

NO. 66015-2-I

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

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STATE OF WASHINGTON,

Respondent,

v.

SADIE HUNTOON

Appellant.

---

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

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REPLY BRIEF OF APPELLANT

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2011 JUN 16 PM 4:10

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A. ARGUMENT

THE TRIAL COURT'S ERRONEOUS EXCLUSION  
OF RELEVANT EVIDENCE DENIED MS. HUNTOON  
HER SIXTH AMENDMENT RIGHT TO PRESENT A  
DEFENSE

1. The record establishes the trial court erroneously excluded relevant evidence of bias. Despite his history of burglaries, and admission to committing the burglary in this case, the State allowed Mr. Flynn to plead guilty to attempted residential burglary. 8/26/10 RP 46. By operation of statute, the sentence for an "attempt" is 75% of the completed crime. RCW 9.94A.533(2). Nonetheless, when the deputy prosecutor asked whether he received any benefit for his plea, Mr. Flynn responded that he had not. 8/26/10 RP 47.

On cross-examination, Mr. Flynn acknowledged he had pleaded guilty to a lesser offense, but the court sustained the deputy prosecutor's objection when defense counsel asked "[a]nd that impacted your future a little bit?" 8/26/10 RP 60. The court again sustained an objection to defense counsel's question "The consequences were different between the residential burglary and the attempted residential burglary." 8/26/10 RP 61.

The deputy prosecutor argued the questions were improper because the trial court had granted a motion in limine preventing the defense from eliciting information regarding Ms. Huntoon's potential punishment. 8/26/10 RP 62. Defense counsel responded that Mr. Flynn's lesser sentence was relevant to bias and potential prejudice. 8/26/10 RP 64. Defense counsel added that in any event the State had opened the door to such questioning when it elicited Mr. Flynn's testimony that he had received no benefit. Id. The deputy prosecutor responded that once Mr. Flynn stated that he had not received a benefit "[t]hat's where the inquiry ends." 8/26/10 RP 66. The trial court accepted the State's confusion of the legal issue and ruled that because the jury could not hear information regarding Ms. Huntoon's potential punishment, they should not hear evidence of Mr. Flynn's. 8/26/10 RP 67-68.

Defense counsel later asked the court to revisit the question and again argued that Mr. Flynn's sentence was relevant to bias and his motive for testifying. 8/26/10 RP 114. Defense counsel added the benefits of the plea bargain were relevant considerations for the jury. RP 115. The trial court clung to its earlier ruling. 8/26/10 RP 119.

During closing argument, the trial court again sustained the State's objection when defense counsel argued the jury should consider any benefit Mr. Flynn received for his guilty plea. 9/1/10 RP 57. Further, the court overruled a defense objection to the deputy prosecutor's claim that Mr. Flynn got nothing in exchange for his plea. 9/1/10 RP 39.

Despite this record, the State contends Ms. Huntoon has not preserved the issue. Brief of Respondent at 6-8. Regardless of any other benefit he may have received, as a matter of law, Mr. Flinn received a 25% reduction in his sentence as a result of his guilty plea. That fact is not disputed by the State, and is fully established by the record before this Court.

2. Ms. Huntoon's right to effective cross-examination is not a subject of the trial court's discretion. The Confrontation Clause of the Sixth Amendment guarantees the right to effective cross examination of the State's witnesses. Davis v. Alaska, 415 U.S. 308, 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). A defendant must receive the opportunity to present his version of the facts to the jury so that it may decide "where the truth lies." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. 284, 294-95, 302, 93 S.Ct. 1038, 35

L.Ed.2d 297 (1973); State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). “[A]t a minimum . . . criminal defendants have . . . the right to put before the 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).

So long as evidence is minimally relevant

“. . . the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial.” The State's interest in excluding prejudicial evidence must also “be balanced against the defendant's need for the information sought,” and relevant information can be withheld only “if the State's interest outweighs the defendant's need.”

(Internal citations omitted.) Jones, 168 Wn.2d at 720 (quoting State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002)).

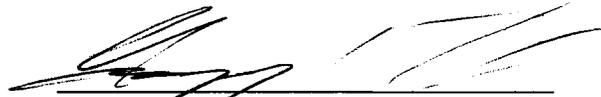
Despite the fact that Jones plainly controls the analysis in this case, the State's brief does not cite that case once. Thus rather than dispute the relevance of the testimony or shoulder its burden of demonstrating some prejudice, the State simply claims the court was in its discretion to refuse the evidence. Brief of Respondent at 9-10. But it is clear, that Jones does not defer to the trial court's decision. Instead, if the evidence is minimally relevant

the State must show that its admission would prejudice the fairness of the proceeding. The State has not met this burden.

B. CONCLUSION

The violation of Ms. Huntoon's right to confront the State's witnesses requires reversal of her conviction.

Respectfully submitted this 16<sup>th</sup> day of June, 2011.



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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, JOSEPH ALVARADO, STATE THAT ON THE 16<sup>TH</sup> DAY OF JUNE, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 16<sup>TH</sup> DAY OF JUNE, 2011.

X \_\_\_\_\_ 

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