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67107-3 KN

No. 67107-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

KINYATA P.S.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

REPLY BRIEF

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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TABLE OF CONTENTS

A. ARGUMENT 1

WHERE THE TRIAL COURT VIOLATED KINYATA'S
CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE,
REVERSAL IS REQUIRED. 1

a. The trial court excluded testimony that was relevant to
Kinyata's defense and that would have been helpful to
the finder of fact. 1

b. Because the finder of fact excluded evidence of the
prior incident, reversal must be granted. 2

B. CONCLUSION 4

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Allery, 101 Wn.2d 591, 682 P.2d 312 (1984) 2

State v. Janes, 121 Wn.2d 220, 850 P.2d 495 (1993)..... 2

State v. Jones, 168 Wn.2d 713, 230 P.3d 576 (2010)..... 2

State v. Maupin, 128 Wn.2d 918, 913 P.2d 808 (1996) 2

Washington Court of Appeals

State v. J.H., 96 Wn. App. 167, 978 P.2d 1121 (1999) 3

State v. Tai N., 127 Wn. App. 733, 113 P.3d 19 (2005) 3

United States Supreme Court

Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973) 2

Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 437 (1974) 2

Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006) 1

Statutes

RCW 10.52.040..... 2

Rules

CrR 6.12..... 2

A. ARGUMENT

WHERE THE TRIAL COURT VIOLATED
KINYATA'S CONSTITUTIONAL RIGHT TO
PRESENT A DEFENSE, REVERSAL IS
REQUIRED.

a. The trial court excluded testimony that was relevant to Kinyata's defense and that would have been helpful to the finder of fact. Defense counsel established that Kinyata felt afraid when she saw the complainant ("Lala") on her street on the night of the incident, that Lala was close to Kinyata's home, and that Kinyata had received specific threats from Lala. RP 116-17. Defense counsel also made an offer of proof that she had an additional witness who was willing to come forward to testify about the incident the day before. RP 111-12.

The trial court, however, refused to admit any of the defense testimony concerning the prior incident – including the statements contained in the offer of proof. RP 118. The trial court's decision thus denied Kinyata's right to fully present a justification defense at trial, unduly burdening her due process right to a fair trial. U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3, 22; Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L.Ed.2d 503 (2006); Davis v. Alaska, 415 U.S. 308, 314-15, 94 S.Ct. 1105, 39

L.Ed.2d 437 (1974); Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010); State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996); see also RCW 10.52.040; CrR 6.12.

b. Because the finder of fact excluded evidence of the prior incident, reversal must be granted. Kinyata was denied the opportunity to present her self-defense claim and to fully explain the reason that Lala's presence near her home made her feel so frightened for her family and for her own safety. RP 116-17.

In Washington, the finder of fact "is to consider the defendant's actions in light of all the facts and circumstances known to the defendant, even those substantially predating" the incident. State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993) (quoting State v. Allery, 101 Wn.2d 591, 594, 682 P.2d 312 (1984)) (partial emphasis added). Here, the facts known to Kinyata were influenced most significantly by the incident which occurred – not at a time "substantially predating" the incident, as suggested by the Janes Court – but only the evening before. If the Supreme Court has stated that trial courts should look to events substantially predating an incident in order to determine the facts known to a defendant, it was error to exclude evidence of an assault committed by the complainant

against the defendant merely the night before. Janes, 121 Wn.2d at 238; Allery, 101 Wn.2d at 594.

In addition, the State argues that Kinyata's defense was not restricted, as the trial court did hear testimony from Kinyata and her mother Shannon concerning the prior incident, before excluding it. Resp. Brief at 19. The State seems to want to have it both ways, arguing that the court both excluded the testimony, but considered it at the same time. RP 117; Resp. Brief 18-19.

It is beyond dispute that where a defendant has no right to a jury trial, as here, that the trial judge is the sole finder of fact. See, e.g., State v. Tai N., 127 Wn. App. 733, 739, 113 P.3d 19 (2005) (quoting State v. J.H., 96 Wn. App. 167, 186–87, 978 P.2d 1121 (1999) (the “unique rehabilitative nature of juvenile proceedings” makes judges and not juries the appropriate fact finders). The State's argument seems to imply that although the court clearly excluded the testimony of the prior incident, the error did not critically restrict Kinyata's right to present a defense, as the judge heard the testimony anyway – something that would not, presumably have occurred in a jury trial setting.

In fact, crucial testimony was excluded from this trial, in that the defense was prevented from calling a witness, and direct and

cross-examination on the prior incident were also restricted. RP 117. The testimony concerning the assault committed by Lala against Kinyata on the night before would have exculpated Kinyata, and there is no greater example of relevant testimony.

Kinyata had the constitutional right to present this evidence, and the juvenile court's ruling thus violated her due process right to present a defense. Jones, 168 Wn.2d at 720; Maupin, 128 Wn.2d at 924.

B. CONCLUSION

For the reasons above, as well as those stated in Appellant's Opening Brief, this Court should reverse Kinyata's conviction and dismiss.

DATED this 24th day of January, 2012.

Respectfully submitted,



JAN TRASEN – WSBA 41177
Washington Appellate Project
Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 67107-3-I
v.)	
)	
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)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF JANUARY, 2012, I CAUSED THE ORIGINAL **REPLY 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] PETER DESANTO, DPA	(X)	U.S. MAIL
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APPELLATE UNIT	()	_____
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF JANUARY, 2012.

X _____ 

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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710