72210-7

72210-7

No. 72210-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

VINCENT MELENDREZ,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

PRO SE SUPPLEMENTAL

VINCENT MELENDREZ
Appellant
#373005, H5A-78U

STAFFORD CREEK CORRECTIONS CENTER
191 Constantine Way
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A. SUMMARY OF ARGUMENT

Pro Se Appellant, Vincent P. Melendrez, hereby agrees to all of the brief of appellant and asks that it be incorporated into the following Pro Se Supplemental. Vincent Melendrez is the father of seven children, whom he raised alone following his divorce. As an employee for Microsoft, Mr. Melendrez worked long hours and relied on his older children to manage the household and care for the younger children in his absence. Much of this responsibility, fell on his oldest child R.M. however, as R.M. got older Mr. Melendrez became concerned about her behavior. After she ran away for several days, he required her to attend school online until her behavior improved. When he threatened to place her in the online program a second time, she made an allegation to her school counselor that Mr. Melendrez had regularly forced her to have sex.

The information was constitutionally deficient and the trial court erred when it denied Mr. Melendrez request for a bill of particulars. At trial, the court violated Mr. Melendrez's constitutional rights when it failed to properly address newly discovered evidence brought forth at trial. It also failed to address evidence brought forth as part of the state's case which included an act of perjury, denied the defense the identity of a witness that

was referred to in the state's case, the newly discovered evidence, and the act of perjury. It also failed to prevent an egregious act of misconduct by the prosecutor when he made a false statement about a defense witness. The trial court also violated Mr. Melendrez's constitutional rights when it required him to testify before the defense witnesses, inadvertently informed the jury he was in custody, permitted a nurse to make a speculative statement beyond her area of expertise and failed to make it clear to the jurors that they must agree on one specific act to find Mr. Melendrez guilty of incest[1] for these reasons, this Court should reverse.

[1] Issues listed are from Brief of Appellant which are referenced in this Pro Se Supplemental. The appellant accepts the Brief of Appellant and asks it be referred to when referenced.

B. ASSIGNMENTS OF ERROR

1. The trial court violated Mr. Melendrez's right to due process when it failed to address defense's request to investigate newly discovered evidence brought forth at trial, which included an unknown male witness.

2. The trial court violated Mr. Melendrez's right to a fair trial when it failed to address evidence introduced by the state as part of its theory of the case that included an admitted act of perjury committed by R.M. as precedent to actions R.M. claimed Mr. Melendrez took, referencing the unknown male witness.

3. The trial court violated Mr. Melendrez's right to due process and confrontation when it determined the identity of the unknown male witness was irrelevant; after having heard defenses request to investigate the newly discovered evidence and having heard evidence brought forth by the state as part of its theory of the case that referenced this unknown male witness which included an admitted act of perjury by R.M.

4. The trial court erred by allowing the state to suggest and declare untruthfulness of a defense witness without providing or intending to provide corroborating evidence or substantiating the claim.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Pursuant to the Due Process Clause of the 14th Amendment, the confrontation clause of the 6th Amendment, and the 14th Amendment right to a fair trial a defendant has the right to obtain and investigate discovery evidence brought forth in a case and must be given the opportunity to confront witnesses pertinent to the evidence introduced; while also having the presumption the court will uphold its obligation to ensure evidence introduced is truthful. At trial, the court failed to address a request by defense to investigate newly discovered evidence which referred to an unknown male witness and after hearing evidence bought forth by the State as part of its theory of the case, that encompassed an admission of a complex act of perjury by R. M. referencing the unknown male witness, the court determined the identity of the witness was not relevant. Did the failure of the court to properly address newly discovered evidence, the failure to prevent or address the introduction by the State of evidence that was part of an admitted act of perjury and the denial by the court as to the identity of the male witness referenced in that evidence deny Mr. Melendrez's right to due process, a fair trial, and Confrontation?

2. Pursuant to the 14th Amendment, a defendant has the right to a fair trial. During trial, the state prosecutor suggested

that defense witness D. M. was not being truthful when testifying and then failed to corroborate the suggestion and informed the court he had no intention to corroborate the suggested untruthfulness. The prosecutor then declared the untruthfulness suggested of Daniel M. to be fact. Did the false statements the prosecutor suggested and declared violate Mr. Melendrez's right to a fair trial?

D. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS

Vincent Melendrez joined the military at age 19 and served in the army for five years. RP 1804-05. He received training in computer networking and communications and used this skill to transition to a civilian position helping serve the military's technology needs. RP 1806. Mr. Melendrez worked long hours and traveled frequently for his job. RP 1807. Married, and with a growing family, he accepted a position in Germany in 2001, which he hoped would allow him to spend more time at home. RP 1808. The job originally offered him a more flexible schedule and the family was excited about exploring Europe together. RP 1808. However, after the 9/11 attacks, things quickly changed and Mr. Melendrez was required to work long hours six days a week. RP 1808. By the time his family returned to the United States three years later, he had seven children and his marriage was strained.

RP 1808, 1810. The family eventually moved back to Alaska to be near his wife's family, but his marriage ended in divorce in 2007. RP 1812.

Mr. Melendrez was awarded custody of all seven children, all of whom were under the age of 12 and one of whom has Down Syndrome. RP 1812, 1843. He moved the children to Bremerton, Washington, where his brother lived, and made arrangements to have his mother, Guadalupe,[2] come up from California to help out. RP 1812-13. Mr. Melendrez was able to slowly transition his job from Alaska to Washington, and began working full time in Washington in January 2008. RP 1818. He rented a house from his brother in Bremerton and changed jobs, starting work at Microsoft in July 2008. RP 1820, 1824. In January 2009, the family moved into an apartment in Bremerton. RP 1820. In March of 2010, the family moved back into the brother's home until later that fall, when Mr. Melendrez moved everyone to an apartment in Renton after his mother returned to California. RP 822, 1824.

Mr. Melendrez typically worked twelve-hour days, five days a week, at Microsoft, and brought work home. RP 1828. Managing this work schedule while also caring for seven children, including one with special needs, required that he schedule the

[2] For purposes of clarity, the other members of the Melendrez family will be referred to by their first names.

kids' daily routines carefully and rely on the older children to assist with household duties and childcare. RP 777, 1961. As the First-born, most of the responsibility fell on his daughter R.M. RP 815, 826-830. R.M. helped her two younger sisters get ready for school, in addition to doing all of the laundry for the family, cooking dinner, and supervising the younger children's homework. RP 827, 830. She also laid out her father's clothes for work and got his bag ready when he worked the graveyard shift at Microsoft from September 2008 to April 2011. RP 828, 1824-25, 1827 Because he was often gone in the evenings, Mr. Melendrez required his children introduce him to any friend they wanted to have over while he was gone, and that they ask permission before inviting the friend over. RP 1872. Upon meeting his children's friends, he confirmed the friend's parents knew where they were and provided his cell phone number so the parents could contact him with any concerns. RP 1872. However, the older kids, including R.M., did not always follow the rules. She invited boys to the home while her father was at work without his permission and reported to family members that she was sexually active with her boyfriend. RP 1537-43, 1925-26.

Mr. Melendrez became particularly concerned about R. M.'s behavior after he learned from his mother that R.M. was "sexting," or sending naked photos of herself to boys using her cell phone,

and R. M. confirmed this was true. RP 1511, 1926, 1972. After the family moved to the apartment in Bremerton, Mr. Melendrez's sons reported R. M. was not sneaking out as often, but had begun inviting boys to the home and spending time alone with them behind closed doors. RP 1974. Mr. Melendrez then learned one of R.M's boyfriends had vandalized a car while the others kids watched. RP 1975. Because he was increasingly concerned about what was happening in the home while he was gone, Mr. Melendrez pretended to leave for work one day in the summer of 2009, and surprised the kids by returning home an hour later. RP 1977-79. Upon entering his bedroom, he saw the sheets had been stripped and his two oldest sons, William and Daniel, informed him R.M. had smoked marijuana and had sex in his bed with her boyfriend after he left. RP 1978. R.M. continued to deny her brothers' reports, but several months later Mr. Melendrez found a note in R.M.'s handwriting in which she told a classmate she had sex with a specific boy. RP 1980. He quickly took her to a clinic so she could speak with a medical professional about practicing safe sex. RP 1982.

