

22-6800

No. _____

FILED

FEB 06 2023

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SUPREME COURT U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

RONALD LEE SORENSEN — PETITIONER
(Your Name)

VS.

STATE OF WASHINGTON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF WASHINGTON

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ronald Lee Sorenson

(Your Name)

#355432, Stafford Creek Corr. Center
191 Constantine Way

(Address)

Aberdeen, WA 98520

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

1. Where the First of the Four Total Specific Alleged Acts presented by the prosecution in its Evidence in support of the Four Total Counts Charged against Mr. Sorenson, for crimes charged involving B.E.S., was presented and conceded to by the Prosecution as having occurred in the State of Oregon at a location on the beach in Violation of Mr. Sorenson's Sixth Amendment Constitutional Right to be tried in the State wherein the crime shall allegedly have been committed, does the Structural Error Doctrine require the Convictions in Mr. Sorenson's Case to be Vacated?
2. Where the First of the Four Total Specific Alleged Acts presented by the prosecution in its Evidence in support of the Four Total Counts Charged against Mr. Sorenson, for crimes charged involving B.E.S., was presented and conceded to by the prosecution as having occurred in the State of Oregon at a location on the beach in Violation of Mr. Sorenson's Fifth and Fourteenth Amendment Constitutional Rights to Due Process, does the Reasonable Doubt Standard require the Convictions in this case be Vacated where it is impossible for the Jury to have found proof beyond a reasonable doubt that all Four Total Counts Charged for crimes involving B.E.S. had occurred in the State of Washington?
3. Where the First of the Four Total Specific Alleged Acts presented by the prosecution in its Evidence in support of the Four Total Counts Charged against Mr. Sorenson, for crimes charged involving B.E.S., was presented and conceded to by the prosecution as having occurred in the State of Oregon at a location on the beach in Violation of Mr. Sorenson's Fifth and Fourteenth Amendment Constitutional Rights to Due Process, does the application of the Mathews Factors to the Facts in this Case require Mr. Sorenson's Convictions be Vacated and an additional procedural safeguard, requiring State's to Dismiss out of State Jurisdiction Counts from criminal proceedings, to be established by the Supreme Court of the United States?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- State of Washington v. Ronald Lee Sorenson, Trial Court Case No. 10-1--1995-2, Superior Court of the State of Washington in and for Clark County. Judgment and Sentence Entered: March 8, 2012.
- State of Washington v. Ronald Lee Sorenson, Court of Appeals Case No. 43199-8-II, Division Two Court of Appeals of the State of Washington. Judgment Entered: January 28, 2014.
- State of Washington v. Ronald Lee Sorenson, Washington Supreme Court No. 89974-6, Supreme Court of the State of Washington. Judgment Entered: July 9, 2014.
- In re Pers. Restraint of Sorenson, Court of Appeals Case No. 48111-1-II, Division Two Court of Appeals of the State of Washington. Judgment Entered: October 3, 2017.
- In re Pers. Restraint of Sorenson, Washington Supreme Court No. 95158-6, Supreme Court of the State of Washington. Judgment Entered: August 8, 2018.
- Sorenson v. Gilbert, Case No. 16-cv-05227-BHS-JRC, U.S. District Court for the Western District of Washington. Judgment Entered: May 7, 2020.

RELATED CASES (Cont.)

- In re Pers. Restraint of Sorenson, Court of Appeals No. 57022-0-II, Division Two Court of Appeals of the State of Washington. Judgment Entered: July 8, 2022.
- In re Pers. Restraint of Sorenson, Washington Supreme Court No. 101139-3, Supreme Court of the State of Washington. Judgment Entered: September 27, 2022.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Court of Appeals, Division Two court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was 9/27/2022.
A copy of that decision appears at Appendix A .

[x] A timely petition for rehearing was thereafter denied on the following date: December 7, 2022, and a copy of the order denying rehearing appears at Appendix C .

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- United States Constitution Amendment VI
Rights of the Accused
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.
- United States Constitution Amendment XIV
All persons born or naturalized in the United States, 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 laws.
- United States Constitution Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

After 20 years of marriage, Mr. Sorenson and his wife, Sabrina, began discussing separation. RP2 at 132 (The Verbatim Report of Proceedings at Trial is referenced herein by volume as RP(Volume #)).

By July of 2010, the parties agreed to separate and planned to Divorce, and, on July 22, 2010, after Mr. Sorenson had made it clear to Sabrina that he was done with the marriage, Sabrina Sorenson had informed Mr. Sorenson that she intended on having a 'Separation Meeting' with their daughters and daughter-like niece, that she had planned on not having Mr. Sorenson attend this meeting, and that she had concocted a scheme to implicate herself as the cause of the separation by stating that she was 'molested' as a child. RP2 at 133-134.

With regard to life in the home, although the girls noticed their parents drifting away from each other, the home seemed happy. RP2 at 192; RP3A at 252. The parents encouraged the girls to excel in school. The girls were very active in sports; softball, volleyball, bowling. RP3A at 233. By all appearances, particularly to each other, they had a cohesive, affectionate, loving family. RP2 at 192. The family was so comfortable with each other that, on any given night, any one of the biological daughters would fall asleep in their parents' bed while watching a movie and would spend the night there. RP2 at 139, 210; RP3 at 254.

It was also not unusual for any of the girls to cuddle on the couch with their Father while watching TV. RP3A at 287. This couch cuddling extended to a frequent guest of the house, A.B., whom is the daughter-like niece both Sabrina and Mr. Sorenson had babysat for years. RP3 at 370-371.

