

No. SC96524

**In The
Supreme Court of Missouri**

STATE OF MISSOURI,

Respondent,

vs.

JORDAN L. PRINCE,

Appellant.

Appeal from the St. Charles County Circuit Court, Eleventh Judicial Circuit
Case No. 1211-CR06357-01
The Honorable Nancy L. Schneider, Judge

APPELLANT'S SUBSTITUTE BRIEF

Craig A. Johnston, MOBar #32191
Assistant State Public Defender

Woodrail Centre
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
(573) 777-9977 (telephone)
(573) 777-9963 (facsimile)
Craig.Johnston@mspd.mo.gov

Attorney for Jordan L. Prince

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MO. CONST. art. I, §18(c) (2014) gives a trial court discretion to admit “relevant evidence of prior criminal acts” in prosecutions for crimes of a sexual nature involving victims under 18 years of age, for the purpose of demonstrating the defendant’s propensity to commit the charged crime.

The Eastern District’s opinion would have reversed Prince’s judgment and remanded for further proceedings because Prince’s juvenile records were not admissible evidence under Art. I, §18(c) since juvenile records are “not lawful or proper evidence” under §211.271.3; thus, the trial court erred in admitting Prince’s juvenile records as propensity evidence during the guilty phase of his trial. *State v. Prince*, No. ED102938, slip op. at 9. But that court transferred the case to this Court because the admissibility of a defendant’s juvenile records under Art. I, §18(c) is a question of general importance. *Id.* op. at 9, 20.

Thus, this case involves the issue of whether evidence about Prince’s 2004 juvenile adjudication for lewd and lascivious conduct (“manual/genital contact” of a six-year old child) is admissible as “relevant evidence” of a prior “criminal act” in a prosecution for first-degree murder, abuse of a child, and forcible sodomy for events occurring in 2012 involving a four-month old baby?

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TRANSFER QUESTION

MO. CONST. art. I, §18(c) (2014) gives a trial court discretion to admit “relevant evidence of prior criminal acts” in prosecutions for crimes of a sexual nature involving victims under 18 years of age, for the purpose of demonstrating the defendant’s propensity to commit the charged crime.

The Eastern District’s opinion would have reversed Prince’s judgment and remanded for further proceedings because Prince’s juvenile records were not admissible evidence under Art. I, §18(c) since juvenile records are “not lawful or proper evidence” under §211.271.3; thus, the trial court erred in admitting Prince’s juvenile records as propensity evidence during the guilty phase of his trial. *State v. Prince*, No. ED102938, slip op. at 9. But that court transferred the case to this Court because the admissibility of a defendant’s juvenile records under Art. I, §18(c) is a question of general importance. *Id.* op. at 9, 20.

Thus, this case involves the issue of whether evidence about Prince’s 2004 juvenile adjudication for lewd and lascivious conduct (“manual/genital contact” of a six-year old child) is admissible as “relevant evidence” of a prior “criminal act” in a prosecution for first-degree murder, abuse of a child, and forcible sodomy for events occurring in 2012 involving a four-month old baby?

JURISDICTIONAL STATEMENT

Appellant Jordan L. Prince was convicted by a St. Charles County jury of first-degree murder (Count 1), abuse of a child (Count 2), and forcible sodomy (Count 3). He was sentenced by the Honorable Nancy L. Schneider to consecutive terms of imprisonment for life without the possibility of probation or parole, life, and life. After an appeal was filed, the Eastern District Court of Appeals issued an opinion on June 20, 2017, *State v. Jordan L. Prince*, No. ED102938 (Mo. App. E.D. 2017). Two judges of that court (Quigless, P.J.; Van Amburg, J.) would have reversed the judgment and remanded for a new trial because the trial court, relying on MO. CONST. art. I, §18(c), erred in admitting Prince's juvenile court records, and Prince suffered prejudice as a result. One judge (Dowd, Jr., J.) would have affirmed the judgment. But all three judges agreed that this was an issue of first impression in Missouri and involved a question of general importance, so the court ordered the case to be transferred to this Court pursuant to Rule 83.02.¹ Thus, this Court has jurisdiction. Article V, §§3, 4 and 10, Mo. Const. and Rule 83.02.

¹ The record on appeal contains a legal file (LF), a pre-trial motion transcript (M.Tr.), a trial transcript (Tr.), and a sentencing transcript (S.Tr.). Statutory references are to the Revised Statutes of Missouri RSMo (2000), except that references to §568.060 are to RSMo Supp. 2012; rule references are to Missouri Supreme Court Rules (2016).

STATEMENT OF FACTS

Jordan Prince lived with two male roommates in a mobile home in St. Charles, Missouri (Tr. 284-85, 308). Prince had his own room, and his roommates shared a room (Tr. 285). Prince's girlfriend, Jessica Howell, an alleged codefendant,² did not live there, but she and her four-month-old daughter ("Victim") would sometimes visit him (Tr. 294-95, 344, 381).

On the evening of December 2, 2012, Howell and Victim spent the night at Prince's home. The following morning, around 7:00 a.m., one of Prince's roommates heard a baby crying; the noise appeared to be coming from Prince's and Howell's bedroom (Tr. 310).

Later that day, around 12:20-12:30 p.m., Prince opened his own bedroom, pushed one of his roommates aside, and walked quickly into the living room; he then screamed that Victim was not breathing (Tr. 287, 293). When the roommate went to his room to call 911, he saw Howell lying naked in bed and he told her that something was wrong with Victim (Tr. 287, 289, 293-94). Howell got up with a blanket draped over her, and meandered into the living room (Tr. 294).

When emergency personnel responded to Prince's home, Prince was performing CPR on Victim, who was on the floor wearing only a diaper (Tr. 269-71, 283). Using a very calm and "normal" tone of voice, Howell instructed Prince

² Howell pled guilty to felony murder and abuse of a child, receiving a 25-year prison sentence, as the result of Victim's death (Tr. 13-15).

on how to perform the CPR (Tr. 270-71, 278). Prince told an officer that he had laid Victim down to sleep about an hour before the police had arrived, and when he later checked on her, she was not breathing (Tr. 273).

Prince told another officer at the scene that he last had contact with Victim around 11:30 a.m. during “a feeding” (Tr. 329-30). He said that he had fed Victim, held her until she fell asleep, and then laid her down on the couch (Tr. 330). He put her on her back, and he positioned two cushions on either side of her along with a blanket draped over that so that she would not roll over (Tr. 330). He then went into the back bedroom with Howell for about 30 minutes (Tr. 331, 335). Later, he heard his roommate walking down the hallway and he asked the roommate if Victim had been crying (Tr. 331). The roommate replied, “No,” so Prince checked on her and found her face down on the couch (Tr. 331).

Victim was taken to the hospital (Tr. 344-45). She had blood coming out of her anal area, and she had sustained a laceration to her ear and multiple bruises to her face, chest, and various parts of her body (Tr. 344-46, 365-66, 702-03). Victim’s anus had been penetrated with an object, causing numerous internal tears, including one approximately 6 cm in length (Tr. 697-98, 700, 712-13).³ These injuries caused Victim to lose more than one-third of her blood supply (Tr. 698-300).

³ 6 cm is about 2.36 inches.

Victim also was strangled to death (Tr. 691-93, 696). Medical records showed that Victim was resuscitated by paramedics; this indicated that the strangulation had occurred less than an hour before the resuscitation (Tr. 708-09). According to the medical examiner, Victim died from strangulation but she also would have died from the internal injuries (Tr. 701, 732).

After Victim died at the hospital, Prince and Howell returned to Prince's home (Tr. 289). Howell threw her purse and glasses and was screaming (Tr. 301). One of Prince's roommates heard them, mostly Howell, saying that they had to "get their story straight;" Howell could have been the one doing all of the talking (Tr. 290, 301).

A quilt seized from the couch at Prince's home appeared to have numerous blood or bodily fluids stains on it (Tr. 566-67). But there were no seminal fluids or semen found on the quilt (Tr. 651-52, 668). Ten of the spots were consistent with human blood (Tr. 653). Two of them were consistent with Prince's DNA; five were consistent with Victim's DNA (Tr. 654-57, 672-73).

A DNA examiner only found evidence of Victim's DNA on the rectum/anus swab used on Victim; there was no evidence of semen or male DNA on that swab (Tr. 642, 646, 648-50, 661-63). A DNA profile from the vaginal swab was consistent with Victim's DNA; there was no evidence of semen or male DNA on the vaginal swab (Tr. 650, 660-61, 663). There also was no evidence of semen, sperm, or seminal fluids from Victim's oral swab (Tr. 662).

On December 5, 2012, Prince met with Detective Donald Stepp at the police station (Tr. 445-46). During the interview, Prince basically excluded everyone else who was in the house as having anything to do with Victim's death (Tr. 451-52, 458-59, 476). As possible explanations for Victim's injuries, he told Stepp that Victim had fallen out of bed, and he had bounced her too hard on his knee (Tr. 461, 474). But he denied that he had sexually assaulted her (Tr. 479).

