

64077-1

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NO. 64077-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANATOLIY STRIZHEUS,

Appellant.

2010 MAY 28 PM 4:49  
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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

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A. INTRODUCTION.

Vladimir Strizheus told police that he stabbed his mother Valentina and his father Anatoliy. Yet in the attempted murder prosecution of Anatoliy for the alleged stabbing of Valentina, the trial court concluded evidence of Vladimir's guilt was not admissible as other-suspects evidence because the court concluded the confession did not "clearly point to someone else" other than Anatoliy as the perpetrator of the crime.

The United States Supreme Court has held that exclusion of relevant evidence of third-party guilt violates the defendant's Sixth Amendment right to present a defense and the Fourteenth Amendment right to due process. The trial court's unreasonable exclusion of extremely relevant evidence in this case deprived Mr. Strizheus of the right to present his defense and denied him due process of law.

B. ASSIGNMENTS OF ERROR.

1. The trial court denied Mr. Strizheus his right to present a defense in violation of the Sixth Amendment of the United States Constitution and Article I, section § 22 of the Washington Constitution.

2. The trial court denied Mr. Strizheus his Fourteenth Amendment right to due process.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

The Sixth Amendment's guarantee of the right to present a defense and the Fourteenth Amendment guarantee of due process, along with similar guarantees of the Washington Constitution, are violated where a trial court bars a defendant from admitting relevant evidence of third-party guilt. Washington courts have concluded such evidence is admissible where it points to someone other than the accused as the person who committed the crime. Where Mr. Strizheus proffered evidence of a another's confession to the crime for which Mr. Strizheus was on trial, did the evidence point to someone other than Mr. Strizheus as the perpetrator such that the trial court's exclusion of the evidence violated Mr. Strizheus Sixth and Fourteenth Amendment rights as well as his rights under Article I, section 22?

D. STATEMENT OF THE CASE.

Police, summoned to the Strizheus's home, found Valentina Strizheus sitting on a neighbor's lawn with several stab wounds. 7/7/09 RP 73-75. As officers approached the apartment itself, Anatoliy Strizheus, Valentina's husband, came out of the home

bleeding from several knife wounds on his arms. 7/7/09 RP 82-83.

Officers arrested Mr. Strizheus.

Ms. Strizheus testified she had no recollection of the events, only remembering finding herself in the hospital. The neighbor who first called 911, as well a handful of police officers and medical personnel testified Valentina said her husband stabbed her. See, e.g., 7/9/09 RP 92. When questioned at the hospital, while he was being treated for his wounds, Mr. Strizheus said his wife had stabbed him. 6/29/09 RP 13-14.

The State charged Mr. Strizheus with attempted first degree murder and first degree assault. CP 1-6.

At trial, Mr. Strizheus proffered evidence that several weeks after the incident Vladimir called police and stated he did something "he felt bad about. 6/30/09 RP 78. After police officers arrived, Vladimir said he had stabbed both his mother and father, and that he felt bad that his father was in jail. Id. at 79. The trial court excluded the evidence. 6/30/09 RP 84; 7/7/09 RP 68-69. 7/20/09 RP 13-27.

Mr. Strizheus was convicted of both charges. CP 88-90. Finding the two convictions violated double jeopardy, the court

vacated the assault charge and entered a conviction only on the attempted murder charge. CP 94.

E. ARGUMENT.

THE TRIAL COURT DENIED MR. STRIZHEUS HIS SIXTH AMENDMENT RIGHT TO PRESENT A DEFENSE WHEN IT SUPPRESSED RELEVANT EVIDENCE THAT ANOTHER PERSON HAD CONFESSED TO THE CRIME

1. The trial court excluded relevant evidence of Vladimir's guilt. Prior to trial the State moved to exclude evidence that Vladimir Strizheus stabbed his mother and father. 6/30/09 RP 75 Specifically, the State sought to exclude as irrelevant and hearsay Vladimir's spontaneous statement to police that he had stabbed his parents and that his father was in jail awaiting trial for a crime Vladimir committed. 6/30/09 76-77. Focusing only on admission of the confession itself rather than on testimony by Vladimir, the State argued it was hearsay for which there was no exception. Despite the fact that he admitted guilt, the State argued the evidence did not clearly point to Vladimir as the person who committed the crime and thus was not relevant. 7/7/09 RP 23.

