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Court of Appeals
Division I
State of Washington NO. 72799-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

YUSSUF ABDULLE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE THERESA B. DOYLE

BRIEF OF RESPONDENT

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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	2
a. General Trial Testimony	2
b. Expert Testimony Regarding Prostitution	12
c. Trial Testimony Regarding UFED	18
C. <u>ARGUMENT</u>	21
1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED RELEVANT EXPERT TESTIMONY ON PROSTITUTION PRACTICES	21
a. Expert Testimony Was Relevant	21
b. Any Error Was Harmless	27
2. THERE WAS SUFFICIENT EVIDENCE OF AUTHENTICATION AND RELIABILITY	29
D. <u>CONCLUSION</u>	34

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Benn, 120 Wn.2d 631,
845 P.2d 289 (2000)..... 27

State v. Black, 109 Wn.2d 336,
745 P.2d 12 (1987)..... 21, 22

State v. Bradford, 175 Wn. App. 912,
308 P.3d 736 (2013)..... 30, 31, 32

State v. Brown, 132 Wn.2d 529,
940 P.2d 546 (1997)..... 30, 34

State v. Halstein, 122 Wn.2d 109,
857 P.2d 270 (1993)..... 27

State v. Hayward, 152 Wn. App. 632,
217 P.3d 354 (2009)..... 27

State v. Magers, 162 Wn.2d 174,
189 P.3d 126 (2008)..... 22

State v. Mak, 105 Wn.2d 692,
718 P.3d 407, cert. denied,
479 U.S. 995, 107 S. Ct. 599,
93 L. Ed. 2d 599 (1986)..... 22

State v. Myers, 133 Wn.2d 26,
941 P.2d 11102 (1997)..... 28

State v. Payne, 117 Wn. App. 99,
69 P.3d 889 (2003), rev. denied,
150 Wn.2d 1028 (2004)..... 29

State v. Simon, 64 Wn. App. 948,
831 P.2d 139 (1991), rev'd in part on
other grounds, 120 Wn.2d 196,
840 P.2d 172 (1992)..... 12, 24, 25, 27, 28

<u>State v. Stenson</u> , 132 Wn.2d 668, 940 P.3d 1239 (1997), <u>cert. denied</u> , 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998).....	22, 27
<u>State v. Williams</u> , 136 Wn. App. 486, 150 P.3d 111 (2007).....	29, 30
<u>State v. Yates</u> , 161 Wn.2d 714, 168 P.3d 359 (2007), <u>cert. denied</u> , 128 S. Ct. 2964 (2008).....	12, 21

Rules and Regulations

Washington State:

ER 104	29
ER 401	22, 23
ER 403	22
ER 702	22
ER 901	30

A. ISSUES PRESENTED

1. Yussuf Abdulle was charged with two counts of commercial sex abuse of a minor, assault in the second degree and unlawful imprisonment. At trial, the State presented expert testimony regarding general practices of the pimp/prostitution relationship, culture and business. Has Abdulle failed to show an abuse of discretion where the trial court found the expert testimony to be relevant and helpful to the trier of fact?

2. The State presented evidence of a cell phone report, consisting of text messages, call history and contact information, obtained using a universal forensic examination device (UFED). Where there was testimony supporting the UFED's operation, function and results, including corroborating witness testimony, did the trial court properly find that the report was authenticated under the rules of evidence?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Yussuf Abdulle was charged by amended information with two counts of promoting commercial sex abuse of a minor, unlawful imprisonment and assault in the second degree. CP 1-2. Between February and March of 2013, juvenile runaways, B.I. and A.P., lived

with Abdulle at his West Seattle apartment in exchange for their earnings as prostitutes. CP 4-10. A jury found Abdulle guilty of two counts of promoting commercial sex abuse of a minor and acquitted him of the unlawful imprisonment and assault. CP 59-62. Abdulle was sentenced to 189 months in prison, and community custody of 36 months. Abdulle now appeals his convictions.

2. SUBSTANTIVE FACTS

a. General Trial Testimony.

B.I. was born in July of 1996. RP 600. In the 10th grade, B.I. dropped out of school, left her family and began living with friends. RP 602-03. At fifteen years old, she began prostituting in Burien to support herself. RP 605.

A.P. was also born in July of 1996. RP 440. Her mother, Maria, once worked as a pre-school teacher but became a full-time caretaker for her disabled granddaughter. RP 269. Maria and her daughter had a difficult relationship. By the 11th grade, A.P. dropped out of school and began staying with her boyfriend and older sister. RP 447-49.

In February of 2013, through her friends, B.I. met Abdulle who introduced himself as "Derrick." RP 609. Needing a place to stay, she called "Derrick" a couple of days later and moved into his

apartment located at 8840 Delridge Way SW, apartment 201.

RP 617, 1430. Coincidentally, A.P. split from her boyfriend and had nowhere to go. RP 460. A.P., having previously met B.I., saw her in Burien and told B.I. she needed a place to stay. Id. B.I. told A.P. she would talk to her friend "Derrick" and see if A.P. could stay at his apartment. RP 460-61 (A.P.), 631-32 (B.I.). The next day, after B.I. spoke to "Derrick," "Derrick" drove to Burien and picked up both B.I. and A.P. in his car. RP 460-61 (A.P.), 631-32 (B.I.).

