

70820-1

70820-1

NO. 70820-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

JOSE MALDONADO,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE DOUGLASS NORTH

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**BRIEF OF RESPONDENT**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

DAVID SEAVER  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

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**A. ISSUES PRESENTED**

1. Evidence of a defendant's prior bad acts is admissible to prove common scheme or plan if the prior events show a shared strategy, as opposed to mere proclivity. A trial court's decision to admit such evidence is reviewed for abuse of discretion. In this case, the defendant was charged with molesting his five-year-old daughter by rubbing the exterior of her genitals while she was left alone and unaware of the defendant's intentions. The trial court found sufficient commonality in the defendant's years-earlier abuse of the named victim's then-five-year-old half-sister to admit evidence of those prior bad acts. In the earlier events, the defendant approached that victim while she was alone and unsuspecting, and the defendant rubbed the exterior of her genitals in an identical manner. Did the trial properly exercise its discretion by admitting this evidence of prior misconduct under the common scheme or plan exception?

2. Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, and with all reasonable inferences made in the State's favor, it permits a rational trier of fact to find the elements of the charged crime proved beyond a reasonable doubt. Here, the defendant was

accused of first-degree child molestation, which required the State to prove, inter alia, that the defendant engaged in sexual contact with his very young daughter. The State's evidence demonstrated that the defendant reached under his daughter's underwear and rubbed her vulva under circumstances in which it would be impossible to ascribe his intent as anything other than a desire for sexual gratification. Was this evidence sufficient to permit the jury to reasonably conclude that the defendant engaged in sexual contact?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The appellant, Jose Maldonado, was charged by amended information with two counts of first-degree child molestation, for allegedly victimizing G.M. on separate occasions between January 1, 2009, and December 21, 2010. CP 87-88. At his first trial on this information, the jury was unable to reach a unanimous verdict, and the trial court declared a mistrial as a result, on November 19, 2012. Supp. CP \_\_\_ (sub no. 106B, Order Discharging Jury, filed on Nov. 19, 2013).

For reasons that are unclear from the report of proceedings provided by Maldonado, it appears that the State proceeded at

retrial on only one count of first-degree child molestation. By jury verdict rendered on July 16, 2013, Maldonado was found guilty as charged. CP 162.

## 2. SUBSTANTIVE FACTS

In December 2010, then-five-year-old G.M. was spending her winter vacation at the Montesano home of her older sister, then-twenty-four-year-old B.V. 4RP 100, 115; 5RP 65.<sup>1</sup> At one point during her visit, G.M. told B.V. that she did not want to return to her home in Seattle, where she lived with her mother, Maria Gomez, and her father, Maldonado, because Maldonado was hurting her. 4RP 118. G.M. explained to B.V. that Maldonado would squeeze her legs and cause her pain; B.V. noticed a bruise on G.M.'s thigh. 4RP 118-19.

B.V. asked G.M. to tell G.M.'s sister, then-nineteen-year-old, Isabel Maldonado, who was also visiting B.V., about what had happened to her. 4RP 120; 5RP 135. After B.V. left the room, G.M. told Isabel that Maldonado had squeezed her legs very hard, and added that he had also touched her vagina, underneath G.M.'s

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<sup>1</sup> The verbatim report of proceedings submitted by Maldonado consists of ten volumes, all of which involve Maldonado's retrial. These volumes are referred to hereinafter in this brief as follows: 1RP (6/27/2013); 2RP (7/1/2013); 3RP (7/2/2013); 4RP (7/8/2013); 5RP (7/9/2013); 6RP (7/10/2013); 7RP (7/11/2013); 8RP (7/15/2013); 9RP (7/16/2013); 10RP (8/23/2013).

underwear. 5RP 148. G.M. said that Maldonado would warm up his hands and then reach under G.M.'s underwear and press down; she stated that Maldonado would not reach insider her vagina, but would touch the exterior of her genitals. 5RP 148.

G.M. said that she would ask Maldonado to stop, but that he would ignore her requests. 5RP 148. She told Isabel that she had not told her mother about this because she did not know if her mother would believe her, and because she feared that Maldonado would prevent her from visiting her sisters. 5RP 149.

B.V. then re-entered the room, and G.M., without prompting, repeated her account, adding that Maldonado would assault her when her mother was not around, and they were watching television together. 4RP 124-25; 5RP 150.

B.V. called an advocacy center for abused children in Aberdeen that night. 4RP 126. Based on the advice she received, B.V. drove to Seattle that night and filed a police report. 4RP 128.