In the fall of 2010, Mr. Melendrez grew more concerned about his daughter's behavior. He found evidence R.M. was sexting again. RP 2014. He also received a report card from her school that indicated she was failing her math and science

classes. RP 2016. Her teachers reported that she was not paying attention and talking excessively in class. RP 2016.

Mr. Melendrez grounded R.M. for most of November in Response to the report card and sexting. RP 2017. On Thanksgiving Day 2010, the family had relatives over to celebrate. RP 1682. Mr. Melendrez had to leave after dinner to go to work, and R.M. asked to go out with friends. RP 1682, 2017. He told her no, in part because she had been grounded and in part because he felt she needed to help her brothers clean up from the dinner. RP 2017. R.M. helped clean until her father left, at which point she told her brothers she was going outside to talk to friends and would be right back. RP 1682. The boys finished cleaning and, when R.M. did not return, one of them called Mr. Melendrez to notify him that R.M. was not home. RP 2018. R.M. had gone to a classmate's apartment with friends. RP 873. Mr. Melendrez left work, went home and texted her. RP 2019. When R.M. realized he had caught her lying, she became scared and decided to stay at her classmate's house rather than return home and face punishment. RP 874.

She stopped responding to his text messages and phone calls. RP 875, 2019. She stayed up all night talking with her classmate, and told the classmate how difficult her life was at home, having to adhere to her father's rigid schedule and move

around so often. RP 875. She also told her classmate that Mr. Melendrez had repeatedly sexually assaulted her. RP 875.

Mr. Melendrez took personal leave from work and Reported R.M. missing. 2019-20. R.M. eventually called her father and told him she planned to live with her classmate's family but wanted to return home to pick up her things. RP 881. Mr. Melendrez agreed in order to get her to return home, but as soon as she arrived, he called 911 and had an officer speak with her about running away. RP 2020. In response to this incident, Mr. Melendrez pulled R.M. out of school and enrolled her in an Online program, which she hated. RP 893. She spent the remainder of her sophomore year of high school in the online program, but Mr. Melendrez allowed her to return to school for the start of eleventh grade after her behavior improved and she excelled academically. RP 898, 2032.

However, by that fall, R.M. wanted badly to be free of her family. RP 918. Mr. Melendrez saw her behavior deteriorate. RP 2022. He asked her to go to the post office and she returned three hours later, apparently high. RP 2022-23. He caught her sexting again. RP 2025. On October 3, 2011, he received a call from the apartment manager, who informed him that she found R.M. performing oral sex on a boy in the complex's welcome center bathroom that afternoon. RP 919, 1901, 2026

Based on the testimony of R.M., the events surrounding and including the welcome center bathroom are part of a complex act of perjury R.M. perpetuated up until the first week of trial. RP 920-921, 923, 1062-1066, 1102-1105, 1139-1141, 1144-1145, 1256-1257. According to R.M., when Mr. Melendrez learned about the oral sex act he beat her, made her apologize to her siblings while bloody, and forced her to stay in his bedroom the next day by strategically placing a mattress, ironing board, and shoe against the outside of the door. RP 921, 925-26. However, according to William and Daniel, the door was never booby-trapped and R.M. was actually injured when she got into a physical altercation with another girl at school and a physical fight with Daniel, after she told him she was going to lie and say that Mr. Melendrez had raped her. RP 1516, 1690-92.

Concerned that R.M. had fallen in with a bad crowd, Mr. Melendrez kept R.M. home and contacted the school counselor to try and figure out an alternative to sending her back to the public high school. RP 1299, 2030. On October 5, 2011, R.M. disregarded her father's wishes and returned to school after he went to work, with plans to go live with the classmate she had stayed with the previous Thanksgiving. RP 929. After William confronted her at school and threatened to call Mr. Melendrez, she went to her school counselor and told the counselor Mr. Melendrez

had been regularly having sex with her since 2008. RP 938. The counselor contacted child protective services. RP 1293.