Abdulle introduced himself to A.P. as "Derrick." RP 467. He asked A.P. if she knew what she was doing, "like going out and making these jugs," and that he would not set her up with a "jug" just to have her run off. RP 463-66.¹ After assuring "Derrick" she would not leave, "Derrick" and A.P. left B.I. at a Jack in the Box in Tukwila where she met a "jug." RP 469. A.P. and "Derrick" returned to the apartment where "Derrick" told A.P. he wanted B.I. to take pictures of her and that he would "call some jugs," and "get things going from there." RP 475-76. It didn't take long before he made appointments for A.P. RP 482-83. He arranged her dates, set the price, and told her to look "cute." Id., RP 500-01. Both B.I. and A.P. had their own cell phones: B.I.'s number was

¹ A "jug" is a date for a prostitute. RP 166.

"206-478-0346" and A.P.'s "206-380-2223." RP 542, 647.

"Derrick" communicated with A.P. and B.I. using a phone number of "206-673-0684." RP 482 (A.P.), 542 (A.P.), 911-12 (Washington).

A.P. and B.I. shared a bedroom in the apartment for a few weeks, while Abdulle slept on the living room sofa. RP 474-76 (A.P.), 632-33 (B.I.), Exhibits 9-14. A.P. met with a total of six "jugs" arranged by "Derrick" receiving \$120-\$130 to have sexual intercourse with them. RP 499-500. She would later split money with "Derrick" back at his apartment. RP 502, 503-04. B.I. claimed she worked independently, arranged her own dates, kept her earnings, and never paid rent. RP 684-86. According to A.P., however, B.I. argued with "Derrick" about money and was eventually kicked-out of the apartment a couple of weeks after A.P. moved in. RP 505. Before leaving, B.I. gave "Derrick" a cell phone worth \$100 and money to cover gas expenses for driving her to meet a date. RP 513-14, 653-57, 673.

A.P., however, continued living with Abdulle and making "jugs." Although he did not physically strike A.P., he pointed a gun at her and threatened to kill her if she tried to leave. RP 520-21. A couple of days later, "Derrick" offered A.P. a pill called "phizz." RP 515-17. Because "Derrick" had often offered B.I. and A.P. pills

before, A.P. ingested it. Id. Shortly after, A.P. lost her appetite, vomited, cried and could not sleep. Id. The next morning, A.P. left the apartment and walked to a nearby convenience store where she called 911. RP 515-17. An ambulance arrived and took A.P. to Swedish Hospital on March 14, 2013, where she was treated and connected with social worker, Jennifer Cruze. RP 1106.

A.P. initially reported she had been staying with her father, but the following day disclosed she was homeless and depressed. RP 1113, 1133-34. A.P. did not tell Cruze she had been staying with "Derrick" or prostituting. RP 1111-14. Cruze requested a children's crisis outreach advocate to meet with A.P. RP 1116.

Sheronda Duncan, an advocate from the Real Escape From The Sex Trade, met with A.P. prior to her discharge from the hospital on March 15, 2013. RP 1116, 1156, 1164-65. At that time, A.P. disclosed to Duncan she had been prostituting and needed help retrieving her clothing. RP 1169. After A.P. coordinated with "Derrick" by phone, Duncan drove A.P. to his apartment in West Seattle. RP 531, 1170-74. Duncan watched from her car as A.P. met with a man who appeared to be Ethiopian and walked with a distinctive limp. RP 1174-81. (Duncan recognized that Abdulle exhibited the same limp while walking in the courtroom.

RP 1194-95.) A.P. entered the apartment and returned to Duncan's car with her belongings. RP 1183-84.

On April 11, 2013, Det. Maurice Washington met with A.P. at Youthcare services in Seattle after receiving a report from A.P.'s mother, Maria, that A.P. had been prostituted by a pimp. RP 762-63. Maria had seen text messages on A.P.'s phone asking her to return to prostitution. RP 290. A.P. agreed to be interviewed by Washington and disclosed that she and B.I. had been prostituted by "Derrick" while living in his apartment in West Seattle. After the interview, A.P. took Washington to "Derrick's" apartment in West Seattle. RP 769-71.

A.P. identified two vehicles parked at the apartment which were associated with "Derrick." RP 771-73. Washington documented the license plate and vehicle identification number from a tan Buick and a silver Buick. RP 772. A.P. also gave Washington her cell phone for purposes of a forensic examination. RP 790. Using a universal forensic examination device (UFED), Washington later successfully extracted phone data from A.P.'s phone. RP 807.

Washington then searched and located photos of B.I. through social media. RP 808. On April 23, 2013, with the

assistance of other officers, Washington located B.I. in Burien sitting at a bus stop. RP 814. Because there was a "missing person report" and an active warrant for B.I., Washington placed her under arrest. Id. Without informing B.I. of his investigation involving A.P. and "Derrick," Washington asked B.I. where she had been and whether she needed to retrieve her phone and belongings. Id. He drove B.I. to a nearby apartment where she grabbed a few personal items. RP 815-16.

