

NO. 46521-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RICHARD STAVRAKIS,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it refused to allow the defense to elicit evidence that A.S. had a motive to fabricate her initial claims against the defendant.

2. The trial court denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it refused to allow the defense to elicit evidence that A.S. had made prior false claims of abuse against the defendant.

Issues Pertaining to Assignment of Error

1. In a case in which a 16-year-old witness claims that a defendant sexually abused her on one occasion eight years previous, does a trial court deny that defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it refuses to allow the defense to elicit evidence that the witness had a motive to fabricate her claims?

2. In a case in which a 16-year-old witness claims that a defendant sexually abused her on one occasion eight years previous, does a trial court deny that defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it refuses to allow the defense to elicit evidence that the witness had previously made false claims of abuse against the defendant?

STATEMENT OF THE CASE

Factual History

In May of 2014, A.S. was a 16-year-old sophomore in High School when she testified in the trial in this case. RP 316 to 318.¹ She has lived her entire life at 8801 NE 136th Avenue in Vancouver with her mother Angela, her father John and her older brother P.S.. *Id.* For a number of years leading up to 2006, her father's mother Helen Stavrakis also lived with them. RP 361. The defendant Richard Stavrakis is John Stavrakis's only sibling. RP 514-515. Prior to mid-summer of 2006 Richard was serving a prison sentence in Oregon for delivery of cocaine. RP 268-279.

Sometime in August or September of 2006, John and Angela Stavrakis held a family barbeque at their home in Vancouver and invited the defendant to attend. RP 453-454. This was a few weeks after the defendant had been released from prison and the first time his brother's family had seen him since his release. RP 268-279, 453-454. During much of the afternoon Angela was inside cleaning while her husband John spent most of his time in the back yard preparing and cooking on the grill. RP 782-783. Helen Stavrakis occasionally come out in the back yard to visit or to smoke. RP

¹The record on appeal includes eight volumes of continuously numbered verbatim reports of three pretrial hearings, the jury trial held on May 12, 13, 14 and 15, 2014, and a subsequent sentencing hearing. The verbatim reports are referred to herein as "RP [page #]."

522-524. After arriving and visiting with everyone the defendant got into John and Angela's hot tub, which sits in the back yard, visible to anyone in the yard and through all the rear windows in the house. RP 321-323, 453-458, 522-524, 783. Although both A.S. and her brother P.S. wanted to get into the hot tub with him they agreed that A.S. would first have a turn in the hot tub with the defendant and then P.S. would have a turn. RP 321-323. At the time A.S. was eight-year-old. RP 319-320.

During the time A.S. was in the hot tub with the defendant Helen came out and smoked sitting next to the tub, John came in and out cooking, and P.S. came out wanting his turn in the tub. RP 330-331, 522-524, 782-783. A little while after A.S. got out of the hot tub and went inside her mother Angela notice that she was upset. RP 462-464. Upon asking what the matter was A.S. told her mother that while in the hot tub the defendant had "touched her pee pee" in a manner that made her uncomfortable. RP 462-464, 785-786. After hearing this Angela told John, and the two of them then spoke with Helen and the defendant. *Id.* Upon hearing this report the defendant stated that when A.S. had got into the hot tub she had jumped on top of him and that he had lifted her up by the back of her thighs and placed her in a seat in the tub. *Id.* He denied ever touching her in an inappropriate manner. *Id.*

Based upon the statements A.S. and the defendant made both Angela

and John concluded that any touching had been unintentional. RP 464, 819. However, they did decide to adopt a rule that the defendant could not be alone with A.S. whenever he came over for a family gathering. RP 338, 464, 819. There were a number of subsequent occasions in which the defendant did come into the home for family events. RP 345-346, 790-792. Although A.S. later denied that she had any contact with the defendant after the hot tub incident, the defense did produce a subsequent photograph showing a smiling A.S. standing next to the defendant with her arm around him. RP 384-386, 397.

Seven or eight years after the incident in the hot tub, A.S. was expelled from school for theft and possession of marijuana and referred to juvenile court for criminal charges, which were resolved through a diversion agreement. RP 208-220, 281. As part of that process A.S. was ordered to attend group therapy. *Id.* During one of these sessions one of the participants broke down and stated that she had been sexually abused as a child. RP 339-340. A.S. then stated for the first time that during the hot tub incident eight years previous the defendant had digitally penetrated her. RP 339-344, 377-378, 396. Based upon her statements the group leader reported her claims to the police, who later interviewed A.S. and her parents. RP 343, 369. They were later interviewed by a defense attorney and investigator. RP 703-705.

