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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

NO. 298884

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM T. MILLER

Appellant.

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

APPELLANT'S OPENING BRIEF

TANESHA LA'TRELLE CANZATER
Attorney for Appellant
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A. ASSIGNMENT OF ERROR

The State did not prove an essential element of the crime charged.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Was there sufficient evidence to convict Mr. Miller of second-degree child molestation when the evidence presented did not prove that K.C. was less than 14 years old at the time she claimed the crime occurred?

C. STATEMENT OF THE CASE

Fifty-six year old William Miller (Mr. Miller) was born and raised in Wenatchee, Washington. 3/10/11 RP 269-270. He lived and worked in Wenatchee without incident and had never been in trouble before with the law, until his ex-girlfriend's daughter K.C., accused him of molesting her. CP 280-289.

Mr. Miller met K.C. when he began dating her mother in or around 2004, when K.C. was 12 years old. He moved in with K.C. and her mother in 2005. 3/10/11 RP 270-271.

Mr. Miller was very proud of K.C. and considered her a daughter. 3/10/11 RP 273-274. His relationship with her was good in the beginning. As K.C. grew older, their relationship became strained.

K.C. testified that she felt as if Mr. Miller was trying to control her by playing the "father" role. 3/9/11 RP 65. Mr. Miller appreciated the fact that K.C. had a father, and he certainly did not try to replace him in K.C.'s life. 3/10/11 RP 272. The only thing he ever asked K.C. to do was to keep her

bedroom clean. 3/10/11 RP 276. Mr. Miller confronted her, whenever she neglected to do so. Her mother would often intervene and order Mr. Miller to back off. 3/10/11 RP 278.

Mr. Miller considered a different approach to get K.C. to clean her bedroom. He overheard her talking about laptop computers and offered to buy her one either for her birthday or for Christmas, if she kept her bedroom clean. K.C. did not keep her end of the deal. Nevertheless, Mr. Miller bought her a laptop computer. 3/10/11 RP 275.

The family's dynamics changed when K.C.'s cousin's girlfriend, Tiana, moved into the house. 3/10/11 RP 192; 5/9/11 RP 86. Mr. Miller suspected Tiana was using drugs at the house and wanted to confront her about his suspicions. 3/10/11 RP 276. K.C. was furious. 3/9/11 RP 88. She testified that the very thought of Mr. Miller confronting Tiana pushed her over the edge. She did not feel it was Mr. Miller's place to interfere in household affairs, because it was her mother's house and her mother paid all of the bills. 3/9/11 RP 68.

K.C. told her mother how Mr. Miller was "overstepping" his boundaries in the house and her mother confronted Mr. Miller. 3/10/11 RP 278. She reminded Mr. Miller about all the other times he had "overstepped" his boundaries by asking K.C. to clean her bedroom, and asked him to move out of the house for while. 3/10/11 RP 193. Mr. Miller moved in with his sister. 3/10/11 RP 279.

K.C. moved in with her father. 3/9/11 RP 68. She told her father the reason she moved out of her mother's house was because she had to share her bedroom with Tiana and she was just tired of the "drama." 3/10/11 RP 230; 3/10/11 RP 239-240.

Some time later, K.C.'s father noticed a diary type notebook on her bed. He thumbed through the pages and opened a letter that was addressed to her mother. In the letter, K.C. wrote that Mr. Miller had molested her. 3/10/11 RP 232. K.C.'s father continued to thumb through the notebook and found a second letter addressed to Mr. Miller. In that letter, K.C. asked how Mr. Miller could what he did to someone that he loved. 3/10/11 RP 232.

K.C.'s father telephoned police and an officer arrived at his house. 3/10/11 RP 234. K.C. told the officer that Mr. Miller started to molest her 3 years before, when she was 15 years old, and that the abuse occurred over the span of 1 year. 3/10/11 RP 248-249.

The officer turned the matter over to detectives. Detectives sought to elicit a confession from Mr. Miller. They obtained a court order that authorized them to intercept and to record a telephone call conversation between K.C. and Mr. Miller for that purpose. CP 26-27.

