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Division II  
State of Washington  
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NO. 51699-3-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

DAVID ROQUE-GASPAR

Appellant

---

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

---

OPENING BRIEF OF APPELLANT

---

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## A. INTRODUCTION

David Roque-Gaspar was charged with four counts of Rape of a Child in the First Degree in Tacoma, Washington. AG, the alleged victim, claimed that her cousin, Mr. Roque-Gaspar, raped her numerous times between the ages of nine and eleven years old, in the house where their families both lived together. She made these allegations approximately three years later, at the age of fourteen. AG had lived in Arizona for several years with her mother before coming back to live with her father in Washington at age fourteen.

After AG returned to Tacoma, Washington, AG's aunt and her father both witnessed her interacting with boys. After her father saw her kissing a boy, he canceled her upcoming quinceanera. AG wanted to return to Arizona after the quinceanera was canceled, but her father refused. Days later, she alleged that Mr. Roque-Gaspar had raped her years before. After AG alleged rape, her mother immediately flew her back to Arizona. During an interrogation of Mr. Roque-Gaspar, he initially denied the allegations against him. In a 3.5 hearing, the trial court found that his confession was voluntary, denying the defense's motion to suppress.

At trial, the defense sought to introduce evidence of AG's interactions with boys that preceded her father canceling the quinceanera. The defense theory of the case was that AG made up the allegations against Mr. Roque-Gaspar in order to leave her father's strict living environment. The trial court reserved ruling on the State's motion in limine seeking to suppress any of this information under the rape shield statute. During the testimony of the State's third witness, the court upheld the State's 5<sup>th</sup> motion in limine. After the State rested and the defense called its second witness, the court reversed its ruling on the State's motion in limine. The defendant was convicted of all four counts.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in granting plaintiff's motion in limine #5 on February 5, 2018 based on the rape shield statute, when it restricted the defense from mentioning AG's interactions with boys two years after the alleged rapes but contemporaneous with her allegations of rape, because the interactions were not past sexual behavior.

2. The trial court erred in granting Plaintiff's motion in limine #5 and violated Mr. Roque-Gaspar's Sixth Amendment right to confrontation when it granted the Plaintiff's motion in limine #5 on February 5, 2018, limiting the defense's ability to elicit information about AG's interactions with boys that caused her to be punished by her father and gave her a

motive to make false allegations toward Mr. Roque-Gaspar in order to leave the strict living environment with her father.

3. The trial court erred in denying Mr. Roque-Gaspar's motion to suppress detectives' interrogation of defendant as an involuntary confession under the Fifth Amendment by order entered on January 25, 2018, when interrogating detectives used the suggestive Reid method in their interviews, Mr. Roque-Gaspar had been held back a year in high school, he had experienced a traumatic event involving law enforcement in his childhood and since that event had been afraid of law enforcement figures, and a detective told him he would be in a "world of hurt" if he took the "bad result" in the interrogation.

#### C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Fourteen-year old AG accused Mr. Roque-Gaspar of raping her between the ages of nine and eleven. Shortly before AG made the accusations, her aunt (Rosa Torres) saw AG going into a neighbor's house with a boy and saw her receiving texts from a boy, and her father (Francisco Gaspar) saw AG kissing a boy and then her father canceled her quinceanera. AG then accused the defendant of rape and was flown to her mother's home in Arizona within days. Did the Court misapply the rape shield statute by initially finding that the statute precluded the defense from bringing in evidence of AG's interactions with boys and therefore

interfered with the defense's ability to defend against the charges?

(Assignment of Error 1)

2. An accused must be given a meaningful opportunity to present a complete defense, including great latitude in the cross-examination of prosecution witnesses to show motive or credibility. Did the trial court violate Mr. Roque-Gaspar's right to confrontation when it reserved ruling on the State's motion in limine #5, then partially granted the motion midway through the State's case in chief, then reversed its ruling during the defense's case in chief, after the defense's opportunity to cross-examine State witnesses had passed? (Assignment of Error 2)