In Fact, the entire family and household had continued to function this way right up until the day Sabrina Sorenson had held the Separation Meeting. RP 484-487.

For work, Mr. Sorenson was a union truck driver. RP4A at 427. To support his family, he put in long hours driving truck. The competitive softball played by his daughters was expensive to equip, so, to make the best money, Mr. Sorenson often worked swing and graveyard. That meant he often was not at home at night, and, consequently was not the parent who frequently shared a bed with his daughter. RP4A at 477-83, 491-492.

After the Separation Meeting was held by Sabrina Sorenson, however, numerous accusations surfaced alleging Mr. Sorenson had molested his daughters for years. RP2 at 134.

One such accusation alleged that B.J.S. had told Sabrina Sorenson, approximately four months prior to the Separation Meeting, that there was an alleged incident with her Father that had happened years earlier. RP2 at 134, 192-201. According to Sabrina Sorenson's Testimony at Trial, it was this alleged incident, which she had known of for over four months and yet hadn't reported to anyone or made any attempt to keep her

daughters away from their Father, that was one of the reasons for the separation. RP2 at 134, 192-201.

Although Mr. Sorenson had confirmed in his Testimony that Sabrina had told him of the allegation with B.J.S. prior to the Separation Meeting, Sabrina had also stated she did not believe the accusation and had considered it handled. RP4A at 513-514. In Fact, the Jury at Trial had acquitted Mr. Sorenson of the alleged act as Testified to by Sabrina and B.J.S., thereby proving there was no motive to disclose by Sabrina or fear for her daughters safety with their Father. The Fifth Amended Information has been attached as Appendix D, Id. at 2-3, Count 5.

The Jury at Trial would also acquit Mr. Sorenson of the alleged crime in Count 6 against A.H., due to the financial motivations behind A.H.'s accusation. Appendix D, Id. at 3.

To this date, Mr. Sorenson maintains that the Separation Meeting was a conspiracy to fabricate allegations against him orchestrated by Sabrina Sorenson through coercion of their daughters for the purpose of financial gain and to remove Mr. Sorenson from any potential child custody rights in their upcoming Divorce. The Declaration of Ronald Lee Sorenson, which was included in the first collateral challenge by the Petitioner under related Case No. 48111-1-II, provides substantial evidence of the financial gains made by Sabrina following the Separation Meeting and accusations against Mr. Sorenson.

As it happened, however, although Sabrina Sorenson would ultimately concede that she had never actually seen her husband doing anything inappropriate with their children, RP3 at 273, as a result of the accusations initially reported by Sabrina Sorenson to CPS and the Police following her Separation Meeting, with only her daughters, Ronald Lee Sorenson was Charged with six counts of Child Molestation via Information Filed on December 14, 2010 under Clark County Superior Court Cause No. 10-1-01995-2.

Subsequently, upon review of the Sheriff's Office Reports used to create the Declaration in Support of Issuance of a Summons and the original Information Filed by the Prosecutor, the witness statements within the Sheriff's Reports do not specify that all of the alleged acts and incidents of sexual contact had occurred within Clark County in the State of Washington.

While this Fact establishes an act of Prosecutorial Misconduct and renders the Criminal Summons in this case invalid, the criminal case against Mr. Sorenson continued and, after several months and amendments to the Information, in which and additional five charges were added, the Petitioner had, through Counsel, Filed a Motion for Bill of Particulars on December 16, 2011.

The Motion for Bill of Particulars was Docketed by the Clark County Superior Court on December 20, 2011 and a Hearing

was set for December 23, 2011.

The Motion for Bill of Particulars had raised Issue that the Court does not have Jurisdiction to proceed with the Cause where, the first alleged incident as Charged in Counts one thru four for alleged victim B.E.S., had repeatedly been alleged to have occurred on Mr. Sorenson's birthday (June 28) in the State of Oregon at a location on the Beach.

As confirmation of the fact that all parties were aware that the first alleged incident was presumed to have occurred in Oregon at a location on the Beach, the Prosecutor's own Records confirm that on December 27, 2011, the Deputy Prosecuting Attorney (Anna Klein) sent Defense Counsel James Sowder an Email, Subject: Sorenson bill of particulars issue, which states, in relevant part; "with regard to victim B.E.S., I will not be seeking a conviction for the incident at the Beach. I will be seeking to introduce evidence of it to the jury, however. I'd be fine with an instruction telling the jury that they're not to convict him for that incident. Does that clear this issue up for you?" Prosecutor's December 27, 2011 Email attached as Appendix E.

In addition, the Prosecutor's Records also confirm that on December 28, 2011, the Deputy Prosecuting Attorney (Anna Klein) had sent a fax to the Newport Oregon Police Department which states; "We are sending you these reports for your review and possible investigation. DPA Anna Klein is currently prosecuting

Mr. Sorenson here in Clark County, Washington for the crimes of: 2 counts Child Molestation in the First Degree and 2 counts Child Molestation in the Second Degree. According to the mother of the victim the "beach" incident occurred in Newport." Prosecutor's December 28, 2011 Fax attached as Appendix F.

The Petitioner had also repeatedly attempted to obtain additional proof that all parties, including the Clark County Superior Court, were aware of the Fact that the alleged first incident is claimed to have occurred in the State of Oregon at a location on the Beach, but, the Petitioner's Request to Clark County Superior Court on February 7, 2022 as well as the Petitioner's Motion to Produce Case Filings Filed March 17, 2022 seeking the disposition and Clerk's Notes on the Defendant's Pretrial Challenge via the December 16, 2011 Motion for Bill of Particulars has not, as of the date of this Filing, been responded to by the Clark County Superior Court.

