

FILED
Court of Appeals
Division III
State of Washington
11/9/2020 3:00 PM

SUPREME COURT NO.
99215-1
COA NO. 37015-1-III

FILED
SUPREME COURT
STATE OF WASHINGTON
11/12/2020
BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

SHERI WOOLEY,
Petitioner.

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

Stevens County Cause No. 18-1-00186-7

The Honorable Patrick Monasmith, Judge

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. IDENTITY OF PETITIONER..... 1

II. COURT OF APPEALS DECISION 1

III. ISSUES PRESENTED FOR REVIEW 1

IV. STATEMENT OF THE CASE 2

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..... 5

The Supreme Court should accept review and hold that the trial court violated Ms. Wooley’s constitutional rights to present a defense and to confront the state’s witnesses by prohibiting her from eliciting evidence that Ms. Petersen had a significant financial motivation to exaggerate the allegations against Ms. Wooley..... 5

VI. CONCLUSION..... 14

Appendix: Court of Appeals Decision

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Chambers v. Mississippi</i> , 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 296 (1973).....	7
<i>Crane v. Kentucky</i> , 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)	10
<i>Davis v. Alaska</i> , 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). 7, 8, 13, 14	
<i>Holmes v. South Carolina</i> , 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006).....	10
<i>Pennsylvania v. Ritchie</i> , 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987)	10
<i>Rock v. Arkansas</i> , 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) ...	10
<i>United States v. Blackwell</i> , 459 F.3d 739 (6th Cir. 2006)	11

WASHINGTON CASES

<i>State v. Darden</i> , 145 Wn.2d 612, 41 P.3d 1189 (2002).....	11
<i>State v. Duarte Vela</i> , 200 Wn. App. 306, 402 P.3d 281 (2017).....	11
<i>State v. Franklin</i> , 180 Wn.2d 371, 325 P.3d 159 (2014)	12, 13
<i>State v. Jones</i> , 168 Wn.2d 713, 230 P.3d 576 (2010).....	10, 11
<i>State v. Spencer</i> , 111 Wn. App. 401, 45 P.3d 209 (2002)	12

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI	7, 11
U.S. Const. Amend. XIV	7
Wash. Const. art. I, § 22.....	7, 11

Wash. Const. art. I, § 3..... 7

OTHER AUTHORITIES

3A J. Wigmore, Evidence s 940 (Chadbourn rev. 1970)..... 7

RAP 13.4..... 14

I. IDENTITY OF PETITIONER

Petitioner Sheri Wooley, the appellant below, asks the Court to review the decision of Division III of the Court of Appeals referred to in Section II below.

II. COURT OF APPEALS DECISION

Sheri Wooley seeks review of the Court of Appeals unpublished opinion entered on October 8, 2020. A copy of the opinion is attached.

III. ISSUES PRESENTED FOR REVIEW

ISSUE 1: The constitutional right to confront the state’s witnesses guarantees an accused person the opportunity to cross-examine those witnesses on possible ulterior motives and motivation to lie. Did the trial court violate Ms. Wooley’s confrontation right by barring her from cross-examining the alleged victim about her potential to gain \$25,000 from her ex-husband’s estate by getting Ms. Wooley “out of the way”?

ISSUE 2: The constitutional right to present a defense guarantees an accused person the opportunity to present relevant evidence to the jury when that evidence is necessary for the theory of the defense. Did the trial court violate Ms. Wooley’s right to present a defense by prohibiting her from presenting evidence that the alleged victim had gained \$25,000 from her ex-husband’s estate after Ms. Wooley had been gotten “out of the way” by being arrested?

IV. STATEMENT OF THE CASE

Sheri Wooley was married to Gerald (“Curley”) Wooley for fifteen years, until 2006. RP 454-58. They had two children together – a daughter and a son, born in 1994 and 1996. RP 455-56.

