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Division III
State of Washington
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NO. 36085-7-III

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

STATE OF WASHINGTON,

Respondent,

v.

PATRICIA VITTORIO,
Appellant.

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

The Honorable John Hotchkiss, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court violated Vittorio's Sixth Amendment right to present her defense when it precluded relevant, admissible evidence that would have created reasonable doubt that did not otherwise exist.

2. The trial court's error was not harmless.

B. ISSUES PRESENTED ON APPEAL

1. Vittorio's defense to heft was that no crime occurred – general denial, because Elliot took his own television in order to frame Vittorio for a crime she did not commit. The trial court precluded Vittorio's testimony that she heard Elliot tell her former husband that Elliot would cause Vittorio to be arrested, testimony from the nurse who performed Vittorio's sexual assault examination, who also confirmed Vittorio's vaginal injury. The omitted evidence provided a context for why Elliot wanted to frame Vittorio and, thus, created reasonable doubt that did not otherwise exist. Did the trial court violate Vittorio's Sixth Amendment right to present her defense by omitting this evidence?

2. Vittorio's defense to theft was that no crime occurred

because Elliot took his own television in order to frame Vittorio for a crime she did not commit. The trial court precluded testimony that Elliot forcibly confined Vittorio to her bedroom the night she started packing her property. The omitted evidence showed Elliot had an opportunity to take his television out of the home without Vittorio's knowledge and then bring it back after she was arrested. Thus, it created reasonable doubt that did not otherwise exist. Did the trial court violate Vittorio's Sixth Amendment right to present her defense when it precluded this evidence?

3. Vittorio's defense to malicious mischief regarding urine in Elliot's bed was that she involuntarily urinated as a result of being dehydrated, losing consciousness and being sexually assaulted by Elliot. Evidence that Vittorio was treated for dehydration and that she suffered a vaginal injury, supported her defense and would have created reasonable doubt that otherwise did not exist. Did the trial court violate Vittorio's Sixth Amendment right to present her defense when it precluded this evidence?

4. Vittorio's defense to malicious mischief regarding

Elliot's fish was that Elliot lied about her placing cat feces in the fish tank. The trial court precluded Vittorio's testimony that she heard Elliot tell her former husband Elliot would cause Vittorio to be arrested, testimony from the nurse who performed Vittorio's sexual assault examination and confirmed Vittorio's vaginal injury, and Vittorio's medical records, which confirmed Vittorio's vaginal injury. The omitted evidence provided a context for why Elliot wanted to frame Vittorio and, thus, created reasonable doubt that did not otherwise exist. Did the trial court violate Vittorio's Sixth Amendment right to present her defense when it precluded this evidence?

5. Vittorio's defense for making a false or misleading statement to a public servant was that she did not make a false or misleading statement. The trial court precluded Vittorio's testimony as set forth above, including Vittorio's testimony that Elliot turned up the heat on a hot summer day, Vittorio's medical records which confirmed Vittorio's dehydration and Vittorio's testimony that Elliot forcibly confined Vittorio to her bedroom the night she started packing

her property. The omitted evidence provides context for why Vittorio may have misremembered an event that took place a short time earlier and, thus, creates reasonable doubt that did not otherwise exist. Did the trial court violate Vittorio's Sixth Amendment right to present her defense when it precluded this evidence?

C. STATEMENT OF THE CASE

1. Procedural History

Patricia Vittorio was charged by fourth amended information with Count I theft in the second degree (RCW 9A.56.020(1)(a) and RCW 9A.56.040(1)(b)); Count III making a false or misleading statement to a public servant (RCW 9A.76.175); Count IV malicious mischief in the third degree (RCW 9A.48.090(1)) for causing the death of James Elliot's fish; and Count V malicious mischief in the third Degree (RCW 9A.48.090(1)) for urinating on James Elliot's bed. CP 25-28; RP 226-27. After a jury trial, Vittorio was convicted of theft in the second degree; making a false or misleading statement to a public servant; and two counts of malicious mischief in the third Degree. CP 99. Vittorio timely appeals. CP 115.