When Stepp asked him about the possibility of strangulation, Prince said that his hand might have accidentally slipped around Victim's neck when he was bouncing her, but he denied strangling her (Tr. 555; State's Exhibit 28A, clip 21). He demonstrated by taking one hand and grasping Stepp's throat, with the thumb on one side and the fingers on the other side, and squeezing, which was consistent with the marks that Stepp had seen at the autopsy (Tr. 481-82, 554, 560).

Prince told Stepp that he thought he would "do twenty-five to life in prison for what he did" (Tr. 483). But Prince continually denied that he had suffocated or sexually assaulted Victim (Tr. 533). He also denied hitting her or inserting anything into her rectum (Tr. 534).

Prince also told Stepp that when he was 12 years old he was adjudicated for lewd and lascivious conduct while in Idaho (Tr. 465; State's Exhibit 28A). He told Stepp that he abused his niece when he was 12 and she was 4, and that he went to "prison" (State's Exhibit No.28A, clip 7). As a result of what happened, he went to a juvenile correctional center from ages 15 to 18 (State's Exhibit No.28A, clip 7).

Detective Daniel Maxiner examined data seized from Prince's cellphone and laptop computer (Tr. 571-76). That data showed the following: the week before Victim died, someone had used Prince's cellphone to look for pornography; a large amount of pornography websites were visited on Prince's phone that week (Tr. 581-84). At 9:14 a.m. on the day Victim died, there was a search for pornography on Prince's cellphone (Tr. 580). On December 6, the day Prince was arrested and three days after Victim's death, there were internet searches on Prince's phone regarding child autopsies (Tr. 576-79).

Text communications between Prince's and Howell's phones during September, 2012, were found on Prince's cellphone including a discussion about the two of them fantasizing about engaging in anal sex (Tr. 586-89). Also, on September 16, 2012, there were text communications between their two phones (with the "Q." being Howell's phone, and the "A." being Prince's phone):

Q. [Victim] will have it too, because I won't let her settle for second best
[indication of a correction] I won't let her settle for second best.

A. No, baby, I won't have sex with our daughter.

A. And the reason I say you and [Victim] is because I want to protect her, give her everything she needs until she finds a good guy to take over?

A. No baby. I can't.

Q. It is what it is, and I won't press the issue, but I understand NTM, that would be hottest as fuck, you going from me to her?

A. I just can't baby, makes me feel like a monster.

Q. But if you finger her she gets a little wet because of it, well, I didn't see anything.

A. Baby, stop, I love you.

(Tr. 588-89, 591-92, 628).

On the unallocated portion of the hard drive of Prince's computer, there were file names that would have been downloaded or viewed by someone using his computer via LimeWire prior to September of 2011 (Tr. 604-05, 608-15). It appeared that pornography was downloaded on May 27, 2010, May 29, 2010, and June 5, 2010, about things such as incest, "pedo porn," and "pre-teen hard core" (Tr. 605-12). The incest and child pornography that was downloaded on Prince's computer had occurred before Victim was born (Tr. 616). The LimeWire was deactivated in 2011 (Tr. 622).

On September 28, 2012, a web site involving incest pornography was visited on Prince's computer (Tr. 618-19). On Prince's phone there were over 6,000 photos; none of them depicted images of child pornography (Tr. 625).

Detective Maxiner also examined Howell's cellphone; he found that on December 22, 2012, less than a month after Victim's death, she had visited some pornography websites concerning incest (Tr. 618).

Prince was arrested and charged with three counts: first-degree murder, §565.0202 (Victim died by asphyxiation as a result of strangulation); the class A felony of abuse of a child, §568.060 (Victim suffered multiple tears and lacerations to the anus and rectum, resulting in serious physical injury); and

forcible sodomy, §566.060 (Victim's anus and rectum were penetrated by the use of forcible compulsion, resulting in serious physical injury) (LF 83).

After Prince was charged, but before his jury trial occurred, the Missouri Constitution was amended to allow relevant evidence of a defendant's prior criminal acts to be introduced as evidence of the defendant's propensity to commit the crime charged in a prosecution for a crime of a sexual nature involving a victim under the age of 18. MO. CONST. art. I, §18(c) (2014) ("Article I, §18(c)" or the "Amendment").

Prior to trial, Prince filed a motion *in limine* to exclude all evidence from his juvenile records as well as his pornography use (LF 44-54). Prince argued the juvenile records were not legally relevant, contained inadmissible testimonial hearsay, and were inadmissible under §211.271, which governs the admissibility of juvenile records (LF 44-49). Concerning his pornography use, Prince argued the evidence was neither logically nor legally relevant (LF 50).

Prince also filed a motion *in limine* seeking to exclude all evidence of prior criminal acts, arguing that admitting propensity evidence would violate his constitutional rights to due process and a fair trial by an impartial jury as guaranteed by the Missouri and United States Constitutions (LF 55-65). The trial court largely denied these motions, admitting Prince's juvenile records as well as evidence of Prince's use of pornography (M.Tr. 26-31; Tr. 10-11).

During trial, the state introduced evidence of Prince's juvenile records through the testimony of the police detective who interrogated Prince in this case.

The court overruled Prince's objection to that testimony, but it allowed Prince to have a continuing objection (Tr. 463-64). When the state offered the juvenile records for admission, Prince again objected, renewing his arguments from the motions *in limine* (Tr. 466-70). The court overruled the objection and admitted the evidence (Tr. 469-70). The court also denied Prince's request to give a limiting instruction when the evidence was presented to the jury (Tr. 426-31).

The detective read portions of Prince's juvenile records to the jury, including the allegations of lewd and lascivious conduct with a minor, the criminal statute defining the acts as a felony under Idaho law, and the certified adjudication showing Prince admitted to committing the alleged acts (Tr. 464-71). The state also introduced into evidence video clips of the interrogation where Prince acknowledged his juvenile record to the detective (Tr. 465, 471).

Over Prince's objection, the state also introduced evidence of Prince's Idaho juvenile records relating to a 2004 adjudication of juvenile delinquency for "lewd and lascivious" conduct with a minor (Tr. 466-68; State's Exhibit 48A). The petition said that Prince was 15 years old when it happened and that the victim was 6 years old (Tr. 468, 469). The petition alleged that on or about January 10, 2004, Prince "willfully and lewdly" committed "lewd and lascivious acts" upon a six-year-old child by having "manual/genital contact" with the child "with the intent to appeal to the sexual desire" of Prince and/or the minor child (Tr. 468-69; State's Exhibit 48A). The state was also allowed to read to the jury, over

objection, the Idaho statute concerning that offense (Tr. 469-70). Prince did not testify at trial.

At the conclusion of evidence, the court instructed the jury it could consider any evidence that Prince committed other criminal acts “on the issue of demonstrating the defendant’s propensity to commit the crimes of abuse of a child and forcible sodomy with which he is presently charged” (LF 98).

During deliberations, the jury sent a request to the judge asking to see “the paperwork for the defendant’s prior crime against a child that occurred in another state” (LF 108). The court provided the jury portions of Prince’s juvenile records, including the petition listing the factual allegations for the charge of lewd and lascivious conduct, as well as the juvenile court’s decree indicating Prince admitted to the charges (Tr. 795-98).

The jury found Prince guilty of all charges, but it did not recommend sentences because Prince waived his right to jury sentencing (Tr. 2-3, 798-99; LF 82). Prince was given additional time to file his motion for new trial (Tr. 799-800).

In his motion for a new trial, Prince argued that the trial court erred by allowing into evidence, over Prince’s repeated and continuing objections, testimony and documents relating to Prince’s Idaho juvenile adjudication for lewd and lascivious conduct (LF 118-122; claims 4-9). He also alleged that the trial court erred by overruling his objections and allowing into evidence prior bad acts and uncharged crimes, including pornography from Prince’s computer, laptop, and cellphone (LF 118-19, 122-23; claims 4, 11). He argued that this evidence served

no probative value and was utilized by the state to portray Prince as a person of bad character; it was remote in time to the charged offenses; and, any conceivable probative value was substantially outweighed by the prejudicial effect (LF 122).

The new trial motion was overruled, and Prince was sentenced to consecutive terms of imprisonment of life without the possibility of probation or parole, life, and life (S.Tr. 2, 7; LF 146-48). Notice of appeal was timely filed (LF 150-53).

Subsequently, the Eastern District issued an opinion wherein the majority of that panel would have reversed Prince's judgment and remanded for further proceedings because Prince's juvenile records were not admissible evidence under Art. I, §18(c), reasoning that juvenile records are "not lawful or proper evidence" under §211.271.3. *State v. Jordan L. Prince*, No. ED102938, slip op. at 9 (Mo. App. E.D. 2017). But the court transferred the case to this Court pursuant to Rule 83.02 because the admissibility of a defendant's juvenile records under Art. I, §18(c) is a question of general importance. *Id.*, slip op. at 9, 20. Any further facts necessary for the disposition of this case will be set out in the argument portion of this brief.

POINTS RELIED ON

I.