G.M. testified at Maldonado's retrial (she was eight years old at the time of retrial), and told the jury that Maldonado would stay home with her while her mother worked at Walmart. 5RP 41, 45-46. She would usually watch t.v. with Maldonado in the bed that she, he, and her mother shared in the small residence where they

lived in Seattle. 5RP 46. G.M. told the jury that her father used to touch her "private," and described it as an area that she would usually cover with underwear. 5RP 47-48. She said that Maldonado did this several times, and that it felt "a little bit weird" and unpleasant. 5RP 50, 54. She explained that she told the truth about these events when she spoke to B.V. and Isabel, as well as when she was interviewed by King County Prosecuting Attorney's Office child interview specialist Carolyn Webster. 5RP 52-53.

Webster testified that she interviewed G.M. in connection with the police investigation. 7RP 25. Her interview of G.M. was video-recorded, and was played to the jury, which was also provided with a transcript in order to ensure that it could follow the conversation. 7RP 51-52; Supp. CP \_\_ (State's Ex. #16, DVD of G.M.'s Forensic Interview, admitted on 7/11/2013); Supp. CP \_\_ (State's Ex. #17, Transcript of G.M.'s forensic interview, admitted on 7/11/2013).

During Webster's interview, G.M. explained that her father hurts her in her "*colita*," a Spanish term for genitals. 7RP 5, 57-58. G.M. told Webster that Maldonado would put his fingers in her *colita* and "squish" it while they would watch t.v. in bed together,

and that he would then wash his hands. 7RP 13. G.M. described the sensation as painful. 7RP 17.

B.V. explained to the jury that it was a particularly difficult experience to hear from G.M. about Maldonado's abuse, because Maldonado was B.V.'s stepfather from the time that B.V. was three years old, and he had abused her in a similar fashion when she was approximately five or six years of age. 4RP 84, 89-90, 119. Maldonado would enter her bedroom while she was asleep, remove her underwear, and rubbed her on top of her vagina while instructing B.V. to be quiet. 4RP 89. Maldonado warned B.V. not to tell anyone, or he would send her mother to Mexico and B.V. would never see her again. 4RP 90.

B.V. told the jury that Maldonado thereafter left to work in Alaska for about a year, but then continued his surreptitious abuse when he returned. 4RP 92-94. B.V. finally told her mother, and while her mother did not contact police, she attempted to protect B.V. by placing baby powder on the floor around B.V.'s bed and by propping a garbage can against B.V.'s bedroom door to detect intruders. 4RP 93-95.

B.V.'s mother, Maria Gomez, told the jury that the leaders of her church had advised her to try to "cure" Maldonado by

encouraging his religious study, rather than report him to police.

5RP 85.

Maldonado testified in his case-in-chief, and stated that he had rubbed baby oil on G.M.'s legs on two or three occasions at his wife's direction, because G.M. had complained of pain in her feet and lower legs. 8RP 91. He stated that he never touched G.M.'s genitals intentionally or accidentally. 8RP 92. He acknowledged that he had touched B.V.'s vagina "on top of her clothes" on one occasion, after drinking a large amount of wine. 8RP 97.

In closing argument, Maldonado's counsel contended that G.M. had been encouraged by B.V. to make a factually untrue report of sexual abuse, because B.V. hated Maldonado for a variety of reasons, particularly the fact that Maldonado had given B.V.'s dog away a few years earlier. 9RP 161-64.

**C. ARGUMENT**

**1. THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF MALDONADO'S PRIOR ACTS OF MOLESTATION.**

Maldonado asserts that the trial court erred by permitting the State to present evidence of his years-earlier molestation of his stepdaughter, B.V., pursuant to ER 404(b). He contends that the State failed to prove the existence of certain prior acts of sexual

contact by a preponderance of the evidence, and posits that the earlier misconduct was neither sufficiently similar to the charged acts to constitute a common scheme or plan, nor relevant to proving intent or absence of mistake. Brief of Appellant, at 20-23. Maldonado's claims are without merit.

a. The State met its burden of proof as to the prior bad acts.

A trial court's finding that prior misconduct actually occurred will be affirmed if supported by substantial evidence in the record. State v. Roth, 75 Wn. App. 808, 816, 881 P.2d 268 (1994). Where facts were in dispute at the trial court level, an appellate court will uphold the lower court's interpretation of those facts "when any reasonable view substantiates his [or her] findings, even though there may be other reasonable interpretations." Id., quoting Ebling v. Gove's Cove, Inc., 34 Wn. App. 495, 663 P.2d 132 (1983).