As it happened, the Motion for Bill of Particulars was not heard even though the Facts clearly establish that at least one specific incident (the alleged first incident involving B.E.S.) is alleged to have occurred in the State of Oregon at a location on the Beach.

In Fact, rather than remove a Count Charged against Mr. Sorenson for an alleged crime against B.E.S. where the alleged first incident is repeatedly alleged to have occurred in the State of Oregon at a location on the Beach, outside of the

State of Washington's Jurisdiction, instead, the Deputy Prosecuting Attorney (Anna Klein) had Filed the Fourth Amended Information on January 20, 2012.

In the Fourth Amended Information, Mr. Sorenson was Charged, in relevant part, with Four Counts for alleged crimes against B.E.S. as follows:

COUNT 01 - CHILD MOLESTATION IN THE FIRST DEGREE -
9A.44.083

That he, RONALD LEE SORENSON, in the County of Clark, State of Washington, between March 9, 2002 and March 8, 2004, on an occasion separate and distinct from that in Count 2, did have sexual contact with [B.E.S.], who was less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.083...

COUNT 02 - CHILD MOLESTATION IN THE FIRST DEGREE -
9A.44.083

That he, RONALD LEE SORENSON, in the County of Clark, State of Washington, between March 9, 2002 and March 8, 2004, on an occasion separate and distinct from that in Count 1, did have sexual contact with [B.E.S.], who was less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.083...

COUNT 03 - CHILD MOLESTATION IN THE SECOND DEGREE -
9A.44.086

That he, RONALD LEE SORENSON, in the County of Clark, State of Washington, between March 9, 2004 and March 8, 2006, on an occasion separate and distinct from that in Count 4, did have sexual contact with [B.E.S.], who was at least twelve (12) years old but less than fourteen (14) years old, and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.086...

COUNT 04 - CHILD MOLESTATION IN THE SECOND DEGREE -
9A.44.086

That he, RONALD LEE SORENSON, in the County of Clark, State of Washington, between March 9, 2004 and March 8, 2006, on an occasion separate and distinct from that in Count 3, did have sexual contact with [B.E.S.], who was at lease twelve

(12) years old but less than fourteen (14) years old, and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.086...

Then, later, at Trial, the mother of B.E.S., Sabrina Sorenson, had Testified as a witness for the State, as follows:

"Q. Okay. So a different topic. Did at times you -- the family go on vacation to the Oregon coast?
A. Um-hum.
Q. Is that a yes?
A. Yes.
Q. And was that to celebrate, let's say, example, would that be at least one time to celebrate Ron's birthday?
A. Yes, it was.
Q. Did you frequent -- the family frequently go to the Oregon coast?
A. That particular spot on his birthday, no, we had never been there before.
Q. But when you went to the beach, was it normally on the coast, Oregon coast?
A. Seaside, yeah.
Q. Okay. And when you went to the Oregon coast, was it just the family, or how many people went?
A. We would normally go, all of us.
Q. Okay, Do you remember what year it might be, when his birthday was?
A. You're asking about the time on his birthday? Is that what you're asking?
Q. Yes.
A. The girls were in junior high. I don't remember exactly the year. It was prior to us buying the house. It was the house prior to the indoor soccer arena. So I'm going to say '03, '04." RP2 at 165-166.

Here, the Testimony of Sabrina Sorenson makes clear that she had knowledge of a specific act on the Oregon Coast in 2003 or 2004 on Mr. Sorenson's Birthday (June 28).

Then, when Testifying as to the specific alleged incidents supporting all of the crimes charged against her dad, B.E.S. had Testified as to the first alleged incident of sexual contact as

follows:

"Q. Can you describe to the jury what the first thing is that you remember happening with your dad that made you uncomfortable?

A. We were -- it was his birthday at the beach. And we usually, like -- well, sometimes I'll lay in bed with mom and dad. And then, one night I woke up, like I was sleeping but I woke up and his hands were in my pants and then, I like fake woke up and, like -- like fake woke up and went to the bathroom. And then I moved beds.

Q. Okay. So this beach incident, can -- can you say whether that was even in the State of Washington?

A. I -- like I don't remember if it was in Washington or in Oregon. It was when I was young, it was my very -- it was the first time, I can't say that I guarantee remember, like Washington, Oregon. I remember that it was a suite, and I'm pretty sure it was on his birthday. And if you opened the backdoors to the beach, you could see like waves shining on the rocks and that's, like, the visual that I could remember from it.

Q. And about how old were you when that happened.

A. Like, middle school, Like eleven." RP2 at 234-235.

Here, B.E.S. confirms that the alleged first incident of sexual contact with her Father, Ronald Lee Sorenson, had occurred on his birthday at the Beach. Although B.E.S. is not sure if the Beach was in the State of Washington or Oregon, the prior Testimony of Sabrina Sorenson confirms that the "Beach" is on the Oregon Coast in the State of Oregon.

As the Trial continued, there was no other specific acts alleged to have occurred at the Beach, and, the remaining specific alleged acts provided in B.E.S.'s Testimony were all claimed to have occurred at the family's home. RP2 at 234-245.

In Fact, the State Prosecutor, via the Direct Testimony of B.E.S., had twice confirmed that the Testimony of B.E.S. had

provided Four Total Specific Alleged Acts in support of the Four Total Crimes Charged against Mr. Sorenson for alleged victim B.E.S. RP2 at 234-245.