3. Twenty-year-old Mr. Roque-Gaspar was interrogated at the police station for an hour and forty minutes by two detectives who utilized Reid methods of interrogation. Approximately six years prior, defendant witnessed police officers threaten to take his parents to jail if they didn't let the police go into the family home and arrest Mr. Roque-Gaspar's uncle. The family was ejected from the home while police arrested the uncle. Mr. Roque-Gaspar testified to being scared of law enforcement and authority figures since that event. He was held back a year in high school. He initially insisted on his innocence during the interview. One of the interrogating detectives told Mr. Roque-Gaspar that he would be in a "world of hurt" if he took a bad result in the interrogation, and a

confession resulted. Should Mr. Roque-Gaspar's confession be suppressed as involuntary? (Assignment of Error 3)

D. STATEMENT OF THE CASE

The State of Washington charged David Roque-Gaspar with four counts of rape of a child in the first degree in Pierce County Superior Court. CP 3-4. AG alleged that Mr. Roque-Gaspar raped her in their Tacoma home, where two related families were living together with their children. RP 571, 578. During the investigation of the case, Mr. Roque-Gaspar was interrogated by detectives. RP 466. Throughout the interrogation, Mr. Roque-Gaspar initially explained that he was innocent. RP 551, 1186 - 1187. The detectives rejected his statements of innocence, and continually provided alternative versions of events, all establishing guilt in some manner. RP 550.

Pretrial motions on *State v. David Roque-Gaspar* began on January 25, 2018. RP 3. The Court denied the defense's motion to suppress a detective interrogation of the defendant that utilized the Reid method in a 3.5 hearing conducted on January 25, 2018. RP 101. The jury was impaneled on January 31, 2018, and the opening statements were conducted on February 1, 2018. RP 409, 439-450. The Court had reserved ruling on the State's motion in limine #5 seeking to exclude any evidence or argument suggesting that the victim "was promiscuous or that she

received text messages from several boys.” RP 669, CP 16 (State’s trial brief). The Court ruled on this issue on February 5, 2018, during the testimony of the State’s third witness, when the Court partially granted the State’s motion in limine, allowing only the question “were you talking with boys and your father didn’t like that?” but precluding any other questions without the defense obtaining prior Court permission. RP 670. At this point in the trial, the State had already established through AG’s testimony in its case in chief that she had experienced sexual intercourse with someone other than the defendant. RP 636.

The State presented through AG’s testimony that between the ages of nine and eleven, Mr. Roque-Gaspar raped her numerous times. RP 629. AG testified that she was fourteen years old when she first alleged that Mr. Roque-Gaspar raped her. RP 678. AG’s father testified that after he saw her kissing a boy, he canceled her quinceanera, and a week or two later, she told her aunt that Mr. Roque-Gaspar had raped her years before. RP 1006, 1008, 1103. AG wanted to go back to Arizona, but her father did not want her to keep moving around. RP 690, 1011. Once AG made rape allegations, her mother bought her a ticket to go back to Arizona. RP 1010, 1011.

On February 8, 2018, during the direct examination of Francisco Gaspar, the Court upheld two State’s objections to Mr. Gaspar’s testimony

that the alleged victim's father caught her "flirting with a boy." RP 990. Defense counsel objected to the Court sustaining the objections, based on the fact that the testimony did not violate the Court's ruling on the motion in limine regarding the rape shield statute. RP 1000 - 1001. Later, during the second defense witness's direct testimony, the Court reversed its earlier ruling on the State's motion for limine #5, ruling that the defense could ask the question eliciting the response that the victim's father saw her "kissing a boy." RP 1005. The case was given to the jury on February 13, 2018, and the jury found the defendant guilty on all four counts on February 14, 2018. RP 1373, 1377 - 1378. The notice of appeal was filed on April 9, 2018. CP 107 - 121.

E. ARGUMENT

**1. The trial court erred in granting plaintiff's motion in limine #5 on February 5, 2018 based on the rape shield statute, when it restricted the defense from mentioning AG's interactions with boys two years after the alleged rapes but contemporaneous with her allegations of rape, because the interactions were not past sexual behavior.**

The rape shield statute provides that:

...Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility...

RCW 9A.44.020(2).

