

NO. 68319-5-I

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

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STATE OF WASHINGTON,

Respondent,

v.

Jaime J. C.P.,  
(a minor child),

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY  
JUVENILE DIVISION

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APPELLANT'S REPLY BRIEF

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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A. ARGUMENT IN REPLY

**1. The admission of K.R.F.'s unreliable, out-of-court statements to her mother violated due process and the child hearsay statute.**

Jaime stands by the argument in his opening brief that K.R.F.'s out-of-court statements to her mother were unreliable and should not have been admitted. Jaime refers the court back to his opening brief in rebuttal of the State's legal and factual suppositions. Further, Jaime takes issue with the State's assertion that the mother's questioning was not suggestive. Resp. Br. at 11. As even the State's recitation recognizes, K.R.F. repeated back to her mother within the structure set forth by the mother's questioning. When her mother asked whether "it was only over the clothes," K.R.F. responded, no, it was under her clothes." *Id.* (citing RP 168). This is suggestive. Further, the mother testified she asked the close-ended question, "But he did touch you or he didn't touch you?" RP 168. To which K.R.F. responded affirmatively. *Id.*

Moreover, the State incorrectly argues that there is no evidence of any reason K.R.F.'s mother might be predisposed to believe her statements accusing Jaime. Resp. Br. at 12. As Jaime's mother testified, K.R.F.'s mother Ms. Flores told Ms. C-P that she did not want

their husbands working together. RP 368-70. Apparently, Ms. Flores did not approve of Jaime's father's interactions with her husband although he provided her husband with work. RP 139-40, 368-70.

**2. The adjudication should be reversed on the separate error stemming from admission of Jaime's custodial statements.**

Jaime's adjudication should be reversed on the independent ground that the court erred in failing to suppress Jaime's custodial statements. Before a statement obtained during custodial interrogation may be used at trial, the State, as the party seeking to admit the statements, and as the party that controlled the circumstances in which the statements were made, has the burden of establishing that any statement obtained was made only after a respondent "knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Miranda v. Arizona*, 384 U.S. 436, 475, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Even more particular care must be taken in admitting statements obtained from juvenile suspects. *In re Gault*, 387 U.S. 1, 45, 55, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967); RCW 13.40.140. A juvenile's custodial statement is admissible only if "it is made clear to the juvenile that criminal responsibility can result and that the questioning authorities are not

operating as his friends but as his adversaries.” *State v. Prater*, 77 Wn.2d 526, 531-32, 463 P.2d 640 (1970) (quoting *State v. Gullings*, 244 Or. 173, 416 P.2d 311, 313-14 (1966)). To be voluntary, a confession must be the product of a rational intellect and a free will in light of all the circumstances. *Mincey v. Arizona*, 437 U.S. 385, 398, 98 S. Ct. 2408, 2416, 57 L. Ed. 2d 290 (1978).

Jaime was in the middle of his school day when he was pulled out of class without parental notification or consultation and led to a small, closed-door office where he was alone with two armed police officers, one of whom was also in uniform. He was questioned for an hour, threatened with a polygraph exam, and provided warnings only orally at first. Jaime was fifteen years old; he had no experience with law enforcement; his parents were not present; and he was confronted with serious allegations of sexual abuse. By the end of the interrogation, Jaime was shaking uncontrollably. His statements were not of free will and a rational intellect in light of the totality of the circumstances.

The State claims Jaime was aware of his rights and refers this court to his testimony that he knew he had the right to remain silent. But the State conveniently omits that Jaime testified he did not pay

attention well and did not understand he had the right to an attorney.

RP 82-83, 87-88.

The State also argues that the two armed officers, one of whom was in uniform, made not threats to Jaime during the interrogation. However, Detective Robinson indeed threatened to subject Jaime to a polygraph test. RP 45, 70. The State apparently claims this was not a threat because Robinson did not state outright “if you don’t change confess your guilt, I will subject you to a polygraph test.” But the clear implication of Detective Robinson’s statement was that he did not believe Jaime and he would subject him to formalized testing unless he changed his story.

Finally, the State does not argue in the alternative that if the statements were improperly admitted the error was harmless. It is the State’s burden to prove an erroneously admitted custodial statement did not contribute to the conviction beyond a reasonable doubt. As set forth in Jaime’s opening brief, the State cannot meet this onerous burden and its lack of responsive argument should be treated as a concession on the issue.

**B. CONCLUSION**

As set forth above and in Jaime's opening brief, Jaime's adjudication should be reversed on two independent grounds: because unreliable child hearsay and Jaime's involuntary confession were improperly admitted at trial.

DATED this 7th day of January, 2012.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I**

|                      |   |               |
|----------------------|---|---------------|
| STATE OF WASHINGTON, | ) |               |
|                      | ) |               |
| Respondent,          | ) |               |
|                      | ) | NO. 68319-8-I |
|                      | ) |               |
| JAIME C-P.,          | ) |               |
|                      | ) |               |
| Juvenile Appellant.  | ) |               |

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF JANUARY, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |   |                   |                                     |
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| [X] | JAIME C-P.<br>15995 CASCADE LN SE<br>MONROE, WA 98272   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

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**SIGNED** IN SEATTLE, WASHINGTON, THIS 7<sup>TH</sup> DAY OF JANUARY, 2013.

X \_\_\_\_\_ 

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