When providing this confirmation, B.E.S. Testified:

"Q. So, you've described specifically one -- one time when he had his fingertips inside of your vagina, another time where you had your hand in his pants, on his penis, and another time where his penis was on your butt. Were -- and you also had said that there were times where you would wake up and his hand would be in your pants. Was there -- besides these three times that you've discussed and the beach incident, was there ever a time when you -- another time where you woke up with his hand in your pants?

A. No. -- I mean, like, in between all those, there was like the same occasion where it would be the hands in the pants or the hand on the boob. But I can't say exactly, like, which time which was, because it's hard to remember those. But I know that's what happened within each of those. But I know there was other incidents where I'd wake up and his hands would be either in my pants -- and it was always in the bed. And -- or on the boob. So there's all those incidents but it may have had, like -- there was more times, I guess, than just what you're saying.

Q. Mm-hmm.

A. But I can't tell you exactly what happened each time.

Q. Okay. So, I guess what I'm asking is, I don't -- I know that you probably not going to be able to describe all ten times for us. But what I'm asking is, beyond this fingertip incident, beyond the penis on the butt incident and your hand in his pants, am I understanding right that you're saying that beyond those three times and beyond the beach incident, that there were other times where either his hand would be on your breast or in your pants?

A. Those were all of the types, yes.

Q. Those were all of the times, or all of the types?

A. The types.

Q. Okay. So are you saying that it happened more than just those specific incidences that you've described?

A. Yes." RP2 at 244-245.

Here, although the Testimony of B.E.S. contends that there

are more than just the Four Specific Alleged Acts provided in her Testimony, she also repeatedly Testified she cannot remember those specific alleged acts and can't tell exactly what happened. This makes clear, then, that only Four Specific Alleged Acts were provided in the Testimony of B.E.S. and the Prosecutor had twice confirmed this Fact in B.E.S.'s Direct Testimony.

As a result of the Testimony of B.E.S., however, the Trial Court would make the following Rulings, after the Testimony of State's Witnesses on January 24, 2012, and in regards to the Oregon Beach specific alleged act and Defense Counsel's Proposed Jury Instructions:

"JUDGE MELNICK: Alright, so I'm going to look at the jury instructions. Mr. Sowder had, I think it was pretty much a Petrich instruction.

MR. SOWDER: Yes. And I wrote one (inaudible.)

JUDGE MELNICK: The other one I'm probably not going to give, because it's an element already. The other one just said something like, you -- if it didn't happen in Washington, you couldn't use it. But since it's an element, I don't think I need to do it, and I think it would get confusing. So you're talking about the Oregon incident?

MR. SOWDER: Right, the beginning of that came as I had a motion for a bill, particularly before Judge Collier, about what are we going to do about this? And --

JUDGE MELNICK: Well, I didn't know anything about that, I'm sorry.

MR. SOWDER: -- because this is -- there's something going on in another state and how are we going to resolve this, because -- and then I -- the State said, well, you know, we'll -- we think its admissible under 404(b), which it probably is -- or it is. But the question is could it be -- he can't be convicted of that, so there's -- there was -- what we came out of is that Judge -- is that the State agreed we could have an instruction on it. And so that's

the only instruction I could think of.

JUDGE MELNICK: Alright, well what I'm going to do is prohibit the State from arguing to the jury they can convict him on that incident.

MS. KLEIN: Sure.

JUDGE MELNICK: I mean --

MR. SOWDER: Yes, I -- I hesitated on the instruction because I kept thinking well, it's an element, it has to be in Washington --

JUDGE MELNICK: Right.

MR. SOWDER: So I kind of --

JUDGE MELNICK: Right. so i'm just going -- I mean -- I mean, I'm just going to say that, but I think that's pretty obvious.

MS. KLEIN: Right, well, and I --

JUDGE MELNICK: Isn't it?

MS. KLEIN: I mean, yes. And I'm not going to argue that -- that that's one of the charges. And I'll probably even say that they can't convict on that count. So it'll be clear." RP3 at 445-447.

Here, both the Trial Court and the State both agree that one of the Four Total Specific Alleged Acts provided in the Testimony of B.E.S. in support of the Four Total Charges regarding alleged victim B.E.S., was Testified and presented in State's Evidence as having occurred in the State of Oregon, and, following this concession of Fact, the Trial Court had also Ruled:

"JUDGE MELNICK: Okay. If they -- if she starts to argue contrary, even if it's just a slip -- I mean, again, the reason I say that, is sometimes things happen in trial, people say things they don't mean, just because they're going through -- and if she does, just object and I'll tell the jury at that point." RP3 at 447.

This latter Ruling, which requires Defense Counsel to Object if the State argues that the Jury should Convict on all Counts Charged for crimes against B.E.S., even though one of

the Four Total Specific Alleged Acts supporting the Four Counts Charged regarding B.E.S. was Testified as having occurred in the State of Oregon, does not contemplate or even mention the Fact that the Trial Court had no Jurisdiction to proceed with the Cause where a specific alleged act supporting a Count Charged had been presented by State's Evidence as having taken place in the State of Oregon at a location on the Beach.

As it happened, on the next day of Trial, the State had sought to Amend the Charges again via the Fifth Amended Information. Appendix D.

When making its argument, the State offered that the Fifth Amended Information was "essentially because she testified for one of the incidents that she wasn't positive whether she was 11 or 12. And so I'm moving to, basically, include up to the point that she was 11." RP3 at 452.

