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STATE OF WASHINGTON  
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COURT REPORTER

NO. 39660-2-II

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

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STATE OF WASHINGTON,

Respondent,

v.

JASON ROMERO,

Appellant.

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

The Honorable Jeanette Dalton, Judge

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BRIEF OF APPELLANT

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*DM 1-11-10*

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A. ASSIGNMENTS OF ERROR

1. Mr. Romero was denied his right to a fair trial by the introduction of evidence of an act of molestation against a third party that was expressly suppressed by the trial court in an order in limine.

2. The trial court erred by admitting evidence of Mr. Romero's prior sexual contact with a third party under ER 404(b).

3. The trial court erred by admitting evidence of Mr. Romero's prior sexual contact with a third party under RCW 10.58.090.

4. RCW 10.58.090 is an unconstitutional intrusion by the legislature upon the Courts' rule-making authority.

5. RCW 10.58.090 violates the Washington Constitution's fair trial guarantees.

Issues Presented on Appeal

1. The trial court correctly suppressed introduction of evidence of an act of molestation against a third party knowing that it would unduly prejudice Mr. Romero and create a great risk that the jury would convict on the basis of propensity.

2. Should the trial court have excluded testimony by Carly regarding a prior sexual contact Mr. Romero had with her under ER 404(b),

as such evidence was more unfairly prejudicial than probative?

3. Should the trial court have excluded testimony by Carly alleging Mr. Romero had sexual contact with her prior to the current allegations under RCW 10.58.090?

4. Is RCW 10.58.090 an unconstitutional intrusion by the Legislature upon the courts' rule-making authority?

5. Is RCW 10.58.090 an unconstitutional violation of the Washington Constitution's fair trial guarantees?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Jason Romero was charged with first degree child molest occurring sometime between January 30, 2006 and January 30, 2007. CP 1. The incident was not reported until February 26, 2008, by then ten year old CD.1 CP 6.

2. SUBSTANTIVE FACTS

C.D.'s Testimony

In 2008 C.D., the complainant told her mother Nancy Diaz Mr. Romero touched her inappropriately in 2006. C.D. told her mother after her mother told her that Mr. Romero was in trouble for doing the same thing to

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1 CD are the initials of the complainant's name.

Carly, Mr. Romero's wife Reilani's sister. RP 9, 16, 17 (June 11, 2009). During the intervening two years between 2006 and 2008, Ms. Diaz frequently spoke with her daughter about good touch and bad touch. RP 8 (June 11, 2009).

After Mr. Romero was convicted of molesting Carly in 2006, Ms. Diaz asked her daughter in detail many times if Mr. Romero ever touched her inappropriately. C.D. always responded that Mr. Romero never touched her inappropriately. RP 11-12, 24-25, 54-57. (June 11, 2009). C.D. told her friends at a slumber party that Mr. Romero touched her inappropriately and then told her mother. RP 63 (June 11, 2009). C.D. stated that she did not want to tell because she was afraid telling would hurt Reilani. RP 65 (June 11, 2009).

C.D. and her brother Diego frequently spent the night at Mr. Romero's home where he lived with his wife Reilani and their son Andrew. RP 6 (June 11, 2009). Typically, C.D. slept in "footies" on the top bunk bed with her brother Rudy who slept closest to the wall and her brother Diego slept in the bottom bunk bed and Andrew slept in his own bed, all in the same room. RP 37-38 (June 11, 2009). C.D. saw Mr. Romero naked a few nights before the alleged molestation as she was leaving the bathroom in the middle of the night and he was going to the bathroom. Mr. Romero apologized and wore pajamas from that night on to avoid an inadvertent exposure. RP 48 (June 11, 2009).

The night after the seeing Mr. Romero naked, C.D. dreamed that he came into the room where she slept and touched her inappropriately. RP 48 (June 11, 2009). C.D. immediately told her mother about seeing Mr. Romero naked and about her dream. RP 21.

C.D. told her mother two years after the alleged incident that when she was eight years old Mr. Romero came into the bedroom and touched her privates over her pajamas for a minute and put his hand under her bottom and rubbed her for 30 seconds, then put his thumb on her teeth and his tongue on her lips and then left. C.D. had her eyes closed for all but a second when she “peeked”. RP 39-42 (June 11, 2009).