The trial court clearly erred in overruling Prince’s objections and allowing the state to introduce evidence of Prince’s 2004 juvenile adjudication for lewd & lascivious conduct with a minor, because this propensity evidence was not “relevant evidence of prior criminal acts,” and thus violated his rights under §211.271 and to due process, a fair trial, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the U.S. Constitution and Art. I, §§10, 17, 18(a), and 18(c) of the Missouri Constitution, in that propensity evidence is inadmissible in Missouri unless it falls within the exception provided in Art. I, §18(c), but this juvenile adjudication did not qualify under that section because: it was not “logically relevant” since the prior adjudication had occurred almost nine years before the charged offenses when he was a juvenile and it involved a dissimilar act under dissimilar circumstances (manual/genital contact to his cousin) than the charged crimes of first-degree murder, abuse of a child, and forcible sodomy; it was not “evidence” because all evidence, reports, and records of the juvenile court are not “lawful or proper evidence” under §211.271; and it was not a “criminal act”-- it was a delinquent act committed by a juvenile and adjudicated in juvenile court.

State v. Ellison, 239S.W.3d603 (Mo. banc 2007);

State v. Arbeiter, 449 S.W.2d 627, 633 (Mo. 1970);

State v. Stegall, 353 S.W.2d 656, 658 (Mo.1962);

State v. Fisher, 783N.W.2d664 (S.D. 2010);

U.S. Const., Amend. 14;

Mo. Const., Art. I, §§10, 17, 18(a), and 18(c); and

§§211.271 and 566.025.

II.

The trial court abused its discretion in allowing the state to introduce evidence of Prince’s 2004 juvenile adjudication for lewd & lascivious conduct with a minor, over his objections, because this propensity evidence was not legally relevant, violating his rights to due process, a fair trial, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the U.S. Constitution, and Art. I, §§10, 17, 18(a), and 18(c) of the Missouri Constitution, in that propensity evidence is inadmissible unless it falls within the exception provided in Art. I, §18(c), and the evidence should have been excluded by the court under that section because its probative value was substantially outweighed by the danger of unfair prejudice since it occurred about nine years before the charged offenses, and it involved dissimilar circumstances (manual/genital contact to his six-year-old cousin when Prince was a juvenile) than the charged crimes (four-month-old victim was strangled to death after she suffered multiple tears and lacerations to the anus and rectum as a result forcible compulsion, resulting in serious physical injury when Prince was an adult).

State v. Barriner, 34 S.W.3d 139 (Mo. banc 2000);

State v. Nelson, 178S.W.3d638 (Mo. App. E.D. 2005);

State v. Chiles, 847 S.W.2d 807 (Mo. App. W.D. 1992);

State v. Fisher, 783N.W.2d 664 (S.D. 2010);

U.S. Const., Amend. XIV;

Mo. Const., Art. I, §§10, 17, 18(a), and 18(c); and

§566.025.

III.

The trial court abused its discretion in admitting evidence, through State's Exhibits and testimony, concerning the viewing of pornographic websites on Prince's cellphone and computer, because this evidence was neither logically nor legally relevant, violating Prince's rights to due process of law, a fair trial before an impartial jury, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the United States Constitution and Article I, §§10, 17 and 18(a) of the Missouri Constitution, in that this was bad character or other crimes evidence that was more prejudicial than probative because many people find pornography greatly offensive, and evidence indicating that Prince had viewed pornographic websites up to a year or two before the charged offenses, was not necessary to establish any element of the charged crimes of first-degree murder, abuse of a child, and forcible sodomy, and inappropriately colored the way the jurors viewed the rest of the evidence in the case.

State v. Alexander, 875S.W.2d924 (Mo. App. S.D. 1994);

State v. Barriner, 34S.W.3d139 (Mo. banc 2000);

State v. Olson, 815S.W.2d67 (Mo. App. S.D. 1991);

State v. Kitson, 817S.W.2d594 (Mo. App. E.D. 1991);

U.S. Const., Amend. 14; and,

Mo. Const. Art. I, §§10, 17, and 18(a).

ARGUMENT

I.

The trial court clearly erred in overruling Prince's objections and allowing the state to introduce evidence of Prince's 2004 juvenile adjudication for lewd & lascivious conduct with a minor, because this propensity evidence was not "relevant evidence of prior criminal acts," and thus violated his rights under §211.271 and to due process, a fair trial, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the U.S. Constitution and Art. I, §§10, 17, 18(a), and 18(c) of the Missouri Constitution, in that propensity evidence is inadmissible in Missouri unless it falls within the exception provided in Art. I, §18(c), but this juvenile adjudication did not qualify under that section because: it was not "logically relevant" since the prior adjudication had occurred almost nine years before the charged offenses when he was a juvenile and it involved a dissimilar act under dissimilar circumstances (manual/genital contact to his cousin) than the charged crimes of first-degree murder, abuse of a child, and forcible sodomy; it was not "evidence" because all evidence, reports, and records of the juvenile court are not "lawful or proper evidence" under §211.271; and it was not a "criminal act"-- it was a delinquent act committed by a juvenile and adjudicated in juvenile court.

Factual and Procedural Background

Prince was charged with first-degree murder (Victim died by asphyxiation as a result of strangulation), abuse of a child (Victim suffered multiple tears and lacerations to the anus and rectum, resulting in serious physical injury), and forcible sodomy (Victim's anus and rectum were penetrated by the use of forcible compulsion, resulting in serious physical injury) (LF 83-84). These offenses were alleged to have occurred on or about December 3, 2012 (LF 83-84).

After Prince was charged, but before his jury trial occurred, the Missouri Constitution was amended to allow relevant evidence of defendant's prior criminal acts to be introduced as evidence of the defendant's propensity to commit the crime charged in a prosecution for a crime of a sexual nature involving a victim under the age of 18. MO. CONST. art. I, §18(c) (2014) ("the Amendment").

Prior to trial, Prince filed a motion *in limine* requesting, in part, that the court enter an order excluding from evidence any reference to or the introduction of Prince's juvenile record, including a 2004 adjudication for "lewd & lascivious conduct" involving a minor who was 6 years old when Prince was 15 years old (LF 44). Prince alleged that this evidence was not relevant, in part, because: the prior incident was factually dissimilar to the charged crimes, the prior events were remote in time, and Prince was a juvenile; any probative value was substantially outweighed by the threat of unfair prejudice, including that the jury might use the evidence in determining all counts, even though the Amendment limited the admissibility of such evidence to crimes of a sexual nature; the juvenile court

record contained hearsay; and, the admission of juvenile adjudications is prohibited by Missouri, Idaho, and Federal law (LF 44-49).

That motion also noted that §211.271 provides that “...all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, *are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever* in any proceeding, civil or criminal, other than proceedings under this chapter.” §211.271.3 (emphasis added). The trial court overruled the motion (M.Tr. 26-31, 46-47; Tr. 7, 10-11).

During trial, the state introduced evidence of Prince’s juvenile records through the testimony of the police detective who interrogated Prince in this case. The court overruled Prince’s objection to that testimony, but it allowed Prince to have a continuing objection (Tr. 463-64).

The detective read portions of Prince’s juvenile records to the jury, including the allegations of lewd and lascivious conduct with a minor, the criminal statute defining the acts as a felony under Idaho law, and the certified adjudication showing Prince admitted to committing the acts alleged (Tr. 464-71). The state also introduced into evidence video clips of the interrogation wherein Prince acknowledged his juvenile record to the detective (Tr. 465, 471).

On video clip 7 to State’s Exhibit No. 28A, Prince told Stepp that he was 12 years old when he was adjudicated for lewd and lascivious conduct while in Idaho (Tr. 465; State’s Exhibit 28A). He said that he had abused his niece when he

12 and she was 4, and that he went to “prison” (State’s Exhibit No.28A, clip 7). In clip 8, he told Stepp that as a result of what happened, he went to a juvenile correctional center from ages 15 to 18 (State’s Exhibit No.28A).

When the state offered the juvenile records for admission, Prince again objected, renewing his arguments from the motions *in limine* (Tr. 466-70). The court overruled the objection and admitted the evidence (Tr. 469-70). The court also denied Prince’s request to give a limiting instruction when the evidence was first presented to the jury (Tr. 426-31).

The juvenile records indicated that Prince was 15 years old when it happened and that the victim was 6 years old (Tr. 468, 469). The petition alleged that on or about January 10, 2004, Prince “willfully and lewdly” committed “lewd and lascivious acts” upon a six-year-old child by having “manual/genital contact” with the child “with the intent to appeal to the sexual desire” of Prince and/or the minor child (Tr. 468-69; State’s Exhibit 48A). The state was also allowed to read to the jury, over objection, the Idaho statute concerning that offense (Tr. 469-70).

Prince did not testify at trial. At the conclusion of the evidence, the court instructed the jury it could consider any evidence that Prince committed other criminal acts “on the issue of demonstrating the defendant’s propensity to commit

the crimes of abuse of a child and forcible sodomy with which he is presently charged” (LF 98).⁴

During deliberations, the jury sent a request to the judge asking to see “the paperwork for the defendant’s prior crime against a child that occurred in another state” (LF 108). The court provided the jury portions of Prince’s juvenile records, including the petition listing the factual allegations for the charge of lewd and lascivious conduct, as well as the juvenile court’s decree indicating Prince had admitted to the charges (Tr. 795-98).