During these interviews A.S. made a number of factual claims about

the incident. RP 704-705. She claimed that the defendant had put his hands inside the lower piece of her two piece swimming suit while they were sitting in the hot tub and had then digitally penetrated her. RP 324-326, 396, 510. She also claimed that she and the defendant were in the hot tub for about two hours and that the sexual abuse continued for about 30 or 40 minutes while they were in the tub. RP 367-368. During the interview process John Stavrakis was asked about the claims A.S. was making. RP 408-419. He stated that after A.S.'s recent claims of abuse he and his wife Angela sat down with their daughter to speak with her. *Id.* He further stated that during these discussions A.S. also revealed that on more than one occasion after the hot tub incident when she was alone in the house the defendant came in, took her into her bedroom and "raped" her. RP 414-417.

As part of their investigation the police also met with the defendant in the Portland home he then shared with his mother and interviewed him. RP 705-708. Although the defendant admitted that he had been in the hot tub with A.S. some eight years previous he stated that he had never touched A.S. in an inappropriate manner. *Id.*

Procedural History

By information filed April 30, 2013, and later amended in January of 2014, the Clark County prosecutor charged the defendant with one count of first degree rape of a child and one alternative count of first degree child

molestation. CP 1, 195-197. Following a CrR 3.5 hearing, the court called the case for trial, during which the state called six witnesses, including A.S. as well as her mother Angel, her father John and grand-mother Helen. RP 316, 442, 449, 503, 513, 617, 697.

During the trial the state moved in limine to prevent the defense from eliciting evidence that (1) A.S. had been referred to group counseling based upon her expulsion from school and prosecution for theft and possession of marijuana in juvenile court, and (2) that John Stavrakis had stated during an interview that A.S. had revealed to him and his wife that after the hot tub incident the defendant had come into their home when they were gone, had taken A.S. into her bed room and had raped her on more than one occasion. RP 431-440, 595-612. The court granted the first motion over the defendant's argument that the school expulsion and criminal prosecution were relevant to show that A.S. had fabricated the claims of rape to deflect her responsibility for her criminal acts and to garner sympathy. RP 565-612.

Although the court had granted the state's first motion in limine, it took the second under advisement to await the defense calling John Stavrakis by way of offer of proof. RP 431-440. During that subsequent offer of proof John Stavrakis stated the following: (1) that he and his wife had met with A.S. after her recent claims of abuse, (2) that his wife and A.S. did most of the talking, (3) that during a defense interview he had stated that during the

meeting he and his wife had with A.S., A.S. had revealed that after the incident in the hot tub the defendant had come over to their house on more than one occasion when A.S. was alone, had taken her into her bedroom and had raped her, (4) that he has now come to believe that he misinterpreted what A.S. said to him and his wife, and (5) that he no longer believes A.S. told him and his wife that the defendant had come over after the hot tub incident when he and his wife were not present, that he had taken her into her bedroom and that he had raped her on more than one occasion. RP 408-431.

Based upon this testimony the court ruled that if the state called John Stavrakis as a witness in its case-in-chief, the defense would be allowed to cross-examine him concerning his interview statements that A.S. had made specific, multiple allegations of rape following the hot-tub incident. RP 431-440. Following this ruling the prosecutor (1) informed the court that it was striking John Stavrakis from its witness list, and (2) that the state was renewing its motion to preclude the defense from eliciting any claims of rape after the hot tub incident should the defense call John Stavrakis as a witness. *Id.* Following argument the court granted the state's motion. *Id.* Thus, while the defense did later call John Stavrakis as a witness after the state refrained from doing so, the court prevented the defense from eliciting the fact that John Stavrakis had previously stated that A.S. had made the subsequent allegations of rape. RP 776-821.

As its first witness in the case the state called A.S. RP 316. During her testimony she claimed that when she had got into the hot tub with the defendant some eight years previous, the defendant had stuck his hand down the bottoms of her pink, two-piece swimming suit and had digitally penetrated her for almost 30 to 40 minutes of the two hours that they were in the hot tub together. RP 323-331, 367-368. She also stated that during this abuse her grandmother came out and talked to them while she smoked and that her brother came out demanding his turn in the hot tub with the defendant. RP 333-335, 374-375. During direct examination A.S. denied any subsequent sexual contact with the defendant. RP 345-346.