Mr. Strizheus contended the evidence was substantive evidence. 6/30/09 78-80. He maintained Vladimir's admission of guilt was admissible as other-suspects evidence. Id. at 78. Mr.

Strizheus argued that if the court did not permit him to offer the evidence as substantive evidence of another's guilt, he should be allowed to impeach Vladimir with his prior statement. Mr. Strizheus also argued that excluding the evidence would deprive him of his Sixth Amendment right to present a defense and Fourteenth Amendment right to due process. 7/7/09 RP 35.

Incredibly, and despite Vladimir's confession to the crime, the trial court asked "where's any evidence that he committed a crime?" 7/20/09 RP 13. The Court continued, "What we have here is just no credible evidence of any other suspect. We have one confession, and that's it." *Id.* at 27. Thus the court concluded Mr. Strizheus had to establish the foundation for admission of other-suspects evidence. The court also concluded Vladimir's confession itself was hearsay. 7/7/09 RP 9-10. Finally, the court concluded Vladimir's admission to police that he committed the crime was a collateral matter and thus Mr. Strizheus could not impeach Vladimir with his statement. 6/30/09 RP 84; 7/7/09 RP 68-69.

The trial court's ruling deprived Mr. Strizheus of his right to present a defense.

2. The state and federal constitutions guarantee an individual the right to present a defense. The Sixth and Fourteenth Amendment separately and jointly guarantee an accused person the right to obtain witnesses and a meaningful opportunity to present a defense. (Citations and internal quotations omitted.) Holmes v. South Carolina, 547 U.S.319, 324, 126 S.Ct 1727, 164 L.Ed.2d 503 (2006). Article I, §section 22 of the Washington Constitution provides a similar guarantee. State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996). A defendant must receive the opportunity to present his version of the facts to the jury so that it may decide “where the truth lies.” Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. 284, 294-95, 302, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); State v. Jones, \_\_ Wn.2d. \_\_, 2010 WL 1492583, 6. “[A]t a minimum, . . . criminal defendants have . . . the right to put before the jury evidence that might influence the determination of guilt.” Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

The right to offer the testimony of witnesses ... is in plain terms the right to present a defense, the right to present the defendant's version of the facts.... [The accused] has the right to present his own witnesses

to establish a defense. This right is a fundamental element of due process of law.”

Washington, 388 U.S. at 19.

These guarantees are violated by rules of evidence which infringe upon the defendant’s ability to present a defense and which are either “arbitrary” or “disproportionate to the purpose they are designed to serve.” (Citations and internal quotations omitted) Holmes, 547 U.S. at 324-25. Washington concluded a Texas rule barring testimony of any person who had also been charged with the offense unless acquitted violated the right to present a defense. 388 U.S. at 22-23. Chambers found the trial court’s strict application of Mississippi’s hearsay rules and “voucher rule” (barring a party from impeaching his own witness) deprived Mr. Chambers of his Sixth Amendment rights to confront witnesses and present a defense – specifically that another person has confessed to the crime. 410 U.S. at 298. In Holmes the Court unanimously concluded application of South Carolina’s rule barring other-suspects evidence where the State’s case was strong, deprived the defendant his right to present a defense. 547 U.S. at 330-31.

Similarly, the trial court's application of the other suspects rule in this case to exclude the Vladimir's confession to the crime deprived Mr. Strizheus of his right to present a defense.

3. The trial court's exclusion of another person's confession to the crime violates the Sixth and Fourteenth Amendment.

a. Evidence of Vladimir's confession of the crime was plainly relevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." ER 401. Evidence that another person committed the crime is relevant if it points to someone other than the defendant as the person who committed the crime. Maupin, 128 Wn.2d at 927-28. Most Washington cases, including Maupin, which have addressed the admissibility of evidence of third-party guilt have either directly or indirectly cited to the rule first announced in State v. Downs, 168 Wash. 664, 13 P.2d 1 (1932). That rule provides

[w]hile evidence tending to show that another party might have committed the crime would be admissible, before such testimony can be received there must be such proof of connection with it, such a train of facts or circumstances as tend clearly to point out some one besides the prisoner as the guilty party. Remote acts, disconnected and outside of the crime itself, cannot be separately proved for such a purpose.

