

65935-9

65935-9

NO. 65935-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

STATE OF WASHINGTON,

Respondent,

v.

JOHN ERICKSON,

Appellant.

2017-05-11 11:00  
65935-9-I-001



---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN ERICK

---

**BRIEF OF RESPONDENT**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

ANDREA R. VITALICH  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL FACTS .....	1
2. SUBSTANTIVE FACTS .....	3
C. <u>ARGUMENT</u> .....	12
1. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ADMITTING EVIDENCE OF MARKEDLY SIMILAR ACTS AS PROOF OF A COMMON SCHEME OR PLAN .....	12
2. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ADMITTING STATEMENTS ERICKSON MADE IN RESPONSE TO HIS FORMER GIRLFRIEND FINDING DISTURBING IMAGES ON HIS COMPUTER .....	20
3. THE STATE CONCEDES THAT ONE OF THE CONDITIONS OF COMMUNITY CUSTODY SHOULD BE MODIFIED AND THAT ANOTHER SHOULD BE STRICKEN .....	24
D. <u>CONCLUSION</u> .....	25

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Atsbeha, 142 Wn.2d 904,  
16 P.3d 626 (2001)..... 12, 21

State v. DeVincentis, 150 Wn.2d 11,  
74 P.3d 119 (2003)..... 14, 15, 16, 17, 19

State v. Enstone, 137 Wn.2d 675,  
974 P.2d 828 (1999)..... 13, 21

State v. Ervin, 158 Wn.2d 746,  
147 P.3d 567 (2006)..... 19

State v. Lough, 125 Wn.2d 847,  
889 P.2d 487 (1995)..... 14, 16, 17

State v. O'Cain, 144 Wn. App. 772,  
184 P.3d 1262 (2008)..... 25

State v. Ray, 116 Wn.2d 531,  
806 P.2d 1220 (1991)..... 16

State v. Sexsmith, 138 Wn. App. 497,  
157 P.3d 901 (2007)..... 13, 14

State v. Thorne, 43 Wn.2d 47,  
260 P.2d 331 (1953)..... 16

Other Jurisdictions:

People v. Ewoldt, 7 Cal. 4th 380,  
867 P.2d 757, 27 Cal. Rptr. 2d 646 (1994)..... 14

Statutes

Washington State:

RCW 9.94A.700 ..... 24  
RCW 9A.42.110 ..... 22  
RCW 9A.44.083 ..... 17

Rules and Regulations

Washington State:

ER 403 ..... 2, 22  
ER 404 ..... 1, 2, 12, 13, 16-20

Other Authorities

<http://en.wikipedia.org/wiki/NAMBLA>..... 3  
Sentencing Reform Act ..... 24

**A. ISSUES PRESENTED**

1. Whether the trial court exercised sound discretion in admitting evidence under ER 404(b) because it was indicative of a common scheme or plan by the defendant to use bathing with young girls as a method of grooming them and gaining access to them.

2. Whether the trial court exercised sound discretion in allowing limited testimony by the defendant's former girlfriend that she found disturbing images on the defendant's computer because it was necessary to provide context for the incriminating statements the defendant made when she confronted him about the images.

3. Whether the State must concede that the trial court erred in imposing conditions of community custody that were not statutorily authorized.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State charged the defendant, John Erickson, with one count of child molestation in the first degree for having sexual contact with 5-year-old J.S., the daughter of Erickson's son's

ex-girlfriend. CP 1-9. A jury trial on this charge occurred in April and May 2010 before the Honorable John Erlick.

Prior to jury selection, as will be discussed further below, the trial court granted the State's motion to admit evidence under ER 404(b) because it showed a common scheme or plan. More specifically, the evidence showed that Erickson bathed naked with J.S., her 5-year-old friend S., and Erickson's youngest daughter, Y.,<sup>1</sup> and that he had also bathed naked several years prior with his daughter B. when she was also approximately 5 years old. 6RP 834-36, 892-93. The trial court admitted this evidence because "it does show a common plan or scheme with respect to attempting to gain access to young girls, to engage in grooming type activity with such girls, and to have access to them for improper purposes[.]" 1RP 86. As required, the court found that the incidents occurred by a preponderance of the evidence, and ruled that the evidence was more probative than prejudicial under ER 403. 1RP 86.