On cross-examination A.S. denied any memory of the subsequent photograph showing her standing next to the defendant smiling with her arm around him. RP 397. She also stated that on the day of the hot tub incident she did not tell her parents about the defendant's conduct until after the defendant had left the house and that her parents had actually spoken with the defendant the next day. RP 382-383. Finally, she reiterated that (1) the swimming suit she was wearing while in the hot tub was her two-piece pink suit and not her black one-piece suit, and (2) that the defendant had stuck his hand down the front of the bottom part of that two-piece pink suit and had then digitally penetrated her. RP 362-363, 396.

As its third witness in its case-in-chief the state called Angela

Stavrakis. RP 449. During her testimony, Ms Stavrakis stated that on the day in question A.S. was wearing her one-piece, pink bathing suit, and that she got into the hot tub with the defendant for no more than 15 or 20 minutes, which was the maximum amount of time she and her husband would allow the children to stay in the hot tub. RP 459-460. She also testified that A.S. made her claim about inappropriate touching before the defendant left and that she and her husband had spoken with the defendant and Helen prior to the defendant leaving the house that day. RP 462-464.

Following Angela Stavrakis's testimony the state recalled A.S. to the stand. RP 503-513. When recalled to the stand A.S. made the following claims: (1) that following her initial testimony she "remembered" that her pink bathing suit had actually been one-piece as opposed to two-piece as she had testified to the jury earlier that day, (2) that what the defendant actually did when they were in the hot tub was to put his hand through one of the leg holes of her suit as opposed to putting it down the front of the bottom half of a two-piece suit as she had testified to the jury earlier that day, and (3) that she had spontaneously remembered these facts and that no one had told her about her mother's testimony that her bathing suit had been in one and not two pieces. RP 503-508. On cross-examination A.S. admitted that she had previously told the police officers who interviewed her that she had been wearing a two-piece swimming suit that day. RP 510.

After recalling A.S. to the witness stand the state called three further witnesses and then rested its case. RP 513, 558, 697. The defense then called five witnesses and rested its case. RP 407, 821, 846, 874, 894. At this point the court instructed the jury with the defense objecting to Instruction No. 11 defining the term “sexual contact.” RP 981-983. The defense also took exception to the court’s refusal to give its proposed WPIC 4.64.01, which would have limited the jury’s use of the evidence that A.S. had participated in group therapy sessions. RP 981-983; CP 111. Following instruction the parties presented closing argument, during which a number of objections were raised by both sides. RP 1018-1046, 1046-1063, 1063-1074.

After argument the jury retired for deliberation. RP 1018-1074. Eventually the jury returned a verdict of acquittal on the rape charge along with a verdict of guilt on the alternative child molestation charge. RP 1079-1087; CP 137-140. Based upon the latter verdict, the court sentenced the defendant to life in prison with a minimum time to serve of 120 months in prison before first being eligible for consideration for release. CP 164-183. This sentence was within the standard range as calculated by the court. *Id.* The defendant thereafter filed timely notice of appeal. CP 184-185.

ARGUMENT

I. THE TRIAL COURT DENIED THE DEFENDANT A FAIR TRIAL WHEN IT REFUSED TO ALLOW THE DEFENSE TO ELICIT EVIDENCE THAT A.S. HAD A MOTIVE TO FABRICATE HER CLAIMS AGAINST THE DEFENDANT.

While due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment does not guarantee every person a perfect trial, it does guarantee all defendants a fair trial. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963); *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968). As part of this right to a fair trial due process also guarantees that a defendant charged with a crime will be allowed to present relevant, exculpatory evidence in his or her defense. *State v. Hudlow*, 99 Wn.2d 1, 659 P.2d 514 (1983); *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).

For example, in *State v. Ellis*, 136 Wn.2d 498, 963 P.2d 843 (1998), a defendant charged with aggravated first degree murder sought and obtained discretionary review of a trial court order granting a state's motion to exclude his three experts on diminished capacity. In granting the motion to exclude, the trial court noted that the defense had failed to meet all of the criteria for the admissibility of diminished capacity evidence set in the Court of Appeals decision in *State v. Edmon*, 28 Wn.App. 98, 621 P.2d 1310 (1981).