2. Substantive Facts

Patricia Vittorio moved into James Elliot's split-level home with her three children in July 2017. RP 33, 70. The charges against Vittorio arose from the events that took place while Vittorio attempted to move her personal property out of the home two weeks later. RP 73, 129.

a. Vittorio's Version of events

Vittorio met Elliot through friends and arranged an interview to rent two upstairs rooms from Elliot. RP 159-60. One room was for Vittorio and her daughter and the other was for her two young sons. RP 161. Elliot and another man, Stephen Mendenhall, had bedrooms downstairs. RP 160.

When Vittorio move into Elliot's home, she brought three televisions (TVs). RP 76, 124, 170; Exh. 13, 15. One of Vittorio's TV's was a 64" LG she bought several years prior and kept in her bedroom. RP 124, 125, 171; Exh. 15. Elliot owned a brand new LG OLED 65" TV, which looked similar to Vittorio's TV. RP 75; Exh. 1, 15.

For the two weeks she lived in the house Vittorio fed Elliot's fish pellets from a container. RP 187-89. The fish tank was full of

algae during that entire period. RP 85, 102. Vittorio was only tasked with feeding the fish not cleaning the tank. RP 84-85; Exh. 11.

The day before Vittorio began moving out, she overheard a discussion between Elliot and her former husband about their plan to have her arrested so she would lose custody of her children. RP 11-12, 64. Sometime after that conversation, Elliot forcibly confined Vittorio to her bedroom and would not let her leave for a period of time. RP 9-11.

Elliot and his roommate also turned up the heat while Vittorio was locked in the room to aggravate Vittorio. RP 10, 179. As a result, Vittorio became dehydrated and sought treatment at the hospital. RP 10. After the hospital visit, Vittorio returned home and eventually lost consciousness. RP 13, 146. Vittorio awoke in Elliot's bed covered in urine and blood. RP 146, 161. Vittorio believed Elliot sexually assaulted her while she was unconscious, so she underwent a sexual assault examination. RP 13. The exam revealed a vaginal injury. RP 12.

The next day Vittorio began to move her property out of Elliot's home, but Elliot would not allow her to move her property out of the driveway, so she called the police. RP 151-52. Deputy Taylor Melton

arrived and spoke with Vittorio. RP 152. Vittorio stated that Elliot had pushed a bookcase down the stairs onto her and injured her ankle. RP 152.

Deputy Melton testified that Vittorio gave three slightly varied accounts about how she was injured. RP 152. First Vittorio stated Elliot pushed the bookcase onto her while she was moving it downstairs. Vittorio then stated Elliot assisted her with the bookcase then pushed it onto her as she walked down the stairs. RP 152. Finally, Vittorio stated Elliot caused the bookcase to fall on her when he pushed past her while she was carrying it down the stairs. RP 152. Vittorio testified that her ankle was uncomfortable and inconvenient but did not hurt enough to take an ambulance to the hospital. RP 166.

After Deputy Melton's visit, Vittorio continued to move her property. Two of Elliot's friends offered to help her move and she asked them to retrieve her TV (which looked similar to Elliot's TV) from her room. RP 163, 167. Around the time Elliot's friends moved the TV out of the house, Elliot threatened to kill Vittorio's children so she called the police again. RP 168-69.

While Deputy Tom Williams was on his way, Elliot called

Williams and accused Vittorio of taking his TV. RP 123. When Deputy Williams arrived, Vittorio insisted that the TV she moved out of the home belonged to her but acknowledged the movers could have mistakenly taken Elliot's TV. RP 125. After Vittorio consented, Deputy Williams searched her apartment, where Vittorio thought the movers took her TV. RP 127. Deputy Williams did not find the TV but found a blanket from Elliot's home. RP 128-29. Williams arrested Vittorio for stealing Elliot's TV. RP 129.

While Vittorio was in Deputy Williams' custody, Elliot's TV reappeared in Elliot's driveway. RP 156. Deputy Melton confirmed the TV was Elliot's. RP 156.

b. Elliot's version of events

According to Elliot, he and Vittorio met in a bar and began a romantic relationship. RP 69. Elliot asked Vittorio to move in with him about a month later. RP 70. Elliot agreed that Vittorio's children had two rooms but testified he and Vittorio shared his room. RP 71.

Elliot testified that Vittorio's 64" LG television was never in his house, but in Exhibit 15 he is pictured standing next to Vittorio's television in her room that she shared with her daughter. Exh. 15.

