

No. 44477-1-II

---

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

---

**J.C.,  
Appellant,  
v.  
S.C.,  
Respondent.**

---

**APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COUNTY  
THE HONORABLE ANNE HIRSCH**

---

**BRIEF OF RESPONDENT**

---

**Amy L. Perlman, WSBA 42929  
Attorney for Respondent  
MADISON LAW FIRM, PLLC  
2102 Carriage Dr. S.W., Suite A-103  
Olympia, WA 98502  
T 360.539.4682  
F 360.915.9236**

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES.....iii**

**I. INTRODUCTION.....1**

**II. RESPONSE TO ASSIGNMENTS OF ERROR.....2**

**III. RESTATEMENT OF ISSUES.....2**

**IV. BACKGROUND.....3**

**A. ON NOVEMBER 8, 2012, J.C. EXPOSED HIS ERECT PENIS TO S.C. WITHOUT HER CONSENT AND FORCED HER TO TOUCH IT.....3**

**B. AT A HEARING ON S.C.'S PETITION FOR SEXUAL ASSAULT PROTECTION ORDER, PRO TEM COMMISSIONER MEYER ALLOWED EVIDENCE REGARDING S.C.'S PRIOR SEXUAL RELATIONSHIP OVER OBJECTION OF COUNSEL.....4**

**C. PRO TEM COMMISSIONER MEYER HEARD TESTIMONY FROM J.C. THAT THERE WERE NO SEXUAL OVERTURES BY EITHER S.C. OR J.C. PRIOR TO J.C. EXPOSING HIS ERECT PENIS AND FORCING S.C. TO TOUCH IT.....5**

**D. PRO TEM COMMISSIONER MEYER FOUND DETAILS OF S.C.'S PRIOR SEXUAL RELATIONSHIP HELPFUL IN RULING, BUT DID NOT FIND A DECLARATION REFUTING J.C.'S TESTIMONY HELPFUL AND DID NOT CONSIDER IT.....6**

**E. AFTER CONSIDERING INADMISSIBLE EVIDENCE BUT FAILING TO CONSIDER ADMISSIBLE EVIDENCE, PRO TEM COMMISSIONER MEYER DISMISSED S.C.' PETITION.....6**

	<b>F. JUDGE HIRSCH REVISED PRO TEM COMMISSIONER MEYER AND ENTERED A SEXUAL ASSAULT PROTECTION ORDER, FINDING THAT THE PRO TEM COMMISSIONER CONSIDERED INADMISSIBLE EVIDENCE .....</b>	<b>8</b>
<b>V.</b>	<b>ARGUMENT.....</b>	<b>9</b>
	<b>5.1 STANDARD OF REVIEW.....</b>	<b>9</b>
	<b>A. Revision shall be de novo.....</b>	<b>9</b>
	<b>B. Ruling was well reasoned in law and fact.....</b>	<b>9</b>
	<b>C. Ruling not abuse of discretion.....</b>	<b>9</b>
	<b>5.2 JUDGE HIRSCH PROPERLY EXCLUDED INADMISSIBLE EVIDENCE OF S.C.'S PRIOR SEXUAL RELATIONSHIP WITH SOMEONE OTHER THAN APPELLANT AND PROPERLY REVISED PRO TEM COMMISSIONER MEYER'S DISMISSAL OF S.C.'S PETITION.....</b>	<b>10</b>
	<b>A. RCW 7.90.010 defines sexual assault .....</b>	<b>10</b>
	<b>B. Admissibility of Evidence pursuant to Evidence Rule 412(b) and RCW 7.90.080.....</b>	<b>10</b>
	<b>C. Rape Shield Law .....</b>	<b>13</b>
	<b>5.3 JUDGE HIRSCH HEARD S.C.'S MOTION FOR REVISION DE NOVO AND PROPERLY RULED ON DOCUMENTARY EVIDENCE ALONE.....</b>	<b>15</b>
<b>VI.</b>	<b>CONCLUSION.....</b>	<b>16</b>
	<b>DECLARATION OF SERVICE.....</b>	<b>18</b>

**TABLE OF AUTHORITIES**

**CASES**

*Blackmon v. Blackmon*, 230 P.3d 233, 155 Wn.App. 715 (2010).....3, 16

*Ferree v. Doric Co.*, 62 Wash.2d 561, 568, 383 P.2d 900 (1963).....10

*King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wash.2d 543, 561, 14 P.3d 133 (2000).....10