On review, the state argued that the trial court had not erred because

the defense experts had failed to meet the *Edmon* criteria. In its decision on the issue, the Supreme Court initially agreed with the state's analysis. However, the court nonetheless reversed the trial court, finding that regardless of the factors set out in *Edmon*, to maintain a diminished capacity defense, a defendant need only produce expert testimony demonstrating that the defendant suffers from a mental disorder, not amounting to insanity, and that the mental disorder impaired the defendant's ability to form the specific intent to commit the crime charged. The court then found that the state had failed to prove that the defendant's experts did not meet this standard. Thus, by granting the state's motion to exclude the defendant's experts on diminished capacity, the trial court had denied the defendant his due process right under Washington Constitution, Article 1, § 3, and United States Constitution, Sixth and Fourteenth Amendments, to present relevant evidence supporting his defense.

In the case at bar, the state called two witnesses to elicit the fact that A.S. had been in "group therapy," that she had heard a group member reveal her experience with sexual abuse and that this event had been the impetus for her revelation of the extent of the abuse she claimed she had suffered at the hands of the defendant. These two witnesses were A.S. and a therapist who had access to the records of the group therapy sessions A.S. attended. The defense theory of the case was diametrically opposed to the state's theory that

the method by which A.S. made her claims of abuse lent credibility to her claims. The defense theory was that when A.S. was present in the group therapy session she saw the sympathy that the claim of abuse garnered her fellow group therapy member and that she decided to make up her own claim of abuse as a method to garner the same type of sympathy and thereby deflect the result of her own bad actions that had landed her in group therapy: her theft of two cell phones, her illegal possession of marijuana, her expulsion from school and her referral to juvenile court.

Under the defense theory the truth about how A.S. ended up in group therapy sessions was critical to both (1) rebutting the state's argument that the facts surrounding A.S.'s revelations lent credibility to those claims, and (2) supporting the defense's argument that the facts underlying how A.S. ended up in the group therapy session indicated that she had fabricated a claim of abuse to garner sympathy and deflect blame from her actions. As the following explains, this evidence was both relevant and admissible, and the trial court's decision to exclude it denied the defendant his due process rights to present exculpatory evidence.

Under ER 401, "relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Under ER 402, "all relevant evidence is admissible"

with certain limitations. By contrast, under this same rule “[e]vidence which is not relevant is not admissible.” Thus, before testimony can be received into evidence, it must be shown to be relevant and material to the case. *State v. Wilson*, 38 Wn.2d 593, 231 P.2d 288 (1951). Finally, the “existence of any fact” as that term is used in these two rules cannot rest upon guess, speculation, or conjecture. *State v. Golladay*, 78 Wn.2d 121, 470 P.2d 191 (1970).

For example, in *State v. Thamert*, 45 Wn.App. 143, 723 P.2d 1204 (1986), the defendant was charged with two counts of robbery, and he offered a diminished capacity defense, arguing that his voluntary drug usage prevented him from forming the requisite intent to commit the crime. During trial, he attempted to call a jail nurse as a lay witness to testify concerning her personal observations of the defendant following his arrest. However, the court excluded this witness and the defendant was convicted. The defendant then appealed, arguing that the trial court denied him a fair trial when it excluded his proposed witness.

In addressing the defendant’s arguments, the court first noted that lay witnesses may testify concerning the mental capacity of a defendant so long as the witness’ opinion is based on facts the witness personally observed. The court then noted that the trial court did not abuse its discretion when it excluded the defendant’s proposed witness because she did not meet these

criteria as she had never observed the defendant when he was abusing drugs.

In the case at bar the ultimate question before the jury was whether or not the state had proven A.S.'s claims of digital penetration beyond a reasonable doubt. There was no physical evidence to support the claim, there were no witnesses of the abuse and the defendant had made no admissions of guilt. As with numerous similar claims of abuse this case turned on the jury's perception of A.S.'s credibility. In such a case evidence that calls that credibility into question is critical to the defense, highly relevant and therefore admissible under ER 402. Consequently, the trial court in this case erred when it refused to allow the defense to elicit the facts underlying how A.S. ended up in group therapy sessions.

In this case the state may concede that the evidence explaining the reason for A.S.'s presence in group therapy sessions was relevant under ER 401 and generally admissible under ER 402, but none the less argue that under ER 403 the trial court did not err when it excluded the evidence because it was more prejudicial than probative. ER 403 states:

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.