Elliot also testified that he was the only one authorized to feed

his fish. RP 79, 105-06. Elliot's roommate, Mendenhall, set up a dashcam to record the weekend's events. RP 35; Exh. 1. The video shows Vittorio near Elliot's fish. Exh. 1. Elliot alleged that Vittorio placed cat feces in the tank, which caused an algae problem so severe Elliot was forced to move the fish to another tank and they died within a few days. RP 81-82, 104. However, Elliot agreed the tank had an algae problem before Vittorio moved into the home and there was no video footage showing anything other than Vittorio feeding the fish. RP 84-85.

Elliot testified that Vittorio took his television and later admitted to urinating on his bed. RP 76-77, 95.

c. Evidentiary Rulings

The trial court precluded the following evidence: a) testimony from Vittorio referencing a conspiracy between Elliot and her former husband; b) testimony from Vittorio about the telephone conversation she overheard between Elliot and her former husband; c) cross-examination about the telephone conversation Vittorio overheard; d) impeachment evidence about the telephone call Vittorio overheard; e) testimony from Vittorio that Elliot turned up the heat on a hot summer day; e) testimony from Vittorio's doctor

confirming her dehydration; f) testimony from the nurse who performed Vittorio's sexual assault examination confirming Vittorio's vaginal injury; g) medical records confirming Vittorio's dehydration or vaginal injury; and h) testimony from Vittorio about Elliot forcibly confining Vittorio to her bedroom the night she started packing her property. RP 14-15, 64-65. The court concluded that none of this evidence was relevant. RP 14-15, 64-65.

D. ARGUMENT

1. THE TRIAL COURT VIOLATED VITTORIO'S SIXTH AMENDMENT RIGHT TO DUE PROCESS WHEN IT PRECLUDED RELEVANT ADMISSIBLE EVIDENCE THAT WOULD HAVE CREATED REASONABLE DOUBT THAT DID NOT OTHERWISE EXIST.

The trial court violated Vittorio's Sixth Amendment right to present a defense when it prohibited Vittorio from presenting relevant, admissible evidence that would have created reasonable doubt that did not otherwise exist.

This Court reviews a trial court's evidentiary rulings for abuse of discretion, but "when a trial court's discretionary ruling excludes relevant evidence, the more the exclusion of that evidence prejudices an articulated defense theory, the more likely [the

reviewing court] will find that the trial court abused its discretion.” *State v. Duarte Vela*, 200 Wn. App. 306, 317, 402 P.3d 281, 287 (2017), *as amended on denial of reconsideration* (Oct. 31, 2017), *review denied sub nom. State v. Vela*, 190 Wn. 2d 1005, 413 P.3d 11 (2018) (citing *State v. Jones*, 168 Wn. 2d 713, 720, 230 P.3d 576 (2010)).

A trial court abuses its discretion when there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or exercised on untenable grounds, or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

However, this Court reviews a claim of a denial of Sixth Amendment rights de novo. *Jones*, 168 Wn.2d at 719 (citing *State v. Iniguez*, 167 Wn.2d 273, 280–81, 217 P.3d 768 (2009)). Therefore,

if the trial court excluded relevant defense evidence, this Court determines as a matter of law whether the exclusion violated the defendant's Sixth Amendment right to present a defense. *Jones*, 168 Wn.2d at 719.

All relevant evidence is admissible unless it is limited by constitutional requirements or by statute, rules of evidence, or other court rules. ER 402. Evidence is relevant if it makes "the existence of any fact of consequence to the determination of the action more probable or less probable..." ER 401. Even evidence of minimal relevance should be admitted if it is probative of the defendant's version of events. *Duarte Vela*, 200 Wn. App. at 323 (citing *Jones*, 168 Wn.2d at 720-21).

If the evidence is relevant, the burden shifts to the state to show the relevant evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial. *Jones*, 168 Wn. 2d at 720. The state's interest in excluding prejudicial evidence must be balanced against the defendant's need for the information sought and the relevant information can be withheld only if the state's interest outweighs the defendant's need. *Jones*, 168 Wn. 2d at 720.

Because the right to present testimony in one's defense is

guaranteed by both the United States and the Washington Constitutions “the ER 403 balancing of probative value versus unfair prejudice is weighed differently when the defense seeks to admit evidence that is central to its defense.” *Duarte Vela*, 200 Wn. App. at 320; U.S. Const. Amend. VI; Wash. Const. art. I, § 22.

A criminal defendant’s right to due process is “the right to a fair opportunity to defend against the State’s accusations.” *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002) (citing *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038 (1973)).

A trial court’s decision to exclude testimony violates the defendant’s Sixth Amendment right to present a defense if the omitted evidence, evaluated in the context of the entire record, creates a reasonable doubt that did not otherwise exist. *Duarte Vela*, 200 Wn. App. at 326 (citing *United States v. Blackwell*, 459 F.3d 739, 753 (6th Cir. 2006)).

Jones, 168 Wn.2d at 721 is illustrative to show when omitted evidence is of such high probative value that excluding it violates the Sixth Amendment right to present a defense. In *Jones*, the trial court precluded, on the ground that it was barred by the rape shield statute, Jones’s testimony and any cross-examination about the night of the

alleged rape. *Jones*, 168 Wn.2d at 719-20. The Washington Supreme Court held the rape shield statute did not apply and that even if the rape shield statute did apply it could not be used to bar Jones' testimony about the night of the alleged rape because his testimony was of such high probative value. *Jones*, 168 Wn.2d at 722.

Jones's' entire defense was that K.D. consented to sex during a drug induced sex party. *Jones*, 168 Wn.2d at 720. If believed, Jones's testimony would have provided a complete defense to the charge of second-degree rape. *Jones*, 168 Wn.2d at 721.

Even though the trial court allowed Jones to testify to the issue of consent alone, the consent testimony was "devoid of any context about how the consent happened or the actual events." *Jones*, 168 Wn.2d at 721. Therefore, the trial court's error prevented Jones from presenting his version of the events. *Jones*, 168 Wn.2d at 724. Because evidence about the party was "of extremely high probative value" it could not be barred without violating the Sixth Amendment. *Jones*, 168 Wn.2d 721.

Duarte Vela, 200 Wn. App. at 320–21 is also illustrative to demonstrate when omitted evidence violates the defendant's Sixth

Amendment right to present a defense. Duarte Vela claimed he killed the victim in self-defense because he was afraid of him. To support that defense theory, Duarte Vela sought to introduce evidence of: the victim's three-year-old prison threat to kill Duarte Vela's entire family; testimony from Duarte Vela that his family members told him about the victim's threat to kill Duarte Vela's family; testimony from Duarte Vela about why he feared the victim being around his family; and why Duarte Vela had an elevated fear of the victim just prior to the killing. *Duarte Vela*, 200 Wn. App. at 313-316. The trial court precluded all of Duarte Vela's proffered testimony and the jury convicted him of murder.

This Court rejected the State's argument that weak or false evidence is not probative. *Duarte Vela*, 200 Wn. App. at 321. Instead, the Court held that probative evidence should be admitted, even if suspect, because it will allow the jury to "retain its role as the trier of fact, and *it* will determine whether the evidence is weak or false." *Duarte Vela*, 200 Wn. App. at 321 (emphasis in original).

This Court reversed Duarte Vela's conviction because the omitted evidence was central to Duarte Vela's defense self-defense claim that his fear of the victim was reasonable. The omitted

evidence created reasonable doubt that did not otherwise exist. *Duarte Vela*, 200 Wn. App. at 288, 326-27. Excluding this evidence barred Duarte Vela from presenting his defense. *Duarte Vela*, 200 Wn. App. at 326-27.

Like in *Jones* and *Duarte Vela*, here the trial court precluded relevant, admissible evidence that was essential and highly probative and central to Vittorio's defense. Vittorio was charged with theft, malicious mischief, and making a false or misleading statement to a public servant.

Her defense theory was that no crime actually occurred. Vittorio alleged that Elliot took his own television, caused the death of his own fish by not cleaning the tank, caused Vittorio to urinate on his bed by causing her to pass out and then placing her in his bed and sexually assaulting her, and that Elliot destroyed her bookcase, injured her ankle, threatened Vittorio and her children.