In his motion for a new trial, Prince argued that the trial court erred by allowing into evidence, over repeated and continuing objections, testimony and documents relating to the Idaho juvenile adjudication for lewd and lascivious conduct (LF 118-22; claims 4-9). That evidence was inadmissible because it was propensity evidence, the facts were substantially different on their face and did not assist the jury in reaching factual findings in this case, any possible probative value of the juvenile adjudication was substantially outweighed by its prejudice,

⁴ The court’s instruction was based on MAI-CR 3d 310.12 (1995) and Pattern Instruction 2.08A from the Eighth Circuit Court of Appeals, but modified to incorporate language from the Amendment permitting the use of evidence of prior criminal acts as evidence of the defendant’s propensity to commit the crime charged. *See State v. Ellison*, 239 S.W.3d 603, 605 (Mo. banc 2007).

the adjudication was from a time when Prince was of an age that he did not have the same ability to reason and comprehend as an adult, and the juvenile adjudication would not have been admissible if it had occurred in Missouri (LF 118-22; claims 4-9). Prince also incorporated his prior motions and arguments regarding this issue (LF 118). This issue is properly preserved for appeal.

Standard of Review

A trial court is vested with broad discretion in ruling on questions of relevancy and admissibility, and this Court reviews for abuse of that discretion. *State v. Batiste*, 264 S.W.3d 648, 650 (Mo. App. W.D.2008). A trial court's ruling is an abuse of discretion if it is clearly against the logic of the circumstances and is arbitrary and unreasonable. *Id.* Evidentiary decisions of the trial court are reviewed in the context of the whole trial to ascertain whether the defendant received a fair trial. *State v. Walkup*, 220 S.W.3d 748, 757 (Mo. banc 2007).

But Missouri rules of evidence are procedural rules of law derived from statutes, the common law, and the Constitution. *Id.* at 757. Thus, the interpretation and application of a rule of evidence is a question of law that this Court reviews *de novo*. *State v. Justus*, 205 S.W.3d 872, 878 (Mo. banc 2006). That is the appropriate standard of review here because this Court must legally determine whether evidence of Prince's prior juvenile adjudication is "relevant evidence of prior criminal acts" under the Amendment. If not, then it was inadmissible propensity evidence under *State v. Ellison*, 239 S.W.3d 603 (Mo. banc 2007).

Analysis

A. Brief history of propensity evidence in Missouri

Article I, §17 of the Missouri Constitution provides that “no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information... .” Article I, §18(a) of the Missouri Constitution provides that “in criminal prosecutions the accused shall have the right ...to demand the nature and cause of the accusation... .”

In 1994, the Missouri legislature enacted §566.025, RSMo 1994:

In prosecutions under Chapter 566 or 568 involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he is charged, provided that such evidence involves acts that occurred within ten years before or after the act or acts for which the defendant is being tried.

This law was enacted despite this Court’s warning in *State v. Bernard*, 849 S.W.2d 10, 16 (Mo. banc 1993), that evidence of prior uncharged misconduct is inadmissible for the purpose of showing the propensity of the defendant to commit such crimes. *Id.* at 13-16. In essence, the Legislature sought to overrule *Bernard*. That attempt was short-lived.

In 1998, this Court held that §566.025, RSMo 1994, was unconstitutional. *State v. Burns*, 978 S.W.2d 759 (Mo. banc 1998). The *Burns* Court held that the statute's declaration that evidence of other charged and uncharged crimes "shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he is charged" offended Article I, §§17 and 18(a) of the Missouri Constitution. *Id.*, at 760. Those sections of the Missouri Constitution guarantee a criminal defendant the right to be tried only for the offense charged. *Id.* "Evidence of uncharged crimes, when not properly related to the cause on trial, violates a defendant's right to be tried for the offense for which he is [charged]." *Id.* This Court further stated, "this Court has recognized that showing the defendant's propensity to commit a given crime is not a proper purpose for admitting evidence, because such evidence 'may encourage the jury to convict the defendant because of his propensity to commit such crimes without regard to whether he is actually guilty of the crime charged.'" *Id.*, at 761 *citing Bernard*, 849 S.W.2d at 16. *Burns* held that "section 566.025 makes no provision for consideration of whether evidence is logically or legally relevant. Rather, its language is mandatory, requiring that propensity evidence 'shall be admissible for the purpose of showing the propensity of the defendant' to commit the charged crime or crimes. The language stands in disregard of article I, sections 17 and 18(a)," thus in violation of the Missouri Constitution. *Id.*, at 761.

In apparent response to *Burns*, in 2000 the legislature amended

§566.025 to require, along with some other changes, that the trial court must determine whether the probative value of such evidence is outweighed by the prejudicial effect:

In prosecutions pursuant to this chapter or chapter 568, RSMo, of a sexual nature involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes of a sexual nature involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he or she is charged unless the trial court finds that the probative value of such evidence is outweighed by the prejudicial effect.

§566.025.

That statute was also found by this Court to be unconstitutional in *Ellison*, 239 S.W.3d at 606. The *Ellison* Court noted that it had long maintained a general prohibition against the admission of evidence of prior crimes out of concern that “[e]vidence of uncharged crimes, when not properly related to the cause of trial, violates a defendant’s right to be tried for the offense for which he is indicted.” *Id.* “This evidentiary bar stems from the need to avoid ‘encourag[ing] the jury to convict the defendant because of his propensity to commit such crimes without regard to whether he is actually guilty of the crime charged.’” *Id.*, quoting *Bernard*, 849 S.W.2d at 16. In other words, the Missouri Constitution shields

defendants from the perception that a person who has acted criminally once will do so again. *Id.* Thus, evidence of a defendant's prior criminal or bad acts, when admitted purely to demonstrate the defendant's criminal propensity, violates the constitutional protections vital to the integrity of our criminal justice system. *Id.* at 606-08.

The evidence of Prince's prior juvenile adjudication for lewd and lascivious conduct was pure propensity evidence, inadmissible under *Burns*, *Ellison* and the Missouri Constitutional provisions upon which those opinions were based. Indeed, here the jury was instructed that it could consider that evidence "on the issue of demonstrating the *defendant's propensity* to commit the crimes of abuse of a child and forcible sodomy with which he is presently charged" (LF 98) (emphasis added). This would be impermissible under *Burns* and *Ellison*.

But almost two years after the alleged commission of the criminal acts with which Prince was charged in this case, the Missouri Constitution was amended to provide:

Notwithstanding the provisions of sections 17 and 18(a) of this article to the contrary, in prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, *relevant evidence of prior criminal acts*, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged. The court may exclude relevant evidence of prior criminal acts if the

probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

Article I, §18(c) (emphasis added) (effective date December 4, 2014).

Thus, the Amendment provides the sole exception to the rule in Missouri prohibiting evidence of prior uncharged crimes admitted for the purpose of showing the defendant's propensity to commit such crimes.

In *State ex rel. Tipler v. Gardner*, 506 S.W.3d 922, 927-28 (Mo. banc 2017), this Court held that the Amendment applied prospectively to all trial occurring on or after the Amendment's effective date regardless of when the crimes were alleged to have occurred. But this Court cautioned that its holding did not preclude claims such as: whether the trial court properly applied the Amendment to the facts and circumstances of the case; or, that the trial court properly applied the Amendment, but that this resulted in a conviction based on evidence that could not have been admitted in the absence of this new provision and such a conviction violates a state or federal constitutional right that the Amendment did not – or in the case of the federal constitutional guarantees, cannot – alter. *Id.* at 928.

But for the Amendment, the propensity evidence in this case would have been excluded under *Burns* and *Ellison*. The question thus becomes whether this evidence was admissible under this new constitutional amendment. As noted above, to be admissible for the purpose of demonstrating the defendant's propensity to commit a charged crime of a sexual nature involving a child, the

prior evidence must be “relevant evidence of prior criminal acts.”⁵ Here, the evidence was not “relevant evidence” of a prior “criminal act.”

B. The juvenile adjudication was not logically relevant

Evidence is logically relevant “if it has some legitimate tendency to establish directly the accused’s guilt of the charges for which he is on trial.” *State v. Barriner*, 34 S.W.3d 139, 144 (Mo. banc 2000). In this regard, “[e]vidence of prior uncharged misconduct generally has a legitimate tendency to prove the specific crime charged when it tends to establish motive, intent, the absence of mistake or accident, a common scheme or plan, or the identity of the person charged with the commission of the crime on trial.” *Id.* at 145; *Bernard*, 849 S.W.2d at 13.

The juvenile adjudication was not logically relevant. The prior act occurred on January 10, 2004, almost nine years before the charged offenses. Under the circumstances of this case, this was too remote to be relevant. Although the remoteness in time of the other bad act or misconduct is ordinarily a factor affecting only the weight afforded the evidence, where the remoteness is so great that it erodes the probative value of the evidence, the prejudicial effect outweighs

⁵ The Amendment also provides that the court may exclude such evidence “if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice,” *i.e.*, is not legally relevant. See Point II for a discussion of that weighing process in this case.

its probative value and the evidence is not admissible. *State v. Shaw*, 847 S.W.2d 768, 778 (Mo. banc 1993).