Dr. John Charles Yuille, an internationally recognized expert on memory presented explained the phenomenon of “created memory”. RP 161-166, 174-177 (June 11, 2009). Dr. Yuille explained that there are four hallmarks of created memory: age, source, repetition and plausibility; and that all four hallmarks were present in C.D.’s reporting of the alleged incident. RP 179, 196 (June 11, 2009). Carly testified that Mr. Romero touched her inappropriately when she was 13 years old while she was sleeping in the top part of the bunk bed with her nephew. RP 93-94

First, Dr. Yuille explained that children under 12 years old are more susceptible to suggestion and that C.D.’s young age, her mother’s repeated

questioning about whether Mr. Romero ever touched her inappropriately, the fact that she dreamed that an act of molestation occurred just a night or two before she believed an incident to have occurred and that the incident could have occurred, i.e., it was plausible, cumulatively could have caused a “created memory” rather than emanating from an actual incident. RP 172, 184 (June 11, 2009).

C. ARGUMENT

1. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING EVIDENCE OF APPELLANT'S PRIOR CONVICTION FOR CHILD MOLESTATION.

Mr. Romero objected to the introduction of evidence of a similar crime of child molestation fearing that the jury would convict him based on a perceived propensity to commit acts of child molestation rather than on the facts of the instant case. RP 11 (April 6, 2009). Mr. Romero was convicted of child molestation on August 7, 2006. CP 5. The trial court permitted the state to introduce this evidence through the complainant in that prior case. RP 94-95 (June 11, 1009).

The defense objected on grounds that the admission of the prior sex conviction was error because: (1) RCW 10.58.090 was facially unconstitutional because it violates the separation of powers doctrine; (2) the statute violates

both the state and Federal constitutions on ex-post facto grounds; and (3) it violates both state and federal due process requirements. RP 3 (April 6, 2009). The trial court expressed its concern that admission of the prior sex offense would be prejudicial but nonetheless ruled that the evidence was admissible to demonstrate a common scheme or plan. RP 3-4 (May 4, 2009). The prior crime involved a similar act of molestation of a 13 year old girl. RP 94-95 (June 11, 2009).

ER 404(b) prohibits the introduction of “[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith.” Id. Before addressing the prejudice to the defendant of any evidence, the trial court must first determine that the proffered evidence is legally relevant. ER 401. State v. Wilson, 144 Wn.2d 166, 177, 181 P.3d 887 (2008).

Division Two set forth the analysis required under ER 404(b) in State v. Wade, 92 Wn. App. 885, 890, 966 P.2d 384 (1998). To determine admissibility of evidence under ER 404(b), the trial court must engage in a three-part analysis established in State v. Saltarelli, 98 Wn. 2d 358, 362, 655 P.2d 697 (1982). First, the court must identify the purpose for which the evidence will be admitted. Second, the evidence must be materially relevant. Third, the court must balance the probative value of the evidence against any

unfair prejudicial effect the evidence may have upon the fact-finder. Saltarelli, 98 Wn. 2d at 362-66. Further, to avoid error, the trial court must identify the purpose of the evidence and conduct the balancing test on the record. State v. Jackson, 102 Wn. 2d 689, 693-94, 689 P.2d 76 (1984). Doubtful cases should be resolved in favor of the defendant. State v. Smith, 106 Wn. 2d 772, 776, 725 P.2d 951 (1986).

"[R]egardless of relevance or probative value, evidence that relies on the propensity of a person to commit a crime cannot be admitted to show action in conformity therewith." Wade, 98 Wn. App. at 334. Moreover "if the only relevancy is to show propensity to commit similar acts, admission of prior acts may be reversible error." State v. Pogue, 104 Wn. App. 981, 985, 17 P.3d 1272 (2001). The trial court's ruling on ER 404(b) evidence is reviewed for an abuse of discretion. "In close cases, the balance must be tipped in favor of the defendant." Wilson, 144 Wn.2d at 177, citing, Smith, 106 Wn.2d at 776.

a. Evidence of Prior Molestation Unduly Prejudicial.

