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Salem, Oregon 97310

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

RICHARD STAVRAKIS

Appellant.

} Court of Appeals Case No.: 46521-II³

} STATEMENT OF ADDITIONAL
} GROUNDS FOR REVIEW

I, Richard Stavrakis, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief, and ask that this Court reverse my conviction for the following substantial and compelling reasons. I understand that the Court will review this Statement of Additional Grounds for review when my appeal is considered on the merits.

As noted in counsel's brief, the trial court denied me a fair trial when it refused to allow counsel to elicit evidence that the putative victim had a motive to lie and that she had also made prior false allegation against me. Counsel, in passing

cited the United States Constitution seemingly as an after thought. Assuredly, this Court will not consider any such claim without thorough briefing on the federal claim. Accordingly, this Statement of Additional Grounds will focus on why the State of Washington violated my Due process rights under the Fourteenth Amendment¹ of the United States Constitution and the Compulsory Process Clause² of the Sixth Amendment of the United States Constitution to complete a complete defense.

States have substantial latitude under the Constitution to define rules for the exclusion of evidence and to apply those rules to criminal defendant. *Clark v. Arizona*, 548 US 735 (2006). See also *United States v. Scheffer*, 523 US 303(1998). This authority, however, has constitutional limits. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” *Holmes v. South Carolina*, 547 US 319, 324 (2006) (quoting *Crane v. Kentucky*, 476 US 683, 690 (1986), in turn quoting *California v. Trombetta*, 467 US 479, 485 (1984)). (Internal quotations omitted). “This right is

¹ The Fourteenth Amendment states in pertinent part: No “State [shall] deprive any person of life, liberty, or property, without due process of law...”

² The Sixth Amendment states in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to...be confronted with the witness against him [and] to have compulsory process...”

abridged by evidence rules that ‘infring[e] upon a weighty interest of the accused’ and are’ “arbitrary” or “disproportionate to the purpose they are designed to serve.”” *Holmes supra* at 324 (quoting *Scheffer supra* at 308, in turn quoting *Rock v. Arkansas*, 483 US 44, 58 (1987)).

Further, the Sixth Amendment to the United States Constitution guarantees the right of an accused in a criminal prosecution “to be confronted with the witness against him.” Confrontation means more than being allowed to confront the witness physically. “Our cases construing the [Confrontation] clause hold that a primary interest secured by it is the right of cross-examination.” *Douglas v. Alabama*, 380 US 415, 418 (1965). Citing Professor Wigmore in *Davis v. Alaska*, 415 US 308 (1974), the Supreme Court noted that a criminal defendant

demands confrontation, not for the idle purpose of gazing upon the witness, or being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.

Id at 416. The Court went on to opine that:

Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested...[T]he cross-examiner is not only permitted to delve into a witness’ story to test the witness’ perception and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness...A more particular attack on a witness’ credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is “always relevant as discrediting the witness and affecting the weight of his testimony.” 3A

J. Wigmore Evidence § 940, p 775 (Chadbourn rev 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.

Id at 316-17. Following this same line of reasoning, the Supreme Court in *Greene v. McElroy*, 360 US 474 (1959) stated:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where the governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witness against him."

In the case at hand, there was no physical evidence, no eyewitness evidence, or any other evidence to support the victim's claims against me. Further, I have, from the beginning, denied that I ever touched the victim in an inappropriate manner. As such, this case boiled down to a swearing match between the victim and myself—a situation in which only one side can be telling the truth. Thus, the central part of both the States case and mine was veracity—the victim's and mine. It was of critical importance that the jury be exposed to every available item of evidence that was relevant on the issue of the victim's credibility as a witness

including evidence that she had motive to fabricate her claims against me and had previously made false allegations against me.

Where, as here, when the State's case rests solely on testimony from the victim and where the State did not present any other evidence that substantiated their allegations against me, the Due process Clause of the Fourteenth Amendment and the Compulsory and Confrontation Clauses of the Sixth Amendment trumps any State right to exclude the evidence under their rules in this case.

