FILED
Court of Appeals
Division II
State of Washington
6/21/2019 12:59 PM

NO. 52420-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

HARRY K. WAYMOTH, III

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

The Honorable John Skinder, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. WAYMOTH'S CASE SHOULD BE REMANDED FOR A HEARING TO WITHDRAW HIS PLEA

In its response, the State argues that Mr. Waymoth's attorney provided effective representation during plea negotiation process,[1] that the plea was voluntarily made,[2] and that the trial court did not abuse its discretion when denying the motion with withdraw his plea.[3]

The lower court made a "provisional" ruling that evidence of a prior accusation made by A.R.E. that a man named Morrell exposed his genitals to her would not be admissible under ER 608(b). 2RP at 100, 101, 104. The State argues that even if admitted, such evidence would "have had minimal relevance at best."[4] Waymoth submits, however, that the impact on a jury of evidence of allegedly false testimony by an accuser in a sex offense prosecution cannot be understated. It is reasonable to conclude that jury would be receptive to evidence that an allegedly false accusation made by A.R.E. that a man exposed himself to her, and which resulted in no apparent repercussion to A.R.E., could escalate to a false accusation by A.R.E. of actual molestation by Mr. Waymoth. The motivation for making a false accusation may not be knowable but could be based on anything from a psychological defect or attention-seeking behavior. Regardless of the motive, evidence of a previous accusation was likely to have been considered to be highly probative by jurors regarding A.R.E.'s credibility.

Next, the record supports the argument that Mr. Waymoth's guilty plea was involuntarily made because the record shows that he was under

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[1]Brief of Respondent (BR) at 5-8.
[2]BR at 15-16.
[3]BR at 19-20.
[4]BR at 8.

extreme pressure and distress during the plea negotiation process. 2 RP at 121-24. As argued in the opening brief, Mr. Waymoth was frustrated because of his trial attorney's failure to investigate options for admission of the Morrell accusation other than through ER 608(b). The failure to seek admission by another method, or to at least seek interlocutory review prior to trial or to obtain a formal, appealable ruling from the court at trial, constitutes ineffective assistance of counsel.

In addition to the claim of ineffective assistance of counsel, it is apparent from the circumstances of the case that Mr. Waymoth was under extraordinary distress at the time he entered his plea. As noted in the opening brief, plea bargaining pressures may render a plea involuntary. ***State v. Swindell,*** 93 Wn.2d 192, 198-99, 607 P.2d 852 (1980). Although the plea statement may indicate the plea was made "freely and voluntarily," that statement, although highly persuasive, is not conclusive evidence that the plea was in fact voluntary. ***State v. Frederick***, 100 Wn.2d 550, 556, 674 P.2d 136 (1983), overruled on other grounds, ***Thompson v. Department of Licensing***, 138 Wn.2d 783, 794, 982 P.2d 601 (1999). Although permission to withdraw a guilty plea rests within the sound discretion of the trial court, such discretion should be "exercised liberally in favor of life and liberty." ***State v. Saylors***, 70 Wn.2d 7, 9, 422 P.2d 477 (1966). In this case, Mr. Waymoth as in an untenable position where he was essentially told by counsel that testimony regarding Morrell was not going to be admitted---and even more alarmingly---he was in a situation where Mr. Waymoth believed that his counsel offered no alternative method to at least *try* for admission of the evidence. With the information that A.R.E.'s accusation against Morrell was not going to be admitted, Mr. Waymoth was forced to accept the plea. The plea was coerced, not voluntary. Accordingly, he has shown a manifest injustice justifying withdrawal of his guilty plea.

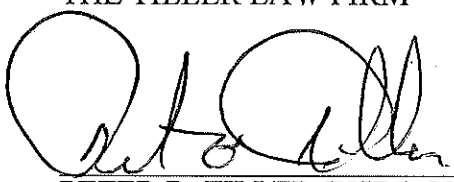
Frederick, 100 Wn.2d at 556. The court abused its discretion by denying the motion when its decision was based on untenable grounds and for untenable reasons.

B. CONCLUSION

For the reasons stated herein, and in appellant's opening brief, Mr. Waymoth respectfully urges this Court to reverse the denial of his motion to withdraw his guilty plea, reverse his convictions, and remand for further proceedings to allow him to withdraw his guilty plea.

DATED: June 21, 2019

Respectfully submitted,
THE TILLER LAW FIRM



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CERTIFICATE OF SERVICE

The undersigned certifies that on June 21, 2019, that this Reply Brief of Appellant was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, a copy was emailed to Joseph Jackson Prosecuting Attorney and copies were mailed by U.S. mail, postage prepaid, to the following:

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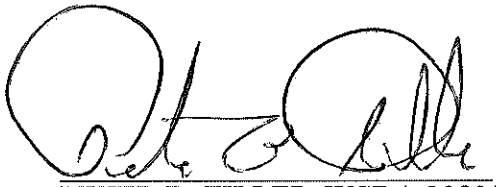
This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on June 21, 2019.



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June 21, 2019 - 12:59 PM

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Filed with Court:	Court of Appeals Division II
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Appellate Court Case Title:	State of Washington, Respondent v. Harry K. Waymoth, III, Appellant
Superior Court Case Number:	17-1-02132-0

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