FILED
SUPREME COURT
STATE OF WASHINGTON
3/11/2021 10:00 AM
BY SUSAN L. CARLSON
CLERK

Supreme court
of the State of Washington

99329-7

State of Washington Respondant	Case no. 36737-1-III
	Spokan County Supurior court no. 16-1-04346-2
V.	
Anthony m. messner Appellant	

Petition for reveiw

Anthony m. messner,
filling as pro se,

Anthony messner
413928/I-B-32
Coyote Ridge Correction center
P.O. box 769
Connell, wa 99326

A) Identity of Petitioner

Appellant Anthony Messner asks this Court to Accept reveiw of the Court of Appeals decision terminating reveiw designated in part B of this petition

B) Court of Appeals Decision

Appellant Anthony Messner moves for this Court to reveiw the decision filed by the Court of appeals on october 6, 2020. A Copy of the decision is Appended to this motion as Appendix A pg 1-7. And a copy of the order denying petitioners motion for reconsideration is Appended to this motion as Appendix A pg 8.

C) Issues presented for reveiw

1. the State presented absolutly No physical or medical evidence to support or Corroborate the Alligations that were made against the defendant.

2. Due to Covid-19, Appellant Anthony Messner was unable to Submit a full and Complete Statement of Additional grounds (SAG)

D) Argument

1) Issue no. 1

On page 6 of the Court of Appeals unpublished opinion, the Courts state that "[mr.] messner Contends correctly that the State presented No physical or medical evidence in Support of the Charges."

According to Washington State Revised Code (RCW) 9A.44.073, "in a prosecution for rape of a child in the 1st degree, the State has to prove that the defendant penatrated, at a minimum, the lips of the victims sexual organs."
(State v. Bishop 63 wn. App. 15, 816 P.2d 738 (wash. Ct. App. 1991))

When is it appropriate to obtain any proof to support Alligations of sexual abuse?

In cases involving young child victims, the Courts have repeatedly emphasized the need for some sort of evidence, in addition to the statements of the victim, to corroborate the alligations of sexual abuse.
(United States v. Shaw, 464 F.3d 615, 624 (2006))

Under RCW 9A.44.120, Corroboration has become a statutory requirement. this requirement States that "Corroborative evidence of the act is necessary to support a logical and reasonable inference that the act of abuse described even occured."
(State v. Hunt, 48 Wn. App. 840, 741, P. 2d 566 (wash. Ct. App. 1987))

So when is it appropiate to obtain a forensic medical examination to prove that any sort of sexual abuse acterally occured?

A childs alligation of sexual abuse can have a powerful emotional impact on a jury, and this emotional Appeal thus creates a special risk of erroneous conviction. However, by permitting into evidence, only the hearsay statements that can be substaniated by physical and/or medical evidence, this risk is greatly reduced, simply by the requirment of Corroboration.

Pleading sworn to, in any case, shall not be deemed as proof of the facts alleged therin, as such pleadings do not constitute as proof. (RCW 5.40.010)

"The hearsay statement of a child must be corroborated by BOTH evidence that the act of physical or sexual occured and evidence that the act was commited by the accused."
(Dyer v. Farris, 787 Fed. Appx. 485 (July 6th, 2018))

It has been said that no physical or medical evidence is neccesary to convict in most cases. However that notion is inncorrect, because that is only true when those cases are of a non violent nature.
(State v. Swan, 114 Wn. 2d 613, 623, 630, 790 P. 2d 610 (1990))

However, in this case in particular, All 4 charges are defined as violent under RCW 9.94A.030(55)(a)(i) and therefore the requirement of proof needs to be held to a Higher Standard and should include both medical and physical corroboration

2) The rules of Appellate procedure allow for a represented person to personally prepare and file a statement of Additional Grounds (SAG) for reveiw on appeal.

The petitioner asked for an extension to file his SAG on or aboutt May 5, 2020. That extension was granted and he was given 30 days more to file his SAg. However, because of Covid-19, the State Supreme Court had issued Supreme Court order 25700-B-611 (see Apendix B) on April 2, 2020, suspending RAP 18.8 deadlines

If the Supreme Court order 25700-B-611 Suspended RAP 18.8 deadlines due to Covid-19, then why was the petitioner only given 30 days to file his SAG?

Shortly After the extension was filled, the petitioner (an inmate at Cyote ridge Corrections Center) was placed on lock-down to Allow Doc to slow the Spread of Covid-19 within it's facilities. At this point, there was absolutly no movements, and petitioner was unable to utalize law library resources to Complete his SAG.

