1981). Such evidence has special significance where the entire State's case depends on the credibility of one witness. *Id.*, citing *State v. Tate*, 2 Wn. App. 241, 469 P.2d 999 (1970); *State v. Wills*, 3 Wn. App. 643, 476 P.2d 711 (1970). Thus, in *Whyde*, the court reversed

defendant's conviction for second degree rape, holding that the trial court erred when it excluded evidence that the alleged victim contemplated a possible lawsuit against the landlord of the building. The court noted that the question of a possible lawsuit related directly to the bias, prejudice, and interest of the victim, that the trial court's ruling prevented the defense from making a factual record on which to base its contention that she fabricated the rape story for her own financial benefit, and that the ruling was erroneous. 30 Wn.App. 166-167.

Given the fundamental nature of Wilks's rights to present a defense and the trial court's refusal to permit him to present evidence of the alleged victims' motive to fabricate and collude, the trial court denied Wilks his fundamental constitutional rights to present a defense. The significance and critical relevance of the evidence was such that there is no State interest warranting exclusion of the evidence. Reversal is required and Wilkes is entitled to a new trial.

## 2. THE TRIAL ERRED WHEN IT FAILED TO INQUIRE ABOUT THE SLEEPING JUROR.

A criminal defendant's right to trial by jury is guaranteed by the United State Constitution amend. VI and Wash. Const. art. I, § 22.

RCW 2.36.110 requires the trial court to excuse from further jury service any juror, who in the opinion of the judge has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention, or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service. Further, CrR 6.5 states that: "[i]f at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged." (Emphasis added.) Thus, both RCW 2.36.110 and CrR 6.5 place a continuous obligation on the trial court to excuse any juror who is unfit and unable to perform the duties of a juror.

On November 1, 2016, defendant made a record that the juror who had been sleeping the day before and also that morning was juror no. 10. RP 11/1/16 47. The court responded that neither the court, counsel, or staff had observed it. *Id.* The court noted that the only observations had come from individuals in the gallery and therefore the court did not find cause "to inquire of the jurors whether they were sleeping or not, given that nobody directly involved with the case either saw it or brought it to the court's attention." RP 11/1/16 47. This juror was never excused and was in the panel that deliberated in this case. *Passim.*

Defense counsel asked to make a record with brief inquiry to the witnesses Katie Wilks and Ashlie Hager regarding their observations of the sleeping juror, but the court refused to permit defense to do so. RP 11/1/16 48.

This juror did deliberate. The trial court owed a duty to the parties under the law to inquire of juror no. 10 whether that juror was able to fulfill the duties of a juror. It may also have been necessary to make general queries of other jurors as to whether they had noticed any other jurors dozing or sleeping.

The law does not limit the trial court's duty to inquire into matters of unfit jurors to circumstances that are observed by the trial judge, court staff or other court officers. Rather, the court has a duty to ensure that the defendant's right to trial by jury is safe-guarded. Based on this record, the trial court failed in its duty to guarantee Wilks his constitutional right to jury trial. The trial court's duty requires on-going vigilance and protection of this fundamental right.

As to remedy, Wilks argues that he is entitled to dismissal. The defendant's constitutional right to be tried by the jury first chosen and sworn to try his case is inviolable. *State v. Rich*, 63 Wn.App. 743, 749, 821 P.2d 1269 (1992). Had the trial court properly fulfilled its duties, the case could

have and would have proceeded to deliberations with fully competent panel.  
Dismissal with prejudice is the sole appropriate remedy in this case.

### 3. THE DEPUTY PROSECUTOR COMMITTED MISCONDUCT IN CLOSING ARGUMENT.

The right to a fair trial is a fundamental liberty secured by the Sixth and Fourteenth Amendments to the United States Constitution and article I, section 22 of the Washington State Constitution.<sup>7</sup> “A “[f]air trial” certainly implies a trial in which the attorney representing the state does not throw the prestige of his public office ... and the expression of his own belief of guilt into the scales against the accused.” *Glasmann*, 175 Wn.2d at 704

A prosecutor is a quasi-judicial officer. In this aspect his role is different than that of defense counsel. The prosecutor has a special duty to act “impartially in the interests of justice and not as a heated partisan.” *State v. Smith*, 71 Wn.App. 14, 18, 856 P.2d 415 (1993); *State v. Huson*, 73 Wn.2d 660, 662, 440 P.2d 192 (1968) cert. den. 393 U.S.1096. 21 L.Ed.2d 787, 89 S.Ct. 886 (1993). A criminal defendant’s right to a fair trial is denied when the prosecutor makes improper comments. *State v. Reed*, 102 Wn.2d 140,145, 684 P.2d 699 (1984); *State v. Davenport*, 100 Wn.2d 757, 762, 675 P.2d 1213 (1983) (“Prosecutorial misconduct may deprive a defendant of a fair trial but

only a fair trial is a constitutional trial.”); *Berger v. United States*, 295 U.S. 78, 88. 79 L.Ed.2d 1314. 55 S.Ct. 629 (1935) (the remarks of the prosecutor are reversible error if they impermissibly prejudice the defendant).