The rape shield statute was designed to erase the misogynistic and antiquated notion that a woman's past sexual behavior somehow impacted her credibility. *State v. Hudlow*, 99 Wn.2d 1, 659 P.2d 514 (1983).

In this case, AG claimed that she was raped from age 9 to 11 years old by Mr. Roque-Gaspar. However, at the time that she made those allegations, she was older: 14 years old. The purpose of the rape shield statute is to prevent evidence of **past** sexual behavior from being used to attack a complaining victim's credibility. However, in this case, the evidence was not past sexual behavior; it was contemporaneous with the time that AG disclosed 2-year-old allegations.

After AG's father canceled her quinceanera in response to her flirtation with a boy, she accused Mr. Roque-Gaspar of raping her years before. The Court's ruling limiting Mr. Roque-Gaspar's ability to cross examine AG about a motivation for her to fabricate the allegations so that she could leave her restrictive environment and move to Arizona was improper within the context of the rape shield statute. On February 8, 2018, the trial court briefly addressed the issue of what past sexual conduct meant when it mentioned *State v. Jones*: the appellate court didn't do any analysis of ... "whether the phrase 'past sexual behavior' was in reference to the alleged event at issue or the testimony that was being given" because no one had challenged that on appeal. *See generally*

*State v. Jones*, 168 Wn.2d 713, 230 P.3d 576 (2010); RP 996. The defendant's right to confront and cross-examine witnesses was significant in this case, as there was no physical evidence of the allegations nor witnesses to the alleged rapes (other than AG). The majority of the State's case rested on AG's credibility.

The evidence that Mr. Roque-Gaspar was allowed to elicit in trial was testimony that AG was seen kissing a boy, and her father punished her and treated her strictly by canceling her quinceanera. The defense theory of the case was that she fabricated the rape allegations in order to be able to move away from her father. Her dissatisfaction with her living situation gave her a motive to lie. However, the Court significantly curtailed Mr. Roque-Gaspar's ability to develop and present this defense by reserving ruling until the third State's witness, when the defense's ability to cross-examine some State witnesses had passed, then restricting the line of questioning that the defense was allowed to pursue, then reversing its ruling three days later. RP 669-670, 990, 1005.

Reserving ruling impacted a significant part of the defense. The Court weakened the defense's presentation of the case. Because defense counsel was awaiting the court's ruling on the State's 5<sup>th</sup> motion in limine, he could not be specific about his theory of the case in opening: that AG lied about the rape allegations in order to leave the state and get away

from her strict, disappointed father. RP 445 – 450. In losing that opportunity to educate the jury in opening statement, the defense’s entire case was weakened. RP 446- 447, 450. Defense counsel was forced to speak in vague generalities in his opening statement, rather than giving specific examples of AG’s behavior that incited her father’s anger and made her want to leave his strict environment. RP 446, 450.

The *Jones* case provides some illumination about the rape shield’s applicability to evidence that the Appellant’s defense counsel was precluded from presenting. *Jones*, 168 Wn.2d 713, 719. The questions are twofold: does the evidence apply to the rape shield statute, and if so, is it so probative as to be admissible anyway under the Sixth Amendment? The evidence that the defense was precluded from presenting involved the fact that the alleged victim was seen receiving texts from boys. Defense was delayed but ultimately allowed to present the evidence that AG was seen going into a house with a boy. Defense counsel was allowed to present that AG was seen kissing a boy, and that her father canceled her quinceanera shortly after that. All of this evidence happened over two years after the alleged rapes took place, and all of it happened just before AG accused the defendant of raping her, nearly contemporaneous with her making the allegations. Because the acts were not past sexual behavior

when compared to the time of the alleged rapes, the rape shield statute should not have barred any of the evidence.