B.I. was then taken to Washington's office where she agreed to be interviewed regarding her connections to A.P., "Derrick" and the apartment on "Delridge." RP 817. Following the interview, B.I. took Washington to the same apartment in West Seattle that A.P. had identified. RP 821-22. Like A.P., she pointed out the tan and silver Buick cars parked outside the apartment as cars driven by "Derrick." Id. B.I. then provided her phone to Washington for a cell phone examination, which was examined using a UFED. RP 829.

Later, during the course of the investigation, B.I. identified Abdulle as "Derrick" in a photo montage. RP 672-73, 966-67, Exhibit 23. Washington reviewed the results of the UFED reports from B.I. and A.P.'s phones. Washington discovered a text message in March sent from "206-673-0684" to A.P.'s phone telling

her "Yo Asian guy and white guy ready tomo. Let me know am good with Bitch." RP 991-93, Exhibit 40-41. After returning A.P.'s phone, A.P. later received texts on May 3, 2013, again exchanged with the number "206-673-0684." RP 1034. The text message requested A.P. to return to work. RP 911-12. Washington met again with A.P. and after confirming the number belonged to "Derrick," Washington kept A.P.'s phone and continued texting with "Derrick." Id. The same phone number had also been stored in B.I.'s phone under "answer don't."² RP 1021, Exhibit 39.

On May 6, 2013, posing as A.P., Washington arranged for a meeting with "Derrick" by text message using A.P.'s phone. RP 918. With the assistance of officers and detectives, Washington arranged to have A.P. meet with "Derrick" at a local convenient store, Super 24, located on S.W. Delridge Street in West Seattle. Id. With A.P. in his unmarked patrol car, Washington watched as A.P. sent text messages to "Derrick" at "206-673-0684." RP 919-20. Prior to his arrival, "Derrick" indicated he was driving a white Honda. RP 547. Shortly after, A.P. recognized "Derrick" as he drove by, alone, in a white Toyota Camry. RP 929, 1090, 1206.

² B.I. testified she had stored "Derrick's" phone number in her phone. Although B.I. could not recall whether she stored his number under the name, "Derrick," his number was found in her phone with a contact name of "answer don't."

"Derrick" initially drove past the convenient store toward Finlay Street before turning around. RP 1090-91. As he approached a second time, he entered the Super 24 parking lot behind the store and pulled around to the front. Id. After the car had stopped, Washington instructed A.P. to continue to send text messages to "Derrick" in an effort to stall. RP 928. After witnessing their text exchange for another minute, Washington gave officers permission to approach the white Camry driven by "Derrick." RP 929. "Derrick" was ordered out of the car and on the ground before being arrested. RP 1207-08. After officers pulled him up, a cell phone was found where "Derrick" had been lying. RP 1208-08. Washington drove A.P. to the arrest location and she positively identified the arrested driver as "Derrick." RP 930-31.

Washington returned to his office and requested search warrants of the S.W. Delridge apartment and for the Buick cars. RP 934-35. After a search warrant was granted, photographs of the apartment were taken and miscellaneous items were collected. RP 1094-98, Exhibits 9-14, 43. A search of the tan Buick yielded an auto insurance policy for "Yussuf Abdulle" and a yellow receipt with the name "Derrick." RP 956. Washington took photos of

"Derrick" following his arrest and asked B.I. if she recognized him. RP 964. Without hesitation, B.I. identified Abdulle as "Derrick." Id.

Washington then attempted to extract cell phone data from the phone recovered during Abdulle's arrest. RP 997. The UFED, however, was unable to connect to the phone. RP 998.

Washington then performed a manual extraction of cell phone information by photographing frame by frame the phone call history, text message history and contact list manually. RP 1000-01, 1004. Washington was unable to turn on the phone recovered from the Camry and did not perform an extraction until later in the investigation.

Washington called the number for "Derrick" and the cell phone began ringing. RP 1005. In searching the contacts list, Washington found A.P.'s phone number, "206-380-2223," stored under the name "Emily." RP 1006. The call history showed several calls to A.P./"Emily" specifically on May 6, 2013, the day Abdulle was arrested. RP 1007. Washington reviewed incoming text messages and discovered several dated May 6, 2013, from "Emily." RP 1009, Exhibit 49. Washington recognized the messages as those sent by A.P. prior to Abdulle's arrest. RP 546-48, 1010-16.

He also located several messages to "Emily" in response.

RP 1005-17. Exhibit 49.

Emily at 6:01 p.m.: what's up, you ready to meet? i'm free.
Derrick at 6:02 p.m.: am on my way home now. I call you in
a little bit.
Emily at 6:06 p.m.: Super 24
Derrick at 6:07 p.m.: ok my nigga.
Emily at 6:23 p.m.: where you at nigga?
Derrick at 6:23 p.m.: pass the old 7-11
Emily at 6:26 p.m.: ok nigga
Derrick at 6:27 p.m.: one minute nigga
Emily at 6:28 p.m.: ok nigga. what kind of car you in,
nigga so I'll know when to walk.
Derrick at 6:29 p.m.: you got lighter?
Emily at 6:30 p.m.: yeah I do.
Derrick at 6:30 p.m.: white Toyota come out

RP 1013-17.