In addition, the trial court allowed limited testimony from Erickson's former girlfriend Karen Skaggs that she found images on Erickson's computer that concerned her, that she confronted

---

<sup>1</sup> Although the transcript indicates that Erickson's youngest daughter's name begins with "E," the actual spelling begins with "Y." CP 7; CP 72-93.

Erickson about them, and that Erickson told her that it was natural to teach children about sex. Erickson also mentioned NAMBLA,<sup>2</sup> a well-known organization that advocates for "consensual" sexual relationships between children and adults. 1RP 82-83. The trial court admitted this evidence because Erickson's statements were "highly probative" evidence of his mental state; however, in order to minimize the danger of unfair prejudice, the court excluded any testimony as to what the computer images actually contained or that Skaggs called the police after seeing the images. 1RP 82-83.

At the conclusion of the trial, the jury found Erickson guilty of first-degree child molestation as charged. CP 41; 8RP 1127-30. The trial court imposed an indeterminate sentence of life in prison with a minimum term of 68 months. CP 60-70. Erickson now appeals. CP 71.

## **2. SUBSTANTIVE FACTS**

November 15, 2008 was Shaun Erickson's birthday. 3RP 427. He got up early that morning to go fix a friend's car.

---

<sup>2</sup> NAMBLA stands for "North American Man/Boy Love Association." See <http://en.wikipedia.org/wiki/NAMBLA>.

3RP 427-28. As he often did, Shaun left 5-year-old J.S.<sup>3</sup> in the care of his father, John Erickson, and his father's wife, Reina. 3RP 409, 429. J.S. was still asleep in Shaun's room when Shaun left the house. 3RP 429.

When Shaun returned several hours later, the defendant was on the computer, Reina and her two young children with the defendant (Y. and K.) were in the living room, and J.S. was nowhere to be seen. 3RP 429. Shaun walked up to his room and found that the door was closed, which seemed odd. 3RP 429-30. Shaun then opened the door and discovered that J.S. was sitting on his bed watching a pornographic video. 3RP 430-31.

Shaun immediately turned the TV off, and explained to J.S. that it was not appropriate for her to be watching the video because it was meant for adults. J.S. appeared confused, and did not seem to understand why it was inappropriate. 3RP 432, 434. After Shaun told her that the video was not appropriate for children, J.S. said, "Why is that, Daddy? Me and Papa John do stuff like that." 3RP 437. Shaun asked J.S., "Stuff like what?" J.S. said "stuff like

---

<sup>3</sup>J.S. is the daughter of Shaun's ex-girlfriend, Lindsey Smith. 3RP 402. Although J.S. is not Shaun's biological daughter, Shaun considers himself to be her father and cares for her as such. 3RP 405.

what she saw on TV." 3RP 438. Shaun was completely stunned; he grabbed J.S. and left the house immediately. 3RP 438.

Shaun put J.S. in the car and started driving to the home of J.S.'s maternal grandmother, Katherine Smith Vangog. 3RP 439. He stopped on the way and called Vangog to tell her what had happened. Shaun was "hysterical and crying" as he told Vangog that he had found J.S. watching pornography and that he knew that his father had been molesting her. 4RP 647, 650. Vangog's husband William went to Lindsey Smith's home, woke her up, and drove her back to Vangog's, and after Shaun arrived with J.S., Smith, Vangog, and William took J.S. to Providence Hospital in Everett. 4RP 650-51, 677-78. J.S.'s physical examination revealed that there was redness in her genital area but no signs of trauma. 3RP 609.