In *State v. Stegall*, 353 S.W.2d 656, 658 (Mo.1962), this Court held that conduct occurring 14 months after the charged conduct was too remote and thus not admissible. In *State v. Chiles*, 847 S.W.2d 807, 808-11 (Mo. App. W.D. 1992) (Breckenridge, J.), the appellate court held that where the defendant was charged with sexual abuse in the first degree of an 11-year-old boy, and the state was allowed to introduce evidence concerning acts leading up to the defendant's prior conviction for sexual abuse of a 9-year-old boy that had occurred approximately 7 years before the crime being tried, it was too remote to be admissible. *Also see*, *State v. Maddox*, 657 S.W.2d 719, 721 (Mo. App. E.D. 1983) (evidence concerning defendant's use of a fictitious name two and a half months after the charged burglary was too remote in time to be relevant to the crime for which the defendant was on trial). *Cf. State v. Long*, 140 S.W.3d 27, 31-32 (Mo. banc 2004) (a prior false allegation made by the victim could be so remote in time or made under circumstances so dissimilar to the charged offense that the prejudice outweighs the probative value); *State v. Waller*, 816 S.W.2d 212, 216 (Mo. banc 1991) (where acts are too remote in time or of a quality substantially different from the act that the defendant accuses the victim of committing, the trial court may decline to admit the proof into evidence). The remoteness of Prince's juvenile adjudication was so great that it was not logically relevant.

Also, the two cases were factually too dissimilar to be logically relevant. The prior adjudication involved a 15-year-old juvenile having “manual/genital contact” with his 6-year-old cousin. In contrast, the charged offense involved Prince, who was an adult in his mid-twenties, and was alleged to have forcibly sodomized a 4-month-old baby by forcibly inserting something into her anus and rectum, causing serious physical injury, and then strangling her. The prior adjudication was not logically relevant because it did not have “some legitimate tendency to establish directly the accused’s guilt of the charges for which he is on trial.” *Barriner*, 34 S.W.3d at 144.

In *State v. Fisher*, 783 N.W.2d 664, 673-74 (S.D. 2010), the South Dakota Supreme Court found that prior bad act evidence that the defendant, 14 years earlier, had pleaded guilty to sexual contact with his 13-year-old stepsister was too remote in time and too dissimilar to be deemed relevant in his trial for multiple rape and sexual contact offenses against his daughter.

On the remoteness question, the South Dakota Supreme Court noted that the defendant was himself a juvenile when he committed the prior offense. *Id.* at 674. The *Fisher* court noted that the Supreme Court of the United States had recently observed that, “from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* quoting, *Graham v. Florida*, 560 U.S. 48, (2010) and *Roper v. Simmons*, 543 U.S. 551, 570 (2005). The *Fisher* court noted that changes in a defendant’s circumstances, such as age, may render

the earlier uncharged act too remote and legally irrelevant. *Fisher*, 783 N.W.2d at 674. “Because of the considerable changes in character that most individuals experience between childhood and adulthood, behavior that occurred when the defendant was a minor is much less probative than behavior that occurred while the defendant was an adult.” *State v. Barreau*, 651 N.W.2d 12, 23 (Wis. App. 2002) (citations omitted) (error to admit prior offense committed when defendant was a minor).

The combination of remoteness and dissimilarity made evidence of the prior juvenile adjudication not logically relevant. See, *Shaw*, 847 S.W.2d at 778, noting that determinations of whether the remoteness is so great that it erodes the probative value must proceed on a case-by-case basis balancing both factors of time and similarity. And because the Amendment requires the prior criminal act to be “relevant evidence,” Prince’s prior juvenile adjudication was not admissible.

C. The juvenile adjudication was not lawful “evidence” under §211.271

Section 211.271.3 provides that “all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter.”

Thus, all evidence, reports, and records of the juvenile court are “not lawful and proper evidence” in a criminal trial. *Id.*; also see, *State v. Arbeiter*, 449

S.W.2d 627, 633 (Mo. 1970) (reversing defendant’s conviction where the state relied on evidence from the defendant’s juvenile proceeding to establish his guilt in a subsequent criminal trial). “[C]onsiderations of fundamental fairness ... do not permit the state, in the harsh adversary arena of criminal courts, to take advantage of the procedures and attitudes which it promotes under the Juvenile Code.” *Arbeiter*, 449 S.W.2d at 633.

As a result, the Eastern District’s opinion correctly held that Prince’s juvenile records were not admissible “evidence” under the Amendment because juvenile records are “not lawful or proper evidence” under §211.271.3. *State v. Prince*, No. ED102938, slip op. at 9. “Therefore, the trial court erred in admitting Prince’s juvenile records as propensity evidence during the guilty phase of his trial.” *Id.* Because a defendant’s juvenile records are “not lawful or proper evidence” in a criminal proceeding under §211.271.3, they cannot logically be considered “*evidence* of a defendant’s prior criminal acts” in a criminal prosecution under the Amendment (emphasis added). *Prince*, No. ED102938, slip op. at 12-13.

The fact that the records were from Idaho does not change the result. *Prince*, No. ED102938, slip op. at 16-17, n. 8. Juvenile records do not lose their legal status as juvenile records merely because they are from another state. *Id.* Because §211.271.3 is a procedural rule of evidence, the law of the forum governs the admissibility of evidence. *Id.* Also see, *State v. Simon*, 680 S.W.2d 346, 353

(Mo. App. S.D. 1984) (the admissibility of a juvenile confession obtained by out-of-state authorities is controlled by the law in Missouri).

D. The juvenile adjudication was not a “criminal act”⁶

Further, the Amendment requires that the prior relevant evidence be of a “prior criminal act.” But an act committed by a juvenile is not a “criminal act;” it is a “delinquent act.” *In Interest of N.R.W.*, 482 S.W.3d 473, 475–76 (Mo. App. E.D. 2016). *Also see, Griffith v. State*, 791 N.E.2d 235, 239 n. 8 (Ind. App. 2013) (“So long as the child remains before a juvenile court, the child has committed a delinquent act, not a criminal act.”).

An earlier edition of Black’s Law Dictionary defined “criminal act” as the commission of a crime. *Black’s Law Dictionary*, (5th ed.1979). Thus, the use of the phrase “criminal act” (i.e., a crime) in the Amendment should be held to require that the prior act be one that was committed when the defendant was no longer subject to juvenile court jurisdiction because a juvenile does not commit a “crime.”

⁶ A similar argument was made in *State v. Hood*, --- S.W.3d ---, 2017 WL 2482640, No. SD34258 (Mo. App. S.D. June 8, 2017), but the court declined to address the argument because the appellant failed to “address or offer any legal argument as to why [the] testimony of [appellant’s] sexual conduct toward [witnesses] is not direct evidence of uncharged prior criminal acts under Section 18(c).” *Id.* at *3-5.

Also see, §211.271.1: “No adjudication by the juvenile court upon the status of a child shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction *nor shall the child be found guilty or be deemed a criminal by reason of the adjudication.*” (emphasis added).

E. Prince was prejudiced by evidence of the prior juvenile adjudication

Prince was prejudiced. “Trials of charges for which there is a human abhorrence should be conducted with scrupulous fairness to avoid adding other prejudices to that which the charge itself produces.” *State v. Alexander*, 875 S.W.2d 924, 929 (Mo. App. S.D. 1994), quoting *State v. McElroy*, 518 S.W.2d 459, 461 (Mo. App. Spr.D. 1975). “Improperly admitted evidence should not be declared harmless unless it can be said harmless without question, and the record demonstrates that the jury disregarded or was not influenced by the improper evidence.” *State v. Grant*, 810 S.W.2d 591, 592 (Mo. App. S.D. 1991). “

Here, the prosecution showed the jury two video clips of Prince discussing his prior juvenile adjudication. It also introduced an exhibit showing the prior conviction and had a detective read about the contents of the prior juvenile petition and the Idaho statute it was based on. The jury requested all the clips from Prince’s interview as well as “the paperwork for the defendant’s prior crime against a child that occurred in another state” (LF 107-08). Thus, it cannot be said that the error was harmless without question, or that the record demonstrated that the jury disregarded or was not influenced by the improper evidence.” *Grant*, 810

S.W.2d at 592. Prince is entitled to a new trial without this improper evidence. His convictions must be reversed and the cause remanded for a new trial.

II.

The trial court abused its discretion in allowing the state to introduce evidence of Prince's 2004 juvenile adjudication for lewd & lascivious conduct with a minor, over his objections, because this propensity evidence was not legally relevant, violating his rights to due process, a fair trial, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the U.S. Constitution, and Art. I, §§10, 17, 18(a), and 18(c) of the Missouri Constitution, in that propensity evidence is inadmissible unless it falls within the exception provided in Art. I, §18(c), and the evidence should have been excluded by the court under that section because its probative value was substantially outweighed by the danger of unfair prejudice since it occurred about nine years before the charged offenses, and it involved dissimilar circumstances (manual/genital contact to his six-year-old cousin when Prince was a juvenile) than the charged crimes (four-month-old victim was strangled to death after she suffered multiple tears and lacerations to the anus and rectum as a result forcible compulsion, resulting in serious physical injury when Prince was an adult).