Here, though it is somewhat unclear from Maldonado's opening brief, it appears that his complaint as to the sufficiency of the State's evidence of his prior bad acts is limited to B.V.'s assertion that he molested her repeatedly at the family's home in Aberdeen, after Maldonado had returned from an extended visit to Alaska. Brief of Appellant, at 21-22. An adult at the time of trial, B.V. testified at a pretrial hearing before Judge North that she could

recall Maldonado repeatedly entering her bedroom at the Aberdeen residence while she slept and touched her inappropriately, rubbing her vagina with his fingers, under her panties. 2RP 48-49. B.V. was no older than eight years of age at that time. 2RP 46-47. B.V. stated that she complained to her mother about Maldonado's surreptitious activity, and that her mother placed talcum powder on the floor around B.V.'s bed in order to be able to detect footprints, after the fact, should anyone come near. 2RP 51. She further testified that she did not report this activity to Aberdeen police officers in 2006, though she had told them of Maldonado's mistreatment of her when she was five or six years of age and living in Forks prior to the family's relocation to Aberdeen; B.V. explained that her recollection of the Aberdeen abuse came flooding back to her during a defense interview conducted in preparation for this trial. 2RP 54-55.

The trial court expressed some concern as to B.V.'s late disclosure of the Aberdeen-situated misconduct, but noted that it was satisfied that the State had met its burden of proof because much of B.V.'s testimony regarding the events in Aberdeen was corroborated by the in-court pretrial testimony of her mother, Maria Gomez. 2RP 74. B.V.'s mother explained that she feared that

Maldonado would continue to molest B.V. after he returned from Alaska, so she sprinkled baby powder around her daughter's bed at night. 2RP 24-25. Gomez further testified that she would often find large footprints in the powder, matching the size of Maldonado's feet, in the powder in the morning. 2RP 25-26. Gomez also noted that she would often find a garbage can that she would prop against the door to B.V.'s bedroom door tipped over when she would check on her daughter in the morning, indicating that someone had opened the door. 2RP 21-22. B.V. had also described the garbage can "alarm" to the trial court. 2RP 51.<sup>2</sup>

On appeal, Maldonado makes scant effort to explain why the trial court's finding that the State had met its burden of proof with regard to this misconduct is erroneous. He appears to suggest that B.V.'s testimony was simply incredible and should have been rejected as untrue on its face. Brief of Appellant, at 21. While that may arguably be one reasonable interpretation of her testimony, it is not the only rational one. Given B.V.'s youth at the time of the events in question; the extremely disturbing nature of those events, such that a child may attempt to bury her memory of them, rather

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<sup>2</sup> Gomez testified that she never confronted Maldonado about his abuse of B.V. while they lived in Aberdeen because she knew that he would simply deny it. 2RP 28. Instead, she attempted to reform him by encouraging his religious studies. 2RP 28.

than dwell upon them; and the many years that had passed since they had occurred, her sudden recollection of this abuse, occasioned by an interview asking her to recount other episodes of molestation, is not implausible. When considered alongside Gomez's corroboration of key facts, the trial court cannot be said to have acted entirely without reason when finding that the State had, by a preponderance of evidence, met its burden.

- b. The evidence of Maldonado's prior bad acts was relevant to prove the existence of a common scheme.

Maldonado criticizes the trial court's conclusion that the evidence of his molestation of B.V. was indicative of a common scheme or plan. In his brief to this Court, Maldonado limits his criticism solely to what he asserts are three key discrepancies between the charged acts and his prior misconduct: (1) that B.V. was asleep when Maldonado would assault her, and that G.M. was awake; (2) that B.V. had her own bedroom, as opposed to G.M.; and (3) that B.V. described Maldonado's reaching under her panties, while G.M. was unclear during her in-court testimony about whether her father put his hand under or on top of her underwear. Brief of Appellant, at 20-21. Maldonado contends that these purported differences are so great that they render the numerous

commonalities between Maldonado's abuse of his children insignificant. His claim should be rejected.