2. PROCEDURAL FACTS

The state initially charged Mr. Melendrez with two counts of second degree rape of a child and one count of first degree incest. CP1-2. However, the State moved to amend the information multiple times after the start of trial, in order to expend one charging period and the alleged location of the sexual assault. CP 57-59, 66-68, 96-98. When the State moved to amend the information a second time, Mr. Melendrez moved for a bill of particulars, but the trial court denied his request. RP 1233, 1235.

At trial, the defense requested to augment a supplemental defense interview the court allowed of R.M. due to newly discovered evidence brought forth by the State but the court failed to address it after reviewing case law cited by defense and a second piece of evidence was brought forth. RP 267-273, 324-325, 439-442. In its case, the State presented evidence that Mr. Melendrez was extremely controlling, and restricted R.M.'s ability to leave the apartment and interact with others after he allegedly began having sex with her. RP 780, 835-37, RP 1121-23, 1221-22. As part of the State's case, evidence was presented surrounding and including events on October 3, 2011 which was

precedent to actions R.M. claimed Mr. Melendrez took. By admission of R.M. The evidence surrounding and including October 3, 2011 was also the subject of a complex act of perjury perpetuated by R.M. in all statements and depositions leading up to the first week of trial. RP 910-11, 918-921, 923-925, 1062-1066, 1102-1105, 1139-41, 1144-1145, 1256-1257.

Mr. Melendrez attempted to defend against the State's allegations by eliciting through cross-examination the name of the unknown male witness whose testimony became relevant after the State presented the evidence of October 3, 2011 but was denied by the court. RP 1102. Mr. Melendrez also attempted to defend against the State's allegations by presenting evidence of R.M.'s misbehavior, which offered an explanation for why he put behavior based limitations in place. RP 75, 112-14. However, the court found most of the evidence was only relevant if Mr. Melendrez first testified that he had imposed punishment as a result of R.M.'s actions. RP 1055, 1661.

As a result, Mr. Melendrez was forced to limit his direct examination of his sons, and present his testimony in fragments among the remainder of his witnesses. RP1498, 1804, 1960, 2085. While limiting Mr. Melendrez's ability to present evidence, the court permitted one of the States witnesses, a sexual assault nurse examiner, to speculate on whether it was

unsurprising to see the remnant of a hymen in a 16 year-old who had engaged in sex one hundred times. RP 1402. During trial, the court also allowed the State to suggest untruthfulness of a defense witness in questioning, then, after attempting to correct the prejudice heard the prosecutor declare the suggested untruthfulness to be fact. RP 1711-12, 1722, RP 1725, 2171. The trial court also inadvertently informed the jury that Mr. Melendrez was in custody when it asked, in front of the jurors, whether the jail had staff available to enable the parties to stay later the following afternoon. RP 1374.

When the court permitted the State to amend its information for a second time, and denied Mr. Melendrez's request for a bill of particulars, it noted the importance of instructing the jury that it must unanimously agree on a specific act in order to find Mr. Melendrez guilty of rape and incest charges. RP 1235. After the jury began its deliberations, it submitted a question to the court, citing these instructions as they related to one count of incest, and asking whether it needed to point to a specific incident or simply agree that an act occurred during the time frame. CP 103. Over Mr. Melendrez's objection, the court refused to answer the jury's questions directly and instead referred them back to the instructions the jurors had cited as confusing. RP 103-04.

Mr. Melendrez was found guilty of all five counts, including one court of second degree rape of a child, one count of third degree rape of a child, two counts of first degree incest, and one count of witness tampering. CP 138. The trial court imposed an indeterminate life sentence with a minimum term of 245 months. CP 142.

E. ARGUMENT

1. MR. MELENDREZ'S CONSTITTIONAL RIGHTS WERE VIOLATED WHEN THE COURT FAILED TO PROPERLY ADDRESS NEWLY DISCOVERED EVIDENCE AND DENIED THE IDENTITY OF THE WITNESS IN THAT EVIDENCE AFTER IT WAS PRESENTED BY THE STATE IN ITS CASE ALONG WITH A COMPLEX ACT OF PERJURY.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense" *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L. Ed.2d 503 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690,106 S.Ct. 2142, 90 L.Ed. 636 (1986)). In essence, this is a defendant's "right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct 1038, 35 L.Ed.2d 297 (2010); *State v. Jones*, 168 Wn.2d 713, 719, 230 P.3d 576 (2010); U.S. Const. Amends. VI, XIV; Const. Art I SS 3, 22.