A second phone was recovered in Abdulle's white Camry and was also examined with the aid of a UFED. RP 1034-35. Approximately 10-12 text messages exchanged with A.P.'s phone number and 6-8 messages related to B.I. were recovered. RP 1034, 1056, Exhibit 52. Washington specifically located a text message conversation on February 19, 2013, where Abdulle told a potential client that he had a "girl" who looked young and would be turning 18 in July. RP 1257. The client replied, "perfecto" to which Abdulle responded "she will obey." RP 1259. When the client further commented "she's cute," Abdulle replied "you want I bring

her.” Id. This corroborated the fact that B.I. told Abdulle she was born in July and was “almost 18.” RP 620.

Abdulle testified and claimed he was not “Derrick” and never met A.P. and B.I. He also presented witnesses (consisting of his sister, a former high school mentor, and best friend) who denied having seen Abdulle with A.P. or B.I. at any time. Abdulle also testified to the same and said that he worked as a taxi driver. RP 1430-38, 1458-76. Abdulle also denied ever using the name “Derrick” or that he had a phone number associated with “Derrick.” Id.

b. Expert Testimony Regarding Prostitution.

The admissibility of Det. Joel Banks’ testimony regarding the pimp/prostitute relationship was first litigated during pre-trial motions. RP 44-55. The State sought to introduce expert testimony from Det. Banks -- a police officer and vice detective for nearly 19 years -- regarding the pimp/prostitution business, terminology, relationship and the culture of the business.³ CP 94-99. The State contended expert testimony was not only relevant to Abdulle’s alleged acts of commercial sex abuse, but was

³ The State relied on two cases: State v. Simon, 64 Wn. App. 948, 964, 831 P.2d 139 (1991), rev’d in part on other grounds, 120 Wn.2d 196, 840 P.2d 172 (1992); State v. Yates, 161 Wn.2d 714, 767, 168 P.3d 359 (2007), cert. denied, 128 S. Ct. 2964 (2008).

outside the common knowledge of the jury and helpful to the trier of fact. Id., RP 44-45, 49-51.

Abdulle argued to exclude expert testimony on the basis that the pimp/prostitution business was within the common knowledge of jurors and such testimony improperly permitted the jury to conclude the defendant was engaged in the prostitution. RP 51-52. Abdulle also argued that the victims could likely demonstrate sufficient knowledge of prostitution practices based on their experience as prostitutes and thus expert testimony was unnecessary. RP 52.

The trial court ruled Det. Banks was an expert based on his extensive background and experience and found his testimony relevant because the topic would be outside the common knowledge of jurors. RP 53. The court also determined that expert testimony would be helpful to the trier of fact, finding:

Then my next question would be whether this information would be helpful to the trier of fact. And I do appreciate the Defense position with respect to relevance. However, an expert needn't be strictly necessary for a party's case. The question is whether that evidence would be helpful to the trier of fact. And this clearly an area where I think most jurors have very limited, if no information or experience. And so for those reasons, I think, it would be helpful for them to hear about, for example, recruiting, typical living arrangements, the business arrangements between the sex worker and the pimp. How that's determined, how the dates are setup, all of

that I think, would be helpful to the trier of fact in addition, to, of course, the particular terms used that may be unfamiliar to jurors.

RP 53-54. The State, however, was precluded from offering any opinion testimony that the defendant “must have been a pimp” or potential “profile testimony.” Id.

At trial, Det. Banks testified regarding his experience as a patrol deputy and vice detective. RP 147-80. During his career, prostitution expanded from street walking to the internet via websites like backpage.com and craigslist.org. Id. Det. Banks estimated that eighty percent of women engaged in prostitution were juvenile girls and many have reported being runaways or dropping out of school. RP 154.

After defining several terms used in the prostitution business, he began to testify regarding recruitment of young women. RP 165-68. Before eliciting further testimony, the trial court sustained a defense objection and ultimately limited the State to asking a few questions in the areas of common rules between a pimp and prostitute, consequences for violating those rules, profit

sharing, fee and money agreements, and how pimps communicate/track their prostitutes.⁴

Banks then testified that pimps screen dates by text message, provide license plates to prostitutes, keep all of the money and do not allow their prostitutes to look at other pimps. RP 177-78. If a rule is broken, a prostitute is subject to public humiliation such as forced public sexual acts. Id. Pimps use a "bottom bitch," a female prostitute, to enforce punishment on other prostitutes when a rule is broken, and also to provide transportation for prostitutes to their dates. RP 179.

On cross examination, Abdulle questioned Banks' expertise on the terminology used in the prostitution/pimp culture and East African culture. RP 181-84. Although Banks admitted he was unfamiliar with the East African pimp culture, he testified that common terms may still be shared. Id. Abdulle then elicited testimony regarding prostitution practices, customers, manipulation by prostitutes to receive benefits from social service organizations

⁴ Abdulle objected when the State sought to elicit testimony regarding additional recruitment tactics. The court sustained the objection and excused the jury. RP 168-69. Abdulle again objected to relevance and the State made an offer of proof that the anticipated testimony from the victims would reveal that Abdulle offered the victim his apartment in exchange for their work as prostitutes. RP 169-74. The trial court ultimately limited the scope of examination. RP 175-76.

and tactics to avoid detection or arrest by officers. RP 185-203.