Although defense counsel should object to the prosecutor’s improper comments, defense counsel’s failure to object still may entitle defendant to relief on appeal where the misconduct is so flagrant and ill-intentioned that it could not have been cured by instruction. *Id.* Put another way, a defendant’s failure to object to a prosecutor’s improper remark constitutes waiver on appeal unless the remark was “so flagrant and ill-intentioned that it evinces and enduring and resulting prejudice incurable by a jury instruction.” *State v. Gregory*, 158 Wn.2d 759, 841, 147 P.3d 1201 (2006) (quoting *State v. Stenson*, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997)).

Prosecutorial misconduct warrants reversal when there is a substantial likelihood that the improper conduct affected the jury. *State v. Fisher*, 165 Wn.2d 727, 747, 202 P.3d 937 (2009).

“Mere appeals to the jury’s passion or prejudice are improper.” *State v. Gregory*, 158 Wn.2d 759, 808, 147 P.3d 1201 (2006). During closing argument, the prosecutor may make arguments “based only on probative evidence and sound reason.” *Glasmann*, 175 Wn.2d at 704 (quoting *State v. Castanada Perez*, 61 Wn.App. 354, 363, 810 P.2d 74 (1991)). This is so

because the prosecutor has a quasi-judicial duty to “ensure a verdict free of prejudice and based on reason.” *State v. Claflin*, 38 Wn.2d at 850. The prosecutor in this case failed to comply with his duty.

A prosecutor’s expressions of personal opinion about the defendant’s guilty or the witnesses’ credibility are improper. *State v. Dhaliwal*, 150 Wn.2d 559, 577-78, 79 P.3d 432 (2003). In determining whether the prosecutor is expressing a personal opinion about the defendant’s guilt, independent of the evidence, the court’s view the challenged comments in context. *State v. McKenzie*, 157 Wn.2d 44, 53, 134 P.3d 221 (2006); *State v. Anderson*, 153 Wn.App. 417, 428, 220 P.3d 1273, 1279-80 (2009). “We review a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions.” *State v. Boehning*, 127 Wn. App. 511, 519, 111 P.3d 899 (2005).

Although a prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence and to express such inferences to the jury, a prosecutor may not make statements that are unsupported by the evidence, not based on reasonable inferences therefrom, and prejudicial to the defendant” *Boehning*, 127 Wn. App. at 519. “However, a prosecutor may not make statements that are unsupported by the evidence and prejudice the

defendant.” *Boehning*, 127 Wn. App. at 519; *Harvey*, 34 Wn. App. at 739.

Counsel may not, however, mislead the jury by misstating the evidence; this is particularly true of a prosecutor -- a quasi-judicial officer, who has a duty to see that the defendant receives a fair trial. *State v. Reeder*, 46 Wn.2d 888, 892, 285 P.2d 884 (1955).

The defense has the burden of showing both the impropriety of the prosecutor's remarks and their prejudicial effect. *Harvey*, 34 Wn. App. at 740. Where impropriety is present, reversal is required only if a substantial likelihood exists that the misconduct affected the jury's verdict, thereby depriving the defendant of a fair trial. *State v. Evans*, 96 Wn.2d 1, 5, 633 P.2d 83 (1981). The court may mitigate potential prejudice by instructing the jury that such statements are not evidence and should not be so considered. *State v. Grisby*, 97 Wn.2d 493, 647 P.2d 6 (1982), cert. denied, 459 U.S. 1211 (1983). Moreover, reversal is not required if error could have been avoided by a curative instruction, but the defense failed to request one. *State v. Martin*, 41 Wn. App. 133, 703 P.2d 309, review denied, 104 Wn.2d 1016 (1985).

In the instant case, the prosecutor's closing argument was replete with misstatements of the evidence, statements referring to “evidence” that was never adduced at trial, impermissible vouching for the credibility of the State's witnesses and other acts of misconduct in argument.

Defendant failed to interpose necessary objections; however given the flagrant, ill-intentioned and prejudicial nature of the argument, for which no adequate curative instruction could have been given, defense counsel's failure to object is not fatal to this appeal.