Washington court rule -CrR 4.7 (H) (2) holds a "continuing duty to disclose. If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such material, and if the additional material is discovered during trial, the court shall also be notified. "Since a key component of this trial hinged on a late discovery of evidence that went to the credibility of R.M. it is also important to cite the definition of perjury which according to RCW 9A. 72. 010 is a "materially false statement" means any false statements oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law." Furthermore, *State v. Spencer 111* Wn APP 401, 45 P. 3d 209 (2002), holds that a "defendant has a constitutional right to impeach a prosecution witness with bias evidence" and "it is reversible error to deny a defendant the right to establish the chief prosecution witness's bias by an independent witness". Although the defendants right to introduce evidence is not absolute, *Jones*, 168 Wn.2d at 720. "Evidence that a defendant seeks to introduce 'must be of at least minimal relevance" *Jones*, 168 Wn.2d at 720 (quoting *State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d. 1189 (2002)). However, "{t}he threshold to admit relevant evidence is

very low. Even minimally relevant evidence is admissible." *Darden*, 145 Wn. 2d at 621. Where the evidence at issue is of high probative value, "no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. Art. 1, § 22." *Jones*, 168 Wn.2d at 720 (quoting *State v. Hudlow*, 99 Wn2d 1, 14, 659 P.2d 514 (1983)). The Court reviews the denial of this Sixth Amendment right de Novo. *Jones*, 168 Wn.2d at 719.

i. *The State did not make information available at the moment of discovery or confirmation.*

At trial, the court allowed a supplemental interview of R.M. in order to address an issue defense brought forth regarding the tampering charge, court VI. RP 266 Lines 9-13. Immediately following that ruling, the defense brought forth information it believed was relevant to a supplemental interview when it informed the court that on the morning of 1-13-14, 7:51 a.m. it received an email from the prosecutor (Mr. Simmons) indicating that on Friday (1-10-14) he had spoken to R.M. and she informed him that she was performing oral sex on a boy on October 3,[3] RP 267. The defense cites *State v. Garcia*, 45 Wn. App 132, which makes clear this kind of information should be made available at the moment of discovery or confirmation as it has a significant

[3] Although the date is October 3, 2011, defense counsel mis-spoke and stated 2010 when bringing this before the court. This was clarified when the state introduced evidence RP 918.

impact on the defense preparation RP 267 lines 14-18. Defense also asks for the prosecution notes from the discovery interview and after review reserves the ability to ask the court to amend or supplement the scope of the supplemental interview RP 268. After hearing from the state as to the nature of the discovery interview and the defense as to the importance of the identity of the boy and of defense's ability to investigate, the court reserves ruling on this newly discovered evidence until he has read the *Garcia* case RP 271.

The court then orders that the state is to summarize the notes in the interview with R.M. and give them to defense counsel.[4] The court also states that if defense counsel is not satisfied with those notes then he is to inform the court. RP 324-325. On 1-21-14, as per courts instructions, defense brings forth another piece of newly discovered evidence found in the summary notes the state provided from the discovery interview on 1-10-14. RP 439-440. Having identified two pieces of newly discovered evidence and the uncontested delay from the state in providing this information it is clear that, CrR 4.7 (H) (2) was not properly followed by the prosecutor in this case.

[4] The prosecutors' notes from the discovery interview were sealed for appellate review RP 632-63.

ii. *The court does not address the defense's request to investigate the initial piece of newly discovered evidence in the supplemental interview.*

In an attempt to remedy the situation, the court allows the defense to investigate the second piece of newly discovered evidence at the supplemental interview but fails to address the initial piece of newly discovered evidence regarding the oral sex with a boy on October 3, RP 267, RP 442. When this evidence was made available to the defense, the defense made it clear to the court it would not be able to mount a proper defense without investigation into this evidence when stating "on this point, as I think the courts now well aware, there's been a consistent denial to the original disclosure, to the police detective, to the school counselor, to CPS, to defense counsel. Included in that was questions about the identity of this boy. The – in the defense interview, Ms. Melendrez claims she could not recall the identity of the boy, we lived with that. However, especially in light of the denial, now we have a 180-degree situation and the identity of this individual is far more significant. And so with respect to the defense's ability to investigate, especially where credibility of the complainant is at the heart of the case, defense has to be able to perform anything necessary, and that would include an investigation." RP 269-270. When asked by the court why it is now more important we talk to this individual. RP 272. The