*The trial court's constitutional error in mistakenly barring evidence under the rape shield statute requires reversal of Mr. Roque-Gaspar's conviction and a remand for new trial because the State cannot establish that the error was harmless beyond a reasonable doubt.*

The trial court's limitation on the defense's ability to cross-examine AG and present evidence establishing her motive to lie about the rape allegations was a constitutional error, because it impacted Mr. Roque-Gaspar's sixth amendment right to confrontation. Constitutional error is presumed to be prejudicial, and the State bears the burden of establishing that the error was harmless beyond a reasonable doubt. *State v. Franklin*, 180 Wn.2d 371, 382, 325 P.3d 159 (2014). A claimed violation of the Sixth Amendment right to present a defense is reviewed de novo. *Jones*, 168 Wn.2d at 719. In this case, Mr. Roque-Gaspar's right to put on a defense was substantially weakened by the trial court's delayed ruling and then reversal of the State's fifth motion in limine. Therefore, this Court should reverse Mr. Roque-Gaspar's conviction and remand for a new trial.

**2. The Court should have denied Plaintiff's motion in limine # 5 to suppress any mention of AG's interactions with boys as violative of Mr. Roque-Gaspar's right to confrontation when those interactions were a basis underlying AG's motive to fabricate an allegation against Mr. Roque-Gaspar because AG**

**wanted to move back to Arizona to escape her strict father's atmosphere.**

The Sixth and Fourteenth Amendments and Article I, Sections 3 and 22 of the Washington Constitution require that an accused be given a meaningful opportunity to present a complete defense. U.S. Const. amends VI, XIV, Const. art 2, sec 3, 22; *State v. Cayetano-Jaimes*, 190 Wn. App 286, 295-298, 359 P.3d 919 (2015). “The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L.Ed. 2d 297 (1973). A defendant must have the opportunity to be heard in his defense, which includes the rights to examine witnesses against him and offer testimony. *Id.* “It is fundamental that a defendant charged with commission of a crime should be given great latitude in the cross-examination of prosecution witnesses to show motive or credibility.” *State v. Peterson*, 2 Wash.App. 464, 466, 469 P.2d 980 (1970).

Cross-examination is the principal means by which a witness’s believability and truthfulness are tested. *Davis v. Alaska*, 415 U.S. 308, 316 (1974). A more focused attack upon a witness’s credibility is accomplished by revealing possible biases, prejudices, or “ulterior motives of the witness as they may relate directly to issues or personalities in the

case at hand.” *Id.* “[E]xposure of a witness’s motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Id.* at 317 (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)).

Courts may deny cross-examination if the evidence sought is vague, argumentative, or speculative. *State v. Jones*, 67 Wash.2d 506, 512, 408 P.2d 247 (1965). Trial judges retain wide latitude within the parameters of the Confrontation Clause to reasonably limit cross-examination based on concerns about harassment, confusion of the issues, repetitive or marginally relevant interrogation. *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). In this case, the evidence that the defense sought to elicit was that AG was facing pressure and punishment from her father based on her interactions with boys and wanted to move to Arizona.

Evidence that is proffered by a defendant “must be of at least minimal relevance.” *State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401. If the evidence is relevant, the burden is on the State to establish that “the evidence is so prejudicial as to disrupt the fairness of

the fact-finding process at trial.” *Darden* at 622; *State v. Jones*, 168 Wn.2d 713, 719, 230 P.3d 576 (2010). The State’s interest in excluding prejudicial evidence must “be balanced against the defendant’s need for the information sought,” and relevant information should only be withheld if “the State’s interest outweighs the defendant’s need.” *Darden* at 622. The integrity of the truthfinding process and the defendant’s right to a fair trial are important considerations. *State v. Hudlow*, 99 Wn.2d 1, 14, 659 P.2d 514 (1983).

Assuming arguendo, that the rape shield statute does apply, the next question is whether the evidence is so highly probative as to be admissible anyway under the Sixth Amendment. In *Jones*, the evidence was excluded was Jones’ entire defense: the fact that on the evening of the alleged rape, the victim had consumed drugs and alcohol with another woman and three men in a nine-hour consensual sex party. By preventing the highly probative defense’s evidence from being presented, the trial court was found to have violated the defendant’s Sixth Amendment rights. In our case, the evidence that was excluded by the trial court was also highly probative to the defense; it was the defense’s entire case theory. The defense was that the reason that AG made up the rape allegations against Mr. Roque-Gaspar was to escape her father’s strictness and punishment and move back to Arizona with her mother.