As part of its argument, the State had conceded that the age of the victim is an element of the crimes charged, and, because the alleged victim had Testified to not knowing her age at the time the alleged act occurred, the State also had conceded, "We can't prove exactly what age she was beyond a reasonable doubt." RP3 at 463.

In response, the Trial Court had stated that the Jury may have the evidence, and, had then repeated and confirmed its earlier Ruling as follows:

"JUDGE MELNICK: That's -- there was a bill of particular asked, apparently. Was that denied?

MR. SOWDER: I asked for a bill of particulars in reference to the Oregon issue, but not --

JUDGE MELNICK: Okay. Well, that's again where the bill of particulars do come in to supplement....But you talked about the one that if it happened outside the State of Washington. And that one I'm not going to give, because it is an element, but the State has also agreed they are not going to do anything like that." RP3 at 464.

Here, again, the Trial Court had confirmed its Ruling that it will not provide the Defense' Proposed Jury Instruction for the Counts Charged against Mr. Sorenson regarding B.E.S., even though one of the Four Total Specific Alleged Acts presented at Trial supporting the Four Total Counts Charged regarding B.E.S. was Testified as to having occurred in the State of Oregon at a location on the Beach.

The Trial Court had then verbally Granted the Fifth Amended Information pending some corrections, RP3 at 474, and the State had Rested its Case in front of the Jury. RP3 at 476.

Then, after the presentation of the Defense and the confirmation by the Trial Court that both parties had Rested their Cases, RP4 at 532, the Trial Court had Reversed its prior verbal Ruling regarding the Fifth Amended Information, citing to authority and research the Trial Court had done on its own. RP4 at 533-535.

The Defense had Objected to the Fifth Amended Information, RP4 at 534, but the Trial Court had Granted the Fifth Amended

Information with expanded charging periods and modified age requirements for specific Counts and arraigned the Defendant on the Fifth Amended Information. RP4 at 539.

Later, when providing Jury Instructions to the Jury, the Trial Court's "To Convict" Instruction for the crime of Child Molestation in the First Degree, as Charged in Count 1, required each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That between March 9, 2002 and March 8, 2004, on an occasion separate and distinct from that that's charged in Count 2, the Defendant had sexual contact with [B.E.S.];
- (2) That [B.E.S.] was less than twelve years old at the time of the sexual contact and was not married to the Defendant;
- (3) That [B.E.S.] was at least thirty-six months younger than the Defendant; and
- (4) That this act occurred in the State of Washington.

Similarly, the "To Convict" Instruction given to the Jury for the Crime of Child Molestation in the First Degree as Charged in Count 2, requires:

- (1) That between March 9, 2002 and March 8, 2004, on an occasion separate and distinct from that in Count 1, the Defendant had sexual contact with [B.E.S.];

- (2) That [B.E.S.] was less than twelve years old at the time of the sexual contact and was not married to the Defendant;
- (3) That [B.E.S.] was at least thirty-six months younger than the Defendant; and
- (4) That the act occurred in the State of Washington.

RP4 at 555-557.

Immediately following the "To Convict" Instructions for Counts 1 and 2 of the Fifth Amended Information, the Trial Court had also included the Specific Act To Convict Instruction (Petrich Instruction), which stated:

"The State alleges that the Defendant committed acts of child molestation in the first degree on multiple occasions involving [B.E.S.]. To convict the Defendant on any count of child molestation in the first degree involving [B.E.S.], one particular act of child molestation in the first degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the Defendant committed all of the acts of child molestation in the first degree." RP4 at 557-558.

The Trial Court had also provided similar Instructions as to Counts 3 and 4 of the Fifth Amended Information where the To Convict Instruction for Child Molestation in the Second Degree in those Counts are required to be proved, beyond a reasonable doubt, separate and distinct from each other and that the acts occurred in the State of Washington. RP4 at 558-560.

Then, in the State's Closing Argument, the State Prosecutor had conceded that:

"It's undisputed that all of these acts occurred in the State of Washington, except for the one where [B.E.S.] described something happening at the beach. I would concede that that -- as far as that particular incident, we didn't prove whether it occurred in the State of Washington, so I'm not asking you to find him guilty of that incident. Everything else, however, was testified to having occurred at the Defendant and Sabrina Sorenson's home, and it's undisputed that those homes were all in Clark County, Washington." RP4 574-575.

Despite this concession by the State, however, the Jury would find the Defendant Guilty, in relevant part, of Counts 1 thru 4 of the Fifth Amended Information even though one of the Four Total Specific Alleged Acts supporting the Four Total Counts involving B.E.S. was presented in the State's Evidence as having occurred in the State of Oregon at a location on the Beach.

As a result of his Convictions, Ronald Lee Sorenson was given an Exceptional Sentence above the Standard Range where the Trial Court had imposed a Minimum Term of 240 Months and a Maximum of an Indeterminate Life Sentence.

REASONS FOR GRANTING THE PETITION

1. Mr. Sorenson's Sixth and Fourteenth Amendment

Constitutional Rights to Due Process, a Fair Trial, and to be tried in the State wherein the alleged crime had been committed was Violated by the Trial Court's Error in Proceeding with the Trial when it had no Jurisdiction of one Count and Ruling the Prosecution was prohibited from arguing the Jury could Convict on the out of Jurisdiction Specific Alleged Act.

The United States Supreme Court has long established the Precedent which Requires that a crime committed withing any State must be tried in that State. *Jones v. United States*, 137 U.S. 202, 11 S.Ct. 80, 34 L.Ed. 691 (1890).