After the Renton Police Department was notified of this case, J.S. was interviewed by child interview specialist Carolyn Webster. 4RP 717, 736; Ex. 14. During the interview, J.S. said that Erickson "does a pee pee thing." Ex. 14, p.12. She said that Erickson told her "it was a secret." Ex. 14, p.18. After some initial reluctance to describe what had happened, J.S. finally told Webster that the "pee pee thing" was when "he rubs the pee pee and then you rub

and the seeds come out." Ex. 14, p.25. J.S. said that the "pee pee thing" happened in Erickson's bedroom, and she said that Erickson's "pee pee" was "just like a stick." Ex. 14, p.26-27. J.S. said that Erickson "made [her] lay on the bed" while "he was standing up," that "he unzipped his zipper," and that she was wearing only her underwear so her clothes "won't get all seedy." Ex. 14, p.28-29. J.S. said that she could feel Erickson's "seeds" on her "pee pee" and that it felt "cold." Ex. 14, p.31.

J.S. also testified at trial. During her testimony, she explained that Erickson touched her private part with his private part, that "[w]hite stuff" came out of Erickson's private part, and that some of it got on her private part. She said this happened about 10 times. 3RP 528-29. She said that it happened in Erickson's room, and that Erickson was standing up while she was lying on the bed on top of the covers. 3RP 531.

After these allegations came to light, Katherine Smith Vangog recalled an incident that had taken place earlier in November 2008, when she was giving J.S. a bath because she had come back from Erickson's house very dirty. J.S. was also very quiet, which was unusual for her. 4RP 638-39. When Vangog put J.S. in the tub, J.S. "kind of put her head down and she said, 'Papa

John showed me how to have a baby.'" 4RP 639. Vangog asked J.S. how Erickson had showed her, and J.S. said "he got on top of me." J.S. was "withdrawn and sad" when she said this. 4RP 640.

Both Vangog and Shaun Erickson's friend Shannon Casey (who also cared for J.S. sometimes) had noticed changes in J.S.'s behavior around the time of J.S.'s disclosures. Vangog noticed that although J.S. had been very confident before, she now seemed to be afraid of everything. She began wetting and soiling her bed and having nightmares. 4RP 640. J.S. also screamed and cried in the shower. When Vangog took her out of the shower, J.S. said she was afraid of the shadows in the shower because "Papa John used to come into the shower[.]" 4RP 646. Shannon Casey noticed that although J.S. used to be very friendly and outgoing, she had become withdrawn. 6RP 902. As Casey stated, J.S. had become "just a shell of the child that she was." 6RP 903.

Erickson made a number of statements regarding his beliefs about children and sexuality that were admitted at trial because they were highly probative of his mental state. For instance, Erickson told Shaun on multiple occasions when he was growing up "that [he] should have sex as young as [he] possibly could and experience it to the fullest." 3RP 425. Shaun recalled that when he

was 11 or 12 years old, Erickson gave him some condoms "and informed [him] on the correct way to please a woman." 3RP 424. Shaun also remembered watching his father's pornographic videos when he was as young as 5. 3RP 425.

Katherine Smith Vangog also recalled Erickson making similar statements to her. Erickson told Vangog that "kids should learn about sex early on and the younger they are, the better." 4RP 635. Erickson had made these statements to Vangog in the context of explaining that he had tried dating women his own age, but he thought they were "gross[.]" 4RP 636.

Shannon Casey remembered a conversation she had had with Erickson in which she told him that she had lost her virginity when she was only 12 or 13 years old, and that she believed that it had had a negative impact on her life. Erickson disagreed, and said, "Well, I want my daughter to experience sex as soon as possible[.]" When Casey responded that age 13 was too young for a girl to have sex, Erickson reiterated, "As soon as possible." 6RP 899. Erickson's daughter Y. was a toddler when this conversation took place.

As noted previously, the trial court also admitted evidence that Erickson had bathed with J.S. and other young girls, including his oldest daughter, B.

