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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

31354-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

GLENN E. SAPP, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I.

ASSIGNMENTS OF ERROR

1. The defendant lists 10 pages of Assignments of Error on appeal. Due to the repetitious nature and the massive quantity of alleged errors, those alleged errors will not be repeated here.

II.

ISSUES

1. Is there only one way to meet the requirements for authentication?
2. Has the defendant shown that the State did not prove the defendant's prior criminal history?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's rendition of the Statement of the Case.

IV.

ARGUMENT

- A. THERE ARE MULTIPLE METHODS TO AUTHENTICATE EVIDENCE.

The defendant raised multiple objections at trial, essentially attacking all of the State's video recordings and photographs. The defendant makes his

repeating claim based on a “lack of foundation” for the admission of various State’s exhibits. Both at trial and again on appeal the defendant improperly interprets Rule 901.

The defendant supports his arguments with citation to cases from outside Washington State. Two citations, *Murry v. State*, 453 So. 2d 774, 775 (Ala. Crim App. 1984) and *State v. Garza*, 242 Neb. 256, 261-62, 487 N. W. 2d 551, 556 (1992) are not helpful. The cases cited are older and from entirely different statutory underpinnings.

The court in *State v. Williams* noted:

The State satisfies ER 901, which requires that documents be authenticated or identified, if it introduces sufficient proof to permit a reasonable juror to find in favor of authenticity or identification. *State v. Danielson*, 37 Wn. App. 469, 471, 681 P.2d 260 (1984). “Rule 901 does not limit the type of evidence allowed to authenticate a document. It merely requires some evidence which is sufficient to support a finding that the evidence in question is what is proponent claims it to be.” *United States v. Jimenez Lopez*, 873 F.2d 769, 772 (5th Cir.1989).

In making a determination as to authenticity, a trial court is not bound by the rules of evidence. ER 104(a); ER 1101(c)(1); *State v. Danielson*, 37 Wn. App. 469, 471, 681 P.2d 260(1984). A trial court may, therefore, rely upon such information as lay opinions, hearsay, or the proffered evidence itself in making its determination. 5 Karl B. Tegland, *Washington Practice: Evidence Law and Practice* § 104.5, at 98 (4th ed.1999). Such information must be reliable, but need not be admissible. *City of Bellevue v. Mociulski*, 51 Wn. App. 855, 860, 756 P.2d 1320 (1988).

A sound recording, in particular, *need not be authenticated by a witness with personal knowledge of the events recorded*. Rather, the trial court may consider any information sufficient to support the prima facie showing that the evidence is authentic. *See State v. Jackson*, 113 Wn. App. 762, 769, 54 P.3d 739 (2002).

State v. Williams, 136 Wn. App. 486, 150 P.3d 111 (2007) (emphasis added).

The rather “fuzzy” logic being used by the defendant can be brought into sharp focus with a simple example. For a moment, assume the State is prosecuting a murder that occurred within view of a security camera, but only the murderer can supply the pieces the defendant in this case demands for authentication. By the defendant’s arguments, the State would not be allowed to seek admission of the security video because there was no testimony that the video accurately portrays the murder.

The defendant cites to *Toftoy v. Ocean Shores Properties, Inc.*, 71 Wn.2d 833, 431 P.2d 212 (1967) in support of the idea that there must be testimony that the photograph accurately portrays the subject illustrated. In *Toftoy*, the issue was the condition of a dance floor. The Court was dealing with a situation in which the condition of the floor was the important part. In the case at bar, the issue is the action of the defendant and the victim. Following the defendant’s arguments to their conclusion would eliminate all video recordings of the type admitted in this case. Few child rapists are going to give a step by step narration to a third party. It is only testimony from the hypothetical third party that would satisfy the defendant’s arguments. Nowhere in *Toftoy* does the court

hold that there *must* be testimony of the accuracy of photograph. Supplying testimony regarding the accuracy of the photograph is *one* way to admit a photo.