defense responds that there would be confirmation an act did occur, which was precedent to other actions R.M. will claim the defendant took, and that this boy would have information relating to the behavior based issues of R.M. that were responded to by her father. RP 272 Lines 7-16. The defense went on to stress the difficulties in investigating the case to that point noting this boy is the first person R.M. admits to relations with as further justifications. RP 272-273. By failing to properly address the late discovery of evidence, having heard ample justification of relevance for further investigation by the defense, the trial court violated Mr. Melendrez rights to due process and a fair trial. This court should reverse.

iii. ***R.M. testifies that she knowingly withheld evidence at defense interview and admits to complex act of perjury in all previous depositions, statements and interviews relating to the events of October 3, 2011 which includes the newly discovered evidence identified in sections i & ii as part of the state's case.***

At trial, the state presented its theory of the case that Mr. Melendrez was an incredibly controlling father who isolated R.M. in order to sexually assault her. See Brief of Appellant Argument 1 section a. i. pages 17-20. As part of the state's theory of the case, the state brought forth evidence surrounding and including events on October 3, 2011, which encompassed the newly discovered evidence, see sections i & ii, of R.M. performing

oral sex on an unknown male boy. RP 910-911, RP 918-920. According to the narrative provided by R.M., Mr. Melendrez reacted to these events by beating her and confining her to the apartment. RP 921, RP 925. The significance of this evidence to the defense's case is not just the admission of a sex act but the entire series of events surrounding the act as well, this is made clear from R.M.'s own testimony when testifying to the events on October 3, 2011, R.M. admitted to lying to the apartment manager who witnessed some of the events on October 3, 2011 and gave the apartment manager a false name as well. RP 921, RP 1124. R.M. Also admitted to lying to Mr. Melendrez and her grandmother (Guadalupe Melendrez) about the incident. RP 920, RP 1144-1145.

In further testimony, R.M. admitted to lying in the statements she gave to police detectives investigating the case, CPS and the school counselor on October 5, 2011, having later admitted she invented a character who was not present (girlfriend) and actions which did not take place and perpetuating this complex act of perjury for 2 years to at least 5 attorneys on 2 separate occasions which included CPS persons as well. RP 923, RP 1062-1066, RP 1103-1105, RP 1256-1257. When asked specifically if she was aware she lied at the recorded

interview on January 23, 2013 R.M. indicated "yes". RP 1139-1141.

When defense counsel asked whether she withheld the name of the boy at the June 2013 defense interview R.M. indicated "yeah". RP 1102. Whether one believes R.M.'s testimony that she committed and perpetuated an act of perjury in 2 years of statements, depositions and interviews or if one believes her testimony at trial was perjured to make her story more believable or if the truth is some variation thereof, neither version of events can be fully corroborated without this unknown male witness. Since R.M. admitted to knowingly with holding evidence and a complex act of perjury in her own testimony, all evidence from R.M. testimony, brought forth by the state at trial, is called into question. Especially since R.M.'s re-counting of events was so considerably different than that of R.A. who was the only other state witness who had allegedly had knowledge of the allegations prior to October 5, 2011. R.P. 755-758. R.P. 1176-1182. When asked by defense if she knew what her brothers were going to testify to and if she knew that they going to have testimony quite different than hers, R.M. stated 'yes' R.P.1258. In review of *State v. Larson*, 160 Wn App, 577, 249, P 3D 669 (Div.3 2011) a "conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must

be set aside if there's any reasonable likelihood that the false testimony could have affected the judgement of the jury" see also; *U.S. v. Lapage*, 231 F.3D 488 (9th cir 2000), *U.S. v. Polizzi*.. 801 F. 2d. 1543 (9th circuit 1986), *U.S. v. Bagley* 105 S.Ct. 3375, 3382 (1985), *U.S. v. Agurs* 96 S.Ct. 2392 (1976). Since the evidence presented by the state was the subject of an admitted act of perjury as well as with holding of evidence and cannot be fully corroborated without the unknown male witness the evidence must still be considered perjured. This court should reverse.