*Marriage of Littlefield*, 133 Wash.2d 39, 46, 940 P.2d 1362 (1997).....10

*Marriage of Moody*, 137 Wash.2d 979, 993, 976 P.2d 1240 (1999).....9

*State v. Blum*, 17 Wash.App. 37, 46, 561 P.2d 226 (1977).....15

*State v. Hoffman*, 115 Wash.App. 91, 101, 60 P.3d 1261 (2003).....9

*State v. Hudlow*, 659 P.2d 514, 99 Wn.2d 1 (Wash. 1983).....14

**STATUTES**

RCW 2.24.050.....9

RCW 7.90.010.....8,10

RCW 7.90.080.....8, 11, 12, 13, 14, 17

**OTHER AUTHORITIES**

ER 412.....8, 11, 12, 13, 14, 17

## I. INTRODUCTION

Respondent, S.C. responds to Appellant, J.C.'s appeal of the issuance of a Sexual Assault Protection Order by Thurston County Superior Court Judge Anne Hirsch on January 25, 2013. CP at 214-216.

On November 14, 2012, 14 year old S.C.'s mother petitioned for a Sexual Assault Protection Order on behalf of her daughter, against 17 year old Appellant, J.C., following an incident on November 8, 2012 where S.C. was sexually assaulted by J.C. CP at 4-7.

On December 19, 2012, an evidentiary hearing was held before Pro Tem Commissioner Martin Meyer. Both S.C. and J.C. appeared, were represented by counsel and testified under oath. Over the objection of counsel for S.C., Pro Tem Commissioner Meyer allowed questions regarding S.C.'s prior sexual relationship with someone other than Appellant. CP at 123, lines 9-20. At the conclusion of the hearing, Pro Tem Commissioner Meyer denied S.C.'s petition. CP at 15-17. Findings of Fact and Conclusions of Law were also entered by Pro Tem Commissioner Meyer. CP 186-188.

On December 31, 2012, S.C. sought revision of Pro Tem Commissioner Meyer's ruling denying her Petition for a Sexual Assault Protection Order. CP at 81-83. On January 25, 2013, S.C.'s Motion for Revision was heard by Judge Hirsch who revised Pro Tem Commissioner

Meyer's ruling and entered a Sexual Assault Protection Order. CP at 214-216.

## **II. RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR**

- A. Judge Hirsch did not err when she found that Pro Tem Commissioner Meyer's allowance of testimony regarding S.C.'s past sexual relationship with someone other than Appellant was in direct violation of the statute. RP at 10, lines 2-4.
- B. Judge Hirsch heard S.C.'s motion for revision de novo. Judge Hirsch's ruling was not arbitrary or capricious. Judge Hirsch made her ruling not solely on the testimony of S.C., but after looking at the transcript and considering briefs of attorneys. RP at 3, lines 9-10.
- C. Judge Hirsch did not ignore the credibility finding of Pro Tem Commissioner Meyer, but heard S.C.'s motion for revision de novo.

## **III. RESTATEMENT OF ISSUES**

- A. Judge Hirsch did not err when she excluded testimony regarding S.C.'s prior sexual relationship with someone other than Appellant.
- B. The decision of Judge Hirsch to exclude testimony regarding S.C.'s prior sexual relationship with someone other than Appellant was neither arbitrary nor capricious.

C. Judge Hirsch heard S.C.'s motion for revision de novo. Pursuant to *Blackmon*<sup>1</sup>, such proceedings are equitable in nature and may be properly determined by a court on documentary evidence alone.

#### IV. BACKGROUND

A. **On November 8, 2012, J.C. exposed his erect penis to S.C. without her consent and forced her to touch it.**

On November 8, 2012 Appellant J.C. exposed his erect penis to S.C. without her consent. After exposing his penis, Appellant then forced S.C. to touch his penis by grabbing her hand and forcing her hand to his penis causing the side of her clenched fist to touch his penis. CP at 6. Following the sexual assault, on November 15, 2012 S.C.'s mother petitioned for a Sexual Assault Protection Order against J.C. on behalf of her 14 year old daughter, S.C. CP at 4-6. A Temporary Sexual Assault Protection Order was entered this same day. CP at 8-10. J.C. filed a declaration in response to S.C.'s petition on November 21, 2012. CP at 12-14. In his declaration, J.C. states:

“When it was getting close to time to leave, because of previous comments between [A.F.] and myself about our relative sizes, I asked [S.C.] if she would tell me if my penis was bigger than [A.F.'s]. She agreed to look at my penis. I showed her my penis.” CP at 13, lines 16-19.