In this case, the State presented testimony from a third party who knows the bedroom in question, the defendant's voice, the general age of the child, etc. Obviously, the videotape accurately portrays the defendant's bedroom or the third party would not have recognized it. Similarly, the video recording was shown to be accurate by the fact that the witness could identify the defendant's voice, the look of the victim and the general time frame of events.

The defendant engaged in multiple sexual acts. Conveniently, he recorded most of his actions.

Authenticity may be shown by circumstantial evidence. *State v. Payne*, 117 Wn. App. 99, 109, 69 P.3d 889 (2003); *see also* ER 901(b)(4); 5C Karl B. Tegland, *Washington Practice: Evidence Law and Practice* § 901.9, at 188 (4th ed.1999). The substance of evidence sought to be authenticated may itself provide evidence of authenticity. *State v. Danielson*, 37 Wn. App. 469, 471, 681 P.2d 260 (1984). In other words, an exhibit can sometimes be "self-authenticating." Once authenticated and admitted, the defendant has the opportunity to attack the exhibit. In the case of the Exhibits submitted by the State in this case, there is not much to attack. A witness testified that the male in the video recordings was the defendant (by voice and image). The defense could claim that the young girl in the video recordings was not the victim cited in the

information, but this would be an issue for the trier of fact to decide. The child's grandmother identified the child in the videos.

The defendant objects to the admission of Exhibit 33 which is a still photograph of the child. The objection on appeal is that the identifying witness did not identify a location for the photograph. The defendant does not expand on his argument and the State is at a loss to understand why the location of the taking of the photo is of any import here. In any event, the photographs being contested by the defendant are still images generated from the videotapes that the State admitted previously. The defendant employs the same arguments as used on the previously admitted video recordings. The State responds to the defendant's protests to the still pictures as it did to the video recordings.

B. THE DEFENDANT HAS NOT MENTIONED THE FACTS PRESENTED BY THE STATE THAT PROVE THE DEFENDANT GUILTY OF FELONY COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, COUNTS I-IV.

The defendant claims that the State did not provide required proof of the defendant's prior sex crimes which is required for one of the elements in a charge of communication with a minor for immoral purposes. Clearly, the defendant did not carefully read the transcript of his trial as all of the required elements are proved beyond a reasonable doubt.

The defendant argues that he had not been convicted of a sex offense at the time he was charge with Communication with a Minor for Immoral Purposes. This is a difficult argument for the defendant to maintain considering at the time of the crimes in this case, he was a registered sex offender. The State presented the sex offender print card with the defendant's known prints and a date of birth of January 3, 1960. RP 538-39; Exh. S37, S38. The State submitted a Judgment and Sentence with the defendant's prints from Chelan County. RP 371, 372; Exh. S12. The State also entered a Statement of Defendant on Plea of Guilty as well as a certified copy of the amended information for that charge. RP 372, 373; Exhs. S10, S11. The State supplied the trial court with booking information, some of which contained fingerprints. Exh. S36.

Quite aside from the documentary evidence clearly showing that the defendant was the person who pled guilty to a sex crime in Chelan County, the defendant wishes this court to accept that a total stranger, who happens to have the defendant's name, appeared in Chelan County, (on the proper day/time) and told the Chelan court he wanted to plead guilty to a sex crime. This total stranger then went through the required colloquy with the court in Chelan County and agreed to be sentenced to a sex crime which includes Sex Offender Registration requirements. The defendant insults this court by claiming that there is no proof that he is the person who pled guilty in Chelan County.

The defendant's sole defense is to object to all of the State's media exhibits. The defendant mistakenly believes that testimony from the victim's grandmother as to the identity of the defendant in the video recordings as well as identification of her granddaughter was not enough to authenticate the proffered video recordings. The grandmother identified the defendant both visually and by recognition of his voice. She also recognized the location where the videos were recorded.

The State has supplied caselaw and facts showing that the exhibits proffered by the State at trial were properly admitted by the trial court. The arguments raised by the defendant on appeal are without merit and the defendant's convictions should be affirmed.

V.

CONCLUSION

For the reasons stated above, the State respectfully requests that the defendant's convictions be affirmed.

Dated this 16th day of October, 2013.

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