Factual and Procedural Background

Prince was charged with first-degree murder (Victim died by asphyxiation as a result of strangulation), abuse of a child (Victim suffered multiple tears and lacerations to the anus and rectum, resulting in serious physical injury), and

forcible sodomy (Victim's anus and rectum were penetrated by the use of forcible compulsion, resulting in serious physical injury) (LF 83-84). These offenses were alleged to have occurred on or about December 3, 2012 (LF 83-84).

After Prince was charged, but before his jury trial occurred, the Missouri Constitution was amended to allow relevant evidence of a defendant's prior criminal acts to be introduced as evidence of the defendant's propensity to commit the crime charged in a prosecution for a crime of a sexual nature involving a victim under the age of 18. Article I, §18(c) ("the Amendment").

Prior to trial, Prince filed a motion *in limine* requesting, in part, that the court enter an order excluding from evidence any reference to or the introduction of Prince's juvenile record, including a 2004 adjudication for "lewd & lascivious conduct," involving a 6-year-old minor when Prince was 15 years old (LF 44). Prince alleged that this evidence was not relevant, in part, because: the prior incident was factually dissimilar to the charged crimes, the prior events were remote in time, and Prince was a juvenile; any probative value was substantially outweighed by the threat of unfair prejudice, including that the jury might use the evidence in determining all counts, even though the Amendment limited the admissibility of such evidence to crimes of a sexual nature; and, the admission of juvenile adjudications is prohibited by law (LF 44-49).

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The court overruled Prince's objection to that testimony, but it allowed Prince to have a continuing objection (Tr. 463-64).

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The juvenile records related to Prince's 2004 juvenile delinquency adjudication for "lewd and lascivious" conduct with a minor (Tr. 466-68; State's Exhibit 48A). The petition said that Prince was 15 years old when it happened and

that the victim was 6 years old (Tr. 468, 469). The petition alleged that on or about January 10, 2004, Prince “willfully and lewdly” committed “lewd and lascivious acts” upon a six-year-old child by having “manual/genital contact” with the child “with the intent to appeal to the sexual desire” of Prince and/or the minor child (Tr. 468-69; State’s Exhibit 48A). The state was also allowed to read to the jury, over objection, the Idaho statute concerning that offense (Tr. 469-70).

At the conclusion of evidence, the court instructed the jury it could consider any evidence that Prince committed other criminal acts “on the issue of demonstrating the defendant’s propensity to commit the crimes of abuse of a child and forcible sodomy with which he is presently charged” (LF 98).⁷

During deliberations, the jury sent a request to the judge asking to see “the paperwork for the defendant’s prior crime against a child that occurred in another state” (LF 108). The court provided the jury portions of Prince’s juvenile records, including the petition listing the factual allegations for the charge of lewd and

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lascivious conduct, as well as the juvenile court's decree indicating Prince admitted to the charges (Tr. 795-98).

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Standard of Review

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Analysis

Article I, §17 of the Missouri Constitution provides that “no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information... .” Article I, §18(a) of the Missouri Constitution provides that “in criminal prosecutions the accused shall have the right... to demand the nature and cause of the accusation... .”

In 1994, the Missouri legislature enacted §566.025, RSMo 1994:

In prosecutions under Chapter 566 or 568 involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he is charged, provided that such evidence involves acts that occurred within ten years before or after the act or acts for which the defendant is being tried.

This Court held that § 566.025, RSMo 1994, was unconstitutional because the statute’s declaration that evidence of other charged and uncharged crimes “shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he is charged” offended Art. I, §§17 and 18(a) of the Missouri Constitution. *State v. Burns*, 978 S.W.2d 759, 760 (Mo. banc 1998). “Evidence of uncharged crimes, when not properly related to the cause on trial, violates a defendant’s right to be tried for the offense for which he is

[charged].” *Id. Burns* held that “section 566.025 makes no provision for consideration of whether evidence is logically or legally relevant. Rather, its language is mandatory, requiring that propensity evidence ‘shall be admissible for the purpose of showing the propensity of the defendant’ to commit the charged crime or crimes. The language stands in disregard of article I, sections 17 and 18(a),” thus in violation of the Missouri Constitution. *Id.*, at 761.

As a result, in 2000 the legislature amended §566.025 to require, along with some other changes, that the trial court must determine whether the probative value of such evidence is outweighed by the prejudicial effect:

In prosecutions pursuant to this chapter or chapter 568, RSMo, of a sexual nature involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes of a sexual nature involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he or she is charged unless the trial court finds that the probative value of such evidence is outweighed by the prejudicial effect.

§ 566.025.

That statute was also found to be unconstitutional by this Court in *State v. Ellison*, 239 S.W.3d 603, 606 (Mo. banc 2007). This Court again held that evidence of a defendant’s prior criminal or bad acts, when admitted purely to

demonstrate the defendant's criminal propensity, violates the constitutional protections vital to the integrity of our criminal justice system. *Id.* at 606-08.

Thus, evidence of Prince's prior juvenile adjudication for lewd and lascivious conduct was pure propensity evidence, inadmissible under *Burns*, *Ellison* and the Missouri Constitutional provisions upon which those opinions were based. This was erroneous under *Burns* and *Ellison*.

But almost two years after the acts alleged in this case, the Missouri Constitution was amended to provide:

Notwithstanding the provisions of sections 17 and 18(a) of this article to the contrary, in prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, relevant evidence of prior criminal acts, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged. *The court may exclude relevant evidence of prior criminal acts if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.*

Article I, §18(c) (emphasis added) (effective December 4, 2014).

But for this Constitutional provision, the propensity evidence in this case would have been excluded under *Burns* and *Ellison*. But even under the Amendment, the evidence should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice.

Evidence of other crimes, bad acts, or misconduct must be both logically and legally relevant. *State v. Barriner*, 34 S.W.3d 139, 144 (Mo. banc 2000).

When this evidence is not properly related and logically relevant to the crime at issue, the introduction of it violates the accused's right to be tried only for the offense for which he is charged. *Id.*

Evidence is logically relevant if it has some legitimate tendency to directly establish the accused's guilt of the charges for which he is on trial. *Id.* (See Point I). For evidence to be considered legally relevant, its prejudicial effect must be outweighed by its probative value. *Id.* at 144-55. But in reaching this determination, the trial court should require that the admission of evidence of other crimes be subjected to rigid scrutiny because "the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors." *State v. Nelson*, 178 S.W.3d 638, 644 (Mo. App. E.D. 2005), quoting *State v. Clover*, 924 S.W.2d 853, 856 (Mo. banc 1996), quoting *State v. Reese*, 274 S.W.2d 304, 307 (Mo. 1955). The state has the burden of proving that the evidence is legally relevant. *State v. Allen*, 274 S.W.3d 514, 524 (Mo. App. W.D. 2008).

Prince's juvenile adjudication was not legally relevant. For the reasons set out in Point I, the evidence had no probative value, and thus was not logically relevant. The prior act occurred on January 10, 2004, almost nine years before the charged offenses (December 3, 2012). Under the circumstances of this case, this was too remote to be legally relevant. See *State v. Chiles*, 847 S.W.2d 807, 808-

811 (Mo. App. W.D. 1992) (Breckenridge, J.), holding that where the defendant was charged with sexual abuse in the first degree of an 11-year-old boy, and the state was allowed to introduce evidence concerning acts leading up to the defendant's prior conviction for sexual abuse of a 9-year-old boy that had occurred approximately 7 years before the crime being tried, it was too remote to be admissible. *Also see, State v. Stegall*, 353 S.W.2d 656, 658 (Mo. 1962) (evidence showing that the defendant obtained possession of property by means of false pretenses more than 14 months after the alleged commission of the charged crime of obtaining money by false pretenses was too remote to be admissible).

Also, factually the two cases were too dissimilar to be either logically or legally relevant. The prior adjudication involved a 15-year-old juvenile (Prince) having "manual/genital contact" with his 6-year-old cousin. But the charged offenses involved Prince as an adult in his mid-twenties, who was alleged to have forcibly sodomized a 4-month-old baby by inserting something forcibly into her anus and rectum, causing serious physical injury, and then strangling her.

The combination of remoteness and dissimilarity of the prior offense weighed against "the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors," *Nelson*, 178 S.W.3d at 644, made the juvenile adjudication evidence not legally relevant; *i.e.*, its probative value was substantially outweighed by the danger of unfair prejudice. *Also see, State v. Shaw*, 847 S.W.2d 768, 778 (Mo. banc 1993), holding that where the remoteness is so great that it erodes the probative value of the evidence, the

prejudicial effect outweighs its probative value and the evidence is not admissible, and such determinations must proceed on a case-by-case basis balancing both factors of time and similarity.

In *Nelson*, the defendant was charged with a 2003 first-degree child molestation of a 13-year-old girl, when he allegedly touched her breast, over her bra, with his hand. *Nelson*, 178 S.W.3d at 640-41. At trial, the state was allowed to introduce evidence of the defendant's commission of a prior crime, specifically a 1999 conviction for statutory sodomy involving a 16-year-old victim. *Id.* at 641. The appellate court reversed for a new trial holding that the evidence of the prior crime outweighed anything presented in support of the crime on trial. *Id.* at 644.