In this case, the deputy prosecutor egregiously misstated the evidence. Consider the following misstatements of the evidence:

- (a) The deputy prosecutor alleged that when the alleged victims were unconscious, the defendant would move their bodies, touch their bodies, put his hands in their pants, penetrate their vaginas, and rape them. RP 11/3/16 43. Facts: Defendant was found "not guilty" of third degree child rape of BS; "guilty" of third degree child rape of BS but not charged with child rape for any of the other alleged victims. For the prosecutor to argue that the defendant had raped every one of the five girls was deliberate, intentional and flagrant misconduct. (CP 327-342)
- (b) The deputy prosecutor misstated that evidence when he asserted that the alleged victims were unconscious. Again, there is no evidence to support this contention that all five of the girls were unconscious. Passim.

- (c) The deputy prosecutor repeatedly argued that the defendant purchased the “expensive” bracelet for LM, apparently wanting to suggest to the jury that he did so as a bribe. RP 11/3/16 60-61, 102.
- (d) The deputy prosecutor repeatedly vouched for the credibility of his witnesses. He argued, “The only conclusion that supported by the evidence is that LM, BS, MR, AB, and RR are telling the **TRUTH.**” This sentence was set out exactly as written herein in the State’s Power Point presentation. Appendix B
- (e) The deputy prosecutor misstated the evidence of defendant’s own witnesses that contradicted his testimony – see Power Point – Appendix C. For example, the deputy prosecutor stated that Daniel Herzfeldt said that there were “piles of girls” on his [defendant’s] bed. Id. In fact, he said no such thing in his testimony. RP 10/20/16 38-39, 82, passim. He also represented that Nathan Wilks saw “the defendant and girls drinking in his room on homecoming.” Appendix C. In fact, Nathan testified that he never saw his father drinking alcohol with or around Samantha’s friends. He never said he saw the defendant and the girls drinking in his room on homecoming. RP 10/24/16 91, 93, 147.

- (f) The deputy prosecutor also stated that when the alleged victim came forward, the defendant would take steps to silence them, “threatening to call state officials on their parents.” RP 11/3/16 43. The deputy prosecutor characterized him as “very willing to threaten children with legal action and other leverages and levers of control and power. He did what he could do threaten and silence them, but they would not be silenced.” [emphasis added]. RP 11/3/16 43-44. Again, the deputy prosecutor wanted to portray the defendant as someone who made general threats against all of his victims that he call the State on their parents and file lawsuits against them, etc., in an effort to silence them. The deputy prosecutor had to have known that he had never elicited such testimony.
- (g) The deputy prosecutor urged the jury to convict based on matters outside the evidence. The deputy prosecutor wanted the jury to share his memory about MR: “I think there was a point when she was weeping softly.” RP 11/3/16 103. Of course, there is nothing in the record to support this and this statement has absolutely no probative value. He also asked the jury to evaluate LM’s credibility based on body language that he personally observed: “And you need to consider that as you evaluate the credibility of her statements and her credibility on the stand. She covered herself up subconsciously. She pulled her cardigan closed as

she described the abuse, as she described the abuse.” RP 11/3/16 101-102. The deputy prosecutor attempted to persuade the jury with his psychoanalytics that LM was traumatized when probably she was only cold.

(h) Finally, the deputy prosecutor forgot his obligation to seek a fair trial for the defendant when he put in his Power Point presentation that the crimes were committed, that the defendant did it, and that **Justice** Guilty.

(Appendices D, E).

Taken alone or cumulatively, the misconduct in this case was improper, on review, this court considers its effect and whether instruction could have cured it. *Emery*, 174 Wn.2d at 762. The focus is on whether the misconduct created a “feeling of prejudice” that would prevent a fair trial. *Id.* “[T]he cumulative effect of repetitive prosecutorial misconduct may be so flagrant that no instruction or series of instructions can erase their combined prejudicial effect.” *Glassmann*, 175 Wn.2d at 707 (quoting *State v. Walker*, 164 Wn.App. 724, 737, 265 P.3d 191 (2011)). Such is the case here.

In this case, for the reasons set forth above and based on the law cited, the deputy prosecutor’s egregious misconduct in misstating the evidence and vouching the State’s evidence compromises reversible error warranting a new trial.

4 .THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT COMMITTED THE CRIMES CHARGED.