Even though Appellants request for an extension was placed after Supreme Court Order 25700-B-611 went into affect, he was not made aware of such an order, nor was he given an oppertunity to make use of the time that was granted to him by the Supreme Court. Because he was not made aware of this order, mr. messner felt compelled to turn in his incomplete SAG as his June 8, 2020 deadline was upon him.

Once movements began to re-open in mid-September and the law library re-opened at a limited capacity, mr. messner began to resume working on his SAG to hopefully file an amended and more complete version of his SAG. However an opinion was filed on october 6, 2020 and the request for filing a more complete statement was hence denied.

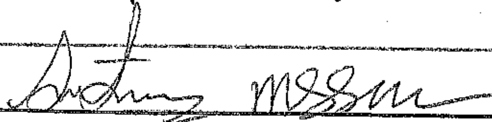
Consequently, since the Court of Appeals did not recieve a complete-amended-SAG prior to isuing it's october 6, 2020 opinion, which is important for a full reveiw of all the issues on Appeal, mr. messner feels his right to due process was therby denied.

E) Conclusion

For the reasons discussed herein, Appellant respectfully requests this court to reveiw the Court of Appeals decision and allow for a new trial to be Commenced in order for a fair and impartial trial to be obtained.

March 11, 2021

Respectfully Submitted,



Anthony Messner

Attorney for: Pro se

APPENDIX A

FILED
OCTOBER 6, 2020
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

STATE OF WASHINGTON, Respondent, v. ANTHONY M. MESSNER, Appellant.	)))))))))	No. 36737-1-III UNPUBLISHED OPINION

FEARING, J. — The trial court convicted Anthony Messner of three counts of rape of a child in the first degree and one count of molestation of a child in the first degree. During Messner's trial, the overwhelming evidence, including victim testimony, established that Messner committed the sexual crimes against his daughter. Nevertheless, the State never pled the crimes as being in the nature of "domestic violence." Messner believes his final judgment and sentence contains a scrivener's error that incorrectly converts his child rape and child molestation charges into domestic violence charges. He asks the court to remand his case to correct the alleged error. Because we do not read the judgment as declaring the convictions to be based on domestic violence, we decline his request.

Domestic Violence Designation

Anthony Messner contends the trial court erred in finding the State pled and proved domestic violence. This contention rests on the presence of language, in his judgment and sentence that reads: "*DV: Domestic Violence was pled and proved." Clerk's Papers (CP) at 46. Messner argues this language incorrectly converted his child rape and child molestation convictions into domestic violence convictions. The State responds by asserting that the the identified language is contained in the standard form judgment and sentence to indicate that, if the judgment contained other information with a domestic violence designation, the court made a finding that domestic violence was pled and proven in such case. The State further argues that, if the court had wished to designate Messner's convictions as domestic violence convictions, the court would have checked two boxes contained in the judgment on a later page. Instead, the trial court left the boxes unchecked. We agree with the State.

The issue is whether the language contained in Anthony Messner's judgment and sentence stating "*DV: Domestic Violence was pled and proved" is a scrivener's error that incorrectly designated his child rape and child molestation convictions as domestic violence convictions. CP at 46. Generally, the law defines a scrivener's error as a clerical mistake that, when amended, would correctly convey the trial court's intention, as expressed in the record at trial. *State v. Davis*, 160 Wn. App. 471, 478, 248 P.3d 121 (2011). We find no scrivener's error.

The language challenged by Anthony Messner serves as part of the general structure of the standard form judgement and sentence prepared by the Washington administrative office of the courts. If domestic violence had been pled and proven during the course of Messner's trial, the trial judge would have checked the two boxes, on a later page, related to domestic violence. Because both boxes remain unchecked, Messner's judgment and sentence did not include a scrivener's error that converts his child rape and child molestation charges into domestic violence charges.

Statement of Additional Grounds

Anthony Messner asserts two errors in a statement of additional grounds. First, he argues that he did not receive a fair and impartial trial as a result of an alleged discussion that occurred outside the courtroom among a jury member, the victim's mother, and the prosecuting attorney. Second, he contends sufficient evidence did not support his convictions because the State lacked physical or medical evidence and the State presented contradicting witness testimony. He emphasizes testimony regarding his purported use of a vibrator when the State never produced the vibrator at trial. Messner fails to cite the extensive record to support either statement of additional grounds.