---

<sup>1</sup> *Blackmon v. Blackmon* 155 Wash.App. 715, 230 P.3d 233 (2010)

In response to J.C.'s November 21, 2012 declaration regarding previous comments between he and A.F., A.F. prepared a declaration on December 11, 2012 stating "I have never made comments to [J.C.] about the size of my penis and [J.C.] and I never had a conversation about the relative size of our penises." CP at 184, lines 21-22.

**B. At a hearing on S.C.'s petition for sexual assault protection order, Pro Tem Commissioner Meyer allowed evidence regarding S.C.'s prior sexual relationship over objection of counsel.**

On December 19, 2012 an evidentiary hearing was held before Pro Tem Commissioner Martin Meyer. S.C. testified that she thought of J.C. as a friend and confidant. CP at 109, lines 20-22, CP at 129, lines 26-28 and CP at 130, line 1. During the hearing, Pro Tem Commissioner Meyer, over objection of counsel for S.C., allowed counsel for J.C. to question S.C. under cross examination about her prior sexual relationship with someone other than J.C. CP at 123. During cross examination, counsel asked S.C. to "...describe the sexual conversation you had with J.C. about you having sex with [A.F.] in the park." And, counsel for J.C. asked S.C. whether she told her mother that she had sex with A.F. CP at 128.

**C. Pro Tem Commissioner Martin Meyer heard testimony from J.C. that there were no sexual overtures by either S.C. or J.C. prior to J.C. exposing his erect penis and forcing S.C. to touch it.**

Despite J.C.'s testimony that there were no overtures from either J.C. or S.C. regarding sexual contact between them prior to J.C. exposing his erect penis to her, (CP at 60, lines 10-16), this still remained the crux of J.C.'s defense at closing argument. Counsel for J.C. argued that one could simply infer that S.C. shared intimate details of her sexual relationship with A.F. with J.C. because she wanted to engage in sexual activities with him. CP at 74, lines 9-12.

Pro Tem Commissioner Meyer also heard S.C. testify that she was scared of J.C., not only for herself during her assault, but scared that J.C. would continue to assault girls. CP at 33, lines 23-26. Further supporting a basis for S.C.'s fear the Court heard testimony about a threatening Instagram message posted by J.C. and admitted during the hearing as Exhibit 1 (CP at 177) which J.C. testified was meant for S.C. CP at 71, lines 5-9.

**D. Pro Tem Commissioner Meyer found details of S.C.'s prior sexual relationship helpful in ruling, but did not find a declaration refuting J.C.'s testimony helpful.**

While Pro Tem Commissioner Martin Meyer found the details of S.C.'s sexual relationship with someone other than the Appellant helpful, after hearing the testimony of S.C. and J.C., Commissioner Meyer chose not to consider the sworn declaration of A.F. because it "isn't very helpful," in spite of the fact that it refuted J.C.'s testimony. CP at 77, lines 24-28. Pro Tem Commissioner Meyer found that A.F.'s declaration was in response to the J.C.'s written response which was filed with the Court but not considered as evidence. Pro Tem Commissioner Meyer's finding was in error as J.C. specifically testified during that very hearing that he and A.F. had talked about the size of their penises. CP at 61, lines 15-18.

**E. After considering inadmissible evidence but failing to consider admissible evidence, Pro Tem Commissioner Meyer dismissed S.C.'s petition.**

Pro Tem Commissioner Meyer found that after hearing the evidence in its entirety, he could not conclude that S.C. met her burden of proving by a preponderance of the evidence that she had been sexually assaulted by J.C. CP at 78, lines 20-25. Based upon his finding, Pro Tem Commissioner Meyer denied S.C.'s request for a Sexual Assault Protection Order. Based upon Pro Tem Commissioner Meyer's findings, on December 19, 2012 a Denial Order was entered dismissing S.C.'s petition. CP at 179-181.

On January 4, 2013, Findings of Fact and Conclusions of Law were entered. CP at 186-188. The following findings were entered.