Shortly after Ms. And Mr. Wooley divorced, Mr. Wooley married Cheryl Petersen. RP 248. Mr. Wooley and Ms. Petersen were married for three years and split up in 2010. RP 254. They did not have any children together. During that marriage, Mr. Wooley’s parents deeded a family home to him and Ms. Petersen, in exchange for \$10. RP 312-13. When Ms. Petersen and Mr. Wooley divorced, the divorce decree gave the house back to Mr. Wooley. RP 321.

Mr. Wooley died in January 2018. RP 468. He did not leave a will. RP 260. His hope had been to leave the home to his and Ms. Wooley’s youngest son, Wade, who was in his early twenties. RP 260, 472.

Several months later, when Ms. Wooley started asking Wade whether he had taken care of the taxes and paperwork for the transfer of the home, she learned for the first time that Ms. Petersen was claiming an ownership interest in the property. RP 472, 475.

Ms. Wooley decided to discuss the issue with Ms. Petersen over drinks and went to her home with a copy of the deed and some homemade Kahlua. RP 486-87.

When Ms. Wooley told Ms. Petersen that her son had a right to Mr. Wooley's house, Ms. Petersen laughed at her. RP 490-91. Ms. Wooley (who suffers from Post-Traumatic Stress Disorder) went into a blind rage and assaulted Ms. Petersen. RP 475, 491. When Ms. Wooley realized what she had done, she fled. RP 491.

Ms. Petersen called the police. RP 441-42. In addition to reporting the assault, however, she claimed that Ms. Wooley had forced herself into Ms. Petersen's home.¹ RP 273-74. The state charged Ms. Wooley with first degree burglary, fourth degree assault, and third degree malicious mischief (because a ceramic container of kitchen utensils had been broken in the fracas). CP 1-3.

After Ms. Wooley was arrested on those charges, Ms. Petersen had herself appointed to be the personal representative of Mr. Wooley's estate. *See* CP 85. In the end, the family home was sold; Ms. Petersen got more than \$25,000 from the estate while Mr. and Ms. Wooley's children got less than \$8,000 each. CP 77-83. All of this estate distribution occurred while Ms. Wooley was in jail and unable to advocate for her children's interests. *See* CP 77-83.

¹ Ms. Petersen alleged that Ms. Wooley had claimed to be one of Ms. Petersen's friends to get her to open the apartment door. RP 274. The state also charged Ms. Wooley with Criminal Impersonation, but the jury later acquitted her of that charge. CP 1-3, 48.

At trial, Ms. Wooley admitted that she had assaulted Ms. Petersen. RP 491. But she claimed that she had not committed burglary because Ms. Petersen had invited her into her home and she had gone there with the intent to have a discussion, not to commit a crime. RP 489-90.

Ms. Wooley's defense theory was that Ms. Petersen had exaggerated the events – alleging that a burglary had occurred in addition to the assault – in order to get Ms. Wooley out of the picture so she could get more money out of Mr. Wooley's estate. RP 153-55. Ms. Wooley argued that Ms. Petersen had motivation to embellish the allegations because Ms. Wooley had been advocating for her son's right to the house, which challenged Ms. Petersen's claim to the property. RP 153-56.

The court permitted the state to introduce testimony from Ms. Petersen, claiming that she and Mr. Wooley had actually bought the home from his parents, regardless of what the deed said. RP 312. Ms. Petersen said that she had put a significant amount of her personal money toward the house and that Mr. Wooley had been paying her back but had not yet completed his payments. RP 250, 256.

Ms. Petersen admitted that her word was the only evidence of either of those agreements. RP 319-20, 322. She did not have any written documentation of either the sale of the home or of her deal with Mr. Wooley. RP 319-20, 322.

Despite this evidence regarding estate matters in support of the state's case, the court refused to permit Ms. Wooley to elicit evidence that Ms. Petersen had secured the vast majority of the estate funds for herself during the time that Ms. Wooley was in jail on these charges. RP 153-55; CP 77-83. When Ms. Wooley argued that the evidence was relevant to Ms. Petersen's intent and motive to lie, the court ruled that the evidence could not be used as impeachment because it happened after the alleged events underlying the charges. RP 155.