Shannon Casey was very close to the Erickson family; she knew where Erickson kept a spare key to his house, and she was welcome to stop by any time. On one occasion when Casey stopped by, Erickson was in the bathtub with J.S., Y., and J.S.'s 5-year-old friend S. 6RP 892. Casey knocked on the bathroom door, but it was locked. When Erickson came out of the bathroom, he was clothed, but his hair and beard were wet. 6RP 892. On another occasion, Casey came over and Reina told her that Erickson was giving J.S. and Y. a bath. Casey opened the bathroom door and discovered that Erickson was "naked and wet" in the bathroom with the girls. Erickson "said he would be right down and he shut the door[.]" 6RP 893. Casey did not think anything of these incidents at the time. 6RP 899.

From 2000 until 2002, before J.S. was born and before Erickson married Reina, Karen Skaggs was Erickson's live-in girlfriend. 6RP 828. During that time frame, Erickson's oldest daughter, B., visited Erickson briefly every summer for the July 4th holiday. B. lived with her mother in Phoenix the rest of the year.

B. was 5 or 6 years old during this time period. 6RP 832. During one of B.'s visits, Skaggs came home from the grocery store and needed to use the bathroom, but the bathroom door was locked. Skaggs knocked on the door; she heard splashing, and she heard Erickson say, "Just a minute, just a minute." 6RP 834. When Erickson opened the door, B. was in the bathtub and Erickson was soaking wet and wearing nothing but a towel. 6RP 834. Skaggs was "pretty upset" by what she saw. 6RP 834-35.

Later that day, Skaggs confronted Erickson about the incident. Erickson said "he was just having a bath with her; that it was very natural; that [it] was important that young girls see their fathers naked; that they learn sexuality from their parents[.]" 6RP 836. When Skaggs told him that she did not think it was appropriate for Erickson to be naked in the bath with B., Erickson reiterated that "it was a very natural and proper thing for a father to do." 6RP 840.

Also as previously mentioned, the trial court allowed Skaggs to testify that a couple of months after the bath incident, she found images on Erickson's computer that caused her concern. 6RP 845, 849. Skaggs was very upset and "fairly hysterical" when she found these images, and she confronted Erickson about it. 6RP 849. At

first, Erickson denied knowing anything about them, but "then he got upset and said, Yes, they were his, but it was okay; that this was a natural thing -- that these images were out there to be found[.]" 6RP 849-50. Erickson said such images "were put out there by groups, NAMBLA or MAMBLA; that it was all very natural." 6RP 850. Then Erickson "started to cry and begged [Skaggs] not to do anything about it." 6RP 850. Skaggs left immediately and moved to Indiana. 6RP 850.

Erickson testified in his own defense. He denied molesting J.S., he denied that he bathed naked with young girls, and he denied believing that children should have sex as soon as possible. 7RP 979-80, 999, 1019, 1035-36. Erickson said that the images that Skaggs found on his computer were Shaun's, and that he had never heard of NAMBLA. 7RP 1023-24. Erickson claimed that Shaun was upset on November 15, 2008 because Erickson did not give him a birthday cake. 7RP 969.

**C. ARGUMENT**

**1. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ADMITTING EVIDENCE OF MARKEDLY SIMILAR ACTS AS PROOF OF A COMMON SCHEME OR PLAN.**

Erickson claims that the trial court abused its discretion in admitting evidence that he bathed with B. when she was the same age as J.S. Erickson argues that this evidence was improperly admitted as evidence of a common scheme or plan under ER 404(b). Brief of Appellant, at 12-24. This claim should be rejected. The trial court properly exercised its discretion in admitting this evidence, because Erickson's behavior with both B. and J.S. was remarkably similar, and the evidence showed that Erickson used bathing as an opportunity to be naked with young girls and to provide cover for his criminal acts. Thus, this evidence was probative of a common scheme or plan. In addition, the bathing incidents involving J.S. were admissible to show Erickson's lustful disposition towards J.S., and the fact that a nearly identical incident had occurred with B. was corroborative of J.S.'s testimony. This Court should affirm.