In *State v. Fisher*, 783 N.W.2d 664, 673-74 (S.D. 2010), the South Dakota Supreme Court found that prior bad act evidence that the defendant 14 years earlier had pleaded guilty to sexual contact with his 13-year-old stepsister was too remote in time and too dissimilar to be deemed relevant in his trial for multiple rape and sexual contact offenses against his daughter.

The South Dakota Supreme Court noted that the defendant was himself a juvenile when he committed the prior offense. *Id.* at 674. The *Fisher* court noted that the Supreme Court of the United States had observed that, "from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* quoting, *Graham v. Florida*, 560 U.S. 48 (2010) and *Roper v. Simmons*, 543 U.S. 551, 570 (2005). The *Fisher* court noted that changes in a

defendant's circumstances, such as age, may render the earlier uncharged act too remote and legally irrelevant. *Fisher*, 783 N.W.2d at 674. *Also see State v. Barreau*, 651 N.W.2d 12,23 (Wis. App. 2002) (error to admit prior offense committed when defendant was a minor) ("Because of the considerable changes in character that most individuals experience between childhood and adulthood, behavior that occurred when the defendant was a minor is much less probative than behavior that occurred while the defendant was an adult." (citations omitted)).

Prince was prejudiced by the admission of evidence concerning his prior juvenile adjudication. "Trials of charges for which there is a human abhorrence should be conducted with scrupulous fairness to avoid adding other prejudices to that which the charge itself produces." *State v. Alexander*, 875 S.W.2d 924, 929 (Mo. App. S.D. 1994), quoting *State v. McElroy*, 518 S.W.2d 459, 461 (Mo. App. Spr.D. 1975). "Improperly admitted evidence should not be declared harmless unless it can be said harmless without question, and the record demonstrates that the jury disregarded or was not influenced by the improper evidence." *State v. Grant*, 810 S.W.2d 591, 592 (Mo. App. S.D. 1991). "

Here, the prosecution showed the jury two video clips of Prince discussing his prior juvenile adjudication. It also introduced an exhibit showing the prior conviction, and it had a detective read the contents of the prior juvenile petition and the Idaho statute it was based on. The jury requested all the clips from Prince's interview (LF 107), as well as "the paperwork for the defendant's prior

crime against a child that occurred in another state” (LF108). Thus, it cannot be said that the error was harmless without question, or that the record demonstrated that the jury disregarded or was not influenced by the improper evidence. *Grant*, 810 S.W.2d at 592. Prince is entitled to a new trial without this improper evidence. His convictions must be reversed and the cause remanded for a new trial.

III.

The trial court abused its discretion in admitting evidence, through State's Exhibits and testimony, concerning the viewing of pornographic websites on Prince's cellphone and computer, because this evidence was neither logically nor legally relevant, violating Prince's rights to due process of law, a fair trial before an impartial jury, and to be tried for the offense with which he was charged, as guaranteed by the 14th Amendment to the United States Constitution and Article I, §§10, 17 and 18(a) of the Missouri Constitution, in that this was bad character or other crimes evidence that was more prejudicial than probative because many people find pornography greatly offensive, and evidence indicating that Prince had viewed pornographic websites up to a year or two before the charged offenses, was not necessary to establish any element of the charged crimes of first-degree murder, abuse of a child, and forcible sodomy, and inappropriately colored the way the jurors viewed the rest of the evidence in the case.

Factual and Procedural Background

Prince filed a motion *in limine* to exclude evidence that various pornography websites had been accessed on his cellphone and a shared computer, because it was impermissible bad character evidence that was lacking in probative value, and its prejudicial effect was substantial (LF 50). At trial, Prince objected to the evidence concerning pornography and text messages found on his computer

and cellphone (Tr. 574-75). The trial court overruled the objection and allowed a continuing objection (Tr. 574-75).

Detective Daniel Maxiner examined the data seized from Prince's cellphone and laptop computer (Tr. 571-76). That data showed the following:

The week before Victim died, someone had used Prince's cellphone to look at a large number of pornographic websites (Tr.581-84). There were over 6,000 photos on Prince's phone, but none of them depicted images of child pornography (Tr. 625).

On the unallocated portion of the hard drive of Prince's computer,⁸ there were file names that would have been downloaded or viewed by someone using his computer via LimeWire⁹ prior to September of 2011(Tr. 604-05, 608-15). It appeared that pornography had been downloaded on May 27, 2010, May 29, 2010, and June 5, 2010, about things such as incest, "pedo porn," and "pre-teen hard

⁸ "Unallocated space of the hard drive is when you delete something, the data still remains, but it's no longer accessible to the end user" (Tr. 603). But with a sophisticated data recovery program, Maxiner was able to see some of what was in the deleted unallocated space (Tr. 603-04).

⁹ LimeWire is a file sharing program, which allows people to share data, including pornography, between their computers (Tr.601). When the police seized Prince's computer, LimeWire was no longer on the computer; it had been deactivated in 2011, which was about fifteen months before Victim's death (Tr. 601-02, 622).

core”(Tr. 605-12). The incest and child pornography that had been downloaded on Prince’s computer had occurred before Victim was even born (Tr. 616).

On some unknown date, a pornographic website about incest was visited on Prince’s computer (Tr. 616-18). On September 28, 2012, more than two months before Victim died, a web site involving incest pornography was visited on Prince’s computer (Tr. 618-19).

Text communications between Prince’s and Howell’s phones during September, 2012, were found on Prince’s cellphone including a discussion about the two of them fantasizing about engaging in anal sex (Tr. 586-89).

Prince’s timely motion for new trial alleged that the trial court erred by overruling his repeated, continuing objections and allowing through testimony and documents, evidence of prior bad acts and uncharged crimes, including evidence of electronic “searches” and access to pornography and LimeWire from Prince’s computer, laptop (or “tablet”), and cellphone (LF. 118-19,122-23; claims 4, 11). The LimeWire account had been deactivated well before Prince came into contact with the Victim (LF 122). The motion argued that this evidence served no probative value and was utilized by the State to portray Prince as a person of bad character; it was remote in time to the charged offenses; and, any conceivable probative value was substantially outweighed by the prejudicial effect (LF 122). This error violated Prince’s rights to due process and a fair trial, as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, §§10,

17, and 18(a) of the Missouri Constitution (LF 118-23). This point is properly preserved for appellate review.

Standard of Review

The trial court is vested with broad discretion in ruling on questions of relevancy and admissibility, and this Court reviews for abuse of that discretion. *State v. Batiste*, 264 S.W.3d 648, 650 (Mo. App. W.D. 2008). Evidentiary decisions of the trial court are reviewed in the context of the whole trial, to ascertain whether the defendant received a fair trial. *State v. Walkup*, 220 S.W.3d 748, 757 (Mo. banc 2007).

“Trials of charges for which there is a human abhorrence should be conducted with scrupulous fairness to avoid adding other prejudices to that which the charge itself produces.” *State v. Alexander*, 875 S.W.2d 924, 929 (Mo. App. S.D. 1994), quoting *State v. McElroy*, 518 S.W.2d 459, 461 (Mo. App. Spr.D. 1975). “Improperly admitted evidence should not be declared harmless unless it can be said harmless without question, and the record demonstrates that the jury disregarded or was not influenced by the improper evidence.” *State v. Grant*, 810 S.W.2d 591, 592 (Mo. App. S.D. 1991).

Analysis

To be admissible, evidence of other crimes, bad acts, or misconduct must be both logically and legally relevant. *State v. Barriner*, 34 S.W.3d 139, 144 (Mo. banc 2000). When this evidence is not properly related and logically relevant to

the crime at issue, the introduction of it violates the accused's right to be tried only for the offense for which he is charged. *Id.*

Evidence is logically relevant if it has some legitimate tendency to directly establish the accused's guilt of the charges for which he is on trial. *Id.* For evidence to be considered legally relevant, its prejudicial effect must be outweighed by its probative value. *Id.* at 144-55. Because of the dangerous tendency and misleading force of evidence of other crimes, its admission should be subjected by the courts to rigid scrutiny. *State v. Primers*, 971 S.W.2d 922, 929 (Mo. App. W.D. 1998).

This prohibition is not limited to uncharged crimes, but also applies to uncharged misconduct. *State v. Kitson*, 817 S.W.2d 594, 596-98 (Mo. App. E.D. 1991) (probative value of evidence of defendant's sexual conduct with wife, including anal intercourse and insertion of objects into orifices, was outweighed by prejudice in prosecution for deviate sexual intercourse with defendant's young son, requiring new trial). Evidence of non-criminal sexual conduct is as inadmissible as that conduct would be if it were criminal conduct. *Id.* at 598. This is because the possibility of prejudice arises whenever the evidence amounts to an attack on the accused's character; when the evidence is used to show that the accused is bad or evil to support a further inference that he committed the charged crimes. *Id.* at 597-98. In the jury's eyes, non-criminal conduct may work as much prejudice as criminal conduct. *Id.* at 598.

Another tenet of law that applies in this context is that the state cannot attack the character and reputation of the accused when that character or reputation has not been put into issue by the accused. *State v. Ellis*, 820 S.W.2d 699, 702 (Mo. App. E.D. 1991) (evidence that defendant was homosexual inadmissible to establish propensity to engage in sexual activity with children).