The court permitted Ms. Wooley to ask Ms. Petersen about the fact that she had petitioned to become personal representative of the estate shortly after Ms. Wooley's arrest. RP 157. But Ms. Wooley was not allowed to demonstrate for the jury that Ms. Petersen had obtained a significant personal financial advantage by doing so. RP 157.

The jury found Ms. Wooley guilty of first-degree burglary as well as misdemeanor assault and malicious mischief. CP 47-50. Ms. Wooley timely appealed. CP 62. The Court of Appeals affirmed her convictions in an unpublished opinion. Appendix.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Supreme Court should accept review and hold that the trial court violated Ms. Wooley's constitutional rights to present a defense and to confront the state's witnesses by prohibiting her from eliciting evidence that Ms. Petersen had a

significant financial motivation to exaggerate the allegations against Ms. Wooley.

Ms. Petersen found out that Ms. Wooley was questioning her ownership interest in Mr. Wooley's house at the time of the events leading to the charges against her. RP 324. Both Ms. Petersen and Ms. Wooley knew that Mr. Wooley's intention had been to leave his home to his and Ms. Wooley's youngest son. RP 260, 472. Ms. Wooley demonstrated her intent to advocate for her son's interest in the home (over Ms. Petersen's interest) on the day of the events underlying her charges. RP 490-91.

Two weeks after Ms. Wooley's arrest, Ms. Petersen petitioned to become the personal representative of Mr. Wooley's estate. RP 325-26.

While she was personal representative – and while Ms. Wooley was still in jail on these charges – Ms. Petersen received \$25,000 from Mr. Wooley's estate. CP 77-83. This was the case even though Mr. Wooley's two youngest children received less than \$8,000 each. CP 82-83.

Ms. Wooley's theory of her defense was that Ms. Petersen had exaggerated the allegations against her by alleging that she had forced her way into the home in addition to committing the misdemeanor assault (to which Ms. Wooley admitted). RP 595-609. As evidence of Ms. Petersen's motivation to exaggerate in this manner, Ms. Wooley sought to introduce evidence that Ms. Petersen stood to gain – and in fact did gain – a

significant personal financial advantage by getting Ms. Wooley “out of the way.” RP 153-55.

But the court prohibited Ms. Wooley from eliciting that evidence, reasoning that it was not admissible to impeach Ms. Petersen’s credibility because the distribution of the estate had occurred after the alleged events underlying the charges. RP 153-55. The court permitted Ms. Wooley to introduce evidence that Ms. Petersen had petitioned to become personal representative of the estate. RP 157. Without the additional evidence of the considerable amount of money she secured after doing so, however, the evidence of being personal representative was inadequate to demonstrate to the jury that Ms. Petersen had a financial motivation to lie.

The trial court violated Ms. Wooley’s constitutional rights to present a defense and to confront the state’s witnesses by prohibiting her from eliciting evidence regarding Ms. Petersen’s incentive to lie by exaggerating the allegations against her.

The constitutional rights to present a defense and to confront the prosecution's witnesses through meaningful cross-examination are among the “minimum essentials of a fair trial.” *Davis v. Alaska*, 415 U.S. 308, 316–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 296 (1973); U.S. Const. Amends. VI, XIV; Wash. Const. art. I, §§ 3, 22.

Cross-examination into a witness's biases or ulterior motives is "always relevant as discrediting the witness and affecting the weight of his testimony". *Davis*, 415 U.S. at 316 (citing 3A J. Wigmore, Evidence s 940, p. 775 (Chadbourn rev. 1970)). The exposure of the motivation behind the testimony of a state's witness "is a proper an important function of the constitutionally protected right of cross-examination." *Id.*

When a witness's testimony is key to the state's case, the accused must be permitted to inquire into that witness's bias and motivation to lie because "the jurors [are] entitled to have the full benefit of the defense theory before them so that they [can] make an informed judgment as to the weight to place on" that witness's testimony. *Id.* at 317.