The information about AG's interactions with boys that defense sought to enter into evidence through the direct testimony of Rosa Torres and Francisco Gaspar, and the cross-examination of AG was not unduly prejudicial. The defense's right to put on relevant evidence was not outweighed in this case by the state's interest in seeing that the evidence is not so prejudicial as to disrupt the fairness of the factfinding process. The evidence involved AG going into a neighbor's house with a boy, kissing a boy and getting texts from boys. The defense was not asserting that she had previously had sexual intercourse with anyone; the State introduced in their direct examination of AG that she had experienced sexual intercourse with someone other than Mr. Roque-Gaspar. RP 636. There was no assertion that AG had consented to any sexual activity with Mr. Roque-Gaspar; the defense was a denial. The defense sought submission of this evidence to support their theory of the case: that AG made up the allegations to escape her father's strict environment in favor of her mother's home in Arizona. RP 110-111. In an allegation of forcible rape of a nine-year-old where consent is not being alleged, the concern that past sexual activity would be used to embarrass or malign her is ludicrous. Mr. Roque-Gaspar was trying to establish AG's motive to fabricate the allegations against him. The evidence that the defense sought to admit was much less prejudicial than that of the defense in the *Jones* case.

Jurors were entitled to have the benefit of the defense theory before them, so they could determine what weight to place on AG's testimony, which was a crucial part of the State's case. By granting the State's 5<sup>th</sup> motion in limine on February 5, 2018 and then reversing itself on February 8, 2018 during the second defense witness's testimony after AG had already testified, the Court weakened the defense's opportunity to defend against the charges. RP 670, 1005. By relying on a ruling for three days and then having that ruling changed, defense counsel was unable to fully pursue his defense against the charges: that AG lied to be allowed to move back to Arizona. Mr. Roque-Gaspar was therefore denied the right of effective cross-examination, which violated his Sixth Amendment rights of confrontation.

*The trial court's constitutional error in limiting Mr. Roque-Gaspar's ability to cross examine witnesses and present evidence of AG's motive to lie violated his sixth amendment right to confrontation and requires reversal of his conviction and a remand for new trial because the State cannot establish that the error was harmless beyond a reasonable doubt.*

The violation of the right to present a defense is constitutional error. *Franklin* at 382; *Jones*, 168 Wn.2d at 724. Constitutional error is presumed to be prejudicial, and the State bears the burden of establishing that the error was harmless beyond a reasonable doubt. *Id.* A claimed

violation of the Sixth Amendment right to present a defense is reviewed de novo. *Jones*, 168 Wn.2d at 719.

In this case, AG was the sole accuser of Mr. Roque-Gaspar. No physical evidence of the rapes was ever produced by the State, and the allegations were approximately three years old at the time AG accused Mr. Roque-Gaspar. Given the weaknesses in the State's case, the trial court's limitation on the defense's ability to thoroughly cross-examine AG and to present complete basis supporting her motive to fabricate was not harmless beyond a reasonable doubt.

This Court should reverse Mr. Roque-Gaspar's conviction and remand for a new trial. *Franklin*, 180 Wn.2d at 383.

**3. The Court should have suppressed the detectives' interrogation of the defendant due to their use of the Reid technique and the defendant's susceptibility to deceptive techniques.**

The Fifth Amendment bars the admission of involuntary confessions. U.S. CONST. amend V. The Court must determine whether the defendant's will had been overborne so that the statement was not his free and voluntary act. *U.S. V. Jacques*, 744 F.3d 804, 809 (1<sup>st</sup> Cir. 2014). There is "no single litmus-paper test for constitutionally impermissible interrogation," and no one feature of the interrogation determines if a

confession is voluntary. *Culombe v. Connecticut*, 367 U.S. 568, 601, 81 S.Ct. 1860 (1961).

As law enforcement has turned to more subtle types of psychological persuasion and away from physical coercion, courts have found that the mental condition of a defendant is more significant when determining voluntariness of a confession. *Colorado v. Connelly*, 479 U.S. 157, 164, 107 S.Ct. 515, 93 L.Ed. 2d 473 (1986). It takes less in terms of more sophisticated, complex police interrogation techniques “to interfere with the deliberative processes of one whose capacity for rational choice is limited than it takes to affect the deliberative processes of one whose capacity is not so limited.” *U.S. v. Preston*, 751 F.3d 1008 (Ninth Cir. 2013) (citing *Smith v Duckworth*, 910 F.2d 1492, 1497 (Seventh Cir. 1990)).