Counsel openly challenged Banks' "expert" qualifications in front of the jury, including his examination of pimp literature and experience with internet advertising. RP 208-50.⁵

On redirect, Banks testified that sexual acts often occur in parking lots, vacant lots, motels, and residential streets. RP 252-53. Pimps use other avenues for advertising other than "backpage.com," such as "T and A" where reviews and photos can be posted. RP 254. In cases where victims have reported being pimped, he will attempt to gain consent to search their phones for evidence of communication with a pimp related to jugs, dates, money or meeting information. RP 256. Banks again testified to having read portions of "Pimp's Bible," "Pimpology," and "Rules of the Game."

Banks concluded by testifying that cell phone information, recovered from a prostitute's phone, may or may not reveal their pimp's identity. RP 262-64. Banks also admitted he had not reviewed the police reports or witness statements and was not involved in Abdulle's investigation. RP 180.

⁵ "Ok. So what makes you, in your opinion, an expert?" RP 220. Banks then offered testimony of having street experience and trainings, specifically with the Western States Vice Investigators. RP 220.

After the witness and jury were excused, Abdulle renewed his motion to strike the testimony of Banks, arguing his expert testimony was not specialized, irrelevant to the anticipated testimony and not outside the common knowledge of the jury. RP 265-66. He further asserted that Banks did not have sufficient qualifications as an expert and that Banks admitted that "all pimps don't do these things." Id.

The State argued that practical experience may qualify an individual as an expert and that Banks' 1600 arrests qualified him to testify about the practices of pimps, prices, and dynamics of the pimp/prostitute relationship. Id. Additionally, Banks rendered no opinion testimony to suggest that Abdulle's behaviors fit the profile of a pimp. RP 267.

The trial court adhered to its prior ruling:

Okay. All right. I'll adhere to my previous ruling. This area's beyond the knowledge of the average person. This witness has specialized knowledge. It's relevant to this case because, for example, here the State's alleging that [the] Defendant help set up dates. A lot of that was done with the use of text messaging. There are allegations about how money was divided. And so his testimony, I think, will be helpful for the trier of fact and is connected to this case.

Id. Abdulle's motion to strike expert testimony was denied.

c. Trial Testimony Regarding UFED.

During the course of his investigation, Washington collected A.P.'s and B.I.'s cell phones in an effort to locate cell phone calls, email communications or photos sent between both girls and their pimp, "Derrick." RP 790-91. During Abdulle's arrest, a cell phone was located underneath Abdulle, lying on the ground where he had been arrested, and a second phone was later found in the car he was driving. RP 955, 1075, 1208-09.

Washington used a universal forensic examination device (UFED) to examine the cell phones. Id. A UFED is a "black computer box, compact, mobile" used for analyzing data on a phone. RP 792. The device, when turned on, indicates whether it is properly functioning and calibrated. RP 803. After it indicates that the system is properly functioning, the device displays a step by step process of how to connect it to a cell phone. Id. The device guides the user in connecting to a phone and in preparing the phone for examination. Id., RP 804. It will allow the user to search and enter, on the UFED, a phone by model or serial number. Id. Once that information is entered into the device, the specific phone is identified, and UFED provides instruction on how the phone is to be analyzed. Id.

Washington testified about the extraction process:

Washington: Ok. So, the interaction between the device and the phone is, the device is setup to do two types of read or analysis of the phone. It can do a physical extraction of information from the phone and it can do a logical extraction. The difference, physical extraction is a bit by bit copy of the flash memory of the phone. So you're getting all the live data, phone calls that were made in and out, text messages, instant messages, emails, applications that are used, Facebook, Twitter, any of those types of things. You're getting that from a physical extraction. You're also getting from a physical extraction any hidden information that's on the phone, i.e. passwords, secret vaults that are put on the phone, you're getting that, and you're also getting deleted data, anything that the person has recently tried to delete off the phone, that information is captured with a physical extraction.

Prosecutor: Okay.

Washington: Okay? And the other type of extraction it does is the logical extraction. And the logical extraction does a live or extracts live data from the phone, what has just occurred on the phone and can be absorbed or kept in its memory. That does not include hidden data, and that doesn't include deleted data.

Prosecutor: And when you say logical –when you said live, is that limited to that date for that particular device?

Washington: No, just what's on the phone and can be stored in its memory or if there's a sim card.

RP 798-99. During the examination process, a UFED will determine the type of extraction it can perform on the phone. Id.

In some instances the device may only be able to successfully perform one type of extraction. Id.

Once data from the cell phone is extracted, the UFED will notify the user that the analyzation has been completed. RP 805. The extracted data is put into a report identifying the type of phone, serial number, model number, date, phone number assigned to the phone, instant messages and other phone data. RP 800-01, 829, Exhibits 39, 42, 52.