The evidence that Ms. Petersen stood to gain a significant amount of money from Mr. Wooley's estate was relevant because it provided a motive to exaggerate the allegations against Ms. Wooley. *Id.* Ms. Wooley was the only person challenging Ms. Petersen's claim to an ownership interest in Mr. Wooley's home. Her theory of the defense was that Ms. Wooley's actions on behalf of her children incentivized Ms. Petersen to fabricate an alleged burglary (in addition to the misdemeanor assault to which Ms. Wooley admitted) in order to get Ms. Wooley "out of the way" while the estate was distributed. *See* RP 153-55, 595-609.

Without the evidence that Ms. Petersen claimed nearly half of the estate's assets as her own shortly after Ms. Wooley was arrested on these charges, the jury was left without the "full benefit of the defense theory," as necessary "make an informed judgment as to the weight to place" on Ms. Petersen's testimony at trial. *Id.* at 317.

Even so, the Court of Appeals affirms Ms. Wooley's convictions because the trial court had permitted her to elicit the evidence that Ms. Petersen successfully petitioned to become personal representative of the estate. Appendix, p. 8. Absent the additional evidence of the significant financial advantage that Ms. Petersen was able to gain by doing so, however, Ms. Wooley was unable to fully argue her theory of defense. Indeed, the mere evidence that Ms. Petersen became representative of the estate while Ms. Wooley was in jail is inapposite regarding whether she had a reason to fabricate or exaggerate the allegations. The additional evidence regarding Ms. Petersen's motivation for her actions – to gain a significant portion of the estate's assets – was critical to Ms. Wooley's defense.

Ms. Wooley had a constitutional right to present the evidence that Ms. Petersen claimed a significant percentage of the estate's assets as her own, in addition to the evidence that she sought to become personal representative of the estate. The trial court violated Ms. Wooley's

constitutional right to confront adverse witnesses by prohibiting her from cross-examining Ms. Petersen regarding her financial incentive to exaggerate her accusations against Ms. Wooley. *Id.*

The right to present a defense, likewise, prohibits a judge from limiting the defendant's elicitation of evidence relevant to the theory of the defense. *State v. Jones*, 168 Wn.2d 713, 721, 230 P.3d 576 (2010).

An accused person has “the right to put before a jury evidence that might influence the determination of guilt.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). Rules excluding evidence from a criminal trial may not infringe upon the “weighty interest of the accused” in having a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); *Rock v. Arkansas*, 483 U.S. 44, 56-58, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)).

If there are questions of the strength or accuracy of evidence that is critical to the defense, those weaknesses must be established by cross-examination, not by exclusion:

[T]he trial court should admit probative evidence [offered by the defense], even if it is suspect. In this manner, the jury will retain its role as the trier of fact, and *it* will determine whether the evidence is weak or false.

State v. Duarte Vela, 200 Wn. App. 306, 321, 402 P.3d 281 (2017)

(emphasis in original).

The exclusion of evidence offered by the defense violates the Sixth Amendment right to present a defense when “the omitted evidence evaluated in the context of the entire record, creates a reasonable doubt that did not otherwise exist.” *Id.* at 326 (citing *United States v. Blackwell*, 459 F.3d 739, 753 (6th Cir. 2006)).²

Evidence relevant to a theory of defense may be barred only where it is of a character that undermines the fairness of the trial. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). The state bears the burden of showing that the evidence is “so prejudicial as to disrupt the fact-finding process at trial.” *Jones*, 168 Wn.2d at 720 (quoting *Darden*, 145 Wn.2d at 622). For evidence of high probative value, “no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. art. I, § 22.” *Id.*