In Wilson, the Supreme Court granted the defendant a new trial holding that because intent to kill was not an element of the crime charged: felony murder, the admission of evidence of the defendant's intent to kill and

of her prior bad acts was unduly prejudicial.

In Mr. Romero's case, evidence of the prior molestation conviction was not necessary for the state to make its case, however, it was unduly prejudicial to Mr. Romero under ER 403, which provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Substantial prejudicial effect is inherent in ER 404(b) evidence. State v. Lough, 125 Wn.2d 847, 863, 889 P.2d 487 (1995). Evidence that a defendant previously committed crimes ostensibly similar to those for which he stands trial are particularly likely to unfairly prejudice a defendant:

There is no more insidious and dangerous testimony than that which attempts to convict a defendant by producing evidence of crimes other than the one for which he is on trial, and such testimony should only be admitted when clearly necessary to establish the essential elements of the charge which is being prosecuted.

State v. Smith, 103 Wn. 267, 268 (1918); see, e.g., Government of Virgin Islands v. Pinney, 967 F.2d 912 (3d Cir. 1992) (in prosecution for rape, trial court should not have admitted evidence that the defendant had also raped the victim's sister). In Pinney, the appellate court stated:

The obvious reason the government wanted [the] testimony before the jury was because of the substantial likelihood that one or more members of the jury would use this highly

inflammatory evidence for exactly the purpose Rule 404(b) declared to be improper -- i.e., drawing the inference that [defendant] was the kind of person who raped young girls and that, accordingly, he must have raped [the complaining witness].

967 F.2d at 917.

The complainant's allegations may have been sufficiently similar to the prior but they were too inflammatory and generated unfair prejudice to Mr. Romero's defense. Moreover, the irrelevant evidence implicitly describing Mr. Romero as a serial child abuser likely improperly influenced the jury to believe that Mr. Romero committed the charged acts based on propensity contrary to ER 404(b). Carly's testimony was not necessary and had little probative value on the issue of a common scheme or plan, and carried a high risk of unfair prejudice to Mr. Romero. The trial court erred in admitting Carly's testimony under ER 404(b).

b. The Evidence Was Not Admissible Under RCW 10.58.090.

The trial court also erred in admitting Carly's testimony under RCW 10.58.090, because that statute likewise prohibits admission of evidence that fails to satisfy the requirements of ER 403.

RCW 10.58.090, enacted as a new statute in 2008, allows the state to present evidence concerning a criminal defendant's prior sex offenses. The

statute provides, in pertinent part:

- (1) In a criminal action in which the defendant is accused of a sex offense, evidence of the defendant's commission of another sex offense or sex offenses is admissible, notwithstanding Evidence Rule 404(b), if the evidence is not inadmissible pursuant to Evidence Rule 403.

Under RCW 10.58.090, in evaluating whether evidence of the defendant's commission of another sexual offense or offenses should be excluded pursuant to ER 403, the trial judge shall consider the following factors:

- (a) The similarity of the prior acts to the acts charged;
- (b) The closeness in time of the prior acts to the acts charged;
- (c) The frequency of the prior acts;
- (d) The presence or lack of intervening circumstances;
- (e) The necessity of the evidence beyond the testimonies already offered at trial;
- (f) Whether the prior act was a criminal conviction;
- (g) Whether the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; and
- (h) Other facts and circumstances.

RCW 10.58.090(6).

These factors militate against the trial court's decision to admit Carly's testimony. First, there were differences between Carly's and the complainant's allegations. Second, Carly and the complainant were different ages at the times of the alleged abuse. Third, because the complainant knew of the abuse of Carly at the time of trial it was impossible to determine what was borrowed, what was suggested and what was real.

Significantly, Carly's testimony was not necessary. The complainant was old enough to convey the substance of her allegations against Mr. Romero on the witness stand. She was able to testify in detail and remained on the witness stand throughout direct and cross examination. She did not require any special assistance on the witness stand, and responded directly to the questions posed to her. Carly's testimony was in no way necessary to allow the jury to weigh the complainant's credibility.