1. The Court finds that the declaration of A.F. which appears to be in response to J.C.'s declaration which was not submitted as evidence and which the Court has not considered is not helpful in any of the issues the Court needs to decide.
2. The Court finds that there is no eye witness and it comes down to the credibility of the parties and both parties cannot be right as to what occurred on November 28, 2012.
3. The Court finds that the ultimate issue is whether there was nonconsensual activity between the parties sufficient to meet the definition of the terms defined under RCW 7.90.
4. The Court finds that the parties were quite comfortable talking about matters of an adult nature with each other.
5. The Court finds that the parties were very comfortable discussing topics such as relationships they had in the past and are currently having.
6. The Court finds that after observing the evidence in its entirety, the Court cannot conclude that the petitioner has met its burden of proving by a preponderance of the evidence that a sexual assault has occurred here as defined for this Court to issue an order of

protection and this can be the end of the case or the beginning of another nightmare.

On December 31, 2012, S.C. sought revision of Pro Tem Commissioner Meyer's ruling based upon Pro Tem Commissioner Meyer's allowance and consideration of inadmissible evidence regarding S.C.'s prior sexual relationship with someone other than J.C., failing to consider the declaration of A.F. and failing to consider a threatening Instagram message posted by J.C. and meant for S.C. CP at 81-83. S.C.'s motion for revision was supported by Brief of Petitioner in Support of Motion for Revision. CP at 84-181.

**F. Judge Hirsch revises Pro Tem Commissioner Meyer finding Pro Tem Commissioner Meyer considered inadmissible evidence and finding it appropriate to enter a sexual assault protection order.**

S.C.'s Motion for Revision was heard on January 25, 2013 by Thurston County Superior Court Judge Anne Hirsch. Judge Hirsch reviewed a transcript of the December 19, 2012 hearing as well as written and oral argument of both counsel. RP at 3, lines 9-10. In her oral ruling, Judge Hirsch summarized the facts of the case, addressed the Rape Shield Act, as well as the applicability of RCW 7.90.010, RCW 7.90.080 and ER 412. Judge Hirsch found this case to be a classic example of why the rules and laws we have are in place, which is to prevent a case from being about

anything other than the facts at issue, not what S.C. did with someone else. RP at 12, lines 24-25 to RP 13, lines 1-5. Judge Hirsch found that it was inappropriate for Pro Tem Commissioner Meyer to lecture either party and found that the Instagram message posted by J.C. was vulgar, inappropriate and threatening. RP at 13, lines 13-18. Finding that it was appropriate to revise Pro Tem Commissioner Meyer, on January 25, 2013, Judge Hirsch entered a sexual assault protection order protecting S.C. from J.C. for two years. CP at 238.

## V. ARGUMENT

### 5.1 Standard of Review.

A. **Revision shall be de novo.** All commissioner rulings are subject to revision by the superior court pursuant to RCW 2.24.050. On revision, the superior court reviews the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner. *In re Marriage of Moody*, 137 Wash.2d 979, 993, 976 P.2d 1240 (1999).

After ruling by the superior court on revision, the appeal is from the superior court's decision, not the commissioner's. *State v. Hoffman*, 115 Wash.App. 91, 101, 60 P.3d 1261 (2003).

B. **Ruling was well reasoned in law and fact.** An action is arbitrary and capricious if it is willful and unreasoning and taken without regard to

the attending facts or circumstances. Judge Hirsch's ruling is supported by substantial evidence and law which Judge Hirsch thoughtfully and carefully outlined in her ruling.

C. **Ruling was not an abuse of discretion.** Pursuant to *In re the Marriage of Littlefield*, 133 Wash.2d 39, 46, 940 P.2d 1362 (1997), a trial court's decision is reviewed for an abuse of discretion. The trial court abuses its discretion when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Provided that the trial court's findings of fact are supported by substantial evidence, they will be accepted as verities by the reviewing court. *Ferree v. Doric Co.*, 62 Wash.2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wash.2d 543, 561, 14 P.3d 133 (2000).