Under both the federal and state constitutions, due process requires that the State prove every element of a crime beyond a reasonable doubt. U.S. Const. amend. XIV; Wash. Const. art. I, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). In reviewing a claim for insufficient evidence, the appellate court therefore considers ““whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (plurality opinion) (emphasis omitted) (quoting *Jackson*, 443 U.S. at 319). Where a conviction is dismissed for insufficiency of the evidence, retrial is prohibited under the double jeopardy doctrine. *State v. Fuller*, 185 Wn.2d 30, 36, 367 P.3d 1057 (2016).

- (a) The State failed to prove the following charges against BS beyond a reasonable doubt and therefor they must be dismissed with prejudice.

BS’s date of birth is 3/24/99. RP 9/26/16 35.

**Count 2: Child Molestation in the Second Degree.**

The State charged defendant with child molestation in the second degree, requiring the State to prove beyond a reasonable doubt that during the period between the 1<sup>st</sup> day of June, 2012, and the 23<sup>rd</sup> day of March, 2013, the defendant has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim. **9A.44.086** .

BS testified to multiple occasions, starting when she was in the 8<sup>th</sup> grade although she did not know when it stopped. RP 9/28/16 111, 172.

She at first did not know whether her allegations were dreams. RP 9/28/16 172. She thought that she dreamed that it happened one time she was in 7<sup>th</sup> grade. *Id.* She thought the allegations were nightmares after it allegedly happened in 8<sup>th</sup> grade. *Id.*

She thought the touching started after 8<sup>th</sup> grade but did not know when it stopped. *Id.*

She thought she was with Sam when this happened. RP 9/28/16 173.

She had known Samantha since 6<sup>th</sup> grade at Keithley Middle School and had been going to her house since that time. RP 9/28/16 105-106. On September 28, 2016, when she testified, she was 17 years old and a senior in high school. RP 9/26/16 104. Her birthdate is 3/24/99. 9/26/16 35.

She did not know when any of these acts occurred. RP 10/4/16 66.

She knew that Sam was being bullied at school. RP 10/4/16 30-21.

She knew that she had been excluded from their residence. RP 10/4/16 33.

On one occasion, she thought defendant touching her in his bed, rubbed her boobs or vagina, lifted her shirt, pulled down her pants or tried to kiss her. RP 10/4/16 42. No one saw her push defendant away or tell him, "Stop, don't do that." RP 10/4/156 42. Katie Wilks was in the bed at this time. RP 10/4/16 43.

She did not know when any of these acts occurred. RP 10/4/16 66.

BS make no disclosure until after she had been excluded from the Wilkes residence and she had discussed this matter with other girls who also had been excluded. RP RP 10/4/16 35. She had talked about what she claimed had happened to her with LM, MR. RP 10/4/16 35-36.

### **Count 3: Rape of a Child in the Third Degree**

The State charged that defendant had sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim. RCW 9A.44.079.

She did not know when any of these acts occurred. RP 10/4/16 66.

BS did not know whether the touching was real or a nightmare. RP 9/28/16 172, 173; She thought it was a nightmare, something that had happened only in her dreams, RP 9/28/16 172. She was not sure when the defendant used his fingers and put them “a little but in her vagina: but thought it was probably summer.” RP 9/28/16 172.

As with Count 2, BS had no idea when these acts occurred, who was present, etc.

#### **Counts 4: Child Molestation in the Third Degree<sup>3</sup>**

Defendant incorporates the same argument as for Counts 2 and 3. The State failed to prove any separate distinct acts. BS could not credibly distinguish dreams from reality. Her testimony became concrete only as her animosity toward defendant grew.

#### **Count 5: Unlawful Delivery of A Controlled Substance to a Person Under the Age of Eighteen**

The State alleged that defendant, a person over the age of eighteen, distributed marijuana to BS who was under eighteen years of age at least three years defendant’s junior.

BS contended that from 8<sup>th</sup> grade on, she smoke marijuana at defendant's residence and that "the parents" provided it. RP 9/28/16 111. She asserted that on one unknown date or dates defendant provided the marijuana. RP 9/28/16 123. However, it cannot be established that this was in the charging period of June 1, 2012 and September 30, 2014.

BS had previously told police that defendant and his wife provided marijuana and alcohol to every kid who came to their house and that "they would sit out there and get you shit-faced drunk until were puking." RP 10/4/16 46, This testimony was belied by every single witness for the defense as well as the other alleged victims in this case. Passim.

BS had been in counselling for a number of years prior to these alleged incidents. RP 10/4/16 54.

Defendant submits that the State failed to prove this charge beyond a reasonable doubt. BS may have testified to a multitude of incidents yet not to any particular incident.

#### **Count 6: Furnishing Liquor to a Minor**

Defendant adopts the same argument in the previous section except as to the nature of the substance involved.