Although Washington admitted he had not been trained directly by the manufacturer of the device, he had received "several weeks, several months" of training on how to operate the UFED device. RP 797. Washington had also been trained by fellow detectives and FBI agents. RP 793. Washington further added that he uses a UFED "2-3 times" a week and had done so previously on "hundreds" of other occasions. RP 797-98. The UFED device is kept in a forensic and FBI office where other persons maintain the machines and update the software. RP 800.

Washington was able to perform a full extraction from A.P.'s phone but only a partial extraction from B.I.'s phone. RP 807, 829. A portion of A.P.'s UFED report containing a text message from the number "206-673-0684" cell phone was admitted. RP 1022,

Exhibit 42. Only a portion of B.I.'s "contacts list," identifying the phone number "673-0684" as "answer don't," was admitted.

RP 1021, Exhibit 39. The UFED report related to the cell phone recovered in the defendant's car with an assigned phone number of "673-0684," containing messages exchanged with A.P. and B.I., was admitted. RP 1035-38, Exhibit 52.

C. ARGUMENT

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED RELEVANT EXPERT TESTIMONY ON PROSTITUTION PRACTICES.

Abdulle contends the trial court abused its discretion when it permitted irrelevant and prejudicial expert testimony of Det. Banks. His claim should fail. The trial court properly ruled that expert testimony was relevant and helpful to the trier of fact in understanding whether Abdulle had pimped two juvenile prostitutes. In the alternative, even if the trial court abused its discretion when admitting such expert testimony, any error was harmless.

- a. Expert Testimony Was Relevant.

Expert testimony requires a qualified witness and helpful testimony. State v. Yates, 161 Wn.2d 714, 762, 168 P.3d 359 (2007); see also State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12

(1987). The decision to admit expert testimony will be reversed only for an abuse of discretion. State v. Mak, 105 Wn.2d 692, 718 P.3d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986). An abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based on untenable grounds. State v. Magers, 162 Wn.2d 174, 181, 189 P.3d 126 (2008). Unless there has been an abuse of discretion, the trial court's decision will not be disturbed. State v. Stenson, 132 Wn.2d 668, 715, 940 P.3d 1239 (1997).

Expert testimony is defined under Evidence Rule (ER) 702 as "scientific, technical, or other specialized knowledge" that "will assist the trier of fact to understand the evidence or to determine a fact in issue."⁶ ER 401 requires that evidence be "relevant" and ER 403 requires the court to consider whether "relevant" evidence is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations

⁶ ER 702 states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

of undue delay, waste of time, or needless presentation of cumulative evidence.”⁷

Here, the State presented testimony that both victims were juvenile runaways who had prostituted. B.I. had experience “walking” in Tukwila, while A.P. was relatively new to the prostitution life. RP 451, 606-09. With nowhere to go, both girls quickly accepted Abdulle’s offer to stay at his apartment if they continued to prostitute and to share with him their profits. RP 466.⁸ Although A.P. had no issue splitting her earnings, Abdulle and B.I. argued about money. RP 502, 514. For more than a few weeks, the girls shared a bedroom while Abdulle slept on his living room sofa. RP 489, 661, Exhibits 8-14. Abdulle arranged for dates by cell phone and provided transportation to both girls in his Buick. RP 460 (A.P.), 502 (A.P.), 587 (A.P.), 653-57 (B.I.), Exhibit 21.

Abdulle told A.P. to look cute for photos and her clients. RP 475, 501. B.I. would take “bra-shots” for her clients. RP 659,

⁷ ER 401 states: “Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

⁸ A.P. presented testimony that Abdulle allowed her to stay but only if she agreed to allow him to set the price, arrange the “jug” and share her profits. B.I. denied entering such an agreement, and claimed to have stayed rent free. RP 622. However, B.I. did admit that Abdulle provided her a customer. RP 623. The jury was free to assess the credibility of each witness’s testimony in rendering their verdict.

Exhibit 8. Abdulle arranged 6-7 "jugs" for A.P. and set her price between 120 to 130 dollars. RP 499-500. If she made a 100 dollars he would keep \$40. RP 465. B.I. also profited \$200 from at least one "jug" provided by Abdulle. RP 622-23.

Although Abdulle was not typically violent or possessive of either girl, he "kicked-out" B.I. following a money dispute. RP 504, 515. He later pointed a gun at A.P. and threatened to shoot her if she "pissed him off" and left. RP 520, 521. After A.P. managed to leave his apartment, following a drug overdose, Abdulle texted A.P. and asked her if she would return to work. RP 911-12.

In State v. Simon,⁹ the defendant was charged with first degree promoting prostitution where it was alleged he had pimped a juvenile victim. Id. at 951-52. At trial, the State was permitted to present testimony of a Seattle Police vice detective's experience and conversations with prostitutes about the pimp/prostitute relationship. Id. at 953. Although the detective had investigated over 50 promoting prostitution cases, he had not taken any course work in the area or police officer courses covering the arrest of prostitutes or investigation related to promotion of prostitution. Id.