**5.2 Judge Hirsch properly excluded inadmissible evidence of S.C.'s prior sexual relationship with someone other than Appellant, J.C., and properly revised Pro Tem Commissioner Martin Meyer's dismissal of S.C.'s petition.**

A. **RCW 7.90.010 regarding sexual assault**

It is undisputed that J.C. exposed his erect penis to S.C. What is disputed is whether S.C. consented to seeing J.C.'s penis and whether S.C.

voluntarily touched J.C.'s penis or whether, as S.C. testified, she was forced to touch it. RCW 7.90.010(1) defines non-consensual as a lack of freely given agreement. Pursuant to RCW 7.90.010(b) any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification constitutes sexual conduct. Therefore, to display one's genitals for the purposes of arousal or sexual gratification or to force one to touch another's genitals with a lack of freely given consent is nonconsensual sexual conduct.

**B. Admissibility of Evidence pursuant to Evidence Rule 412(b) and RCW 7.90.080**

Over the objection of S.C.'s counsel, Pro Tem Commissioner Martin Meyer allowed counsel for J.C. to question S.C. under cross examination about her past sexual relationship with someone other than J.C. In response to the objection by S.C.'s counsel, Pro Tem Commissioner Martin Meyer stated:

"I understand under the statute that sexual activity is not generally admissible for the respondent, but it's part and parcel of what gave rise to this entire proceeding so I don't think I can ignore it in this context." CP at 42, lines 14-19.

ER 412 specifically addresses the admissibility of a sexual assault victim's past sexual behavior. Regarding civil cases such as this, ER 412(b) states that evidence regarding a victim's past sexual behavior is not admissible in any civil proceeding involving alleged sexual misconduct. Pursuant to

ER 412(c), the exception to ER 412(b) is evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. However, ER 412(d)(1) sets forth a procedure to determine admissibility of such evidence. ER 412(d)(1) states:

(d) Procedure to determine admissibility.

(1) A party intending to offer evidence under section (c) must:

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

RCW 7.90.080(2) also sets forth a similar procedure:

No evidence admissible under this section may be introduced unless ruled admissible by the court after an offer of proof has been made at a hearing held in camera to determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place, or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from

inquiring into prior sexual activity between the petitioner and the respondent. The court may not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence shall be admissible at trial to the extent an order made by the court specifies the evidence that may be admitted and areas with respect to which the petitioner may be examined or cross-examined.

Here, it is undisputed that counsel for J.C. did not comply with the procedures for seeking admission of such evidence as required by ER 412 or RCW 7.90.080 nor was there a hearing to determine to admissibility of such evidence.

Could it possibly be of high probative value to make a 14 year old girl discuss her sexual relations in an open courtroom on the stand when the issue is not whether she consented to sex with a boyfriend 3 months prior to J.C. exposing himself to her, but whether, on the day in question, she consented to look at the J.C.'s erect penis when he exposed himself to her and forced her to touch it? Whether S.C. had sexual intercourse with her ex boyfriend in the months prior to J.C. forcing her to look at and touch his erect penis, how many times S.C. had sexual intercourse with her ex boyfriend, whether S.C. told her mom that she had intercourse and whether S.C.'s mother approved of her having sexual intercourse with her ex boyfriend is inadmissible, irrelevant and prejudicial whether testified to by J.C., S.C., or anyone else.

The details of what specifically S.C. confided in J.C. regarding the details of her sexual relationship with her ex boyfriend should in no way have been considered by J.C. or the Court as S.C.'s consent or desire to look at or touch J.C.'s penis.

While the rules of evidence are not strictly applied in special proceedings such as sexual assault protection order hearings, this mainly refers to the issue of the admissibility of hearsay. Here, the issue is not the admissibility of hearsay, the issue is admissibility of evidence that is very clearly prejudicial, irrelevant and inadmissible pursuant to not only ER 412(b) but also RCW 7.90.080 which mirrors ER 412(b).

Judge Hirsch properly excluded and did not consider the evidence finding it inadmissible.

**C. Rape Shield Law**

Rape shield laws have been around since the 1970's because there is no correlation between a sexual assault victim's prior sexual history and the likelihood that they consented to sexual contact. Because of this, there are only specific situations in which the court will allow such evidence to be admitted. Such evidence may be admitted when necessary to establish consent. The admissibility of past sexual behavior evidence is within the sound discretion of the trial court. *State v. Hudlow*, 659 P.2d 514, 99

Wn.2d 1 (1983) citing *State v. Blum*, 17 Wash.App. 37, 46, 561 P.2d 226 (1977).