Evidentiary rulings are matters addressed to the sound discretion of the trial court. State v. Atsbeha, 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001). A trial court abuses its discretion in

deciding whether evidence is admissible only when its decision is manifestly unreasonable or is based on untenable grounds. State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999). A reviewing court will find an abuse of discretion only if it finds that no reasonable person would have ruled as the trial judge did. Atsbeha, 142 Wn.2d at 914.

Under ER 404(b), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Evidence of a defendant's past acts of sexual misconduct are admissible under ER 404(b) to show a common scheme or plan where the prior acts demonstrate a single plan used repeatedly to commit separate, but very similar crimes. State v. Sexsmith, 138 Wn. App. 497, 504, 157 P.3d 901 (2007). The prior acts must be "(1) proved by a preponderance of the evidence, (2) admitted for the purpose of proving a common plan or scheme, (3) relevant to prove an element of the crime charged or to rebut a defense, and

(4) more probative than prejudicial." State v. Lough, 125 Wn.2d 847, 852, 889 P.2d 487 (1995).

In cases such as this one "[w]here a defendant is charged with child rape or child molestation, the existence of 'a design to fulfill sexual compulsions evidenced by a pattern of past behavior' is probative of the defendant's guilt." Sexsmith, 138 Wn. App. at 504 (quoting State v. DeVincentis, 150 Wn.2d 11, 17-18, 74 P.3d 119 (2003)). Although the degree of similarity between the acts must be substantial, the evidence need not show a unique method of committing the crime. DeVincentis, 150 Wn.2d at 20-21. Rather, "the trial court need only find that the prior bad acts show a pattern or plan with marked similarities to the facts in the case before it." Id. at 13. Put another way, such evidence should be admitted when it shows that the defendant committed "markedly similar acts of misconduct against similar victims under similar circumstances." Lough, 125 Wn.2d at 855 (quoting People v. Ewoldt, 7 Cal. 4th 380, 399, 867 P.2d 757, 27 Cal. Rptr. 2d 646 (1994)).

The prior acts admitted need not be limited to criminal acts. For example, in DeVincentis, the evidence admitted under the common scheme or plan exception included evidence that the defendant walked around his house in front of his pre-teen victims

wearing nothing but "bikini or g-string underwear." DeVincentis, 150 Wn.2d at 22. Although wearing only underwear in one's own home is not a crime, this evidence showed that the defendant engaged in this behavior "to reduce the children's natural discomfort or negative reaction" to the defendant in a state of undress. Id. A similar case presents itself here.

In this case, there were striking similarities between Erickson's behavior with J.S. and his prior behavior with his oldest daughter, B. Specifically, Erickson used the act of bathing with both girls as an opportunity to be naked with them. As the trial court stated, this was grooming behavior by which Erickson gained access to young girls. 1RP 85-86. This behavior served multiple purposes in furtherance of Erickson's plan to commit criminal sexual acts. For instance, it desensitized the girls to adult male nudity, as was the case in DeVincentis. Indeed, Erickson himself stated that it "was important that young girls see their fathers naked[.]" 6RP 836. In addition, this behavior provided a veneer of plausible deniability for Erickson, because he could claim that bathing with a 5- or 6-year-old girl was "natural" rather than an opportunity for criminal behavior. 6RP 836, 840.

In sum, the trial court exercised sound discretion in ruling that this evidence was admissible to prove a common scheme or plan. Furthermore, the bathing incidents involving J.S. were admissible to prove Erickson's lustful disposition towards her.<sup>4</sup> The trial court should be affirmed for this reason as well.