- a. Elliot's conversation with Vittorio's former husband about their plan to frame Vittorio was relevant, admissible and highly probative because it provided context for Vittorio's complete defense to theft in the second degree

Elliot's out-of-court statement to Vittorio's former husband that he planned to cause Vittorio's arrest was not hearsay- it was offered to show Vittorio's state of mind.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Duarte Vela*, 200 Wn. App. at 319 (quoting ER 801). Whether an out-of-court statement is hearsay depends on the purpose for which the statement is offered. *Duarte Vela*, 200 Wn. App. at 319 (citing *State v. Hamilton*, 58 Wn. App. 229, 231, 792 P.2d 176 (1990)).

Statements not offered to prove the truth of the matter asserted, but rather as a basis for inferring something else, are not hearsay. *State v. Crowder*, 103 Wn. App. 20, 26, 11 P.3d 828, 831 (2000), *as amended* (Oct. 27, 2000) (citing *State v. Collins*, 76 Wn. App. 496, 498–99, 886 P.2d 243 (1995)).

Out-of-court statements used to prove the declarant acted in accordance with statements of future intent are admissible under the

state of mind exception to the hearsay rule. *State v. Powell*, 126 Wn.2d 244, 266, 893 P.2d 615 (1995) (citing *State v. Terrovana*, 105 Wn.2d 632, 642, 716 P.2d 295 (1986), *cert. denied sub nom. Terrovana v. Kincheloe*, 499 U.S. 979, 111 S.Ct. 1631 (1991)).

In *Terrovana*, 105 Wn.2d at 640, the victim's girlfriend told her he had received a telephone call from Terrovana in which Terrovana said he ran out of gas on 116th street and needed the victim's help. Approximately fifteen minutes later, the victim's body was found on 116th street. *Terrovana*, 105 Wn.2d at 640.

The Washington Supreme Court held that the trial court properly admitted the girlfriend's testimony about the content of the phone call because the statement addressed the victim's future intent, "necessarily implicat [ing] the defendant's future conduct." *Terrovana*, 105 Wn.2d, 641.

The Court emphasized that to be admissible there must be a direct correlation between the victim's statement of future intent and the defendant's future conduct. See also *State v. Bernson*, 40 Wn. App. 729, 738, 700 P.2d 758 (1985) ((holding that the victim's out-of-court statement that she received an offer to sell women's apparel was admissible to show her state of mind and plan).

Similarly here, Elliot's out-of-court statement to Vittorio's former husband, that he planned to cause Vittorio's arrest, addressed Elliot's state of mind based on his future intent. This statement was admissible to show Elliot intended to cause Vittorio to be arrested. Because Elliot's statements were not submitted to prove the truth of the matter asserted, but to show Elliot's plan and future intent, these statements were not hearsay. *Crowder*, 103 Wn. App. at 26. Therefore, the statements were admissible as long as they were at least minimally relevant. *Jones*, 168 Wn. 2d at 720.

(i) Theft Defense

Here, like the omitted consent testimony in *Jones*, testimony that Elliot planned to have Vittorio arrested was not marginally relevant. It was Vittorio's entire defense to the theft- that she was framed. The trial court allowed Vittorio to testify that Elliot took his own TV. However, just as the consent testimony alone was devoid of context in *Jones*, Vittorio's testimony that Elliot framed her was also devoid of any context about why Elliot would frame her. Evidence of Elliot's intent to ensure Vittorio was arrested was highly probative of whether his accusations against Vittorio were truthful. If the jury believed Elliot intended to cause Vittorio's arrest, without

regard to whether she actually committed a crime, then evidence of Elliot's intent or plan would have provided a complete defense to theft in the second degree. Because the omitted evidence was of such high probative value, precluding it prevented Vittorio from presenting her defense and violated the Sixth Amendment. *Jones*, 168 Wn.2d 721.

Also, evidence that Elliot forcibly confined Vittorio to her room the night prior to her moving out of his home was at least minimally relevant because, if believed, Vittorio's confinement provided Elliot with an opportunity to remove his TV from the house without Vittorio's knowledge. Further, if Elliot behaved unlawfully in confining Vittorio to her room, it provides a context for why he may have wanted to discredit Vittorio or ensure she was arrested instead of him. This evidence created reasonable doubt about whether Vittorio took the TV that did not otherwise exist. Without the omitted evidence of Vittorio's confinement Vittorio's defense was devoid of context about the actual events. *Jones*, 168 Wn.2d at 721.