Id. at 667 (quoting Greenfield v. People, 85 N. Y. 75, 39 Am. Rep. 636 (1881)). In fact, the trial court's rulings in this case, while not citing Downs directly, parroted the rule. The trial court concluded the evidence was inadmissible because:

We just don't have the corroborating evidence in this case. I think its going to lead to confusion of the jury, a waste of time, and here the other suspects evidence simply does not tend to point to someone else as the guilty person.

7/7/09 RP 33.

There is no requirement under Downs that direct evidence of another's guilt be corroborated. Instead, what Downs said is that absent some "train of evidence," evidence that another person had the means or opportunity to commit the crime is not relevant. The Downs requirement assumes the evidence is merely circumstantial. Maupin made clear the Downs doctrine does not exclude evidence that directly identifies another person as the guilty party. Maupin, 128 Wn.2d at 928.

Maupin reversed a kidnapping conviction where the trial court excluded testimony by a witness that he saw the victim with a person other than the defendant after the alleged kidnapping. Id. at 928-29. The court dismissed the State's argument that such evidence was speculative simply because it did not completely

exculpate the defendant, concluding at the very least it raised questions of the State's case. Id. at 928. In the end the Court held evidence that the kidnapped victim was seen with someone else other than the defendant after the kidnapping "certainly does point directly to someone else as the guilty party, as Downs requires." Id.

In this case, the proffered evidence is even stronger as it does not merely implicate another and leave open the possibility of Mr. Strizheus's involvement. Instead, the proffered testimony was completely exculpatory of Mr. Strizheus, as Vladimir admitted stabbing his mother and father. Direct evidence which exculpates the defendant and inculpates a third person cannot be excluded under the Downs doctrine. Maupin, 128 Wn.2d at 928 This type of evidence is "neither [merely] evidence of another's motive nor mere speculation about the possibility that someone else might have committed the crime." Id. This evidence tends to make a material fact more or less probable and is plainly relevant.

Nonetheless, the court excluded the evidence because it found the evidence (1) did not clearly point to someone else, (2) would confuse the jury, (3) concerned a collateral matter; (4) was not evidence that Vladimir committed the crime, and was

insubstantial. 7/7/09 33, 69, 7/20/09 14, 27. There could be no more direct evidence than an admission of guilt. An admission of guilt to the crime is collateral only in the sense that it was not consistent with the State's theory that Mr. Strizheus stabbed his wife. Of course, that is not the standard of relevance. In fact that sort of inconsistency with the State's theory, is precisely what Maupin found most relevant with this sort of evidence. 128 Wn.2d at 928. Whatever rule the trial court believed it was applying, it was not the Downs doctrine, nor any rule that the Sixth and Fourteenth Amendment will tolerate. As Maupin made clear the trial court's exclusion of this evidence violated Mr. Strizheus Sixth Amendment right to present a defense, his Fourteenth Amendment right to due process, and the corresponding right to present a defense under Article I, section 22.

b. Evidence that Vladimir confessed to committing the crime was not excludable as hearsay. Having concluded the evidence of Vladimir's admission was not relevant, the court concluded Mr. Strizheus could not call Vladimir and question him directly as to his guilt. Specifically Mr. Strizheus sought clarification from the court as to whether he could call Vladimir and ask "Did you stab your mother?" 7/7/09 RP 68. The court refused to permit

that line of questioning concluding it was merely impeachment on a collateral matter. 7/7/09 RP 68-69.

But, the matter was not collateral. The test to determine whether a matter is collateral is essentially the test to determine if it relevant. K Tegland, 5A Washington Practice, Evidence, §607.19, p409 (2007). As is clear, Vladimir's admission of guilt was relevant. A question regarding his guilt for this crime could in no circumstance be deemed collateral. Thus, the trial court wrongly concluded Mr. Strizheus could not call Vladimir and ask him whether he stabbed his parents. If he denied doing so, Mr. Strizheus was entitled to impeach with his prior admission.