Similarly, in the State of Washington, the Supreme Court of the State of Washington has held that Jurisdiction only exists over a person who commits a crime in Washington. *State v. Norman*, 145 Wn.2d 578, 589, 40 P.3d 1161 (2002).

In this case, the Facts prove that the State Prosecutor and the Clark County Superior Court in the State of Washington were both aware, prior to trial, that one of the Counts Charged against Mr. Sorenson was alleged to have been committed in the State of Oregon at a location on the Beach. See Appendix F, Prosecutor's Fax to the Newport Oregon Police Department on December 28, 2011, prior to Trial.

What's worse, at Trial, after State's Evidence confirmed that the first of the Four Total Specific Alleged Incidents supporting the Four Total Counts Charged against Mr. Sorenson for alleged crimes against B.E.S. was presented as having occurred in the State of Oregon at a location on the Beach, the Trial Court would completely ignore the Fact that it had no Jurisdiction to proceed with the case, and, instead, had Ruled; "well what i'm going to do is prohibit the State from arguing to the jury they can convict him on that incident." RP4 at 445-447.

Here, the Trial Court had a Constitutional Duty to remove and Dismiss from the Trial Proceedings the Count which had been confirmed as having occurred in the State of Oregon outside of the State of Washington's Jurisdiction.

Had the "Oregon Count" been Dismissed by removing Count 1 of what was at that time in the Trial the Fourth Amended Information, then, and only then, would the Superior Court of the State of Washington in and for Clark County have ever had proper Jurisdiction to proceed with the Cause against Ronald Lee Sorenson.

As it happened, the Trial Court would allow the Trial to proceed without any contemplation of the magnitude of its error and knowing it did not have proper Jurisdiction to proceed with the Cause where the first of the Four Total Specific Alleged

Acts presented by the State in its evidence supporting the Four Total Counts Charged against Mr. Sorenson for alleged crimes involving B.E.S. was presented as having occurred in the State of Oregon at a location on the Beach, and, the To Convict Instructions provided to the Jury required that each of the Crimes Charged were separate and distinct from each other.

When such a Fundamental Error of this magnitude occurs, there are Legal Standards which both require Reversal and Define the Structural Error Doctrine and Violations of the Fifth, Sixth, and Fourteenth Amendment Constitutional Rights to Due Process, a Fair Trial, and to be tried in the State wherein the alleged crimes had been committed.

The Petitioner hereby argues and demonstrates the application of the Relevant Legal Standards to the Facts in this case.

a. The Structural Error Doctrine

The United States Supreme Court has established that Structural Errors do not really trigger a presumption of harm at all, and, instead, they so fundamentally undermine the adversarial process that the "defy analysis by 'harmless-error' standards." *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); see also *United States v. Gonzalez-Lopez*, 548 U.S. 140, 149 n.4, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006).

In *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907, 198 L.Ed.2d 420 (2017), the United States Supreme Court had further defined that, "The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a Structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'" *Id.* (quoting *Fulminante*, 499 U.S. at 310).

The United States Supreme Court had also confirmed in *Weaver* that Structural Errors, subject to automatic reversal, deprive defendants of "basic protections," without which "a criminal trial can not reliably serve its function as a vehicle for determination of guilty or innocence, and no criminal punishment may be regarded as fundamentally fair." *Fulminante*, 499 U.S. at 310 (quoting *Rose v. Clark*, 478 U.S. 570, 577-78, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986)).

Additionally, in *Weaver*, the United States Supreme Court identified three kinds of errors that may be considered structural;

First, the Court noted that an error may be structural "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest." *Weaver*, 137 U.S. at 1908;

Second, the Court noted that an error may be structural "if the affects of the error are simply too hard to measure." Weaver, 137 S.Ct. at 1908; and

Third, the Court held in Weaver that an error may be structural "if the error always results in fundamental unfairness." Weaver, 137 S.Ct. at 1908.

In this case, the Fact that the Trial Court had, first, knowingly proceeded with the Trial after it was confirmed by State's Evidence that the First of the Four Total Specific Alleged Acts presented by the State in its Evidence in support of the Four Total Counts Charged against Mr. Sorenson for alleged crimes involving B.E.S. had been presented as having occurred in the State of Oregon at a location on the Beach, and, then, ignoring the Fact that it had no Jurisdiction to proceed, the Trial Court had Ruled, "well what I'm going to do is prohibit the State from arguing to the jury they can convict him on that incident." RP3 at 445-447, constitutes an error that is too hard to measure and which always results in fundamental unfairness.

To demonstrate this further, the Petitioner first turns to the Fact that the Trial Court's Ruling does not resolve the Trial Court's Lack of Jurisdiction to proceed with the Cause where the First of the Four Total Specific Alleged Acts presented as Evidence by the Prosecutor in support of the Four

Total Counts Charged against Mr. Sorenson involving B.E.S., had been presented as having occurred in the State of Oregon at a location on the Beach, contrary to established United States Supreme Court Precedent and Washington State Supreme Court Precedent. *Jones v. United States*, 137 U.S. 202, 11 S.Ct. 80, 34 L.Ed. 691 (1890); *State v. Norman*, 145 Wn.2d 578, 589, 40 P.3d 1161 (2002).

