

FILED
COURT OF APPEALS
DIVISION II

08 AUG 20 AM 11:15

No. 36851-0-II

STATE OF WASHINGTON
BY JW

COURT OF APPEALS, DIVISION II DEPUTY
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Patrick Hannon,

Appellant.

Lewis County Superior Court

Cause No. 05-1-00707-3

The Honorable Judge Richard L. Brosey

Appellant's Reply Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
203 East Fourth Avenue, Suite 404
Olympia, WA 98501
(360) 352-5316
FAX: (866) 499-7475

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 3

**I. Mr. Hannon was denied his constitutional right to
confront his accuser. 3**

**II. Mr. Hannon concedes that attorney fees were properly
imposed. 4**

CONCLUSION 5

TABLE OF AUTHORITIES

FEDERAL CASES

White v. Coplan, 399 F.3d 18 (1st Cir. 2005)..... 3, 4

WASHINGTON CASES

State v. Hudlow, 99 Wn.2d 1, 659 P.2d 514 (1983) 3

State v. Tyler, 138 Wn.App. 120, 155 P.3d 1002 (2007)..... 3

ARGUMENT

I. MR. HANNON WAS DENIED HIS CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESSES AGAINST HIM.

An accused person's constitutional right to conduct meaningful cross-examination into highly probative evidence cannot be infringed, no matter how compelling an objection the state may raise. *State v. Hudlow*, 99 Wn.2d 1 at 16, 659 P.2d 514 (1983). This includes cross-examination into prior false allegations by the alleged victim of a sex crime. *See, e.g., White v. Coplan*, 399 F.3d 18 (1st Cir. 2005). Because of this, Respondent's claim that the trial court "correctly weighed the probative versus prejudicial value of the proffered evidence and determined that its prejudicial value outweighed the probative value" is irrelevant. Brief of Respondent, p. 7. Where evidence is "of high probative value... no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. Article I, Section 22." *Hudlow*, at 16.

This court reviews alleged violations of the confrontation clause *de novo*. *State v. Tyler*, 138 Wn.App. 120 at 126, 155 P.3d 1002 (2007). Thus Respondent's reliance on the "abuse of discretion" standard is misplaced. *See* Brief of Respondent, pp. 5, 7. However, whether review is *de novo* or by an abuse of discretion standard, the trial judge's decision

was error. The trial judge inappropriately focused on the actual truth or falsity of the accusation. RP (8/30/07) 31-33. Given the alleged victim's admission that her accusation was false, the sole question should have been whether or not her admission (that she'd made a prior false accusation of a similar nature) was relevant and admissible on cross-examination. By straying from this focus and excluding the evidence, the trial judge violated Mr. Hannon's constitutional right to confront A.P.

White v. Coplan, supra.

Mr. Hannon did not seek to introduce extrinsic evidence. Instead, he sought to ask A.P. directly about the prior false accusation. CP 47-51. The trial judge's refusal to allow cross-examination about the prior false accusation violated Mr. Hannon's constitutional right to confrontation. His conviction must be reversed and the case dismissed. *White v. Coplan, supra.*

II. MR. HANNON CONCEDES THAT ATTORNEY FEES WERE PROPERLY IMPOSED.

Because the Judgment and Sentence reflected that attorney's fees were to be determined, Mr. Hannon withdraws his assignments of error and argument regarding the imposition of attorney fees.

CONCLUSION

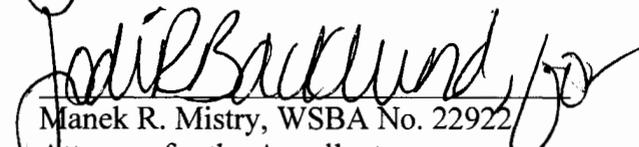
For the foregoing reasons, Mr. Hannon's conviction must be reversed and his case dismissed.

Respectfully submitted on August 19, 2008.

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

FILED
COURT OF APPEALS
DIVISION II

08 AUG 20 AM 11:15

STATE OF WASHINGTON

BY _____
DEPUTY

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Reply Brief to:

Lewis County Prosecuting Attorney
MS: pro01
360 NW North Street
Chehalis, WA 98532-1925

and to:

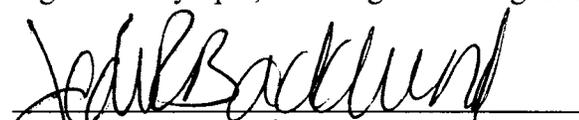
Patrick Hannon (deceased)
C/O Charlotte Hannon
12043 Hobby St. SE
Yelm, WA 98597

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on August 19, 2008.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on August 19, 2008.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant