

FILED
Court of Appeals
Division III
State of Washington
3/29/2018 9:26 AM

NO. 35370-2-III

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JERREMY JOE GMEINER,

Defendant/Appellant.

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

CASES

State v. Bradley, 141 Wn.2d 731, 10 P.3d 358 (2000). 1

State v. Hopkins, 137 Wn. App. 441, 154 P.3d 250 (2007)..... 1

ARGUMENT

The State's analysis concerning the failure of having the minor child attend the child hearsay hearing does not address *State v. Hopkins*, 137 Wn. App. 441, 154 P.3d 250 (2007).

Instead, the State asserts that the invited error doctrine applies. However, the State is in error.

... [I]n a criminal case, where the offering of [a stipulation] may constitute ineffective assistance of counsel, we reach the merits of the challenge anyway in determining if counsel was ineffective. *State v. Aho*, 137 Wn.2d 736, 745-46, 975 P.2d 512 (1999)

State v. Bradley, 141 Wn.2d 731, 736, 10 P.3d 358 (2000).

Even though the *Bradley* case was based upon an incorrect jury instruction, it is equally applicable to Mr. Gmeiner's case based upon the *Hopkins* case.

As argued in Mr. Gmeiner's original brief, the inability to cross-examine the child concerning her use of the term "butt" precluded any chance of arguing that there was no touching of the intimate parts of the child's body. The only thing that the jury heard was the mother's explanation that the word "butt" referred to the entire lower area of the child's body.

Even if the child was not verbal, the child could have been asked to point to the part of her body that was allegedly touched by Mr. Gmeiner.

Mr. Gmeiner otherwise relies upon the argument contained in the original brief.

DATED this 29th day of March, 2017.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 35370-2-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	SPOKANE COUNTY
Plaintiff,)	NO. 16 1 03798 5
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JERREMY JOE GMEINER,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 29th day of March, 2018, I caused a true and correct copy of the *Reply Brief and Motion to Extend Time* and to be served on:

COURT OF APPEALS, DIVISION III
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SPOKANE COUNTY PROSECUTOR'S OFFICE

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s/ Dennis W. Morgan

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