Evidence of prior bad acts is admissible under ER 404(b) if it satisfies two distinct criteria. First, the evidence must be logically relevant to a material issue before the jury. Evidence is relevant if (1) the identified fact for which the evidence is admitted is of consequence to the action, and (2) the evidence tends to make the existence of that fact more or less probable. ER 402; see also State v. Saltarelli, 98 Wn.2d 358, 362-63, 655 P.2d 697 (1982). Second, if the evidence is relevant, its probative value must outweigh its potential for unfair prejudice. Saltarelli, 98 Wn.2d at 362. A trial court's admission of evidence under ER 404(b) is reviewed for abuse of discretion. State v. Hernandez, 99 Wn. App. 312, 322, 997 P.2d 923 (1999).

As this Court explained in State v. Lough, 70 Wn. App. 302, 853 P.2d 920, aff'd, 125 Wn.2d 847, 889 P.2d 487 (1995), there are two categories of evidence that may be sufficient to form a common scheme or plan: (1) evidence of a single plan used to commit separate, but very similar crimes, and (2) evidence of multiple acts or events that constitute parts of a larger, overarching criminal plan in which the prior acts are causally related to the charged offense.

Lough, 70 Wn. App. at 302. In this case, the trial court made clear that it was admitting evidence of the events involving B.V. and G.M. because they bore key similarities to the charged crimes. 2RP 74-77. In other words, Maldonado used a similar approach to commit separate offenses against similarly situated victims.

In Lough, this Court identified a number of "commonsense questions" to keep in mind when determining whether prior events show a common scheme as opposed to a mere proclivity to commit crime. Id. at 319. Those questions include: whether the crimes involved forethought, so that prior experience with preplanned crimes would benefit the defendant later, when he committed the charged offense; whether evidence exists of a repetitive, conscious effort to orchestrate events in order to avoid exposure; whether an unusual technique was involved; and whether there are sufficient features in common from which the fact finder could determine that the prior and current incidents were the work of a single strategist. Id. at 319-20. Or, as the supreme court noted when affirming this Court's opinion:

To establish common design or plan, for the purposes of ER 404(b), the evidence of prior conduct must demonstrate not merely similarity in results, but such occurrence of common features that the

various acts are naturally to be explained as caused by a general plan of which the charged crime and the prior misconduct are the individual manifestations.

State v. Lough, 125 Wn.2d 847, 860, 889 P.2d 487 (1995).

Here, Maldonado does not take issue with the trial court's reasonable determination that his targeting of his own children (biologically related or by virtue of step-parenthood) when each reached the age of five, done in secret while their mother was unlikely to interfere or intrude, and conducted in a similar fashion (i.e., limited to rubbing their vulvas), constitutes a common scheme of which the prior and charged acts are individual manifestations. Rather, he asserts that there was no commonality because he attacked B.V. in her sleep, while G.M. was awake, and because B.V. was in her own room, while G.M. did not have such a relative luxury.

These are distinctions without a difference. Though G.M. was awake and watching television with Maldonado when he would abuse her, the salient point is that she was distracted. In other words, while she was not as entirely defenseless as her older half-sister had been, G.M. was not aware of what her father intended to do to her until his hands were already exploring the most personal

areas of her body. As to the suggestion that G.M. was not in “her” bedroom when assaulted, this appears to be at most a semantic distinction. G.M. was in her room when Maldonado molested her. It is simply that due to the family’s circumstances at the time, G.M. shared the residence’s single bedroom with her mother and father. 5RP 46. Indeed, the critical aspect is that G.M. was at her home and yet separated from her mother or any other family members when Maldonado assaulted her.

Finally, with regard to the suggestion that the lack of detail during G.M.’s in-court testimony as to whether her father reached under her parties rendered the trial court’s pretrial ruling erroneous, it must be noted that, understandably, the trial court did not have the supposed benefit of this trial testimony at the time of its ruling. Moreover, G.M.’s in-court description of her father’s acts was quite clearly affected by the setting and her youth,<sup>3</sup> and several other witnesses testified that G.M. had told them that Maldonado had touched her vulva by reaching underneath her underwear. 4RP 124-25; 5RP 147; Supp. CP \_\_ (State’s Ex. 17, Transcript of Forensic Interview of G.M., admitted on July 11, 2013), at p.14.

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<sup>3</sup> G.M. asked if she could “take a break” immediately after being questioned by the deputy prosecutor to state whether Maldonado touched her “private” over her underwear or underneath. 5RP 48-49.

The purported differences that Maldonado identifies as distinguishing his abuse of B.V. from his treatment of G.M. are, upon examination, not actual differences in fact, or bear only superficial dissimilarities that do not obviate their more fundamental likeness, or are moot when considering the information before the trial court at the time of its ER 404(b) ruling on common scheme or plan. Maldonado's contention should be rejected.

c. Maldonado fails to demonstrate the irrelevance of intent.