Nonetheless, Erickson argues that the passage of time between the incident with B. and the incidents with J.S. weighs against admissibility. Brief of Appellant, at 16. Yet, as the Washington Supreme Court has observed, "when similar acts have been performed repeatedly over a period of years, the passage of time serves to prove, rather than disprove, the existence of a plan." Lough, 125 Wn.2d at 860. In DeVincentis, although approximately 15 years had passed between the defendant's earlier conviction for sexual abuse and the new charge of rape, the court held that the evidence of the prior misconduct was relevant to show that he had previously victimized another girl in a markedly similar way under similar circumstances. DeVincentis, 150 Wn.2d at 13. Here, the

---

<sup>4</sup> Evidence of "collateral sexual misconduct" is admissible under ER 404(b) to show a defendant's "lustful disposition" toward the victim. State v. Ray, 116 Wn.2d 531, 547, 806 P.2d 1220 (1991). Such evidence is admissible because it makes it more probable that the defendant committed the charged offense. Id. (citing State v. Thorne, 43 Wn.2d 47, 60-61, 260 P.2d 331 (1953)).

evidence showed that Erickson engaged in strikingly similar behavior with both B. and J.S. between 5 and 6 years apart. The court did not abuse its discretion in holding that this evidence was admissible under ER 404(b).

Erickson also argues that the fact that B. and J.S. were the same age when Erickson bathed with them cannot be considered for purposes of finding a common scheme or plan because the victim's age is an element of the crime with which he was charged. Brief of Appellant, at 18. This argument is both illogical and incorrect. First, the fact that B. and J.S. were both around 5 years old when Erickson was caught bathing with them is one of the factors that make the two incidents substantially similar as required by Lough and DeVincentis. See DeVincentis, at 22 (noting that both the victim of the charged crime and the victim of the prior crime were "prepubescent or pubescent girls," "between 10 and 13 years old"). Furthermore, the victim's exact age is not an element of first-degree child molestation; rather, a victim of this crime may be any age under 12. RCW 9A.44.083. The fact that Erickson specifically chose 5-year-old girls is relevant evidence tending to show a common scheme or plan, and Erickson's arguments to the contrary are unavailing.

Finally, Erickson argues that even if the evidence was relevant to show a common scheme or plan, the evidence still should not have been admitted because it was more prejudicial than probative. His arguments in this regard are that the bathing incident with B. occurred only once, that J.S. was able to testify that she was molested and so the ER 404(b) evidence was not needed, and the trial court's limiting instruction was inadequate to cure any unfair prejudice. Brief of Appellant, at 19-21. These arguments are unavailing.

First, the fact that Karen Skaggs caught Erickson bathing naked with B. on only one occasion does not render the evidence inadmissible. Rather, the fact that Erickson was caught only once speaks to the caution he exercised, as Skaggs testified she discovered Erickson and B. bathing together only because she had come home from the grocery store and needed to use the bathroom right away. 6RP 834. In addition, B. lived in Phoenix and only visited Erickson for a short period around the July 4th holiday, and there were no other 5-year-old girls in Erickson's house at other times of the year until J.S. began staying there several years later. 6RP 832. Therefore, the fact that Erickson was caught

bathing with B. only once was a function of opportunity, not a lack of a common scheme or plan.

Second, the fact that J.S. testified at trial does not render this evidence inadmissible. To the contrary, this evidence was admissible to *corroborate* J.S.'s testimony. The fundamental reason that ER 404(b) evidence of this nature is admissible at all is to show that it is more probable that the criminal sexual acts that the victim describes actually occurred. See DeVincentis, at 21 (observing that "[s]uch evidence is relevant when the existence of the crime is at issue").

Lastly, the trial court's limiting instruction was proper,<sup>5</sup> and it is well-settled that jurors are presumed to follow their instructions.

State v. Ervin, 158 Wn.2d 746, 756, 147 P.3d 567 (2006).