ER 403.

In weighing the admissibility of evidence under ER 403 to determine

whether the danger of unfair prejudice substantially outweighs probative value, a court should consider the importance of the fact that the evidence is intended to prove, the strength and length of the chain of inferences necessary to establish the fact, whether the fact is disputed, the availability of alternative means of proof, and the potential effectiveness of a limiting instruction. *State v. Kendrick*, 47 Wn.App. 620, 736 P.2d 1079 (1987). In Graham's treatise on the equivalent federal rule, it states that the court should consider:

the importance of the fact of consequence for which the evidence is offered in the context of the litigation, the strength and length of the chain of inferences necessary to establish the fact of consequence, the availability of alternative means of proof, whether the fact of consequence for which the evidence is offered is being disputed, and, where appropriate, the potential effectiveness of a limiting instruction....

M. Graham, *Federal Evidence* § 403.1, at 180-81 (2d ed. 1986) (quoted in *State v. Kendrick*, 47 Wn.App. at 629).

The decision whether or not to exclude evidence under this rule lies within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *State v. Baldwin*, 109 Wn.App. 516, 37 P.3d 1220 (2001). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001).

In the case at bar, the trial court did not perform a balancing test under

ER 403 and find that the proffered evidence was more prejudicial than probative. Rather, the trial court simply excluded that evidence upon its ruling that it was irrelevant. However, a ruling that the evidence was more prejudicial than probative would have been in error under the relevant criteria recognized under the rule. The reason is that in this case the excluded evidence, which the state did not dispute was factually correct, was offered as a direct refutation of the critical issue before the jury: A.S.'s credibility. In addition, any potential unfair prejudice to the state could have been addressed with a limiting instruction. Thus, in this case the trial court abused its discretion when it excluded the evidence that A.S. was in the group therapy sessions as the direct result of her theft of cell phones, illegal possession of marijuana, expulsion from school and referral to juvenile court. As a result, the trial court erred when it refused to allow the defense to elicit this evidence. In addition, as the following explains, the trial court's error also caused prejudice.

In the case at bar the evidence A.S.'s claim of abuse, while sufficient to sustain a conviction, was highly equivocal. First, A.S. was making the claim almost eight years after the alleged event occurred. Second, the facts surrounding her claims strained credulity. Specifically, she was claiming that for somewhere between 20 and 40 minutes the defendant digitally penetrated her within eye site of her father and brother, and as her grandmother literally

stood next to the hot tub while smoking a cigarette. Third, her claims about the configuration of her swimsuit were inconsistent with the testimony of both her mother and grandmother.

Finally, when recalled to the stand to explain the inconsistency between her testimony that she had been wearing a two piece swimsuit (which would have allowed a person to put his hand inside the swimsuit from the top of the bottom piece), and her mother and grandmother's testimony that she had actually been wearing a one piece suit, A.S. recanted her prior testimony from earlier that day and her prior statements to the police and for the first time claimed that the defendant had put his hand up one of her legs from the bottom of her swimsuit. She then claimed that she had somehow "just remembered" that this was the true state of affairs and that no one had informed her concerning her mother and grandmother's testimony about the configuration of her swimsuit.

Given the tenuous nature of the state's case, particularly the inconsistencies in A.S.'s testimony, it is likely that had the defense been allowed to elicit the evidence concerning why A.S. was in group therapy and how her claims provided her a way to deflect blame from her actions, the jury would have returned a verdict of acquittal. This conclusion is supported by the fact that the jury did reject the claim of rape and only returned a verdict on the alternative molestation charge. Thus, in this case the trial court's

erroneous ruling precluding the defendant from presenting relevant, exculpatory evidence denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment. As a result, this court should reverse the defendant's conviction and remand for a new trial.

II. THE TRIAL COURT DENIED THE DEFENDANT A FAIR TRIAL WHEN IT REFUSED TO ALLOW THE DEFENSE TO ELICIT EVIDENCE THAT A.S. HAD MADE PRIOR FALSE CLAIMS OF ABUSE AGAINST THE DEFENDANT.