Although it is clear the state knew the evidence it presented surrounding and including events on October 3, 2011 was the subject of an admitted act of perjury, "Even if the state unwittingly presents false evidence." *U.S. v. Young* 17 F. 3d 1201, 1204 (9th circuit 1994). This court should reverse.

iv. *The trial court abused its discretion when it ruled the identity of the unknown male witness was not relevant in relation to evidence presented as part of the State's case which included a complex act of perjury.*

After R.M. admitted she knowingly withheld the name of the boy at the June 2013 defense interview, the defense asks what's the name of the boy she was with on October 3, 2011, to which R.M. responded, "Why is it relevant?" R.P 1102. The state then objected to the relevance and after having heard from defense as to the significance of this individual to provide confirmation an

act did occur on October 3, 2011 and having heard the testimony in the state's case that this act was precedent to actions R.M. claimed the defendant took and having heard testimony from R.M. That this was the only boy she kept talking to giving defense a good faith belief this boy could provide information relating to behavior based issues R.M. committed, all of which was the subject of an admitted act of perjury and critical to defenses ability to mount on proper defense to the state's case, the court sustained the objection. RP 267, RP 269-270, RP 272-273, RP 910-911, RP 918-921, RP 923, RP 925, RP 1062-1066, RP 1102. By not allowing Mr. Melendrez to obtain and present crucial testimony regarding R.M. credibility/bias from the unknown male the trial court abused its discretion when it ruled the identity of the unknown male witness was not relevant. As previously cited in *Spencer, Jones, Darden*, and all other applicable case Law in this argument, Mr. Melendrez was entitled to fully explore any bias or motive on the part of R.M. and whether she had falsely accused him of the crimes for which he was charged and convicted. By limiting Mr. Melendrez's ability to establish this record from which to argue his theory of the case, the trial court denied Mr. Melendrez his constitutional right to confrontation and a fair trial. This court should reverse.

2. MR. MELENDREZ WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHEN THE PROSECUTOR WAS ALLOWED TO SUGGEST UNTRUTHFULNESS OF DEFENSE WITNESS D.M., INFORMED THE COURT HE HAD NO INTENTION TO CORROBORATE OR SUBSTANTIATE THE CLAIM, AND THEN STATED THE SUGGESTED UNTRUTHFULNESS WAS FACT.

The 14th Amendment of the Constitution allows for a defendant to have a fair trial. *State v. Jungers*, 106 P.3d.827, 125 Wn. App. 895, holds that a "fair trial is denied when the prosecutor makes improper comments and there is a substantial likelihood that the comments affected the jury verdict. Nothing short of a new trial can insure that the defendant received a fair trial." In *State v. Babbich* 68 Wn. App 438. When council elicits testimony from a witness and in the process of asking questions "who implies the existence of a prejudicial fact must be prepared to show it" See also; *State v. Miles* 139 Wn. App 879, *State v. Babbich* 68 Wn. App 435, *State v. Beard* 74 Wn 2d 335; U.S. Const. Amends. XIV. at Trial, the State prosecutor asked defense witness D.M. questions that implied he was not being truthful when he testified that R.M. told him "she was going to tell the counselors and the police that she is getting raped and abused by dad!" RP 1691-1692, RP 1711-1712. The defense then objects and asks the objection be heard outside the presence of the jury. RP 1712.

In the discussion that follows, defense counsel makes it clear to the court that the questions the state asked suggest D.M. did not tell others, where others refers to persons in a professional capacity who would have taken a statement, and as a result implies impeachment, when there are no other statements that were given by D.M. to anyone. So no emission by D.M. could have occurred. Defense also cites case law showing the court this is misconduct. RP 1713-1718. The court agrees with defense and after further discussion states, "I think the way it needs to come out is in a manner not to imply that any statements were or were not given" RP 1719-1722. When the court asks the prosecutor if he can back up and do that, the prosecutor responds that he can ask the witness after the statement on the 5th (October 2011) "Did you ever sit down with anybody and were you interviewed formally about your knowledge or involvement of this case?" My understanding is he will say no. RP 1722 Lines 8-14. Based On this statement the prosecutor makes it clear that the questions he asked D.M., regarding being around the social workers and CPS folks and "you never told any of them hey, my sister told me she was going to make this up"?", was deliberate misconduct to prejudice the jury to the credibility of the defense witness and thereby the defense case, having no good faith basis to believe any statements were made when D.M. was around those professionals.