By allowing the Cause and Trial to proceed, where the Trial Court had known it did not have proper Jurisdiction to do so, and, where the Trial Court's Ruling only prohibits the State from arguing the Jury can Convict Mr. Sorenson on the Oregon incident rather than dismissing a Count (Count 1) from the proceedings, the Trial Court had exacerbated the Error in Violation of Mr. Sorenson's Sixth Amendment protections which prohibit a criminal prosecution outside of the state and district, wherein the crime is alleged to have been committed, and had affected the framework on which the Trial had proceeded.

To further demonstrate this Fact, the Petitioner next turns to the affects the error had on the Trial as it happened.

i. The Error rendered the Information Constitutionally Deficient.

The United States Supreme Court has long established that, "no principle of procedural due process is more clearly established than that notice of the specific charge, and a

chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceedings in all courts, state or federal." Cole v. Arkansas, 333 U.S. 196, 201, 68 S.Ct. 514, 92 L.Ed. 644 (1948); In re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 92 L.Ed. 682 (1948).

Further, the Supreme Court of the United States has established that notice must be sufficiently detailed to enable a defendant to address all the relevant issues in his defense. Russell v. United States, 369 U.S. 749, 766-68, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962).

Here, where Four Total Specific Alleged Acts were presented as Evidence by the Prosecution in support of the Four Total Counts Charged against Mr. Sorenson for alleged victim B.E.S., and, where the Information had Charged the Counts as separate and distinct from each other (Appendix D, Fifth Amended Information, Id. at 1-2), then, Mr. Sorenson could not have had sufficient notice of the specific charges in the Information(s), where the First of the Four Total Specific Alleged Acts presented as Evidence in support of the Four Total Counts Charged against Mr. Sorenson for alleged crimes involving B.E.S. was presented as having occurred in the State of Oregon at a location on the Beach.

What's worse, Defense Counsel in this case had not prepared

a Defense for the Oregon Count, because, as made clear in the Prosecutor's December 27, 2011 Email (Appendix E), the Prosecutor "will not be seeking a conviction for the incident at the beach." Appendix E, Id. It is clear and obvious from the Evidence presented at Trial that the First of the Four Total Specific Alleged Acts presented as Evidence by the Prosecution in support of the Four Total Counts Charged against Mr. Sorenson for alleged victim B.E.S., was presented as having occurred in the State of Oregon at a location on the Beach. As such, Mr. Sorenson was forced to defend against Evidence in support of a Count Charged, without sufficient notice in the Information, which should not have existed in the Proceedings at Trial due to the Trial Court's Lack of Jurisdiction. Such an error always results in fundamental unfairness.

ii. The Facts in this case implicate the Beyond a Reasonable Doubt Standard in Violation of Mr. Sorenson's Fifth and Fourteenth Amendment Constitutional Rights to Due Process.

Under the Due Process Clause of the Fifth Amendment, the State must prove beyond a reasonable doubt every element necessary to constitute the crime with which the defendant is charged. *In re Winship*, 397 U.S. 358, 363, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The United States Supreme Court held in *Sullivan v.*

Louisiana, 508 U.S. 275, 278, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993), that the beyond a reasonable doubt standard applies in both state and federal proceedings.

In this case, each of the Four Total Counts Charged involving B.E.S., in both the Fourth and Fifth Amended Informations, were Charged as separate and distinct Counts from each other and each separate and distinct Count was Charged as having occurred in the State of Washington. Appendix D, Fifth Amended Information, Id. at 1-2.

In addition, the "To Convict" Instructions provided to the Jury had required each Count be proved separate and distinct from each other and that each separate and distinct Count be proved to have occurred in the State of Washington. RP4 at 555-557.

There is no doubt, then, that the beyond a reasonable doubt standard has not been met in this case where the First of the Four Total Specific Alleged Acts presented as Evidence in support of the Four Total Counts Charged against Mr. Sorenson involving alleged victim B.E.S., was presented as having occurred in the State of Oregon at a location on the Beach. It would be impossible, therefore, for the Jury in this case to have found a total of four specific alleged acts which had occurred in the State of Washington when the State had only presented Evidence of three total specific alleged acts and

B.E.S. had repeatedly testified that she cannot remember those specific alleged acts and can't tell exactly what happened, RP2 at 244-245, when Testifying as to the other alleged incidents referenced in her Testimony. This makes clear that only Four Total Specific Alleged Acts were presented as Evidence in support of the Four Total Counts Charged against Mr. Sorenson involving B.E.S., and, as repeatedly proven herein, the First of the Four Total Specific Alleged Acts presented as Evidence in support of the Four Total Counts Charged against Mr. Sorenson for crimes involving B.E.S. was presented as having occurred in the State of Oregon at a location on the Beach.

Indeed, such Error had affected the framework on which the Trial had proceeded and the affects of the Error is simply too hard to measure.

The Petitioner submits that the Facts demonstrate that the Structural Error Doctrine has been met and applies to this case requiring Reversal of Mr. Sorenson's Convictions and Granting this Petition.

b. The Violation of Mr. Sorenson's Fifth and Fourteenth Amendment Constitutional Rights to Due Process.

Procedural Due Process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendment. *Mathews v. Eldridge*, 424 U.S.

319, 332-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews, 424 U.S. at 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)).

In short, a Denial of Due Process means the Denial of a Right to be heard upon issue of fact or law, and, a state law or practice that betrays a fundamental principle of justice offends Due Process. Cooper v. Alabama, 517 U.S. 348, 363-65, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996).

The threshold question in every due process challenge is whether the challenge has been of a protected interest in life, liberty, or property, and consideration of what procedures due process requires under any given set of circumstances "must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." Cafeteria & Rest. Workers Union v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961).