Alternatively, Vladimir could have asserted his Fifth Amendment privilege against self-incrimination. Had he done so, he would have been unavailable and his prior statement would have been admissible as a statement against penal interest. ER 804. Prior to trial Mr. Strizheus allowed he was not certain if Vladimir would assert his privilege if asked. 6/30./09 RP 81. Nonetheless, the trial court reasoned if "there is no other suspect evidence allowed; you can't even go there with him." 7/7/09 RP 9. The court reiterated that if other-suspects evidence was not admissible "you can't even ask [the] question." Id. at 10. The

Court then concluded the evidence was not admissible as other suspect evidence. *Id.* 33.

Because the trial court would not even allow Mr. Strizheus to call Vladimir as a witness and ask the necessary foundational question, i.e., did he stab his mother, it is impossible to know whether he would have asserted the privilege. Thus, the court never allowed Mr. Strizheus the opportunity to establish the foundation for admission of the evidence as substantive evidence or as impeachment evidence if Vladimir denied doing so. Moreover, the court precluded a third alternative and more substantial outcome – Vladimir admitting he had committed the crime.

The Supreme Court has recognized the authority of state courts to adopt and apply procedural rules governing the admission of evidence and to require criminal defendants to comply with those rules in presenting evidence in their defense. Holmes, 547 U.S. at 324. However, the Court has also recognized that even neutral rules of procedure must bend to the constitutional protections afforded defendants.

Although perhaps no rule of evidence has been more respected or more frequently applied in jury trials than that applicable to the exclusion of hearsay,

exceptions tailored to allow the introduction of evidence which in fact is likely to be trustworthy have long existed. The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. That testimony also was critical to Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Chambers 410 U.S. at 302.

The trial court wrongly began its analysis with the conclusion that the evidence was not relevant. From that conclusion the court reasoned Mr. Strizheus would not be able to ask Vladimir about the confession or to ask him directly whether he had committed the crime. Because the court would not allow these questions, the court wrongly speculated the evidence was barred by the hearsay rule. At the end of the day, if Washington's hearsay rule and other suspects rule jointly bar completely exculpatory evidence that another person has confessed to the crime, that application of the those rules must be deemed to violate the Sixth and Fourteenth Amendments in the same fashion as the rules in Holmes, Chambers, and Washington.

4. This Court must reverse Mr. Strizheus's conviction so that he may have a trial that satisfies his right to present a defense

and his right to due process. A constitutional error requires reversal unless the State can establish beyond a reasonable doubt the error “did not contribute to the verdict obtained.” Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); United States v. Neder, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). The State cannot meet that burden here.

Here to meet that burden the State would need to prove that no reasonable juror could have believed the evidence establishing Vladimir’s guilt. But because an appellate court cannot make credibility determinations, this Court “must take [Vladimir’s confession] as true and evaluate its likely effect on the outcome of the trial.”<sup>1</sup> Maupin, 128 Wn.2d at 929-30. The confession of a third party which also exculpates the defendant necessarily casts substantial doubt on the State’s case. Id. at 930. This Court must reverse Mr. Strizheus’s conviction.

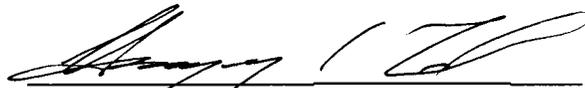
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<sup>1</sup> That is not to say a jury hearing the evidence could not dismiss it. Rather it simply means that this Court cannot resolve that question on appeal.

E. CONCLUSION.

For the foregoing reasons, this Court must reverse Mr. Strizheus's conviction.

Respectfully submitted this 28<sup>th</sup> day of May 2010.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', written over a horizontal line.

GREGORY C. LINK – 25228  
Washington Appellate Project  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64077-1-I
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	)	
ANATOLIY STRIZHEUS,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28<sup>TH</sup> DAY OF MAY, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] ANATOLIY STRIZHEUS 334618 WSP 1313 N 13 <sup>TH</sup> AVE. WALLA WALLA, WA 99362	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 28<sup>TH</sup> DAY OF MAY, 2010.

X \_\_\_\_\_ 

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