Because of all of these factors, the probative value of Carly's testimony was not sufficient to outweigh the dangers of unfair prejudice inherent to her testimony. Carly's testimony should not have been admitted under RCW 10.58.090.

c. The Error In Admitting Carly's Testimony Was Not Harmless.

The complainant's testimony was central to the state's case. There was

no physical evidence implicating Mr. Romero. Mr. Romero denied the complainant's allegations, presented evidence she that her memory was the result of suggestion and was actually a created memory, and revealed inconsistencies in her testimony.

An erroneous ruling is reversible error when the court determines that, “ ‘within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.’ ” Wilson 144 Wn.2d at 178, quoting, Smith, 106 Wn.2d at 780, quoting State v. Cunningham, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). Improper admission of evidence constitutes harmless error only when the evidence is of minor significance when compared with the evidence as a whole. State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001).

In Mr. Romero's case, the improper evidence was significant and encouraged a conviction based on propensity. The only evidence of the crime charged in this case was the testimony of C.D. which came two years after the alleged incident and after many opportunities for a created memory due to her mother's repeated suggestion/questioning. The addition of Carly's unnecessary testimony unfairly prejudiced Mr. Romero both by bolstering the complainant's credibility and by depicting Mr. Romero as a serial abuser. This undoubtedly influenced the jury's verdict. The error was not harmless.

2. RCW 10.58.090 IS AN  
UNCONSTITUTIONAL INTRUSION  
UPON THE COURTS' RULE-MAKING  
AUTHORITY BY THE LEGISLATURE.

Assuming arguendo, this Court finds Carly's testimony was admissible under the statutory criteria of RCW 10.58.090, this Court should nevertheless reverse Mr. Romero's convictions, because the statute is an unconstitutional intrusion upon the Courts' rule-making authority by the legislature. The statute changes the very nature of a trial for a defendant charged with a sex offense, when the state can generate otherwise inadmissible evidence of prior sex offenses. This amounts to a violation of the Court's inherent authority to govern court procedures.

In Washington, separation of powers principles are violated when "the activity of one branch threatens the independence or integrity or invades the prerogatives of another." State v. Moreno, 147 Wn.2d 500, 505-06, 58 P.3d 265 (2002) (internal quotation marks omitted). This separation ensures "the fundamental functions of each branch remain inviolate." Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173 (1994); In the Matter of the Salary of the Juvenile Director, 87 Wn.2d 232, 239-40, 552 P.2d 163 (1976).

In passing RCW 10.58.090, the legislature included an introductory

statement of purpose, citing Washington cases suggesting the legislature has the authority to regulate the admissibility of evidence:

In Washington, the legislature and the courts share the responsibility for enacting rules of evidence. The court's authority for enacting rules of evidence arises from a statutory delegation of that responsibility to the court and from Article IV, section 1 of the state Constitution. State v. Fields, 85 Wn.2d 126, 129, 530 P.2d 284 (1975).

The legislature's authority for enacting rules of evidence arises from the Washington supreme court's prior classification of such rules as substantive law. See State v. Sears, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of (evidence); State v. Pavelich, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law").

The legislature adopts this exception to Evidence Rule 404(b) to ensure that juries receive the necessary evidence to reach a just and fair verdict.

However, cases not cited by the legislature suggest that the Supreme Court has the ultimate authority to regulate the admissibility of evidence, and that, in the event of a conflict between a statute and a rule, the rule controls. See, e.g., City of Fircrest v. Jensen, 158 Wn.2d 384, 143 P.3d 776 (2006) (4-3-2 decision). In Jensen, the plurality held:

This court is vested with judicial power from article IV of our state constitution and from the legislature under RCW 2.04.190. The inherent power of article IV includes the power to govern court procedures. The delegated power of RCW 2.04.190 includes the power to adopt rules of procedure. In general, the judiciary's province is procedural and the

harmonizes the court rule and the statute, this Court should reject such an argument. As argued in the previous section, the evidence was not admissible under ER 404(b). Its admission under the statute, thus, creates an irreconcilable conflict between the court rule and the statute.