The state cannot point to any interest in excluding the evidence that Ms. Petersen had a significant personal financial interest in the outcome of the estate proceedings. Indeed, the state had already elicited

² Evidentiary rulings concerning evidence offered by the defense are reviewed for an abuse of discretion. *Duarte Vela*, 200 Wn. App. at 317. But “the more the exclusion of that evidence prejudices an articulated defense theory, the more likely [an appellate court] will find that the trial court abused its discretion. *Id.* (citing *Jones*, 168 Wn.2d at 720).

significant testimony from Ms. Petersen regarding her claims of verbal agreements for the sale of the home to herself and Mr. Wooley and for Mr. Wooley to repay her the money that she had contributed. RP 250, 256, 312, 319-20. The additional evidence that Ms. Petersen claimed that the estate owed her \$25,000 for that property would not have affected any additional interest of the state.

But the evidence was necessary for Ms. Wooley to present a complete defense. The trial court violated Ms. Wooley's constitutional right to present a defense by barring her from eliciting evidence regarding the depth of Ms. Petersen's financial interest in the estate and the significance of the advantage she stood to gain by getting Ms. Wooley "out of the way."

When a trial court prohibits an accused person from eliciting evidence relevant to the complaining witness's motivation to lie, prejudice is presumed. *State v. Spencer*, 111 Wn. App. 401, 408, 45 P.3d 209 (2002). Reversal is required unless the state proves that no rational jury could have a reasonable doubt as to guilt even with the omitted evidence. *Id.*

Likewise, violation of the right to present a defense requires reversal unless the state can establish harmlessness beyond a reasonable doubt. *State v. Franklin*, 180 Wn.2d 371, 382, 325 P.3d 159 (2014).

As noted by the U.S. Supreme Court in *Davis*, an appellate court “cannot speculate” as to whether the jury would have accepted any given line of reasoning regarding a witness’s motivation to lie, had the court given defense counsel the opportunity to explore it. *Davis*, 415 U.S. at 317. For this reason, the state cannot overcome the presumption of prejudice in Ms. Wooley’s case.

The primary issue for the jury at Ms. Wooley’s trial was whether she had been invited into Ms. Petersen’s home or whether she had forced her way in with the intent to commit a crime. *See* RP 595-609. On this issue, the evidence came down to Ms. Wooley’s word against Ms. Petersen’s. The jury demonstrated that it did not fully believe Ms. Petersen’s testimony by finding Ms. Wooley not guilty of the criminal impersonation charge. Evidence of her potential ulterior motive to exaggerate the events in order to gain a financial advantage could easily have tipped the balance for the jury against guilt on the remaining charges, if Ms. Wooley had been permitted to present it. The court’s violation of Ms. Wooley’s rights to confront the state’s witnesses and to present a defense requires reversal of Ms. Wooley’s burglary conviction. *Id.*

The trial court violated Ms. Wooley’s rights to confront the state’s witnesses and to present a defense by prohibiting her from introducing evidence of Ms. Petersen’s financial motivation to lie. *Franklin*, 180

Wn.2d at 382; *Davis*, 415 U.S. at 317. The Court of Appeals should have reversed Ms. Wooley's burglary conviction. *Id.*

These significant questions of constitutional law are of substantial public interest and should be determined by the Supreme Court. This Court should grant review pursuant to RAP 13.4 (b)(3) and (4).

VI. CONCLUSION

The issues here are significant under the State and Federal Constitutions and are of substantial public interest because they could affect a large number of criminal cases. This Court should accept review pursuant to RAP 13.4(b)(3) and (4).

Respectfully submitted November 9, 2020.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review,
postage pre-paid, to:

Sheri Wooley
4834 E. Commerce Ave.
Spokane, WA 99212

and I sent an electronic copy to

Stevens County Prosecuting Attorney
trasmussen@stevenscountywa.gov

through the Court's online filing system, with the permission of the
recipient(s).

In addition, I electronically filed the original with the Court of
Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE
LAWS OF THE STATE OF WASHINGTON THAT THE
FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on November 9, 2020.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

APPENDIX:

FILED
OCTOBER 8, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 37015-1-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
SHERI ANN WOOLEY,)	
)	
Appellant.)	

LAWRENCE-BERREY, J. — Sheri Wooley appeals after a jury found her guilty of first degree burglary, fourth degree assault, and malicious mischief. She argues the trial court violated her constitutional right to confront the accusing witness by limiting her cross-examination. She also argues the trial court abused its discretion by admitting evidence of a prior bad act. We disagree with her arguments and affirm.

FACTS

Sheri Wooley and the accusing witness, Cheryl Petersen, have a shared history. Wooley was married to Gerald Wooley and they had two children together. They divorced in 2006. In 2007, Gerald married Cheryl Petersen. In 2009, Gerald’s father quitclaimed a house to the two of them. Gerald and Petersen divorced in 2011, and

Gerald received the house. At some later point, Gerald and Petersen reconnected and began spending time together. Gerald died in 2018 without leaving a will.

Wooley believed that her son, then in his early 20s, should inherit Gerald's house. In fact, he was living in the house when Gerald died. At some point, Wooley learned that Petersen was claiming an ownership interest in the house.

On May 11, 2018, Wooley showed up at Petersen's apartment, shouted at her, and threatened her. Following this, Petersen called 911, but she did not want charges brought against Wooley. However, she petitioned for and obtained a temporary restraining order that prevented Wooley from coming near her or her apartment. The temporary order also set a hearing date of May 25 to consider testimony to determine whether a final restraining order should be entered. There is no evidence that the temporary order and notice of hearing was ever served on Wooley. Petersen appeared at the May 25 hearing, but Wooley did not. The court entered an order extending the temporary order and setting a new hearing date.

Soon after Petersen returned home from court, she heard a knock on her door. She asked who it was, and a voice eventually responded, "Shandy." Report of Proceedings (RP) (July 16, 2019) at 274. Petersen and Shandy were good friends. Petersen eventually opened the door and saw Wooley instead of Shandy. Wooley forced her way into

Petersen's apartment, grabbed her, and repeatedly hit her. Wooley then ransacked Petersen's apartment.

Petersen escaped, but Wooley followed her and continued attacking her. Petersen yelled for help. When Wooley saw a man, she fled. Petersen called 911 and reported the assault and the burglary.

Wooley was later arrested and questioned by an officer about the attack. Wooley first denied being at Petersen's apartment on May 25, but later said she was around the apartment, but only drove around and honked.

The State charged Wooley with first degree burglary, first degree criminal impersonation, fourth degree assault, third degree malicious mischief, and driving while license suspended/revoked.¹

Pretrial hearing

An evidentiary hearing occurred the day before trial. By this time, the State had disclosed a witness who would confirm that Wooley attacked Petersen on May 25. Perhaps for this reason, Wooley no longer denied she assaulted Petersen. Instead, Wooley's theory of the case was that Petersen allowed Wooley into her apartment so they could discuss Gerald's house, Petersen said something that upset her, and she lost her

¹ Before trial, the State dismissed the driving while suspended/revoked charge.

temper and hit her. This theory allowed Wooley to argue that she did not commit two felonies—first degree impersonation and first degree burglary.

At the pretrial hearing, the State sought to admit evidence of the history between Wooley and Petersen, including years-old convictions and violations of restraining orders. The State argued that the history was admissible as *res gestae* so the jury understood what led to the May 25 attack. The trial court allowed some general history of Wooley and Petersen’s relationship but, with one exception, did not allow any prior bad act or conviction. The one exception was the May 11, 2018 incident, which the trial court determined was necessary so the jury could understand what led to the temporary restraining order and the May 25, 2018 alleged attack.

As the hearing concluded, the State noted that Wooley had just handed it a number of documents it had not previously seen and the documents pertained to the probate of Gerald’s estate. The State asked the trial court to clarify what would and would not be allowed.