During the telephone conversation, K.C. asked questions tailored to make Mr. Miller confess to touching and to rubbing himself against her. She even accused him of trying to bribe her with the laptop he gave her earlier.[1]

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[1] I have designated the transcript of this telephone conversation. It was presented in court as exhibit 2.

When that effort proved futile, detectives asked Mr. Miller to come to the station for an interview. 3/10/11 RP 387. There, detectives became more aggressive. They bombarded him with loaded questions that forced him to either agree he was a pervert or child molester. 3/10/11 RP 215-216. They even played on Mr. Miller's feelings for K.C. They told him that K.C. would be devastated if he refused to take "ownership" for what he had done to her. 3/10/11 RP 214; 3/10/11 RP 290.

At some point during the interview, detectives believed Mr. Miller made admissions. 3/10/11 RP 225. He was arrested and charged with 2 counts second-degree child molestation. CP 15-16. The State later amended the charges to include 4 counts second-degree child molestation and 2 counts third-degree child molestation. CP 48-51; CP 171-174. Mr. Miller pleaded not guilty to all charges and invoked his right to a jury trial.

The jury found Mr. Miller not guilty of third-degree child molestation, but guilty on the 4 counts of second-degree child molestation. CP 232; CP 233; CP 228; CP 229; CP 230; CP 231. The court sentenced Mr. Miller to 9 years incarceration and imposed a variety of fees. CP 280-289. This appeal followed. CP 329-330; CP 312-326.

D. ARGUMENT

THE EVIDENCE PRESENTED TO PROVE SECOND DEGREE CHILD MOLESTATION WAS INSUFFICIENT TO PROVE THAT K.C. WAS LESS THAN 14 YEARS OLD AT THE TIME SHE CLAIMED THE CRIME OCCURED.

Due process requires the State to prove every element of an offense beyond a reasonable doubt. U.S. Const. amend. XIV; Wash. Const. art. I § 3; State v. Lively, 130 Wn.2d 1, 11, 921 P.2d, 1035 (1996); In re Winship, 397 U.S. 358, 364 (1970). A criminal defendant's right to due process is violated when a conviction is based upon insufficient evidence. Id.; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). Accordingly, a reviewing court will reverse a conviction for insufficient evidence where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Sufficient evidence supports a conviction if, after viewing the evidence in the light most favorable to the State, any rational fact finder could have found guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of evidence in a criminal case, the reviewing court must draw all reasonable inferences from the evidence in the State's favor and interpret all reasonable inferences from the evidence strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). An insufficiency claim admits the truth of the State's evidence and all inferences that the court reasonably

can draw from it. State v. Theroff, 25 Wn.App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). Finally, the reviewing court will defer to the fact finder on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

To prove second-degree child molestation, the State had to show that Mr. Miller knowingly had sexual contact with K.C., who was not his wife, when she was at least 12 years old but less than 14 years old at the time. RCW 9A.44.086. Here, the evidence did not prove that K.C. was at least 12 years old but less than 14 years old at the time she claimed Mr. Miller first molested her.

K.C. was 18 years old, at the time of trial. She was born on November 16, 1992. 3/9/11 RP 46. She reported to the officer who was dispatched to her father's house that Mr. Miller began to molest her 3 years before. 3/10/11 RP 249. At trial, K.C. changed her initial report and claimed Mr. Miller began to molest her when she was in the 6th grade. 3/9/11 RP 50. If K.C. was 15 years old when the alleged abuse began, as she reported to police, then by statute, Mr. Miller did not commit second-degree child molestation.

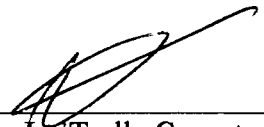
No rational trier of fact could have found Mr. Miller guilty of second-degree child molestation beyond a reasonable doubt, based on K.C.'s conflicting statements. Hence, insufficient evidence supported this conviction. Where insufficient supports the conviction, the case must be

dismissed with prejudice. State v. B.J.S., 140 Wn.App. 91, 97 n. 2, 169 P.3d 34 (2007).

E. CONCLUSION

For the reasons set forth above, Mr. Miller respectfully asks this Court to reverse his conviction.

Respectfully submitted this 20th day of [illegible], 2011.



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