4. RCW 10.58.090 IS AN  
UNCONSTITUTIONAL VIOLATION OF  
THE WASHINGTON CONSTITUTION'S  
FAIR TRIAL GUARANTEES.

The Washington right to jury trial incorporates broader protection than its federal counterpart, because it codifies the understanding of state rights at the time.

The Washington Constitution's jury trial right is comprised of two provisions. Article I, section 21 provides that “[t]he right of trial by jury shall remain inviolate.” Article I, section 22 provides that “[i]n criminal prosecutions the accused shall have the right to ... trial by an impartial jury.” “[T]he right to trial by jury which was kept ‘inviolable’ by our state constitution [is] more extensive than that which was protected by the federal constitution when it was adopted in 1789. The state jury trial right “preserves the right as it existed at common law in the territory at the time of [our constitution's] adoption.” State v. Recuenco, 163 Wn.2d 428, 444, n. 11, 180 P.3d 1276 (2008) (internal citations omitted).

The understanding of the right to a fair trial as one that would be free from propensity evidence predates the federal constitution: “The rule against using character evidence to show behavior in conformance therewith, or propensity, is one such historically grounded rule of evidence. It has persisted since at least 1684 to the present.” McKinney v. Rees, 993 F.2d 1378, 1381 (9th Cir. 1993).

By transgressing this fundamental aspect of a constitutionally guaranteed fair trial, RCW 10.58.090 violates Mr. Romero’s state constitutional fair trial protections.

4. ALTHOUGH INADVERTENT THE VIOLATION OF THE MOTION IN LIMINE TO EXCLUDE APPELLANT'S PRIOR SEX CRIME WAS TOO PREJUDICIAL TO CURE WITH AN INSTRUCTION AND THEREFORE REVERSIBLE ERROR.

The trial court suppressed any reference to a prior allegation of abuse by Mr. Romero against Stormy a 23 year old relative. RP 3-4, 7 (May 4-5, 2009). During the examination of the complainant, she violated the motion in limine and informed the jury that she told her mother about Mr. Romero touching her after her mother told her that Mr. Romero did the same thing to Carly and Stormy. RP 45 (June 11, 2009). The trial court told the jury to disregard the statement. Id. Defense moved for a mistrial on grounds that it

was impossible to undue the damage form the statement about Stormy. RP 78-80 (June 11, 2009)..

The trial court abused its discretion by denying Romero's motion for a mistrial. Whenever there is a violation of motions in limine, the impact on the jury is always, by its nature, speculative. "In a criminal proceeding, a new trial is necessitated only when the defendant' has been so prejudiced that nothing short of a new trial can insure that the defendant will be treated fairly." State v. Bourgeois, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997) (quoting State v. Russell, 125 Wn.2d 24, 85, 882 P.2d 747 (1994)).

Whether a mistrial should be granted on trial irregularities is a matter primarily within the discretion of the trial court, and will not be disturbed unless there is a clear abuse of that discretion. Bourgeois, 133 Wn.2d at 406 (citing State v. Bartholomew, 98 Wn.2d 173, 211, 654 P.2d 1170 (1982)). See also, State v. Lewis, 130 Wn.2d 700, 707, 927 P.2d 235 (1996); State v. Post, 118 Wn.2d 596, 620, 826 P.2d 172, modified, 837 P.2d 599 (1992). The trial court is best suited to judge the prejudice of the statement. State v. Weber, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). In considering whether a trial irregularity warrants a new trial, the court considers three factors: (1) the seriousness of the irregularity; (2) whether the statement was cumulative of

evidence properly admitted; and (3) whether the irregularity could be cured by an instruction. Post, 118 Wn.2d at 620 (citing State v. Escalona, 49 Wn. App. 251, 254, 742 P.2d 190 (1987)).