Wooley explained the probate documents assisted her argument that Petersen falsely claimed Wooley entered her apartment without permission. The documents included a June 8, 2018 petition and order appointing Petersen personal representative of Gerald’s estate. The petition and order were entered shortly after Wooley was arrested

and incarcerated. The trial court ruled Wooley could question Petersen about petitioning and being appointed personal representative soon after Wooley was incarcerated. The court recognized this evidence was important so Wooley could argue her theory of the case.

But Wooley also wanted to admit the probate documents, including an order that showed how much Petersen received from Gerald's estate and how much Wooley's children received from the estate. Wooley explained that Petersen received \$25,000 or \$26,000 from Gerald's estate, and the two children received a total of \$12,000. The State objected and argued the documents had not been previously disclosed, and it did not want Wooley to relitigate the probate matter.

The trial court disallowed these documents and assured Wooley that its previous ruling allowed Wooley to sufficiently cross-examine Petersen about her motives.

Trial

During trial, the State presented the evidence noted above. In addition, the State questioned Petersen about her surprise when Wooley appeared at her apartment on May 11, 2018, the date of the initial incident.

[PROSECUTOR:] Okay. And . . . why . . . didn't [you] want her to know where you lived?

[PETERSEN:] Because she has caused me harm and intended to harm me before that day.

RP (July 16, 2019) at 268. Wooley objected, but the trial court overruled her objection.

The State also called Petersen’s neighbor, who testified about the May 25, 2018 incident. He testified he saw Wooley and Petersen struggle outside Petersen’s apartment. He testified Wooley looked up, saw him, and fled.

The State called another witness who testified Wooley confided details of the May 25 attack to her. Wooley told this witness that she “went up and knocked on the lady’s door and posed as one of that other lady’s friends and as soon as the lady opened the door, she just obliterated her face,” and “[j]ust started wailing on her” RP (July 17, 2019) at 407-08.

The jury returned guilty verdicts on the charges of first degree burglary, fourth degree assault, and malicious mischief. The trial court later entered its judgment and sentence, and Wooley timely appealed to this court.

ANALYSIS

LIMITED CROSS-EXAMINATION

Wooley contends the trial court violated her federal and state constitutional rights to confront her accuser, Petersen, when it ruled it would not admit evidence of what Petersen and Wooley’s two children received from Gerald’s probate estate.

The right to present evidence in one's defense is guaranteed by both the United States and the Washington Constitutions. U.S. CONST. amend. VI; WASH. CONST. art. I, § 22; *State v. Hudlow*, 99 Wn.2d 1, 14, 659 P.2d 514 (1983). The constitutional right to present a defense and to confront the State's witnesses through meaningful cross-examination are among the "minimum essentials of a fair trial." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). Cross-examination into a witness's biases or ulterior motives is always relevant and is an important function of the constitutionally protected right of cross-examination. *Davis v. Alaska*, 415 U.S. 308, 316-17, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The right of a defendant to present evidence is not absolute. Evidence must be at least minimally relevant. *State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). Evidence is relevant if it has "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. For evidence to be admissible, there must be a logical nexus between the evidence and the fact being established. *State v. Cochran*, 102 Wn. App. 480, 486, 8 P.3d 313 (2000).

Here, the trial court allowed Wooley to present evidence that Petersen wanted Wooley out of the way so Petersen could inherit from Gerald's probate estate. Wooley

presented evidence that Gerald intended their son to inherit his house, their son in fact lived in the house when Gerald died, and, shortly after Wooley was incarcerated, Petersen successfully petitioned a court to be appointed personal representative of Gerald's estate. All this evidence allowed Wooley to argue Petersen sought to get Wooley out of the way so she could not assist her son in protecting his interest in Gerald's house.