---

<sup>5</sup> The limiting instruction provided:

Certain evidence has been admitted in this case only for a limited purpose. This evidence may be considered by you only for the purpose of determining whether or not the defendant had a common scheme or plan with regard to exposing young girls to sex and/or whether the defendant had a lustful disposition toward J.S. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

This instruction applies to the testimony presented by Ms. Karen Roblee-Skaggs regarding finding the defendant in the bathroom with his daughter, B.E.

This instruction also applies to the testimony presented by Ms. Shannon Casey regarding finding the defendant in the bathroom with J.S.

CP 51.

Accordingly, Erickson's argument that the jury did not follow their instructions is contrary to precedent and should be rejected.

In sum, the trial court exercised sound discretion in admitting relevant, probative evidence showing a common scheme or plan under ER 404(b), and this Court should affirm.

**2. THE TRIAL COURT EXERCISED SOUND DISCRETION IN ADMITTING STATEMENTS ERICKSON MADE IN RESPONSE TO HIS FORMER GIRLFRIEND FINDING DISTURBING IMAGES ON HIS COMPUTER.**

Erickson also claims that the trial court erred in allowing Karen Skaggs to testify that she found "concerning" images on Erickson's computer because this testimony was not indicative of a common scheme or plan under ER 404(b). Brief of Appellant, at 24-26. This claim should be rejected. The incriminating statements that Erickson made when Skaggs confronted him about the images on the computer were admissible as proof of his mental state, and Skaggs's testimony about finding the images on Erickson's computer was necessary to provide context for those incriminating statements. Therefore, although Erickson is correct that the computer images themselves were not proof of a common scheme

or plan, this evidence was not admitted for this purpose in any event.

As noted above, evidentiary rulings are addressed to the trial court's discretion. Atsbeha, 142 Wn.2d at 913-14. A trial court abuses its discretion only when its decision is manifestly unreasonable. Enstone, 137 Wn.2d at 679-80. Put another way, an abuse of discretion means that no reasonable person would have ruled as the trial judge did. Atsbeha, 142 Wn.2d at 914. The trial court acted well within its discretion here.

When Erickson responded to being confronted by Skaggs regarding the images on the computer, after he initially denied knowing anything about them, Erickson told Skaggs that the images were "all very natural," and that they were available from groups such as NAMBLA. 6RP 850. Erickson does not argue that these statements were not admissible. See Brief of Appellant, at 24-26. Indeed, such an argument would be unavailing, as these statements are highly relevant and probative of Erickson's mental state, i.e., that it is "natural" to think of young children as sexual beings who should have sex as young as possible. In other words, this evidence was relevant to prove the mens rea of the crime

charged.<sup>6</sup> Therefore, it was appropriate for the trial court to allow limited testimony from Skaggs that she found images on Erickson's computer in order to explain why she confronted Erickson and to provide context for the incriminating statements that he made in response to that confrontation.

As the trial court observed, Erickson's incriminating statements were the relevant, probative, admissible evidence, not the images on the computer. 1RP 83. Therefore, the trial court exercised its discretion properly in performing an ER 403 analysis and ruling that limited testimony that Skaggs found images on the computer was necessary to provide context, but that any testimony about the nature of the images themselves or the fact that Skaggs called the police to report them would not be admitted. 1RP 83-84.

Nonetheless, Erickson argues that Skaggs's testimony about the images "permitted the jury to convict Erickson using an improper inference," i.e., "because Erickson had sexually explicit images in the past, he must be a person with 'abnormal bent' with a sexual propensity for young girls[.]" Brief of Appellant, at 25.

---

<sup>6</sup> In order to prove the crime of child molestation, the State must prove that the defendant had sexual contact with a child for the purpose of sexual gratification. RCW 9A.42.110(2).

Erickson overstates the significance of Skaggs's limited testimony regarding finding images on the computer. Again, it was not the images on the computer that provided evidence of Erickson's view of children as sex objects. Rather, it was Erickson's own statements, which he repeated to several people, that children should have sex as young as possible, and that it was "natural" for young children to learn about sex from him. 3RP 424-26; 4RP 635-36; 6RP 836, 840, 849-50, 899. Moreover, these statements were not proof of mere propensity, but of the requisite mental state for the crime charged.