Regarding the first statement of additional grounds, any instances of conversations by a juror outside the courtroom only occurred during his first trial, which resulted in a mistrial. The record of the second trial lacks any mention of a jury member, the victim's mother, or the prosecuting attorney conversing. Any conversation, if it occurred, pertains

to matters not in the record and cannot be addressed in a direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Pertaining to sufficiency of evidence, the State bears the burden of proving all elements of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3. When reviewing a challenge to the sufficiency of the evidence, this court must determine whether, after viewing the evidence and all reasonable inferences in a light most favorable to the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (plurality opinion). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). Credibility determinations are for the trier of fact and are not subject to review by this court. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Canfield*, 13 Wn. App. 2d 410, 418, 463 P.3d 755 (2020). The jury convicted Anthony Messner of three counts of rape of a child in the first degree and one count of child molestation in the first degree. The elements of the rape charge include:

> (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

RCW 9A.44.073. Elements of child molestation include:

> (1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

RCW 9A.44.083.

The victim, Anthony Messner's daughter, testified that Messner performed sexual acts with her while she was between the ages of six years old and nine years old. The first count of rape required the State to prove that sexual contact occurred between Messner's penis and the daughter's mouth. The daughter testified that she put her mouth on Messner's penis on multiple occasions. Her teacher, Meagan Higgins, also testified that the daughter told her that Messner directed her to place her mouth on his penis on multiple occasions beginning when she was in first grade.

The second count of rape required the State to prove Anthony Messner had sexual intercourse with his daughter by an act of sexual contact involving his penis and the daughter's anus. The daughter, through a drawing, showed that Messner placed his genitals against her buttocks. When asked if her father's penis went inside or remained outside of her, the daughter responded, "inside." Report of Proceedings (RP) at 1251-52.

The third count of rape required the State to prove that sexual contact occurred between Anthony Messner's mouth and the daughter's vagina. The daughter testified that Messner touched her privates, as circled on an exhibit, with his mouth when she was unclothed.

Finally, count four charged Anthony Messner with child molestation in the first degree. This charge required the State to prove that Messner had sexual contact with his daughter. The jury instructions defined sexual contact as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party." CP at 23. The State asked the jury to find beyond a reasonable doubt that Messner sexually molested his daughter when he used a vibrator on her. The daughter testified that Messner used a "pink thingy" on her crotch. RP at 1258. The State showed her a picture that she had previously drawn and asked her if that was the object Messner had used on vagina. She responded affirmatively. The court admitted the drawing into evidence. The State later presented the drawing to Jasmine Jordan, one of the daughter's counselors. Jordan explained that the drawing was done by the daughter during one of the counseling sessions with Jordan. Jordan identified, for the jury, the object as a vibrator.

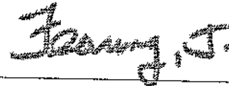
Although Anthony Messner contends correctly that the State presented no physical or medical evidence in support of the charges, such circumstances are common for most child sexual abuse cases. *State v. Swan*, 114 Wn.2d 613, 623, 630, 790 P.2d 610 (1990).

Notwithstanding the fact that law enforcement never found the vibrator described by the daughter, the trier of fact weighs the evidence. Evidence existed in the record to find beyond a reasonable doubt that the sexual acts occurred between Messner and his daughter. The jury weighed the evidence and opted to believe the testimony of the daughter.

CONCLUSION

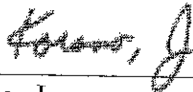
We affirm the four convictions of Anthony Messner.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Fearing, J.

WE CONCUR:



Korsmo, J.

Pennell, C.J.

FILED
NOVEMBER 19, 2020
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

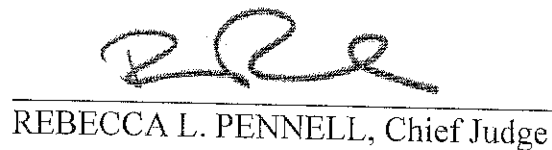
STATE OF WASHINGTON,	)	
	)	No. 36737-1-III
Respondent,	)	
	)	
v.	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
ANTHONY M. MESSNER,	)	
	)	
Appellant.	)	

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of October 6, 2020 is hereby denied.

PANEL: Judges Fearing, Korsmo, Pennell

FOR THE COURT:



REBECCA L. PENNELL, Chief Judge

APPENDIX B

FILED
SUPREME COURT
STATE OF WASHINGTON
APRIL 2, 2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUSPENSION OF RAP 18.8(b) AND (c) IN RESPONSE BY WASHINGTON STATE APPELLATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY	ORDER No. 25700-B-611

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and, on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, on March 24, 2020, Governor Inslee issued an emergency "Stay Home" order to combat the accelerating COVID-19 outbreak in Washington, requiring all residents of Washington to remain home unless certain exemptions applied, effective 5:30 p.m. on March 26, 2020; and

WHEREAS, the Supreme Court and the Court of Appeals are aware of the difficulties these emergency conditions pose for litigants making a good faith effort to timely seek appellate review in accordance with the Rules of Appellate Procedures (RAP); and

WHEREAS, this Court has issued a series of emergency administrative orders, Nos. 25700-B-602, 25700-B-607, 25700-B-608, and 25700-B-609, encouraging social

distancing and the suspension of certain court rules to address the emergency conditions in furtherance of the safety of court personnel, litigants, and the public, as a result of COVID-19.