Specifically, the Court must consider three factors: "the private interest that will be affected by the state action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of

additional or substitute procedural safeguards; and the State's interest, including the function involved and the fiscal and administrative burdens that additional procedures might entail." State v. Beaver, 184 Wn.2d 321, 335 (2015)(applying the United States Supreme Court Precedent in Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

In this case, as to the first factor, the private interest in liberty or freedom from State constraint is substantial. See Addington v. Texas, 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)("[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

Here, there is no doubt that the Petitioner has a substantial liberty interest from State Constraint as a result the unlawful deprivation of liberty which had occurred in this case and requires due process protection.

As to the Second Factor, the risk of erroneous deprivation of such interest through the procedures used, here, the risk is absolute and always results in erroneous deprivation of a Defendant's Liberty Interest.

As repeatedly demonstrated herein, once the Trial Court had proceeded with the Trial after the Prosecution had presented Evidence that the First of the Four Total Specific Alleged Acts provided as Evidence in support of the Four Total Counts Charged

against Mr. Sorenson for alleged crimes against B.E.S. had been presented as having occurred in the State of Oregon at a location on the Beach, then, at that point, the Trial Court had not only lacked the Jurisdiction to proceed with the Cause, but, its Ruling did not resolve the lack of Jurisdiction.

Thus, by failing to Dismiss the Oregon Count from the Trial Proceedings, the Trial Court had affected the framework on which the Trial would proceed as a result of its Error. Only by Dismissing an out of State Jurisdiction Count in a criminal proceeding can the State of Washington have ever had proper Jurisdiction to proceed with its Case against Mr. Sorenson.

Here, then, the procedures used in criminal trial proceedings by the State of Washington is lacking a necessary safeguard, without which, criminal defendants will not receive Due Process Protection. Such procedural safeguard would prevent the fundamental error in criminal proceedings which had occurred in Mr. Sorenson's Case in Violation of his Fifth and Fourteenth Amendment Constitutional Rights to Due Process.

Finally, as to the Third Mathews Factor, the State's Interest. The State does have a substantial interest in protecting public safety, however, as repeatedly proven herein, where the State of Washington had no Jurisdiction to proceed with a Cause where the Oregon Count was presented in State's Evidence as having occurred in the State of Oregon, then, the

State of Washington has no interest, because it has no Jurisdiction unless and until it removes and dismisses the Oregon Count from the Cause.

The burden of including an additional procedural safeguard which requires State Criminal Proceedings to Dismiss out of State Jurisdiction Counts and Charges is, therefore, negligible when compared to the fundamental unfairness which always results when a Defendant must face an out of State Jurisdiction Count and Charge in a criminal proceeding which was known by the Trial Court in that proceeding as having been out of the State Trial Court's Jurisdiction.

The Petitioner, therefore, submits that the Facts demonstrate a Violation of Mr. Sorenson's Fifth and Fourteenth Amendment Constitutional Rights to Due Process requiring the Convictions in this case be Vacated and Granting of this Petition for Writ of Certiorari.

c. The Petitioner has made a substantial showing of the Violations of his Constitutional Rights and other criminal Defendants will suffer as a result of the Materially False Statements committed by the Washington Supreme Court in order to maintain an out of State Jurisdiction Conviction.

As is clear and obvious from the Facts and Evidence in this case, the First of the Four Total Specific Alleged Acts presented by the State of Washington in its Case and Evidence

in support of the Four Total Counts Charged against Mr. Sorenson, for crimes charged involving B.E.S., was presented and conceded to by the Prosecution as having occurred in the State of Oregon at a location on the beach.

In its Ruling Denying Review (Appendix A), however, the Supreme Court of the State of Washington had claimed;

"In closing argument the prosecutor acknowledged that the victim in question described an act at a beach and that the State had not proven that act occurred in Washington, and therefore the prosecutor expressly told the jury not base a conviction on that act. 4B Verbatim Report of Proceedings at 575. The prosecutor then went on to describe several other acts that the state was relying on for conviction under the four counts involving that victim. Id. at 580-82, 595-86. There is nothing in the record Sorenson provides to suggest the jury based any of its verdicts on the act claimed to have occurred in Oregon, and thus there is no evidence the superior court imposed sentence for a crime over which it had no jurisdiction." Appendix A, Id. at 2.

Here, as proven herein, it is a Materially False Statement for the Washington Supreme Court to claim that there is nothing in the record provided to suggest the jury based any of its verdicts on the act claimed to have occurred in Oregon.

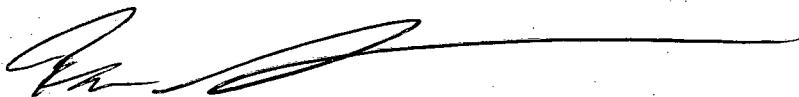
It is clear and obvious that B.E.S. had specifically Testified that she cannot remember any other specific alleged acts and can't tell what happened exactly, RP2 at 244-245, when discussing other alleged incidents which were only alluded to in her Testimony. Although the prosecutor does argue there are more than just the Four Total Specific Alleged Acts, none of those acts were specified as alleged acts in B.E.S.'s Testimony.

As a result of its false determination of material facts, the Washington Supreme Court dismissed Mr. Sorenson's Case without any analysis explaining how, exactly, there are more than Four Total Specific Alleged Acts in the Testimony of B.E.S., and, without application of the relevant United States Supreme Court Precedents demonstrated herein requiring that Mr. Sorenson's Convictions be Vacated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Ronald Lee Sorenson

Date: February 2, 2023