The defendant was convicted of the following charges regarding victim MR. MR's date of birth is 10/1/98. RP 9/26/16 36.

**Count 7: Child Molestation in the Third Degree**

Defendant was charged in the information with child molestation in the third degree for acts committed between September 1<sup>st</sup> and 14<sup>th</sup>, 2014.

MR met Samantha in 9<sup>th</sup> grade at Franklin Pierce High School. RP 10/4/16 121. They became “best friends” and MR hung out at Sam’s house pretty regularly. RP 10/4/16 122.

MR recalled that they watched movies, hung out in her bedroom, and smoked pot. Id. Sometimes MR even brought her own pipe. RP 10/4/16 124.

MR claimed, without providing dates, that defendant provided the pot. RP 10/4/16 123. Katie also provided pot on unspecified dates as well. RP 10/5/16 72.

She claimed that on the Friday before her 16<sup>th</sup> birthday, she spent the night at the Samantha’s house. RP 10/4/16 127. They played a drinking game with Sam’s parents although MR does not know the name of the game or even how it is played. RP 10/4/16 128-129. Samantha’s parents both provided alcohol on various unspecified occasions. RP 10/5/16 72. After playing the game, she stated that they all went to bed in the parents’ bed and that she slept between Samantha and Jason. 10/4/16 130. When she awakened during the night, she believed that defendant’s hand was inside her underwear and that he touched her vagina. 10/4/16 132-133. Katie and Sam, were also in bed at that

time. RP 10/4/16 133. No one else noticed anyone and MR did not say anything to them. RP 10/4/16 133-136.

Samantha gave MR a nice bracelet for her “sweet 16” birthday. RP 10/5/16 30. The prosecutor tried to portray the bracelet as a gift from the defendant, but MR clarified, “I think Jason paid for it.” RP 10/5/16 30-31.

The State’s failed to prove this charge beyond a reasonable doubt because the State lacked proof that the event occurred. In a bed occupied by individuals, two grown adults and two teen-agers, it is inconceivable that such activities could have occurred as described and gone unnoticed any either Samantha or Katie. MR’s testimony established that right after the alleged assault, defendant and Katie got up. RP 10/4/16 133. He returned to the bed. Id. MR and Samantha got up and left the bed. Id. This testimony confirms that people were awake in bed and that any such activity would not have gone unnoticed.

**Count 8: Unlawful Delivery of a Controlled Substance to a Minor – Person Under the Age of 18**

This offense is alleged to have occurred between September 1<sup>st</sup> and September 14<sup>th</sup>, 2014. The State’s proof fails because MR was present at the Wilks’ home nearly every day during this time period. RP 10/4/16 122. She regularly smoked marijuana there and she alleges that sometimes it was

provided by defendant and sometimes by his wife. RP 10/4/16 123, 10/5/16 72. However, MR was at the Wilks residence on October 9, 2014, for a party, which could have been the occasion defendant gave her marijuana. RP 10/5/16 75. Thus, State's proof, if credible, may have been outside the charging period.

**Count 9: Furnishing Liquor to a Minor – Under the Age of 21**

The State nevertheless failed to prove the charge beyond a reasonable doubt The State failed to prove a single incident where defendant provided alcohol to MR and/or permitted MR to consume alcohol on his premises. There is no corroborate evidence to her story about the “drinking game” and she cannot describe anything about the game itself.

The defendant was convicted of the following charges relating to victim LM, whose date of birth is 6/4/99. RP 9/26/16 36.

**Count 10: Child Molestation in the Third Degree**

The State failed to prove beyond a reasonable doubt that the defendant committed the crime of child molestation in the third degree against LM. LM had known Sam since 7<sup>th</sup> grade at Keithley Middle School. RP 9/27/16 33-34. She had spent a substantial amount of time at their home. *Id.*

Like her friends, LM came forth with her allegations after she had been excluded from the Wilks' residence for smoking marijuana with Samantha. RP 10/25/16 72. When she came forth, she alleged that she had played a drinking game with Sam and her parents in which she had consumed "like twelve" shots of whiskey. RP 9/27/16 45. In that intoxicated state, she went into the parents' bedroom with Sam, Katie, and defendant to watch and movie and they all fell asleep on the bed. RP 9/27/16 55-56. When she woke up, she felt the defendant biting or touching her ear and also touching her inside her clothing on her butt. RP 9/27/16 56. However, she later told her counselor, whom she knew to be a mandatory reporter, that the defendant rubbed her back but that her underwear were lowered and "it felt like something had happened." RP 10/10/16 111. She did not tell police that defendant put his hand down her pants or rub her butt. RP 9/28/16 35. She told the reporting officer that he had rubbed her back. RP 10/19/16 104. LM knew how important it was to provide accurate information to police. RP 10/19/16 105.

