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Division II
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Court of Appeals No. 51084-7-II
Pierce County Superior Court No. 13-1-04758-8

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

In re the Personal Restraint of:
JAMES ELLIS CROCKETT,
Petitioner.

REPLY REGARDING PERSONAL RESTRAINT PETITION

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I. REPLY ARGUMENTS

1. The evidence of bias excluded by the trial judge was not cumulative.

On pages 7-11 the State argues that Crockett cannot demonstrate prejudice from the trial court's failure to admit additional evidence of bias because it would have been "cumulative."

Crockett disagrees. The trial court excluded contemporaneous evidence of the discord between Rhonda and M.W. and evidence that M.W. had a motive to lie about James. This evidence was written by the victim at the time she was angry at her mother. It is more powerful than M.W.'s testimony at trial because she soft peddled her animus against James and her mother.

In fact, she soft-peddled it so much that the prosecutor was able to argue in closing that while M.W. had conflicts with her mother but "not to the point where now she was potting revenge to hurt her adoptive mother." RP 932. The text messages make it clear that argument was untrue.

Moreover, the State admits that the Crockett was not able present evidence of M.W. "avarice bias." Response at 7. So clearly that evidence was not cumulative of on that issue.

Finally, this was a credibility battle. The jury had to decide who to believe - Crockett or M.W. The fact that other impeachment evidence was introduced by the defense is insufficient to demonstrate the error was harmless. Where, as here, the jury had to rely on M.W.'s testimony to reach its verdict despite the introduction of impeachment evidence at trial,

and there is a reasonable probability that the suppressed impeachment evidence, when considered together with the disclosed impeachment evidence, would have affected the jury's assessment of the witness's credibility, the suppressed impeachment evidence is prejudicial. *Benn v. Lambert*, 283 F.3d 1040, 1056 (9th Cir. 2002).

2. The text messages were easily authenticated because M.W. admitted she wrote and sent them.

The State is incorrect when it argues that these messages were not a “part of the record.” The defense made an offer of proof and, thus, the text messages were a part of the record. The defense proposed them as exhibits. The fact that the judge did not admit them does not mean they are not a part of the trial record. See App. at 26-45.

The State now argues that there was no error in excluding the text messages because Crockett could not have laid the foundation for the introduction of the remaining messages. The States response is completely disingenuous because M.W. readily admitted the two admitted texts – from the series - were written by her to her friends. RP 426-27. Presumably she would have answered just as honestly about the remaining text messages taken from her phone.¹

¹ The trial deputy conceded that the text messages were from M.W. He said he discussed them with her before trial and said, “had discovery been completed in a timely manner, most likely would have had a sit-down with Mil-Lindsey to discuss the text messages as to what she meant.” RP 368.

3. Trial counsel was ineffective when he failed to properly object to the State's presentation of MW's "prior consistent statements."

This was not a close question. MW had a motive to lie, as evidenced by her text messages on August 19 and 26, the motive preceded her August 29 interview by ten and three days respectively. The purpose of the rule is to show that her allegations were the same before developing the motive to lie and after. In this case, her motive to lie would have been the same on August 29 as on August 19 and 26. Defense counsel was ineffective for failing to properly object.

This failure was prejudicial. In closing, the prosecutor repeatedly emphasized the consistency between her in-court testimony and her out-of-court statements to Brooks and Campbell. He said, "When she was interviewed by Detective Brooks and Mara Campbell three days later, she was consistent about the digital penetration, when she was interviewed by defense counsel, and when she testified." RP 951. Later he said, "You heard from Mara Campbell the CPS procedures, and you heard Mara Campbell describe what MW disclosed to both her and Detective Brooks, which was consistent with what she testified to." RP 958. Later yet, "[H]er statements were consistent with what she told Mara Campbell, what she told Detective Brooks and what she told defense attorney during the defense interview, which was all consistent with her testimony and the evidence in this case." RP 959.

IV. CONCLUSION

This Court should refer this Petition to a full panel of the Court and reverse or, in the alternative, remand to the trial court for an evidentiary hearing.

DATED this 29th day of March, 2018.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing Reply on the following:

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2/29/2018
Date

Suzanne Lee Elliott
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LAW OFFICE OF SUZANNE LEE ELLIOTT

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