Here, the evidence of S.C.'s prior sexual conduct was not used to impeach her, nor could it have been used to show consent because it is not S.C.'s prior sexual conduct with J.C. that is at issue. Based upon this alone, the evidence of S.C.'s prior sexual conduct is inadmissible simply based upon relevance. However, consent appears to be exactly the reason that J.C. argues that the Court should consider S.C.'s prior sexual conduct. J.C. clearly believes that S.C. must have wanted sexual contact with him, but not because she said she did; instead, J.C. believes S.C. wanted sexual contact with him because she disclosed intimate details of her sexual history to him.

The fact that S.C. and J.C. had discussions of a sexual nature that day is no more relevant to the issue of consent than if they had talked about their summer vacation. Cross examining S.C. on her prior sexual relationship with someone other than J.C. is absolutely irrelevant and violates our state's rape shield laws. Judge Hirsch found the evidence to be irrelevant and inadmissible and it was within her discretion to do so.

**5.3 Judge Hirsch heard S.C.'s motion for revision de novo and properly ruled on documentary evidence alone.**

Judge Hirsch had ample evidence with which to make a determination. Pursuant to *Blackmon v. Blackmon*, 155 Wash.App., 230 P.3d 233 (2010), there is no right to a jury trial in a domestic violence protection order hearing because such proceedings are equitable in nature and *may be properly determined by a court on documentary evidence alone*. Therefore, Judge Hirsch was not bound by any of Pro Tem Commissioner Martin Meyer's findings and was free to consider S.C.'s request upon the documentary evidence alone.

J.C. argues on one hand that Pro Tem Commissioner Meyer's finding of credibility should have been considered by Judge Hirsch. On the other hand, J.C.'s brief cites *In re the Marriage of R.E.*, 183 P.3d 339, 144 Wn. App. 393, at 406 (2008) which states that the court may not apply a substantial evidence standard, but must apply a de novo standard. Therefore, the court should not have considered Pro Tem Commissioner Meyer's findings regarding credibility or anything else because the Judge Hirsch was to review the case de novo and pursuant to *Blackmon*, the court may consider this case on documentary evidence alone.

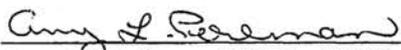
## VI. CONCLUSION

Judge Hirsch properly found that evidence of S.C.'s prior sexual relationship with someone other than J.C. was irrelevant and inadmissible. Judge Hirsch properly found that Appellant did not comply with ER 412

and RCW 7.90.080 which set forth specific guidelines before such evidence may be admitted. Appellant's argument that the rules of evidence do not apply in special proceedings fails because the same guidelines are set forth in RCW 7.90.080. Judge Hirsch properly considered the documentary evidence de novo and based upon the evidence presented, Judge Hirsch found evidence to support the entry of a sexual assault protection order. Respondent requests that this court affirm her ruling.

Respectfully submitted this 23<sup>rd</sup> day of May, 2013.

**MADISON LAW FIRM, PLLC**  
Attorneys for Respondent

  
\_\_\_\_\_  
Amy L. Perlman, WSBA 42929

2102 Carriage Dr. SW, Suite A-103  
Olympia, WA 98502  
T 360.539.4682  
F 360.915.9236

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on May 23<sup>rd</sup>, 2013, I arranged for service of the foregoing Brief of Respondent, to the court and counsel for the parties to this action as follows:

Office of Clerk  
Washington Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402  
Via e-file

Mr. Saxon Rodgers  
Attorney for Appellant  
Rodgers Kee & Pearson, P.S.  
324 West Bay Dr. NW, Suite 201  
Olympia, WA 98502  
Via email and messenger

Dated at Olympia, Washington this 23<sup>rd</sup> day of May, 2013.

Amy L. Perlman  
Amy L. Perlman, WSBA 42929

# MADISON LAW FIRM PLLC

**May 23, 2013 - 4:17 PM**

## Transmittal Letter

Document Uploaded: 444771-Respondent's Brief.pdf

Case Name: Claxton v. Christoffer

Court of Appeals Case Number: 44477-1

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Elise N Kennedy - Email: [amy@madisonlf.com](mailto:amy@madisonlf.com)

A copy of this document has been emailed to the following addresses:

[saxr@buddbaylaw.com](mailto:saxr@buddbaylaw.com)  
[amy@madisonlf.com](mailto:amy@madisonlf.com)