As to the first factor of the analysis described in Post, supra, because the evidence against Romero was limited and because the prejudicial impact extraordinary, the taint from the violations was too great to guarantee Romero a fair trial. Weber, 99 Wn.2d at 165-66. Even the judge recognized the danger of unfair prejudice to Mr. Romero and for this reason excluded any reference to abuse of Stormy. RP 3-4 (May 4-5, 2009). Second, the information was not cumulative of other evidence but rather expressly excluded in the motion in limine to avoid undue prejudice to Mr. Romero. Id. Third, a curative instruction is always problematic because it tends to “ring the bell louder”. Because the evidence against Romero was limited to the complainant’s two year old delayed allegation, and due to the nature of the excluded testimony, the risk of conviction based on propensity was too great to cure with an instruction.

In Escalona, the defendant was convicted of second degree assault with a deadly weapon. The trial court granted the defendant's motion to exclude any reference to the fact that the defendant previously had been convicted of the same crime. Escalona, 49 Wn. App. at 252. During cross examination, the

victim stated that on the day of the stabbing, he was nervous when he saw the defendant because the defendant already had a record and had stabbed someone. Defense counsel moved for a mistrial, but the trial court denied the motion and instructed the jury to disregard the remark. Escalona, 49 Wn. App. at 253. The Court of Appeals reversed the conviction, reasoning that (1) the irregularity was extremely serious, (2) it was not cumulative, since the trial court had already ruled that evidence of the prior crime could not be admitted, and (3) the trial court's instruction to the jury could not have cured the prejudice caused by the remark. Escalona, 49 Wn. App. at 254, 257. Regarding the prejudice caused by the remark, the court stated:

[D]espite the court's admonition, it would be extremely difficult, if not impossible, in this close case for the jury to ignore this seemingly relevant fact. Furthermore, the jury undoubtedly would use it for its most improper purpose, that is, to conclude that Escalona acted on this occasion in conformity with the assaultive character he demonstrated in the past.

Escalona, 49 Wn. App. at 256. Thus, the appeals court concluded that the trial court abused its discretion in denying the defense motion for a mistrial. Escalona, 49 Wn. App. at 256; see also State v. Wilburn, 51 Wn. App. 827, 832, 755 P.2d 842 (1988) (rape conviction reversed when, in violation of

motion in limine, witness testified that defendant told her, “Yes, I did it again, and I need treatment.”); State v. Miles, 73 Wn.2d 67, 71, 436 P.2d 198 (1968) (robbery conviction reversed when police officer testified that defendant was going to duplicate the robbery).

Escalona, Wilburn, and Miles are indistinguishable from the present case. In those cases, as in Mr. Romero’s case the improper statements indicated that the defendants had committed crimes similar or identical to the crimes for which they were on trial. Thus, the statements were extremely prejudicial because it was likely that jurors would conclude that the defendant had a propensity for committing that type of crime.

The seriousness of an irregularity is measured by considering the nature of the irregularity, the effect of it on the defense strategy, and the overall strength of the State's case State v. Hopson, 113 Wn.2d 273, 286, 778 P.2d 1014 (1989); Escalona, 49 Wn. App. at 254-55. Mentioning a mistrial allows the jury to believe that the case is of significant importance to the state such that they are willing to take the matter to trial again. This could create a sense of obligation by the jury to convict, particularly where the co-defendant may be perceived as a serious criminal. For these reasons the taint was not curable by a limiting instruction and ultimately deprived Romero of his right to a fair trial.

D. CONCLUSION

Mr. Romero respectfully requests this Court reverse his conviction for child molestation in the first degree based on denial of his due process right to a fair trial.

DATED this 11th day of January 2010.

Respectfully submitted,

  
\_\_\_\_\_  
LISE ELLNER  
WSBA No. 20955  
Attorney for Appellant

10 JAN 13 2010  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
CLERK OF COURT  
COUNTY OF KING

I, Lise Ellner, a person over the age of 18 years of age, served the Kitsap County Prosecutor's Office 614 Division St, MS-35 Port Orchard, WA 98366 and Jason Romero DOC # 894014 WASHINGTON State Reform PO Box 777 Monroe, WA 98272 a true copy of the document to which this certificate is affixed, On January 11, 2010. Service was made by depositing in the mails of the United States of America, properly stamped and addressed.

\_\_\_\_\_  
Signature