Maldonado also asserts that the trial court's admission of his earlier abuse of B.V. was erroneous because his intent was not at issue at trial. Brief of Appellant, at 22. He bases his claim on the proposition that "criminal intent flows from the act of touching for sexual gratification itself" and that "touching the intimate parts of a child supports the inference" that the touching was for sexual gratification. Brief of Appellant, at 22-23.

The case law on which Maldonado relies is inapposite to the facts presented here. The opinions to which he cites concern the touching of a child's genitals by an *unrelated* adult. See State v. Ramirez, 46 Wn. App. 223, 226, 730 P.2d 98 (1986) (noting that "[w]here an adult unrelated male, with no caretaking function, is proven to have touched the 'sexual or intimate parts' of a little

girl...the jury may infer from that proof that the touching was for the purpose of sexual gratification.”); State v. Powell, 62 Wn. App. 914, 917, 816 P.2d 86 (1991) (holding identically).

Here, of course, Maldonado was accused of molesting his own daughter, and of having done so while ostensibly “snuggled up” with her, watching cartoons. He testified that he rubbed G.M.’s legs to provide therapy, at his wife’s suggestion, and claimed that he had no intent to gratify himself sexually by touching G.M.’s genitals. 8RP 91-92.

Maldonado presents no argument that would make clear the applicability of case law concerning the intent of unrelated adults to the circumstances present in his case. Nor does he attempt to explain why the trial court should otherwise be faulted for recognizing that intent, as was the situation here, may be at issue when the alleged perpetrator is a parent who, as a parent, may have perfectly legitimate reasons to have contact with his or her child’s body.

- d. Any error caused by the admission of Maldonado’s prior bad acts was harmless.

Finally, reversal is not needed were this Court to nevertheless conclude that the trial court erred by permitting the

State to introduce evidence of Maldonado's abuse of B.V. The erroneous admission of evidence in violation of ER 404(b) is harmless so long as the reviewing court is satisfied that the outcome of the trial would have been the same even if the error had not occurred. State v. Gower, 179 Wn.2d 851, 854, 321 P.3d 1178 (2014).

G.M. explained to the jury that her father had touched her "private" in a painful and unpleasant manner while they lay in bed together. 5RP 46-48, 50, 53-54. Her in-court description, subject to vigorous cross-examination, was entirely consistent with her reports to her sisters and a forensic interviewer, who also testified at Maldonado's retrial. 4RP 124-25; 5RP 147; Supp. CP \_\_\_ (State's Ex. 17, Transcript of Forensic Interview of G.M., admitted on July 13, 2013), at p.14. G.M.'s account of her abuse, while disturbing, was couched in the language and understanding of a small child who had gone through the unusual experience of sexual contact at a very young age. And, as the deputy prosecutor stated in her closing argument, it is a remarkably dubious proposition to claim that B.V. would dupe her much-younger sister into believing that she had been molested, with all of the psychological trauma

that would necessarily follow, simply to exact some twisted revenge against the stepfather who had given away her dog. 9RP 191-92.

In sum, the jury was presented with abundant evidence with which it could readily conclude that Maldonado had molested G.M., independent of proof that he had abused her half-sister many years earlier. The admission of testimony about those earlier events was, if erroneous, quite harmless indeed.

**2. THE TRIAL COURT WAS PROPERLY PROVIDED WITH A LIMITING INSTRUCTION REGARDING EVIDENCE OF MALDONADO'S PRIOR BAD ACTS.**

Maldonado asserts that his trial counsel was ineffective for failing to request that the jury be given a limiting instruction regarding its consideration of his abuse of B.V. See Brief of Appellant, at 23-26. Maldonado's assumption appears to be in error, perhaps because this matter was on retrial following a deadlocked jury, and discussion of the need for a limiting instruction may have occurred at his first trial.

The court's instructions to the jury here included a limiting instruction (Instruction No. 6) concerning the ER 404(b) evidence that was admitted:

Certain evidence has been admitted in this case for only limited purposes. The evidence of the defendant's prior sexual contact with [B.V.] may be considered by you only for the purpose of common scheme or plan, absence of mistake or accident and as evidence of sexual motivation as it relates to the current charge. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

Supp. CP \_\_ (sub no. 129B, Court's Instructions to Jury, filed July 16, 2013). Moreover, the deputy prosecutor, in her initial closing argument, discussed this limiting instruction at length. 9RP 151-55. Because Maldonado's attorney cannot be faulted for failing to request an instruction that was in fact given, his claim should be rejected.