In an effort to correct the situation the court agrees the state can ask the question of whether D.M. was sat down and had a formal interview about his knowledge of the case after October 5, 2011and prior to July 11, 2013, to which D.M. responded that he was not RP 1725.

Later in the trial the prosecutor declares D.M. was being untruthful in his statement at the interview on July 11, 2013 and during trial when, referring to the testimony by D.M. that, "my sister told me she was going to lie," by stating "He didn't tell anybody that because it didn't happen." RP 2171 Lines 1-3. After the state confirmed, based on his own knowledge and that of D.M. testimony that no statement exists or was asked for, when around the social workers and CPS folks, the state exacerbated the misconduct by making a false statement to the jury thereby prejudicing the defense case! As cited above in *State v. Babbich*, and this case, as referenced in *State v. Espey* 336 P. 3d 1178, 184 Wn App. 360 (Div 2 2014); the error was incurable and substantially likely to affect {the} jury verdict, as argument attacked defense witnesses credibility by creating the inference that defense witness was lying. Credibility was at the heart of this case and this defense witness testimony was critical to the defense's case. This court should reverse.

F. CONCLUSION

This court should reverse Mr. Melendrez's conviction for several reasons. First, in relation to issues brought forth in this Pro Se Supplemental it is clear the unknown male witness, see Argument 1, could have provided valuable evidence to the defense's case. Given the evidence introduced as part of the state's case and the admission of a complex act of perjury, it is unfair and unreasonable for the trial court to rely solely on R.M. version of events for October 3, 2011. As an example, in the original version of events that R.M. stated were fact in statements, depositions, and interviews leading up to the first week of trial, the unknown male witness came in to the bathroom at the Welcome Center of the Windsor Apartments while R.M. was in the bathroom with a girlfriend, while standing by the sink, when the boy came in and asked for oral sex to which R.M. said "No" and then the boy left RP 1104.

In this version of events the unknown male witness has a significant role because it could be this girlfriend actually was in the bathroom and left after the boy came in. Although the apartment manager (Bertha Antocci) did see only the boy and R.M. come out of the bathroom, RP 1903, there is no other witness to confirm whether there was another girl in the bathroom prior to the apartment managers' arrival, except for this unknown male

witness. R.M. consistently denied knowing anyone in depositions and statements leading up to the trial, RP 272-273, but could it be this girlfriend would have knowledge otherwise or even this unknown male witness? By her own admission, if it can be believed, this unknown male witness was the only boy R.M. kept talking to and indicated she had spoken to him prior to October 3, 2011. RP 910-911. If this is true then, is it possible this unknown male witness has knowledge of other relations of R.M. including himself, that could have provided information contradictory to the state's case that Mr. Melendrez isolated R.M. to sexually assault her? Is it possible this unknown male witness has knowledge of the means and motive to fabricate the allegations that led to the conviction of Mr. Melendrez? The answer is "yes". Otherwise why not provide the name? Is it because the true facts of the case would be revealed? The defense attempted to investigate and bring forth evidence in the case, but because of the rulings of the court they could not.

Second, as shown in the final issue of the Pro Se Supplement, the state committed an egregious act of misconduct by declaring a defense witness was being untruthful. Credibility was at the heart of this case and the state knowingly prejudiced the jury to the defense by making a false statement he admitted earlier in the trial he knew was not true.

Finally, although the issues in this Pro Se Supplemental are each in of themselves basis for reversal of Mr. Melendrez's convictions, the 8 issues listed in the Brief of Appellant are further cause for reversal. None of the errors in the Brief of Appellant or in the Pro Se Supplemental are harmless errors and cumulative effect was cited and is obvious as an issue. This court must reverse.

Dated this 4th of July, 2015

Respectfully submitted,

Vincent P. Melendrez
Appellant.