In sum, Erickson cannot show that the trial court abused its discretion in allowing limited testimony that Skaggs found disturbing images on the computer to provide context for the incriminating statements that Erickson made when Skaggs confronted him. The trial court's ruling is reasonable and was made on a tenable basis; accordingly, this Court should affirm.

**3. THE STATE CONCEDES THAT ONE OF THE CONDITIONS OF COMMUNITY CUSTODY SHOULD BE MODIFIED AND THAT ANOTHER SHOULD BE STRICKEN.**

Lastly, Erickson claims that the trial court exceeded its statutory authority in imposing conditions of community custody. Specifically, Erickson argues that the trial court erred in ordering that Erickson should not purchase or possess alcohol and that he should not access the internet without prior approval from the Community Corrections Officer or sexual deviancy treatment provider. Brief of Appellant, at 26-34.

Erickson is correct that Former RCW 9.94A.700(5)<sup>7</sup> authorized the trial court to prohibit the consumption of alcohol, but not the purchase or possession of alcohol. Brief of Appellant, at 8. Therefore, the State concedes that condition of community custody no. 22 must be modified, striking the words "purchase" and "possess." CP 69.

---

<sup>7</sup> As Erickson notes in his brief, the Sentencing Reform Act has been substantially revised and recodified since he committed his crime in 2008. The Brief of Respondent cites to the relevant statutes in effect at the time of the commission of the crime.

In addition, Erickson is also correct that this Court held in State v. O'Cain, 144 Wn. App. 772, 184 P.3d 1262 (2008) that prohibiting internet access unless such access is authorized by a sexual deviancy treatment provider is an invalid condition of community custody if the crime at issue did not involve the internet. Although there was evidence that Erickson had viewed sexually explicit images of children on his computer in the past, there was no evidence of such conduct in connection with the crime of conviction. Therefore, the State concedes in accordance with O'Cain that condition no. 23 must be stricken.<sup>8</sup> CP 59.

**D. CONCLUSION**

The trial court exercised sound discretion in making its evidentiary rulings; however, one condition of community custody should be modified and another should be stricken. Accordingly, this Court should affirm Erickson's conviction for child molestation

---

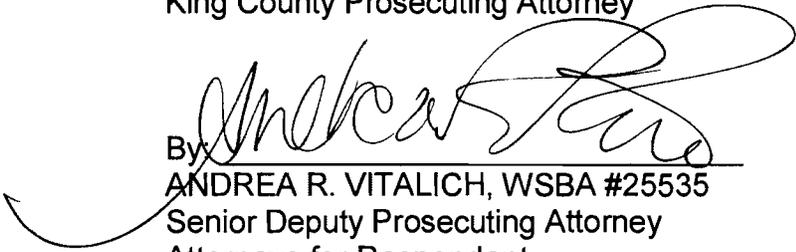
<sup>8</sup> As this Court observed, however, the holding in O'Cain "does not preclude control over internet access being imposed as part of sex offender treatment if recommended after a sexual deviancy evaluation." O'Cain, at 775. Because the evidence showed that Erickson has accessed inappropriate images of children on his computer in the past, it is likely that this will occur.

in the first degree, but remand for entry of an order modifying  
Appendix H of the judgment and sentence.

DATED this 5<sup>th</sup> day of May, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: 

ANDREA R. VITALICH, WSBA #25535  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

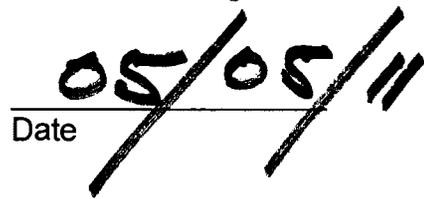
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jared Steed, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JOHN ERICKSON, Cause No. 65935-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name  
Done in Seattle, Washington

  
Date