**3. THE EVIDENCE ESTABLISHED MALDONADO'S GUILT.**

Finally, Maldonado contends that the State presented insufficient proof of sexual contact to justify the jury's verdict. Though his argument is somewhat hard to identify, he appears to assert that the State's evidence was lacking not because it failed to establish that he touched G.M.'s genitals for the purpose of sexual gratification. Rather, he attacks the State's proof that he touched G.M.'s genitals at all. Brief of Appellant, at 27-28.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits a rational trier of fact to find the elements of the charged offense proved beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of evidentiary insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Salinas, 119 Wn.2d at 201.

Given the deferential standard of review, it is difficult to understand the basis of Maldonado's claim. G.M. told this jury that Maldonado used to "touch my private," which she described as an area of her body that she usually wore underwear over. 5RP 47-48. G.M. told both of her sisters, and King County child abuse interviewer Carolyn Webster, that Maldonado had put his hand under her underwear and rubbed her crotch. All of those individuals testified before the jury. 4RP 124-25; 5RP 147; Supp. CP \_\_ (State's Ex. 17, Transcript of Forensic Interview of G.M.), at p.14. Indeed, Maldonado recognizes this significant evidence in his opening brief. Brief of Appellant, at 27. However, he then contends that this "testimony is consistent [sic] with the testimony

[of G.M.] at the first trial.” Brief of Appellant, at 28. Assuming that this was a typographical error, and that Maldonado meant to assert that all of this evidence was *inconsistent* with G.M.’s previous testimony, his claim remains suspect.

G.M. was cross-examined regarding her testimony at the first trial, and explained that she could not now recall whether she had said at that time that Maldonado had touched her legs and that she was unable to remember if he had touched her elsewhere on her body. 5RP 56. While this may or may not have amounted to inconsistency with her testimony at the retrial, it must be emphasized that a challenge to evidentiary sufficiency is examined in a light most favorable to the State. This jury was not only presented with G.M.’s current recollections of her abuse, but also with the fact that she had reported Maldonado’s inappropriate touching to her sisters and to Webster well before his first trial. Given G.M.’s immaturity and the readily apparent difficulties that someone of her age would have discussing these private matters and implicating her father in open court, the jury could have reasonably seen G.M.’s testimony at the first trial as attributable to innocuous nervousness or confusion on the witness stand. Were it to have done so, then the jury would have been presented with

abundant proof, through the testimony of G.M., both of her sisters, and Webster, that Maldonado had touched G.M.'s genital area. Under these circumstances, Maldonado's dubious challenge should be denied.

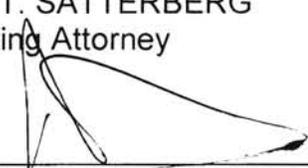
**D. CONCLUSION**

The trial court properly admitted evidence of Maldonado's prior abuse of the victim's half-sister, and appropriately instructed the jury on the limited uses to which it could put such evidence. In addition, the State provided more than minimally sufficient proof that Maldonado touched the victim's genitals. His conviction for first-degree child molestation should be affirmed.

DATED this 24<sup>th</sup> day of November, 2014.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

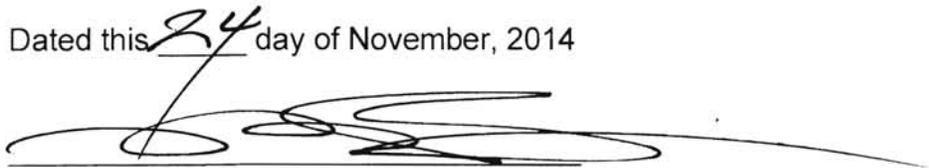
By:   
\_\_\_\_\_  
DAVID SEAVER, WSBA# 30390  
Senior Deputy Prosecuting Attorney  
Attorneys for the Respondent  
WSBA Office #91002

Certificate by Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Barbara Corey, the attorney for the appellant, at 902 S. 10<sup>th</sup> St., Tacoma, WA 98405, containing a copy of the Brief of Respondent, in STATE V. JOSE MALDONADO, Cause No. 70820-1 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 24 day of November, 2014

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name

Done in Seattle, Washington

A small, handwritten mark or signature in the right margin of the page, possibly initials or a checkmark.