Essentially, the State eliminated any chance I had at prevailing when it imposed State rules of evidence to say that I could not present any evidence that went to the heart of there case and was critically essential to mine. Washington's rule is problematic because it excluded evidence in my case no matter how credible and material it may have been in disproving the offenses as charged. The application of the rules has substantially placed a burden upon me and is therefore impermissible as applied to me. The trial court's decision concerning the scope of cross-examination of the victim in this case denied me the right to present a complete defense to the charges I faced, resulting in a fundamentally unfair trial.

To be sure, I had a 'weighty interest' in impeaching the credibility of the victim when she was on the stand with evidence that she wholly fabricated her allegations against me to gain sympathy in her therapy group that she was in for possessing marijuana and stealing. It was our theory that she fabricated her

allegations in order to shift focus from the real reason that she was in the group—her criminal activity—to sympathy as a victim for crimes that were never committed. When confronted with her criminality with her criminality she reverted to a criminal-thinking pattern in a victim's stance. She saw another girl deflecting culpability for the reasons the other girl was in the group and gaining sympathy by disclosing past sexual abuse that may have happened to her. Thus, regardless of what the putative victim in this case had done to victimize others, she employed a common defense when she was being held accountable for her behaviors. The victim stance allowed her to blame Defendant for the situation she was in and created for herself. After all, who would believe a man with a lengthy criminal history and has extreme disabilities. The victim made excuses and pointed a finger at Defendant and claimed she was really the one who was wronged, thereby justifying her actions of using drugs and stealing. Her victim-stance thinking helped her gain sympathy from the group and facilitator—those confronting her—and putting the focus on Defendant. This was done in an attempt to take the heat of her. Counsel should have been allowed to cross-examine the victim as to these events, as mandated by the United States Constitution. Clearly the trial court abused its discretion in ruling otherwise.

Clearly, evidence of the victim's group therapy and the circumstances that surrounded the declaration in the first instance would have the potential of causing

the victim embarrassment, however the probative value of any revelation that might have been garnered regarding the circumstances at that time the statement was first made public greatly outweighed any prejudicial value her testimony might have. In the context of hearsay statements, the Supreme Court has instructed that particularized guarantees of trustworthiness must be shown from the totality of the circumstances, but the relevant circumstances include those that surround the making of the statement and that render the declarants particularly worthy of belief. *See Idaho v. Wright*, 497 US 805 (1990). The victim's motive to conceal her bias and motives to fabricate were potent. The State of Washington realized this fact and took every step to guard her against any evidence that may have reflected negatively on her veracity.

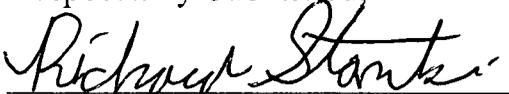
Because there was no other evidence that was highly, or even moderately, probative of whether or not I committed the crimes as charged besides the victim's testimony and given the fact that there was evidence that would have went directly to discrediting the only evidence the State had, it was unreasonable to exclude this evidence from the jury. Further, because of the paucity of evidence presented by the State, the exclusion of the evidence counsel attempted to present, and based on the fact that her testimony went directly to the heart of the matter asserted, any error in excluding the evidence was not harmless beyond a reasonable doubt. *Chapman v. California*, 383 US 18, 24 (1967). *See also Lilly v. Virginia*, 527 US

116 (1999). As noted in counsel's brief the excluded evidence went directly to the victim's intent to disclose the statement she did and this proffered evidence had high relevance to the case, was not cumulative, or otherwise could not have been presented at a later stage in the trial. In other words, the impeaching evidence had to have been presented while the victim was on the stand in order to have the weight that it was due. Anything less infringed upon my right to the Compulsory and Confrontation Clauses of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment.

Accordingly, based on the foregoing and as briefed by counsel, this Court should reverse my conviction and remand my case back to the trial court for further proceedings not inconsistent with counsel's and my arguments.

Dated this 30th day of March, 2015.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that I mailed the foregoing on the following parties by placing a true copy of thereof in a sealed envelope, postage prepaid, and deposited the same in the Oregon State Correctional Institution Law Library for delivery to the United States Post Office after addressing each as follows:

John Hays, Attorney at Law 1402 Broadway Longview, WA 98632	Washington Court of Appeals Division II 950 Broadway, Ste 300 Tacoma, WA 98402-4454
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March 30, 2015

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