NOW, THEREFORE, pursuant to the Court's authority to administer justice and to ensure the safety of court personnel, litigants, and the public, and the Court's authority to take emergency action with respect to rules pursuant to GR 9(j)(1),

IT IS HEREBY ORDERED:

1. That RAP 18.8(b) is suspended as to all notices of appeal, notices for discretionary review, motions for discretionary review of decisions of the Court of Appeals, petitions for review, and motions for reconsideration due for filing on or after March 27, 2020.
2. That during the period of time RAP 18.8(b) is suspended, all motions for extension of time will be decided in accordance with the "ends of justice" standard set forth in RAP 18.8(a).
3. That RAP 18.8(c) is suspended effective March 27, 2020.
4. That the above-referenced rules will remain suspended until further order of this court.

DATED at Olympia, Washington this 2nd day of April, 2020.

For the Court

CHIEF JUSTICE

APPENDIX C

FILED
SUPREME COURT
STATE OF WASHINGTON
OCTOBER 13, 2020 BY
SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF RESCINDING THE APRIL 2, 2020, ORDER THAT TEMPORARILY SUSPENDED THE APPLICATION OF RAP 18.8(b) AND (c)	)	ORDER No. 25700-B-648

WHEREAS, on April 2, 2020, in response to the COVID-19 public health emergency, the Supreme Court entered Order No. 25700-B-611 suspending the application of RAP 18.8(b) and (c). The order provided that the standards for granting an extension of time in RAP 18.8(b) and (c) would be suspended until further order of the court, and therefore motions for extension of time in the appellate courts would be decided in accordance with the "ends of justice" standard set forth in RAP 18.8(a).

WHEREAS, the Court has further evaluated the need for suspending the provisions of RAP 18.8(b) and (c), and found that it is no longer necessary.

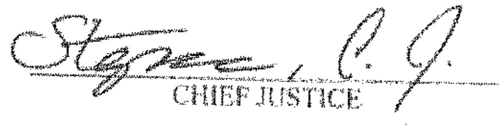
NOW, THEREFORE, pursuant to the Court's authority to administer justice and to take emergency action with respect to rules pursuant to GR 9(j)(1),

IT IS HEREBY ORDERED:

That Order No. 25700-B-611 dated April 2, 2020, is hereby rescinded effective October 14, 2020.

DATED at Olympia, Washington this 13th day of October, 2020.

For the Court



CHIEF JUSTICE

INMATE

March 11, 2021 - 10:00 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	36737-1
Appellate Court Case Title:	State of Washington v. Anthony Michael Messner
Superior Court Case Number:	16-1-04346-2

DOC filing of Messner Inmate DOC Number 413928

The following documents have been uploaded:

- 367371_20210311100001SC030201_7930_InmateFiling.pdf {ts '2021-03-11 09:48:27'}

  The Original File Name was doc1pcnl1171@doc1.wa.gov_20210311_095805.pdf

The DOC Facility Name is Coyote Ridge Corrections Center.
The Inmate The Inmate/Filer's Last Name is Messner.
The Inmate DOC Number is 413928.
The CaseNumber is 367371.
The Comment is 1of1.
The entire orginal email subject is 05,Messner,413928,367371,1of1.
The email contained the following message:

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, DO NOT DO SO! Instead, report the incident. Reply to: doc1pcnl1171@doc1.wa.gov <doc1pcnl1171@doc1.wa.gov> Device Name: DOC1pCNL1171 Device Model: MX-M283N Location: Not Set File Format: PDF MMR(G4) Resolution: 200dpi x 200dpi Attached file is scanned image in PDF format. Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document. Adobe(R)Reader(R) can be downloaded from the following URL: Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries. https://smex-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=http%3a%2f%2fwww.adobe.com&umid=fb380740-e506-4af6-b39f-0c6186a819f5&auth=d15df2c165e24fb53bc026dba1ee9b619a161a5a-2457efe8458979da0db57076a31f6d2303c8db28

The following email addresses also received a copy of this email:

A copy of the uploaded files will be sent to:

- ltabbutlaw@gmail.com
- gverhoef@spokanecounty.org
- lsteinmetz@spokanecounty.org
- valerie.lisatabbut@gmail.com
- scpaappeals@spokanecounty.org

Note: The Filing Id is 20210311100001SC030201