Prince did not testify, and he did not put his character or reputation in issue; thus, it was impermissible for the state to attack his character through the use of graphic titles of pornography. Evidence that he might have viewed pornography on his computer or cellphone up to a year or two before Victim was born was neither legally nor logically relevant to the charged offenses of first-degree murder, abuse of a child, and forcible sodomy. In other words, this evidence did not make the existence of a material fact more or less probable. But even if this evidence could be seen as minimally logically relevant, the prejudice created by the admission of this evidence was greatly outweighed by any probative value it might have had.

In *Alexander, supra*, the defendant was convicted of sodomizing his six-year-old stepdaughter. 875 S.W.2d at 925. At trial, the court admitted into evidence playing cards containing pictures of naked women that were found under the stepdaughter's bed. *Id.* at 926-27. The defendant argued that the cards were not relevant to any issue in the case, and that "any probative value to this evidence was outweighed by its prejudicial impact on the jury." *Id.* at 926. The defendant further argued that "the only purpose of the cards was to inflame the jury, i.e., by

using the pictures to portray [the defendant] as a person obsessed with sex.” *Id.*

The appellate court agreed, determining that the cards were “irrelevant and clearly inadmissible; they lacked any probative value concerning a material issue in the case.” The court further determined that the admission of the cards was prejudicial in that “it is inconceivable that the jury would disregard or was not influenced by the playing cards.” *Id.*

In *Barriner*, the defendant was convicted of first-degree murder. *Barriner*, 34 S.W.3d at 141. The victim was found on her bed with her hands bound with rope. *Id.* at 142. She was unclothed below the waist, there were bite marks on her breast, and she had been anally violated with a blunt object. *Id.* There was a knife protruding from her chest, and there were slashes from a knife on her neck. *Id.*

In reversing for a new trial, this Court determined that the state improperly admitted numerous exhibits, including 1) testimony about consensual sexual activity between an ex-girlfriend and the defendant; 2) a video showing the defendant and the ex-girlfriend engaging in anal and other consensual sex; 3) a photograph of the cover of a *Bondage Fantasies* magazine; 4) a photograph of labels of two videos indicating they were homemade sex tapes from the defendant’s house; 5) a photograph of a red duffel bag and the dildos contained therein; 6) a video showing the defendant tying his ex-girlfriend with rope; and 7) testimony from the ex-girlfriend that the defendant threatened to take her son to the woods and shoot him. *Id.* at 149. This Court characterized these items as evidence of prior uncharged misconduct. *Id.* at 145-48. This Court stated that “a

large amount of graphic evidence regarding appellant's sexual proclivities was admitted and was highlighted throughout the trial." *Id.* at 149.

The *Barriner* Court determined that this improper evidence was outcome-determinative despite the fact that the defendant had confessed, police found ropes consistent with the ones used to bind the victims, police found a note in the defendant's wastebasket containing directions to the victims' house, and police found traces of blood matching one of the victim's DNA in the defendant's car, *id.* at 143-144, which is less evidence than in Prince's case.

In *State v. Olson*, 854 S.W.2d 14, 15-16 (Mo. App. W.D. 1993), the defendant was charged with sodomizing his eight-year-old stepdaughter. On appeal, he claimed that the trial court erred by admitting a tape recording of the victim's statements to police which included unrelated bad acts and crimes. *Id.* at 15. Amidst the details, the victim told the detective that the defendant had given beer to her six-year-old brother and had shown him magazines containing pictures of nude women. *Id.* At trial, the defendant objected to this evidence, and complained that it was irrelevant, inflammatory, and involved evidence of bad acts, and that its prejudice outweighed its probative value. *Id.*

In reversing for a new trial, the appellate court found that the allegations concerning the beer and dirty pictures were irrelevant and inflammatory. *Id.* The evidence of the defendant giving beer and lewd material to his son did not tend to prove, disprove, or corroborate any issue, but rather served only to inflame and

prejudice the jury as to the defendant's character. *Id.* at 16. The evidence lacked any probative value concerning a material issue in the case. *Id.*

In *State v. Hernandez*, the defendant was convicted of involuntary manslaughter and armed criminal action. 815 S.W.2d 67, 68 (Mo. App. S.D. 1991). The defendant, who was driving while intoxicated, caused an accident on the highway which resulted in the death of one person. *Id.* at 69. The sun visor from the interior of the van was received into evidence. *Id.* This visor contained slogans such as "The more I drink the better you look;" "Reality is for those who can't stay drunk;" "Member beer drinkers hall of fame;" and "I only drink to make other people more interesting." *Id.* There were ten total slogans introduced into evidence. *Id.* The defendant argued that these slogans were irrelevant and that they "were used to try to show him to be the 'type' [of] person who would commit the crime in question." *Id.* at 69-70.

The appellate court agreed that these "slogans were not relevant to the issue of whether defendant acted with criminal negligence." *Id.* at 70. The Court further determined that there was prejudice due to the state's references to the slogans throughout the trial. *Id.* at 71. The Court stated that "[i]t is unfortunate when prosecuting officials with otherwise strong evidence in support of a conviction choose to go beyond the legitimate evidence that is available to them and pursue other inflammatory and irrelevant triviality in quest of conviction. When this occurs, the result of appellate review is assured." *Id.*

Just as the playing cards in *Alexander* inflamed the jury, so too did the references to pornography in the present case. Because the charges of first-degree murder, abuse of a child, and forcible sodomy are ones “for which there is a human abhorrence,” the trial court had a responsibility to conduct the trial “with scrupulous fairness to avoid adding other prejudices to that which the charge itself produces. *Alexander*, 875 S.W.2d at 929.

In *Barriner*, a “large amount of graphic evidence regarding appellant’s sexual proclivities was admitted and was highlighted throughout the trial.” *Barriner*, 34 S.W.3d at 149. The same can be said in Prince’s case, and the same result (a new trial) should occur.

Here, as in *Hernandez*, the state went beyond the legitimate evidence and pursued “other inflammatory and irrelevant triviality in quest of conviction.” *Hernandez*, 815 S.W.2d at 71. The state’s use of the pornography evidence in Prince’s case was as bad, or worse, than the inadmissible evidence in *Alexander*, *Barriner*, *Olson*, or *Hernandez*.

It is clear that the state treated the pornography as prior uncharged misconduct by emphasizing that evidence and reading the titles throughout the trial (Tr. 581-84, 604-19); this served no purpose other to inflame the jury. Many people are offended by pornography; it is likely that the jurors held the pornography evidence against him. The references to Prince searching for and downloading pornography colored the rest of the evidence admitted. The state

used the pornography evidence to portray Prince as a depraved, morally corrupt person in an attempt to destroy his presumption of innocence.

Because the references to Prince searching for and downloading pornography were neither logically nor legally relevant, this Court should reverse Prince's convictions and remand the case for a new trial. These references to pornography infected the trial to such a degree that it deprived Prince of his rights to due process and a fair trial under the United States and Missouri Constitutions, and this Court should reverse Prince's convictions. Prince should receive a new and fair trial based only on evidence that is logically and legally relevant.

CONCLUSION

Prince is entitled to a new trial. The prosecution was allowed to present propensity evidence that Prince had a 2004 juvenile adjudication in Idaho for lewd and lascivious conduct involving a minor.

This ruling was erroneous because:

(1) The evidence was not “relevant evidence of prior criminal acts” under Art. I, § 18(c) of the Missouri Constitution, since it was not “relevant” (it was too remote and factually dissimilar), it was not “evidence” because all evidence, reports, and records of the juvenile court are not “lawful or proper evidence” under §211.271, and it was not a “criminal act” because it was a juvenile delinquent act (Point I); and,

(2) The probative value of this propensity evidence was substantially outweighed by the danger of unfair prejudice, i.e., it was not legally relevant, since it was too remote in time and involved too dissimilar circumstances (Point II).

Further, the trial court also erred in allowing the prosecution to present prejudicial, irrelevant evidence that pornography had been viewed and downloaded on his cellphone and computer, most of which had occurred a year or two before the charged offenses (Point III).

Respectfully submitted,

/s/ Craig A. Johnston

Craig A. Johnston, MOBar #32191
Assistant State Public Defender

Woodrail Centre
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
Phone: (573) 777-9977
Fax: (573) 777-9963
Email: Craig.Johnston@mspd.mo.gov

CERTIFICATE OF COMPLIANCE AND SERVICE

I, Craig A. Johnston, hereby certify: The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word 2010, in Times New Roman size 13 point font, and includes the information required by Rule 55.03. According to the word-count function of Microsoft Word, excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 15,108 words, which does not exceed the 31,000 words allowed for an appellant's brief. And, on this 31st day of July, 2017, electronic copies of Appellant's Substitute Brief, and Appellant's Substitute Brief Appendix, were sent through the Missouri e-Filing System to Gregory L. Barnes, Assistant Attorney General, at greg.barnes@ago.mo.gov.

/s/ Craig A. Johnston

Craig A. Johnston, MOBar #32191
Assistant State Public Defender

Woodrail Centre
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
Phone: (573) 777-9977
Fax: (573) 777-9963
Email: Craig.Johnston@mspd.mo.gov