FILED
Court of Appeals
Division II
State of Washington
8/21/2020 4:11 PM
NO. 53892-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

RAMIL SERRANO,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR GRAYS HARBOR COUNTY

The Honorable David Mistachkin, Judge

REPLY BRIEF OF APPELLANT

Peter B. Tiller, WSBA No. 20835
Of Attorneys for Appellant

The Tiller Law Firm
Corner of Rock and Pine
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

TABLE OF CONTENTS

Page

Table of Authorities

A. ARGUMENT IN REPLY 1

1. THE TESTIMONY WAS INCONSISTENT TO THE DEGREE THAT IT REQUIRES REVERSAL UNDER *ALEXANDER* 1

B. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES **Page**

State v. Alexander, 64 Wn.App. 147, 822 P.2d 1250 (1992) 1,2,3

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) 1

State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004) 1

State v. Vladovic, 99 Wn.2d 413, 662 P.2d 853 (1983) 1

State v. Werneth, 147 Wn.App. 549, 197 P.3d 1195 (2008) 1

A. ARGUMENT IN REPLY

1. THE TESTIMONY WAS INCONSISTENT TO THE DEGREE THAT IT REQUIRES REVERSAL UNDER *ALEXANDER*

The State argues in its response that ***State v. Alexander***, 64 Wn.App. 147, 822 P.2d 1250 (1992), a case appellant cites in his opening brief, resulted in overturning multiple rape convictions due to cumulative error, not due to inconsistencies in victim testimony. Brief of Respondent (BR) at 8. The appellant argues that ***Alexander*** is persuasive authority and that the testimony of S.S. regarding the critical issue of penetration was inconsistent to such a degree that reversal is merited under ***Alexander***.

The State must produce substantial evidence to support the elements of a crime. ***State v. Werneth***, 147 Wn.App. 549, 552, 197 P.3d 1195 (2008). Whether the State has met that burden, a burden of production, is a question of law that the Court must review de novo. *Id.* Whether there is sufficient evidence to support a conviction turns on "whether, after viewing the evidence most favorable to the State, any rational trier of fact could have found the essential elements of [the crime]."' ***State v. Vladovic***, 99 Wn.2d 413, 424, 662 P.2d 853 (1983) (quoting ***State v. Green***, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)). Deference is given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the general persuasiveness of the evidence. ***State v. Thomas***, 150 Wn.2d 821, 874-75,

83 P.3d 970 (2004).

In ***Alexander***, a jury convicted Alexander of two counts of first-degree rape of a child. In reversing his convictions, Division One held that without multiple witnesses' improper testimony and the prosecutor's improper statements, the inconsistencies in the victim's testimony were too extreme and the evidence presented to the jury was too confused to allow the jury to find Alexander guilty on either count. ***Alexander***, 64 Wn. App. at 158. The appellant argues that S.S.'s testimony regarding penetration was inconsistent to such a degree that a rational jury could not have found beyond a reasonable doubt that Serrano committed the offenses alleged.

In ***Alexander***, Division One overturned the child rape convictions, in part because of extreme inconsistencies in the child victim's testimony at trial. ***Alexander***, 64 Wn.App. at 157–58. The Court found there was insufficient evidence to convict the defendant for rape of a child where the alleged victim's testimony was too inconsistent and confused for a jury to find the defendant guilty. *Id.* at 157. "[T]he inconsistencies in M.'s testimony regarding when the abuse occurred, and whether the bathtub or baby oil incidents occurred at all, were extreme." *Id.* These inconsistencies related to when the alleged rapes occurred and whether he had touched her inappropriately. ***Alexander***, 64 Wn. App. at 149-50.

Here, the State argues that ***Alexander*** is inapplicable because the

S.S. did not imply that **nothing** happened during her testimony. BR at 9. The State also argues that the testimony was sufficient to support convictions because it is clear what S.S. meant when she was speaking about when she said "private" and pointed to her pelvic vagina area. BR at 16.

S.S. did not assert in her testimony that nothing happened. The appellant submits that her testimony is nevertheless significantly inconsistent on the critical issue of penetration. Regarding the nature of the contact, she variously describes sexual contact as being "on" her "private" and as being "in." 1RP at 51. S.S. variously stated that he "put his private on my private," but when asked what area S.S. "meant by private", she stated "like in." 1RP at 51-52. To be sure, ***Alexander*** does not support the proposition that evidence is insufficient if a victim contradicts her prior statement on an issue or if the testimony of two witnesses conflict. The Court held under the unique facts of that case that because of the "extreme" inconsistencies in the victim's testimony coupled with other errors, the evidence was too "confused" to allow the jury to find the defendant guilty. *Id.* Here, S.S.'s testimony was directly contradictory, stating that contact was both "on" her private or "in," when seemingly describing the same incident. 1RP at 51-52. S.S.'s testimony provided insufficient evidence that Serrano committed either molestation or rape involving penetration,

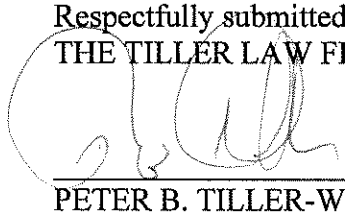
engaged in sexual intercourse with S.S. and the convictions should be reversed.

B. CONCLUSION

For the reasons stated herein, and in appellant's opening brief, the appellant respectfully requests this Court to reverse the convictions and dismiss the charges.

DATED: August 21, 2020.

Respectfully submitted,
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Ramil Serrano

CERTIFICATE OF SERVICE

The undersigned certifies that on August 21, 2020, 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 Katherine Lee Svoboda Grays Harbor County Prosecuting Attorney and copies were mailed by U.S. mail, postage prepaid, to the following:

Katherine Lee Svoboda
Grays Harbor Co Pros Ofc
102 W Broadway Ave. Rm 102
Montesano, WA 98563-3621
Ksvoboda@co.grays-harbor.wa.us

Mr. Derek Byrne
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

Mr. Ramil Serrano DOC# 413716
Coyote Ridge Corrections
PO Box 769
Connell, WA 99326
LEGAL MAIL/SPECIAL MAIL

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 August 21, 2020.

PETER B. TILLER

THE TILLER LAW FIRM

August 21, 2020 - 4:11 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	53892-0
Appellate Court Case Title:	State of Washington, Respondent v Ramil Agles Serrano, Appellant
Superior Court Case Number:	18-1-00591-7

The following documents have been uploaded:

- 538920_Briefs_20200821160804D2764733_1066.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was 20200821155914800.pdf

A copy of the uploaded files will be sent to:

- JZorn@co.grays-harbor.wa.us
- appeals@co.grays-harbor.wa.us
- ksvoboda@co.grays-harbor.wa.us

Comments:

Sender Name: Kirstie Elder - Email: Kelder@tillerlaw.com
Filing on Behalf of: Peter B. Tiller - Email: ptiller@tillerlaw.com (Alternate Email: Kelder@tillerlaw.com)

Address:
PO Box 58
Centralia, WA, 98531
Phone: (360) 736-9301

Note: The Filing Id is 20200821160804D2764733