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Court of Appeals
Division III
State of Washington
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No.360016-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON

Respondent,

v.

JUAN JOSE HUEZO LUNA,

Appellant.

APPEAL FROM THE BENTON COUNTY
SUPERIOR COURT

REPLY BRIEF OF APPELLANT

CARNEY & MARCHI, P.S.
Nicholas Marchi
Attorney for Petitioner

Office and Post Office Address:
108 S. Washington Street, Suite 406
Seattle, WA 98104
Telephone : (206) 224-0909

APPELLANT'S OPENING BRIEF - 1

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I. ARGUMENT

A. The trial court err in allowing the child witness to testify via use of writings done in front of the jury.

The State argues that the trial court did not abuse its discretion when it allowed B.O. and T.O to provide written responses to the State's question. The State further argues that even if responses were appropriate, they were not central to the case. The Satté's position is untenable.

An accused has a constitutional right "to meet the witnesses against him *face to face*." CONST. art. I, § 22.; *State v. Foster*, 135 Wn.2d 441, 957 P.2d 712 (1998) The Confrontation Clause gives defendants the right to confront those who make testimonial statements against them. *State v. Jasper*, 158 Wash. App. 518, 526, 245 P.3d 228, 232 (2010)

A trial court abuses its discretion if its decision 'is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Garcia*, 179 Wash. 2d 828, 844, 318 P.3d 266, 275 (2014)

Mr. Huezo maintains that the written statements were testimonial and thus when the witnesses provided these written statements, this violated the Confrontation Clause and thus was an abuse of discretion.

Secondly to the extent that the State maintains that the statements were not necessary for the jury to convict Mr. Huezo, then the statements were not relevant and should not have been admitted. There is no constitutional right to have irrelevant evidence admitted. See, *State v. Hudlow*, 99 Wn.2d 1, 15, 659 P.2d 514 (1983); *State v. Bonds*, No. 73967-1-I, 2015 Wash. App. LEXIS 3075 (Ct. App. Dec. 28, 2015)

- B. The trial court err when it precluded the Appellant from presenting his witnesses and testimony.

A criminal defendant's right to present a defense extends to ““relevant evidence that is not otherwise inadmissible. *State v. Mee Hui Kim*, 134 Wn. App. 27, 41, 139 P.3d 354 (2006) (quoting *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651 (1992)). Evidence of a person's character generally is inadmissible, but a criminal defendant may present evidence of a "pertinent trait of character." ER 404(a)(1). The courts have held that sexual morality is a pertinent character trait in cases involving sexual offenses. *State v. Griswold*, 98 Wn. App. 817, 991 P.2d 657 (2000); *State v. Woods*, 117 Wash. App. 278, 280, 70 P.3d 976, 977 (2003)

The State contends that the testimony of Ms. Martinez was properly excluded because it was not evidence of sexual morality. (Brf. at 9) Mr. Huezo maintains that he did lay the proper foundation for the evidence to be admissible. The evidence should have been admitted. Further, Mr. Huezo maintains that the fact that the allegations were made a long time ago and that Mr. Huezo was divorced from Ms. Martinez is not relevant to the inquiry. Therefore, the trial court erred when it excluded the evidence.

IV. CONCLUSION

For the reasons stated herein it is respectfully requested that the Judgment and Sentence in this matter be vacated and that the matter be remanded for a new trial.

DATED this 26th day of May 2020.

Respectfully Submitted,

S/ Nicholas W. Marchi
Nicholas Marchi, WSBA 19982
CARNEY & MARCHI, P.S.
Attorneys for Appellant

CERTIFICATE OF SERVICE BY MAIL

I, Nicholas Marchi, Attorney for the Appellant, hereby certify that I have mailed, on 01/30/2020, via postage prepaid, a true copy of the Reply Brief of the Appellant attached hereto to the following individuals:

Juan Jose Huevo Luna Doc. No. 405454
Washington State Department of Corrections
Airway Heights Corrections Center
P.O. Box 1899
Airway Heights, WA 99001-1899

Terry Bloor, DPA
Benton County Prosecuting Attorney Office
7122 W. Okanogan Place
Kennewick, WA 99336

DATED this 26th day of May 2020.

S/ Nicholas Marchi
Nicholas Marchi
Attorney for Appellant

CERTIFICATE OF FILING

I hereby certify that on the 26th day of May 2020, I filed the original Petitioner's

Opening Brief via ECF to:

Clerk of the Court
Court of Appeals of the State of Washington, Division III
500 N. Cedar St
Spokane, WA 99201

Dated this 26th day of May 2020.

S/ Nicholas Marchi
Nicholas Marchi
Attorney for Appellant

CARNEY & MARCHI PS

May 26, 2020 - 10:04 AM

Transmittal Information

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- terry.bloor@co.benton.wa.us

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Sender Name: Nicholas Marchi - Email: nmarchi@carmarlaw.com
Address:
108 S WASHINGTON ST STE 406
SEATTLE, WA, 98104-3433
Phone: 206-224-0909

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