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Clark County No. 06-1-01832-0

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STATE OF WASHINGTON,

Respondent,

vs.

KEITH LATIMER

Appellant.

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

I. MR. LATIMER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

I. MR. LATIMER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO OBJECT TO THE ADMISSION OF EXHIBIT 2 AND FAILED TO OBJECT WHEN TAWANA KETCHUM GAVE A NON-RESPONSIVE ANSWER THAT EXPRESSED HER OPINION THAT MR. LATIMER WAS GUILTY.

C. STATEMENT OF THE CASE

1. FACTUAL HISTORY

Appellant Keith Latimer was married for four years to Lisa Metcalf (formerly Lisa Latimer). Report of Proceedings. Lisa has three children: Three older sons and a daughter, J.R.L. RP Vol. 3, 61. J.R.L. was five when Keith and Lisa got married. RP Vol. 3, 62. Lisa, Keith, J.R.L. and her brother, Mark, all lived in a home in Battleground. RP Vol. 3, 62. In January of 2004, Lisa and Keith separated. RP Vol. 3, 72. They were divorced in April of that same year. RP Vol. 3, 72. However, they continued their relationship after the divorce. RP Vol. 3, 73. Although they did not continue living together, they continued to see one another after Lisa moved back to Bremerton. RP Vol. 3, 73. Keith also spent time with Lisa, J.R.L. and her family in Salt Lake City when they vacationed there. RP Vol. 3, p. 75.

At some point in March or April of 2005, Lisa had a conversation with J.R.L., via instant messaging, in which she told J.R.L. that she and Keith were through with their relationship. RP Vol. 3, p. 74, 91. At that point J.R.L. told Lisa that Keith had touched her inappropriately. RP Vol. 3, p. 74. According to J.R.L., when she was eight or nine when, on two occasions, Keith had rubbed her vagina and, on one of the occasions, rubbed her breast, after she had crawled into her mother and Keith's bed. RP Vol. 3, 20-29. Prior to telling Lisa about this alleged abuse, J.R.L. said she told her stepsister and two of her friends. RP Vol. 3, 31. Several months later J.R.L. told her mother via the instant messaging conversation about the alleged touching. RP Vol. 3, 33. J.R.L. testified that she decided to tell her mother because her mother told her she and Keith had broken up for good. RP Vol. 3, 34.

When she told Lisa, Lisa asked her if she was sure that it happened, whether she had dreamt it, or whether she could have imagined it. RP Vol. 3, p. 34. J.R.L. replied she was positive it happened. RP Vol. 3, p. 34. After J.R.L. told Lisa, Lisa resumed her relationship with Keith. RP Vol. 3, p. 36. In fact, the trip to Salt Lake City, where Keith joined the family, occurred after this disclosure. RP Vol. 3, 76. Lisa, in an interview with defense investigator Brad Morrow, said she felt the allegations were "no big deal." RP Vol. 3, 89.

According to Lisa, after J.R.L. made this disclosure she called Keith. RP Vol. 3, 79. During this conversation, according to Lisa, she told Keith that J.R.L. "was awake, she knows everything that happened." RP Vol. 3, 79. Keith denied that he had intentionally touched J.R.L., postulating that if he had, he must have been asleep. RP Vol. 3, 80. Lisa did not report this allegation to authorities. RP Vol. 3, 80. Lisa, in response to social difficulties J.R.L. was having, took Lisa to be evaluated by a psychologist, Dr. Niems. RP Vol. 3, 81. This evaluation occurred in December of 2005. RP Vol. 4, 141. When Dr. Niems met with Lisa, before his meeting with J.R.L., Lisa told him about the sexual abuse allegation. RP Vol. 4, 142. Dr. Niems brought up the topic with J.R.L. but she initially denied that the abuse had occurred. RP Vol. 4, 143. J.R.L. vacillated about whether anything occurred and never actually confirmed to Dr. Niems that she had been sexually abused. RP Vol. 4, p. 143-44, 148. Dr. Niems nevertheless made a report to CPS. RP Vol. 4, p. 148.

In December of 2005, Lisa was spending the night with Keith and found out that he was seeing another woman, named Tawana. RP Vol. 3, p. 93-94. Lisa had become suspicious of Keith's faithfulness and looked at information stored in his cell phone. CITE. At some point after that Keith's relationship with both women soured and Lisa and Tawana,