As was set out in the prior argument, as part of the due process clauses in both our state and federal constitutions, a defendant charged with a crime is entitled to a fair trial at which he or she is permitted to present relevant exculpatory evidence. *See* Argument I, *supra*. In the case at bar the defendant also claims a violation of this right based upon the trial court's refusal to allow him to elicit evidence from John Stavrakis that after participating in a conversation with his wife and daughter, he believed his daughter was claiming that the defendant had come over to the family home on more than one occasion after the hot tub incident, taken A.S. into her bedroom when no one else was home and had raped her. In this case the trial court excluded this evidence on the basis that it was impeachment on a collateral matter given John Stavrakis's testimony during an offer of proof that he now believes that he misperceived what his daughter had said during

that conversation. As the following explains, this ruling was in error.

Under ER 801(d)(1)(i), a prior inconsistent statement by a witness who testifies at trial is not hearsay, and may be elicited to rebut the witness's testimony, if (1) the witness denies having made the prior statement, and (2) the prior statement is contrary to the evidence given at trial. *State v. Wilder*, 4 Wn.App. 850, 486 P.2d 319 (1971). However, a party may not present extrinsic evidence of a prior inconsistent statement if that extrinsic evidence constitutes impeachment on a collateral matter. *State v. Oswald*, 62 Wn.2d 118, 121, 381 P.2d 617 (1963). A matter is "collateral" for the purposes of impeachment if the fact as to which error is predicated, could not have been shown in evidence for any purpose independent of the contradiction. *State v. Rosborough*, 62 Wn.App. 341, 814 P.2d 679 (1991). *See generally* 5A K. Tegland, *Washington Practice, Evidence* § 227 (3d Ed.1989).

In the case at bar the defense sought to elicit the fact from John Stavrakis that during a recorded defense interview he had stated that during a conversation he and his wife had with A.S. following her claims that the defendant had digitally penetrated her, he believed that A.S. has stated that following the hot tub incident the defendant had come over to the family home, taken A.S. into her bedroom on more than one occasion while no other person was in the house, and that he had then raped her. In his testimony during an offer of proof John Stavrakis did not deny that he had made these

specific statements. Indeed, the defense had recorded the interview and provide all parties with a transcript of John Stavrakis's statements. What he said was that after further reflection he now believes he did not correctly understand the substance of A.S.'s statements.

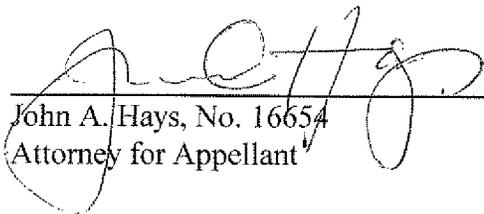
In attempting to elicit John Stavrakis's statements during the defense interview, the defense was not attempting to impeach Mr. Stavrakis. Rather, what the defense was attempting to do was impeach A.S.'s claims made during trial that the incident in the hot tub was the only claim of abuse that she had made. Although the jury was free to accept John Stavrakis's current claim that he did not correctly understand what his daughter had said, the jury should have also been free to accept his first statements as correct, statements which directly impeached A.S.'s claims of abuse made before the jury during trial. Thus, the trial court erred when it found that John Stavrakis's statements made during his defense interview were not admissible as impeachment on a collateral issue and the trial court's decision to exclude this relevant, exculpatory evidence denied the defendant his right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment. As a result, this court should reverse the defendant's conviction and remand for a new trial.

CONCLUSION

The trial court's decision to exclude relevant, exculpatory evidence in this case denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment. As a result, this court should reverse the defendant's conviction and remand for a new trial.

DATED this 19th day of February, 2015.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

ER 401

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

ER 402

All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

ER 403

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.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 46521-3-II

vs.

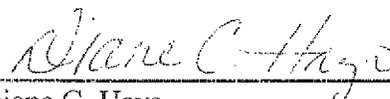
AFFIRMATION
OF SERVICE

Richard Stavrakis,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On this day, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Tony Golik
Clark County Prosecuting Attorney
1013 Franklin Street
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prosecutor@clark.wa.us
2. Richard Stavrakis, No.6738673
Oregon State Correctional Institution
3405 Deer Park Dr. SE
Salem, Oregon 97310-9385

Dated this 19th day of February, 2015, at Longview, WA.



Diane C. Hays

HAYS LAW OFFICE

February 19, 2015 - 3:54 PM

Transmittal Letter

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Case Name: State v. Richard Stavrakis

Court of Appeals Case Number: 46521-3

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: Appellant'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: Diane C Hays - Email: jahayslaw@comcast.net

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prosecutor@clark.wa.gov