Based on this wildly inconsistent information from a witness with a strong motive to fabricate who was by her own admission grossly intoxicated at the time of alleged event, the State failed to prove the charge of attempted child molestation in the second degree beyond a reasonable doubt.

**Count 11: Furnishing Liquor to a Minor**

The State failed to prove this charge beyond a reasonable doubt.

Defendant understands that the appellate does not reweigh the credibility of witnesses. However, in the absence of any corroborating evidence and the presence of numerous witnesses who impeach her testimony, defendant contends that the LM's testimony is not reliable and cannot form the basis for conviction.

The following charges relating to alleged victim AB, whose birthdate is 11/5/98.

**Count 12: Child Molestation in the Third Degree – 3/1/14 – 9/30/14**

**Count 13: Controlled Substance to a Person Under 18**

**Count 14: Furnishing Liquor to a Minor**

The State failed to prove this charge beyond a reasonable doubt for the reason that AB has no memory of it. AB first disclosed what had happened to her after she saw an article in the News Tribune about this case. RP 10/6/16 85. She then wrote a letter to her mother about having flashbacks. RP 10/6/16

91-92. AB then lied when she said she was having flashbacks. RP 10/6/16 92.

Her mother called the police. RP 10/6/16 93.

AB confirmed to police that she had flashbacks after she read the newspaper. RP 10/6/16 118. However, at trial, she denied she ever had flashbacks. Id. She acknowledged she told police about the flashbacks and that she knew they were relying on the information she provided. RP 10/10/16 40.

As a result of the flashbacks, if she had them but she says she did not, she claims to have been at Sam's residence when Katie provided marijuana to 10-15 other teen-agers who were also drinking alcohol. RP 10/16/67, 23. She claimed to have awakened in Katie and the defendant's bed after a drinking game only to find the defendant running his hands along her, "like caressing her, trying to kiss her, with his hands in her pants." RP 10/6/16/

About a week after this, she went on a trip to Ocean Shores with the Wilks, slept in a tent with defendant, Katie, and Samantha, and felt comfortable with it. RP 10/10/16 46.

AB had been excluded from the Wilks residence prior to her reading the newspaper, experiencing or not experiencing flashbacks, and making disclosure.

AB had no independent memory of being touched by defendant. RP 9/26/16 53-54. However, about a year after she had been talking to MR, she started having flashbacks to things she had not known, including an incident where defendant touched her. RP 9/26/16 54.

AB told RR about her flashbacks. RP 9/26/16 54. Then RR began having flashbacks and apparently flashed back to a touching by defendant. RP 9/26/16 54-55.

The State failed to prove beyond a reasonable doubt any of the charges against defendant.

The defendant was convicted of the following charged relating to alleged victim RR whose date of birth is 12/16/98. RP 9/26/16 35.

### **Count 15: Child Molestation in the Third Degree**

RR lacks a clear memory of the defendant doing anything inappropriate to her. RP 10/10/16 141. She testified, “I don’t know for sure it happened, but with the dreams and the flashbacks, I would assume so.” Id. She reiterated that she did not know whether anything occurred. RP 10/10/16 142l She speculated that if something occurred, it occurred “like the second or third time [she had gone over there, so February-ish.” RP 10/10/16 142. The alleged in appropriate contact was based on multiple dreams and flashbacks

where she was in bed with both defendant and Samantha. RP 10/10/16 143-144.

At time of trial, she still not know for a specific fact that anything had happened with defendant. RP 10/12/16 23/25. She simply had no clear memory. Id. She has dreams and flashbacks but she does not know whether they pertain to reality or not. RP 10/10/16 24.

Defendant respectfully submits that this is not the quality of evidence upon which criminal convictions in Washington are based. This conviction must be dismissed for insufficient evidence.

Further, because the furnishing liquor to a minor is inseparable from these unreliable flashbacks and dreams, it too must be dismissed

As noted above, RR reported these flashbacks and dreams only after she had been excluded from the Wilks homes and talked to the other alleged victims. *Supra*.

4. DEFENDANT IS ENTITLED TO RELIEF UNDER THE CUMULATIVE ERROR DOCTRINE.

The cumulative error doctrine protects a criminal defendant's right to a fair trial and applies only when a trial contains numerous prejudicial and egregious errors. See, e.g., *State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 668

(1984). The defendant bears the burden of proving these significant errors. *In re Personal Restraint of Lord*, 123 Wn.2d 296, 332, 868 P.2d 835 (1994).