Wooley argues she also needed to establish Petersen succeeded in her plan. We disagree. Whether Petersen succeeded or failed in her purported plan does not make her motive to lie any more or less probable. For example, had Petersen not succeeded, evidence that the probate court did not distribute any money to Petersen would not be admissible to negate Petersen's purported intent.

We conclude the trial court did not err or violate Wooley's constitutional right to present evidence.

EVIDENCE ADMITTED PURSUANT TO ER 404(b)

Wooley contends the trial court erred by allowing the State to elicit testimony from Petersen that Wooley had previously "caused [her] harm and intended to harm [her]." Wooley argues the evidence should not have been admitted under ER 404(b) because it allowed the jury to infer propensity toward violent action from this uncharged prior act. We disagree.

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” ER 404(b). ER 404(b) must be read in conjunction with ER 403. *State v. Gunderson*, 181 Wn.2d 916, 923, 337 P.3d 1090 (2014).

Before admitting misconduct evidence, the court must (1) find by a preponderance of the evidence the misconduct actually occurred, (2) identify the purpose for which the evidence is offered, (3) determine the relevance of the evidence to prove an element of the crime, and (4) weigh the probative value against the prejudicial effect. *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2014). The court must conduct this inquiry on the record. *State v. McCreven*, 170 Wn. App. 444, 458, 284 P.3d 793 (2012).

Here, the State asked Petersen why she did not want Wooley to know where she lived. It is not obvious that the question would produce an objectionable answer. But it did. Instead of Petersen responding that she was afraid of Wooley, she responded that Wooley had harmed her in the past. To the extent “harmed” implied hit or assaulted, the objection should have been sustained.

Even if the trial court erred, this error was harmless. “Erroneous admission of evidence in violation of ER 404(b) is analyzed under the nonconstitutional harmless error standard—that is, we ask whether there is a reasonable probability that, without the error,

No. 37015-1-III
State v. Wooley

‘the outcome of the trial would have been materially affected.’” *State v. Gower*, 179 Wn.2d 851, 854, 321 P.3d 1178 (2014) (internal quotation marks omitted) (quoting *State v. Gresham*, 173 Wn.2d 405, 433, 269 P.3d 207 (2012)).

We note that Wooley gave inconsistent statements about whether she hit Petersen. She first told an officer she did nothing more than drive around where Petersen lived and honk. She later testified that Petersen let her in the apartment and she had no intent to attack her until she lost her temper. Wooley’s inconsistent statements likely caused the jury to give little weight to her trial testimony.

Also, Petersen had recently gone to court to obtain a temporary restraining order. On the day of the attack, Petersen went to court for the contested hearing. When Wooley did not appear, the court extended the temporary restraining order, presumably at Petersen’s request. The jury likely believed that Petersen was sufficiently fearful of Wooley that she would not knowingly open her door to Wooley.

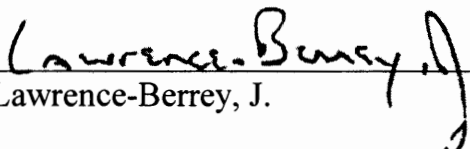
Notably, Petersen’s testimony was buttressed by a witness who testified that Wooley admitted Petersen’s version of events. According to this witness, Wooley told her that she “posed as one of that other lady’s friends and as soon as the lady opened the door, she just obliterated her face.” RP (July 17, 2019) at 407-08.

No. 37015-1-III
State v. Wooley

Given the strength of the State's case, we readily conclude the admission of Petersen's statement of once being harmed by Wooley did not materially affect the outcome of the trial. Error, if any, was harmless.


Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

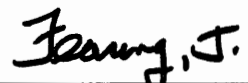


Lawrence-Berrey, J.

WE CONCUR:



Pennell, C.J.



Fearing, J.

LAW OFFICE OF SKYLAR BRETT

November 09, 2020 - 3:00 PM

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Appellate Court Case Title: State of Washington v. Sheri Ann Wooley
Superior Court Case Number: 18-1-00186-7

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