⁹ State v. Simon, 64 Wn. App. 948, 831 P.2d 139 (1991), rev'd in part on other grounds, 120 Wn.2d 196, 840 P.2d 172 (1992).

at 963. This court held that where the witness was qualified as an expert,¹⁰ helpful to the trier of fact, provided no opinion as to the defendant's guilt and offered general testimony, the trial court did not abuse its discretion when admitting the expert testimony. Id. at 964.

Like Simon, Abdulle had been charged with two counts of commercial sex abuse of a minor where it was alleged he had pimped and prostituted two juvenile girls. CP 42-43; RP 463-49, 475-76, 622-23, 627-29.¹¹ Banks' general pimp/prostitution testimony not only provided a context for terms such as "walking," "johns" or "jugs," but also educated the jury regarding juvenile prostitution and pimp practices. While it was not alleged that Abdulle was particularly violent to either victim, other testimony regarding the pimp/prostitute relationship was relevant where the girls acquiesced to Abdulle's conditions of setting "dates," providing transportation, price and profits.

¹⁰ The detective had testified to having been involved in "investigating street prostitution for over 6 years, that he had investigated over 400 prostitution related crimes, and that he had investigated over 50 promoting prostitution cases." Simon, 64 Wn. App. at 963.

¹¹ Although B.I. testified that she worked independently of Abdulle, she was later kicked out the apartment following an argument with Abdulle regarding money. RP 505, 513-15, 697. Additionally, A.P. testified that she and Abdulle had taken B.I. to meet a date at a Jack in the Box located in Tukwila. RP 469.

Abdulle argues that portions of the expert testimony were cumulative or irrelevant because the circumstances of B.I. and A.P. did not involve recruitment, profit sharing, advertising, pimp rules or a "bottom-bitch." Br. of App. at 21. These claims are without merit. First, knowing she needed a place to stay, Abdulle told A.P. he would arrange the date, price and her earnings, if she were to stay at his apartment. In other words, the rules and terms of their living arrangement. Second, Abdulle would not have met A.P. had B.I. not arranged a meeting between the two. While B.I. did not claim to be a "bottom-bitch" during testimony, it could have reasonably been inferred she helped Abdulle recruit another juvenile prostitute, A.P. Third, Abdulle used pictures of A.P. as advertising for prospective "jugs" and the two split her earnings. Even B.I. admitted to giving Abdulle "gas money" to cover transportation, including a trip to meet a date.

Given the facts and evidence presented, Abdulle cannot show the trial court abused its discretion when admitting Banks' expert testimony. First, Banks was qualified as an expert in the business, culture, and practices between a pimp and prostitute based on his experience and training. CP 94-99; RP 53. Second, the trial court found that Banks' expert testimony would be helpful

because most jurors have “limited, if no information or experience.” RP 53-54. “If reasons for admitting or excluding the opinion evidence are ‘fairly debatable,’ the trial court’s exercise of discretion will not be disturbed.” Simon, 64 Wn. App. at 963. Here, the reasons for admitting Banks’ testimony were less than “fairly debatable,” and admission was proper.

b. Any Error Was Harmless.

An evidentiary error not of constitutional magnitude, requires reversal only if the error, within reasonable probability, materially affected the outcome. Stenson, 132 Wn.2d 668, 701, 709, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998) (citing State v. Halstein, 122 Wn.2d 109, 127, 857 P.2d 270 (1993)). Prejudice is found where a reasonable probability exists that the confidence in the outcome of the trial is undermined. State v. Benn, 120 Wn.2d 631, 649, 845 P.2d 289 (2000). A trial court’s decision to admit evidence is subject to harmless error analysis. State v. Hayward, 152 Wn. App. 632, 651, 217 P.3d 354 (2009).

Banks provided general testimony regarding his experience with pimp/prostitution practices. On cross-examination, Abdulle elicited additional testimony related to prostitution practices,

customers, manipulation tactics of prostitutes, and the benefits when claiming to be a victim of prostitution. RP 185-203. Banks was also subjected to extensive examination regarding his "expert" qualifications, escort practices, and internet advertising. RP 220, 234-51. More importantly, however, as cautioned in Simon, Banks did not express any opinion as to Abdulle's guilt or whether his conduct alleged was indicative of pimp practices.

Abdulle cites no authority supporting his argument that Banks' testimony resulted in prejudice. Even if admitting expert testimony was error, the jury was entitled to determine Banks' credibility based on his experience and equally free to accept or reject his testimony. "Credibility determinations are within the sole province of the jury and are not subject to review." State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 11102 (1997). Although Abdulle contends the expert testimony admitted somehow bolstered the credibility of the victims' testimony, the jury determined otherwise by acquitting Abdulle of the assault and unlawful imprisonment charges reported by A.P. CP 61-62. To accept Abdulle's argument, the jury would have returned verdicts of guilty on *all* counts alleged.

The State's case did not hinge on Banks' testimony; both victims testified that Abdulle had been engaged in pimp/prostitution practices. Because the confidence in the outcome of the jury's determination was not undermined by introduction of Banks' testimony, Abdulle fails to establish prejudice as a result.