In this case, the defendant's trial contained numerous prejudicial and egregious errors as noted above. Defendant has proven these and, if anyone of them does not establish reversal, then certainly at least several of them suffice to establish cumulative error.

E. CONCLUSION

For the foregoing reasons, the Appellant respectfully asks this court to grant the relief requested.

DATED this 31<sup>st</sup> day of January, 2018

/s/ Barbara Corey

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 the Court's filing portal a copy of this Document to:  
Pierce County Prosecutor's Office, Appellate Unit.**

1/31/18

/s/ William Dummitt

# APPENDIX A

December 09 2014 3:38 PM

KEVIN STOCK  
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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-04908-2

vs.

JASON CRAIG WILKS,

INFORMATION

Defendant.

DOB: 9/26/1978

SEX : MALE

RACE: WHITE

PCN#:

SID#: 19857702

DOL#: WA WILKSJC22206

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day of June, 2012 and the 23rd day of March, 2013, did unlawfully and feloniously, being at least 36 months older than B.S., engage in sexual intercourse with B.S., who is at least 12 years old but less than 14 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day of June, 2012 and the 23rd day of March, 2013, did unlawfully and feloniously, being at least 36 months

INFORMATION- 1

1 older than B.S., have sexual contact with B.S., who is at least 12 years old but less than 14 years old, and  
 2 not married to the defendant and not in a state registered domestic partnership with the defendant,  
 3 contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### COUNT III

4 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 5 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of RAPE OF A  
 6 CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the  
 7 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 8 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 9 proof of one charge from proof of the others, committed as follows:

10 That JASON CRAIG WILKS, in the State of Washington, during the period between the 24th  
 11 day of March, 2013 and the 30th day of September, 2014, did unlawfully and feloniously, being at least  
 12 48 months older than B.S., engage in sexual intercourse with B.S., who is at least 14 years old but less  
 13 than 16 years old and not married to the defendant and not in a state registered domestic partnership with  
 14 the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

#### COUNT IV

15 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 16 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of CHILD  
 17 MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime  
 18 based on the same conduct or on a series of acts connected together or constituting parts of a single  
 19 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 20 difficult to separate proof of one charge from proof of the others, committed as follows:

21 That JASON CRAIG WILKS, in the State of Washington, during the period between the 24th  
 22 day of March, 2013 and the 30th day of September, 2014, did unlawfully and feloniously, being at least  
 23 48 months older than B.S., have sexual contact with B.S., who is at least 14 years old but less than 16  
 24 years old, and not married to the defendant and not in a state registered domestic partnership with the  
 defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

#### COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of UNLAWFUL  
 DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER THE AGE OF EIGHTEEN,  
 a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts  
 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect  
 to time, place and occasion that it would be difficult to separate proof of one charge from proof of the  
 others, committed as follows:

INFORMATION- 2

1 That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day  
 2 of June, 2012 and the 30th day of September, 2014, did unlawfully and feloniously, being eighteen years  
 3 of age or over, knowingly deliver to a person under eighteen years of age and at least three years the said  
 4 defendant's junior, a controlled substance, to-wit: marijuana, classified under Schedule I of the Uniform  
 5 Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(b) and 69.50.406(2), with sexual motivation  
 6 as defined in RCW 9.94A.030, and invoking the provisions of 9.94A.835, and adding additional time to  
 the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State  
 of Washington.

#### 7 COUNT VI

8 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 9 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of FURNISHING  
 10 LIQUOR TO MINOR, a crime of the same or similar character, and/or a crime based on the same conduct  
 11 or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely  
 connected in respect to time, place and occasion that it would be difficult to separate proof of one charge  
 from proof of the others, committed as follows:

12 That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day  
 13 of June, 2012 and the 30th day of September, 2014, did unlawfully sell, give, or otherwise supply liquor  
 14 to any person under the age of twenty-one years or permit any person under that age to consume liquor on  
 his or her premises or on any premises under his/her control, contrary to RCW 66.44.270(1), and against  
 the peace and dignity of the State of Washington.

