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NO. 68595-3-I

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

REC'D  
JAN 18 2013  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

E.B.,

Appellant.

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

The Honorable Bruce Hilyer, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

E.B. WAS DENIED HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE.

After noting the many instances where D.I.'s credibility was impeached with inconsistencies, the State – like the trial court – posits that E.B. had an “ample opportunity” to present a defense. Brief of Respondent, at 2-7, 9-10. But where D.I.'s credibility was the critical issue at trial, it is improper to conclude that because E.B. had *some* opportunity to challenge D.I.'s version of events, he had a full and constitutionally sufficient opportunity to do so.

If evidence is relevant, and there is no compelling reason to exclude it, a defendant has a constitutional right to present it to the trier of fact. State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). Although the State cites 403 and argues the defense evidence would have been confusing, there is nothing confusing about the fact the movie D.I. claims was used as a prelude to rape did not exist at the time. There was no compelling reason for exclusion.

The State repeatedly labels D.I.'s testimony about the film a collateral matter. Brief of Respondent, at 9-11, 16. But where D.I. herself made the film an integral element of her rape allegation, thereby opening the door to the defense response, the topic was far

from collateral. Not only did the defense evidence demonstrate she had lied on the stand, it demonstrated that events at the time of the alleged rape simply could not have occurred as she described.

Citing what it identifies as a 2009 “film” with the title “No Strings Attached,” the State suggests this may have been the film D.I. referenced on the stand and that it may be similar in plot to the 2011 film, although the State acknowledges it does not know the content of this “film.” Brief of Respondent, at 15. But this is not even a film. It is a “webseries” – eight approximately seven to ten-minute episodes available only on YouTube. See YouTube, No Strings Attached (2009) Webseries. D.I. clearly testified that “No Strings Attached” was a movie with which she was already familiar in 2010. 1RP 130; 2RP 37-38. And the movie with the story line D.I. described was not released until 2011.

The State also speculates that perhaps E.B. was already familiar with the not-yet-released film because he had seen early previews. Or, perhaps – directly contrary to D.I.’s testimony – E.B. did not mention any movie at all and simply said their evening could be “no strings attached.” Brief of Respondent, at 15-16. There is no evidence to support these assertions.

Finally, the State argues that any error in refusing the defense evidence was harmless beyond a reasonable doubt. As proof, the State notes that, despite “numerous other avenues of impeachment,” the court still found D.I. to be credible. Brief of Respondent, at 17. Rather than demonstrating harmless error, this emphasizes the importance of the additional defense evidence. In a case where the trial judge recognized “the seminal factual issue” was D.I.’s credibility [2RP 152], additional evidence impeaching D.I.’s credibility *and* directly disproving her testimony regarding how the rape occurred could have impacted the court’s ultimate decision.

B. CONCLUSION

E.B. should receive a new trial, where he can present all relevant evidence demonstrating he did not rape D.I.

DATED this 17<sup>th</sup> day of January, 2013.

Respectfully submitted,

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DIVISION ONE

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Respondent,	)	
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v.	)	COA NO. 68595-3-I
	)	
E.B.,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18<sup>TH</sup> DAY OF JANUARY 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] E.B.  
11636 102<sup>ND</sup> PLACE NE  
KIRKLAND, WA 98034

SIGNED IN SEATTLE WASHINGTON, THIS 18<sup>TH</sup> DAY OF JANUARY 2013.

X Patrick Mayovsky

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