2. THERE WAS SUFFICIENT EVIDENCE OF AUTHENTICATION AND RELIABILITY.

Abdulle contends that the trial court erred when it admitted portions of a cell phone report produced by a universal forensic examination device (UFED). Specifically, he claims that the reports were not properly "authenticated" or found reliable. His claims are without merit. The trial court did not abuse its discretion in finding that the information found in the reports were what they were purported to be, calls and texts from the defendant.

A proponent of the evidence need only make a prima facie showing of authenticity. State v. Payne, 117 Wn. App. 99, 108-09, 69 P.3d 889 (2003), rev. denied, 150 Wn.2d 1028 (2004). The trial court is not bound by the rules of evidence when making a determination of authenticity. State v. Williams, 136 Wn. App. 486, 500, 150 P.3d 111 (2007) (citing ER 104(a)). This requirement is met "if sufficient proof is introduced to permit a reasonable trier of

fact to find in favor of authentication or identification.” State v. Bradford, 175 Wn. App. 912, 928, 308 P.3d 736 (2013). A trial court’s decision to admit evidence will not be disturbed absent abuse of discretion. State v. Brown, 132 Wn.2d 529, 570, 940 P.2d 546 (1997).

Under ER 901(a), “authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”¹² ER 901(b)(9), authentication of a process or system can consist of evidence “describing a process or system used to produce a result and showing that the process or system produces an accurate result.”¹³ The trial court may rely on lay opinion, hearsay or any other evidence supporting the proponent’s position. While the court must find the evidence is reliable, the evidence supporting admissibility need not be admissible. State v. Williams, 136 Wn. App. at 500.

¹² ER 901(a) states: “General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

¹³ ER 901(b)(9) states: “Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.”

In Bradford, the trial court admitted text messages recovered in a “phone dump” allegedly sent by the defendant. Id. at 919. The “dump” consisted of a 280-page report itemizing each text sent or received over a 7-month period, including 25 relevant text messages received by a witness. Id. This court found that where there was sufficient evidence, including corroborating witness testimony that messages were sent from the defendant, admissibility was proper.

Here, the trial court’s finding of authenticity related to the UFED reports was supported by substantial evidence. RP 905. Washington testified that he used a UFED on average of “2-3 times” per week and had previously used the device on “hundreds” of other occasions. RP 797-98. Washington also testified that he had received “real-world” training by having performed a cell phone examination in the presence of UFED trained FBI agents in his task force. RP 793. If working properly, a UFED will not only alert the user, but generate a report, containing itemized text messages, phone calls, phone history, contact lists, and photos pulled from the phone, if the extraction is successful. Id. Washington was able to obtain UFED reports for both victims’ phones and defendant’s

phone found in the Toyota. RP 806-07 (Washington), 828-29, 989, 1021, 1032-34.

More significantly, like Bradford, the accuracy and results of the UFED reports related to A.P. and B.I. were corroborated by testimony. Washington took the results of A.P.'s phone extraction and had A.P. identify and verify the text messages from "Derrick" received in March. RP 991-93, Exhibit 40-41. B.I.'s UFED results showing "Derrick's" phone number stored under the name "answer don't," was corroborated by B.I.'s testimony that she had stored "Derrick's" phone number in her phone. RP 638 (B.I.). Washington did not verify with B.I. or A.P. additional text messages discovered on the defendant's phone found in the Camry but found text messages sent to their phone numbers.¹⁴ There can be no better showing of "authenticity" – the detective and the witnesses corroborated the results by confirming that texts extracted from the phones were the same as the texts they had sent.

Here, the UFED results were corroborated by testimony and phone number identification. Although Abdulle denied being "Derrick," having used the phone number "206-673-0684" and using the phones recovered from his arrest, he argues he did not have

¹⁴ A UFED report relating to the phone received in the Camry was not performed until December 10, 2014.

the opportunity to challenge the reliability of the UFED reports because Washington returned the victims' phones and determined they were inoperable. Br. of App. at 25. While it is true that these phones were returned to the victims, the other phones recovered during his arrest were in evidence and available to Abdulle or an expert for examination. Abdulle had endorsed Randall Carstadter as an expert concerning "the nature of the UDEF [sic], sim cards, and cellphones." RP 1143, 1149-50. Abdulle later elected not to call expert Carstadter likely in an effort to be consistent with his defense, that he was not "Derrick." RP 1215.

While Abdulle also claims he did not have an opportunity to cross-examine Washington regarding reliability, counsel thoroughly cross-examined Washington regarding his knowledge of a SIM card, phone data, UFED results and possible error. RP 1264-77.

The trial court was presented with more than sufficient evidence that the results of the UFED were reliable and what they were purported to be, text messages and calls from Abdulle. The cell phone evidence was made available to Abdulle and their expert for examination. Because Abdulle cannot establish that the trial court's findings of authenticity and reliability were based on

untenable grounds or reasons, the trial court's admission was proper. Brown, 132 Wn.2d at 572.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this court to affirm Abdulle's convictions and uphold the trial court's rulings.

DATED this 22ND day of December, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, Eric J. Nielsen, containing a copy of the Brief of Respondent, in STATE V. YUSUFF ABDULLE, Cause No. 72799-1-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

12-22-18
Date