#### 15 COUNT VII

16 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 17 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of RAPE OF A  
 18 CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the  
 19 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 proof of one charge from proof of the others, committed as follows:

20 That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day  
 21 of September, 2014 and the 20th day of September, 2014, did unlawfully and feloniously, being at least  
 22 48 months older than M.R., engage in sexual intercourse with M.R., who is at least 14 years old but less  
 than 16 years old and not married to the defendant and not in a state registered domestic partnership with  
 the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

#### 23 COUNT VIII

24 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of UNLAWFUL  
 INFORMATION- 3

1 DELIVERY OF A CONTROLLED SUBSTANCE TO A PERSON UNDER THE AGE OF EIGHTEEN,  
 2 a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts  
 3 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect  
 4 to time, place and occasion that it would be difficult to separate proof of one charge from proof of the  
 others, committed as follows:

5 That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day  
 6 of September, 2014 and the 20th day of September, 2014, did unlawfully and feloniously, being eighteen  
 7 years of age or over, knowingly deliver to a person under eighteen years of age and at least three years the  
 8 said defendant's junior, a controlled substance, to-wit: marijuana, classified under Schedule I of the  
 9 Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(b) and 69.50.406(2), with sexual  
 motivation as defined in RCW 9.94A.030, and invoking the provisions of 9.94A.835, and adding  
 additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and  
 dignity of the State of Washington.

#### 10 COUNT IX

11 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 12 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of FURNISHING  
 13 LIQUOR TO MINOR, a crime of the same or similar character, and/or a crime based on the same conduct  
 14 or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely  
 connected in respect to time, place and occasion that it would be difficult to separate proof of one charge  
 from proof of the others, committed as follows:

15 That JASON CRAIG WILKS, in the State of Washington, during the period between the 1st day  
 16 of September, 2014 and the 20th day of September, 2014, did unlawfully sell, give, or otherwise supply  
 17 liquor to any person under the age of twenty-one years or permit any person under that age to consume  
 18 liquor on his or her premises or on any premises under his/her control, contrary to RCW 66.44.270(1),  
 and against the peace and dignity of the State of Washington.

#### 19 COUNT X

20 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 21 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of CHILD  
 22 MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime  
 based on the same conduct or on a series of acts connected together or constituting parts of a single  
 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 difficult to separate proof of one charge from proof of the others, committed as follows:

23 That JASON CRAIG WILKS, in the State of Washington, on or about the 25th day of October,  
 24 2014, did unlawfully and feloniously, being at least 48 months older than L.M., have sexual contact with  
 L.M., who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a

INFORMATION- 4

1 state registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the  
2 peace and dignity of the State of Washington.

3 **COUNT XI**

4 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
5 authority of the State of Washington, do accuse JASON CRAIG WILKS of the crime of FURNISHING  
6 LIQUOR TO MINOR, a crime of the same or similar character, and/or a crime based on the same conduct  
7 or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely  
8 connected in respect to time, place and occasion that it would be difficult to separate proof of one charge  
9 from proof of the others, committed as follows:

10 That JASON CRAIG WILKS, in the State of Washington, during the period between the 24th  
11 day of October, 2014 and the 25th day of October, 2014, did unlawfully sell, give, or otherwise supply  
12 liquor to any person under the age of twenty-one years or permit any person under that age to consume  
13 liquor on his or her premises or on any premises under his/her control, contrary to RCW 66.44.270(1),  
14 and against the peace and dignity of the State of Washington.

15 DATED this 9th day of December, 2014.

16 PIERCE COUNTY SHERIFF  
17 WA02700

18 MARK LINDQUIST  
19 Pierce County Prosecuting Attorney

20 Hd

21 By: /s/ HEATHER DEMAINE  
22 HEATHER DEMAINE  
23 Deputy Prosecuting Attorney  
24 WSB#: 28216

# **APPENDIX B**

(3) The only conclusion supported by the evidence is that L.M., B.S., M.R., A.B., and R.R. are telling the **TRUTH**

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# APPENDIX C

# The Defendant: Trial Testimony

- Made unrealistic claims
  - I never watched a movie with her even once
  - She wasn't even allowed into my bedroom
  - The boys didn't know about the marijuana
- Was contradicted by his witnesses
  - Daniel Hertzfeldt said "piles of girls" were on his bed, and Katie Wilks said that several girls
  - NW said he saw the defendant and the girls drinking in his room on homecoming
  - Katie Wilks said she caught SW drinking and others smoking marijuana

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- Contradicted by other evidence
  - The knowledge of the marijuana grow operation
  - His claim that AB reported in 2014, when it was in 2015

# **APPENDIX D**

1. Were the crimes committed?

**YES**

2. Did the defendant do it?

**YES**

---

# **APPENDIX E**

**JUSTICE**

**Guilty**

**BARBARA COREY, ATTORNEY AT LAW**

**January 31, 2018 - 12:44 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 50287-9  
**Appellate Court Case Title:** State of Washington, Respondent v Jason C. Wilks, Appellant  
**Superior Court Case Number:** 14-1-04908-2

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