

64141-7

No. 64141-7-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

IGNACIO ARIAS,

Appellant.

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

The Honorable Bruce Heller

REPLY BRIEF

OLIVER R. DAVIS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. REPLY ARGUMENT

1. THERE WAS INSUFFICIENT CIRCUMSTANTIAL EVIDENCE TO SUPPORT PROOF OF NON-MARRIAGE.

Mr. Arias contends that the nonmarriage of the defendant and the complainant F.M.L., was not proved beyond a reasonable doubt. See State v. Rhoads, 101 Wn.2d 529, 532, 681 P.2d 841 (1984). Mr. Arias conceded that the non-marriage of the defendant and the complainants may be proved by circumstantial evidence. Rhoads, 101 Wn.2d at 532; State v. May, 59 Wash. 414, 415, 109 P. 1026 (1910). In the instant case, however, he argues in reliance on the points and authorities in his Appellant's Opening Brief that no circumstantial evidence allowed the jury to conclude beyond a reasonable doubt that the defendant could not have been married to the complainant. There was no circumstantial evidence excluding the possibility of marriage of the complainants to Mr. Arias, such as the fact of marriage between Ms. Loya and Mr. Arias. Ms. Loya testified that she was still married to her first husband, Alfredo Macias, the children's biological father. 7/9/09RP at 40. She was not married to the defendant. 7/8/09RP at 44-47.

And notably, in closing argument, the State told the jury that certain elements of the crimes, including the fact of non-marriage, were plainly not at issue, but then only mentioned the fact of the differences in age of the defendant and the complainant as having been plainly shown. 7/14/09RP at 59-60. The State likely realized its failure to produce evidence on this essential element. Given a definitive familial relation between the defendant and the complainant or other circumstantial evidence that would somehow prove non-marriage between the defendant and the complainant, the State's evidence was indeed insufficient to prove their non-marriage, beyond a reasonable doubt.

2. THE STATE CONCEDES THAT THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING F.M.L.'S STATEMENTS WHERE THEY WERE NOT TIMELY MADE.

The State agrees that under this evidentiary doctrine, timeliness is central under the current state of the law. Brief of Respondent, at p. 16. The trial court erred. Respondent's thoughtful contentions regarding the doctrine aside, this Court of Appeals is bound by the existing law, and arguments for modification of the state of the law are properly addressed to the

Supreme Court. State v. Colwash, 15 Wn. App. 530, 531, 550 P.2d 57 (1976); see also State v. Watkins, 136 Wn. App. 240, 148 P.3d 1112 (2006) (same).

Importantly, it was substantially through the fact-of-complaint testimony that the jury gained any corroboration of the child F.M.L.'s claims. This testimony would have left a significant impression on the jury and reversal is required, as argued in the Appellant's Opening Brief.

3. IT WAS ERROR TO DENY INQUIRY INTO A CRUCIAL WITNESS' PRIOR MISCONDUCT.

Washington case law allows cross-examination under Evidence Rule 608(b) regarding specific instances of the conduct of a witness that are relevant to veracity. Here, Ms. Loya's false statements in an application for benefits and use of a false social security number were matters that would certainly be impactful on a jury's decision to believe a witness. The rule plainly allows inquiry into the past matter if the requirements of ER 608(b) are satisfied, which they were in the present case. Misstating important facts in a writing is significantly impeaching of any witness' truthfulness. United States v. Reid, 634 F.2d 469, 473 (9th Cir.1980), cert.

denied, 454 U.S. 829, 102 S.Ct. 123, 70 L.Ed.2d 105 (1981)

(cross-examination of defendant concerning unrelated false statements in a letter was “entirely proper to impeach appellant's general credibility” under Fed. R. Evid. 608(b)).

Furthermore, as shown by the State’s effort to introduce “hue and cry” evidence that the girls allegedly complained of the alleged incidents to her, Ms. Loya’s testimony was in fact very important to the State. This “fact of complaint” testimony by the mother was crucial as the only evidence from an adult witness regarding claims of abuse by the girls. In sexual abuse prosecutions where children’s claims of sexual crime no longer need be corroborated by physical evidence, testimony like Ms. Loya’s is crucial to the State’s case. There was generally a strong concern for fabrication in this case. Of course, A.M.L.’s statements were apparently not believed by the jury at all, as the defendant was acquitted on that count. CP 80. Both girls “hated” the defendant. 7/9/09RP at 175. They believed he had transformed their mother into someone who drank alcohol and did not attend to their needs as she had previously. 7/9/09RP at 161-63, 167-70; see also 7/13/09RP at 22-25 (testimony of A.M.L.). F.M.L. herself

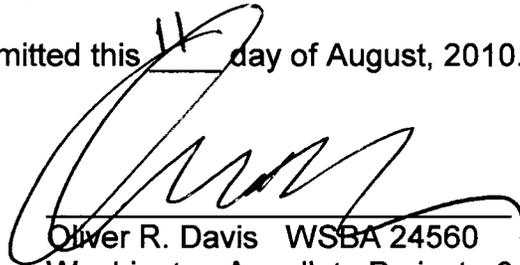
initially did not deny that she and her sister were trying to get the defendant out of the house when they made the claims against him. 7/9/09RP at 164.

When the defendant was denied his legitimate opportunity to impeach Ms. Loya, fairly, in front of the jury under the evidence rules and under his right to confront witnesses, the jury was left only with the State's offer of the mother as a witness, who would be assumed to be telling the unvarnished truth. This was unfair to Mr. Arias to a constitutional degree.

B. CONCLUSION

Based on the foregoing, Mr. Arias respectfully requests that this Court reverse his judgment and sentence.

Respectfully submitted this 11 day of August, 2010.


Oliver R. Davis WSBA 24560
Washington Appellate Project - 9105
Attorneys for Appellant