(ii) Malicious Mischief Defense

Testimony that Elliot purposefully turned up the heat on a hot summer day and Vittorio's medical evidence of her dehydration and

vaginal injury, evaluated in the context of the entire record, creates a reasonable doubt that did not otherwise exist.

Vittorio's theory of defense was that Elliot turned up the heat in the room she was locked in and sexually assaulted her after she passed out causing her to urinate involuntarily. This evidence would have created reasonable doubt about whether Vittorio purposefully and maliciously urinated on Elliot's bed. RP 145-46. The medical records would further lend support to Vittorio's theory that Elliot sexually assaulted her, which would explain why he may have wanted to frame or discredit Vittorio.

It is irrelevant whether Vittorio's theory of sexual assault actually explained the urine on the bed because a defense theory should be tested through cross-examination and ultimately determined by the jury, not decided as a matter of law. *Duarte Vela*, 200 Wn. App. at 321.

(iii) False Misleading Statement Defense

Further, in her defense of making a false or misleading statement to a public servant, Vittorio alleged that nothing she stated to Deputy Melton was false. Vittorio was prevented from explaining the slight variation in the sequence of events surrounding the

bookcase and ankle injury based on her fear of Elliot who sexually assaulted her.

Here, like in *Jones*, the omitted evidence prohibited Vittorio from presenting her version of events and left Vittorio's testimony devoid of context. If Elliot was willing to disregard Vittorio's health to play a cruel joke on her by turning up the heat it is more probable he may have framed her for a crime she did not commit. Therefore, the omitted evidence creates reasonable doubt that did not otherwise exist.

Evidence that Elliot forcibly confined Vittorio to her room may have also explained Vittorio's reaction to her minor ankle injury and why she was flustered and could not accurately recall the events that occurred just prior to Deputy Melton's arrival. The omitted evidence of her confinement creates reasonable doubt about whether she knowingly made a false statement to Deputy Melton or she simply perceived Elliot as a threat and thought he tried to injure her and destroy her property. Therefore, by omitting evidence that Elliot forcibly confined Vittorio to her room the trial court prevented Vittorio from presenting her defense in violation of the Sixth Amendment. *Duarte Vela*, 200 Wn. App. at 326-27.

By omitting this evidence the trial court prevented Vittorio from presenting her defense in violation of the Sixth Amendment. *Duarte Vela*, 200 Wn. App. at 326-27.

2. THE TRIAL COURT'S ERROR WAS NOT HARMLESS

An error of constitutional magnitude can be harmless if it is proved to be harmless beyond a reasonable doubt. *Jones*, 168 Wn.2d at 724–25 (citing *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)). Error is harmless if the reviewing court is “convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error.” *Jones*, 168 Wn.2d at 724–25 (citing *State v. Smith*, 148 Wn.2d 122, 139, 59 P.3d 74 (2002) (citing *State v. Whelchel*, 115 Wn.2d 708, 728, 801 P.2d 948 (1990))).

In *Jones*, regardless of the strength of the state’s case, the trial courts error in omitting the evidence of the sex party was not harmless because the jury could have reached a different result if it heard a completely different account of the events of that night, regardless of the strength of the state’s case. *Jones*, 168 Wn.2d at 724-25.

Similarly here, regardless of the strength of the state's case, the trial courts error in omitting the evidence leading up to the charges was not harmless because the jury could have reached a different result if it heard Vittorio's account of the events leading up to the charges. *Jones*, 168 Wn.2d at 724–25.

Because the trial court's error prevented Vittorio from presenting her version of the events, the constitutional error was not harmless and Vittorio's convictions must be reversed on all counts and remanded for a new trial. *Jones*, 168 Wn.2d at 725.

E. CONCLUSION

Patricia Vittorio respectfully requests that this court reverse her convictions and remand to the trial court for a new trial.

DATED this 19th day of October 2018.

Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Douglas County Prosecutor's Office sclem@co.douglas.wa.us and Patricia Vittorio, 3522 Pine Road NW, Bremerton, WA 98310 a true copy of the document to which this certificate is affixed on October 19, 2018. Service was made by electronically to the prosecutor and Patricia Vittorio by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink that reads "Lise Ellner" followed by a horizontal line.

Signature

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