While it is true that the *Preston* case involved an interrogation of an intellectually disabled 18-year-old defendant, similarities can be found to the case at bar. The investigators in both cases utilized interrogation techniques from the Reid manual, presenting the suspect with two alternatives as to how the crime was committed. RP 49. The investigators in both cases used repeated pressure to encourage the suspect to change answers inconsistent with guilt and adopt answers evidencing guilt. RP 57 80; *Preston* at 1024. Although the appellant is not intellectually disabled,

he was held back a year in high school. RP 52. He experienced a traumatic event involving law enforcement when the police came to his house and demanded to search the house for his uncle, then threatened to take his parents to jail if they refused to allow a search of the house. RP 54, 1184. This experience caused him to feel pressured and controlled more than a person who had not had a similar experience. He testified that he'd "always been afraid of authority." RP 54. He further testified of being "afraid that they would take me to jail if I didn't cooperate with what they wanted." RP 83. He was in a police interview room, which is a more coercive environment than in his own home. He was interrogated by two officers for an hour and forty minutes. RP 88. Detective Song told him that he would be in a "world of hurt" if he took the bad result by detectives during the interrogation. RP 41, 81- 82.

Throughout the interrogation, the Defendant initially explained that he was innocent. RP 551, 1186 - 1187. The detectives rejected his statements of innocence, and continually provided alternative versions of events, all establishing guilt in some manner. RP 550. The detectives encouraged the defendant to get to the middle, with their version of the truth being somewhere in the middle. RP 1187. Thus they were psychologically coercing the defendant into admitting to some form of guilt by warning him that his explanation of innocence would not be

believed, and things would get much worse for him if he persisted with his original insistence of innocence. RP 57. The factors of his intellectual difficulties in school, his frightening experience at the hands of law enforcement when they arrested his uncle and temporarily ejected his family from their home during the arrest and search, and the suggestive, manipulative Reid interviewing techniques and threatening statement by detectives that he was going to be in a “world of hurt” combined to produce an involuntary confession.

*The trial court’s denial of Mr. Roque-Gaspar’s motion to suppress his confession as involuntary under the Fifth Amendment was a constitutional error, and because the State cannot establish that the error was harmless, this Court should reverse the conviction and remand for new trial.*

The trial court should have suppressed Mr. Roque-Gaspar’s confession, due to the Fifth Amendment violation, based on the foregoing facts. Because the violation was a constitutional error, the State bears the burden of establishing that the error was harmless beyond a reasonable doubt. *Franklin* at 724. The State’s case consisted of a three-year-delayed allegation by a teenager with a motive to lie, and no physical evidence to support her claims. When the trial court allowed Mr. Roque-Gaspar’s deceptively obtained confession into evidence, it committed reversible error because the State cannot establish that it was harmless

beyond a reasonable doubt. *Id.* The appropriate remedy is reversal with a remand for a new trial.

E. CONCLUSION

For the foregoing reasons, the Defendant requests the Court to find that his Confrontation Rights were violated when he was prevented from fully cross-examining AG regarding a motive for her fabrication of the allegations against him. Additionally, the defendant requests the Court to find that the rape shield statute did not apply in this case due to the suppressed information not being previous sexual behavior, and therefore, the defense should have been given more latitude to examine defense witnesses regarding AG's interactions with boys that led to her father's discipline of her and her resulting motive to allege false charges against the defendant. Also, the defendant requests the court to find that even if the rape shield statute did apply in this case, that the excluded evidence was much more probative than prejudicial, and therefore should have been allowed by the trial court. The suppression of defense evidence that was essential to the defense theory of the case was not harmless beyond a reasonable doubt, and therefore the defense requests that the conviction be reversed and the matter remanded back for a new trial. Finally, the Defendant requests that the Court find that his confession was involuntary

and reverse the trial court's ruling denying the defense's motion to suppress the confession.

December 4, 2018

Respectfully submitted,



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**Transmittal Information**

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