

FILED
COURT OF APPEALS
DIVISION II

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NO. 37559-1-II

STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Respondent,

v.

JOHN ALVIN FORD,

Appellant.

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

The Honorable Vicki L. Hogan

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT VIOLATED FORD'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE BY EXCLUDING EVIDENCE THAT WAS RELEVANT AND MATERIAL TO HIS DEFENSE AND CUMULATIVE ERROR DENIED FORD HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL	1
B. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

	Page
<u>In re Personal Restraint of Lord,</u> 123 Wn.2d 296, 868 P.2d 835 (1994)	3
<u>State v. Downs,</u> 168 Wash. 664, 13 P.2d 1 (1932)	1
<u>State v. Maupin,</u> 128 Wn.2d 918, 913 P.2d 808 (1996)	2
U.S. Const. amend VI	2
Wash. Const. art I, sec 22	2

A. ARGUMENT IN REPLY

REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT VIOLATED FORD'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE BY EXCLUDING EVIDENCE THAT WAS RELEVANT AND MATERIAL TO HIS DEFENSE AND CUMULATIVE ERROR DENIED FORD HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

The State argues that the evidence excluded by the trial court was irrelevant because the evidence was "remote in time from the incident at hand, did not have a sufficient connection to the crime and would not create a reasonable inference as to exculpate defendant." Brief of Respondent at 7. The State relies on State v. Downs, 168 Wash. 664, 13 P.2d 1 (1932), but Downs is clearly distinguishable from this case. In Downs, the defendants were charged with burglary and attempted to introduce evidence that a well-known burglar was in town and had the opportunity to commit the burglary but offered no evidence to show that the burglar was in any way connected with the burglary. Downs, 168 Wash. at 666. The trial court refused to admit the evidence and the State Supreme Court affirmed because of the "absence of other circumstances tending in some manner to connect" the burglar with the crime, the evidence "would not create a reasonable inference as to the innocence" of the defendants, and the evidence was "merely of the most remote kind of speculation." Id. at 668.

Unlike in Downs, the trial court here excluded evidence that was relevant and material to Ford's defense that Juwan was being untruthful and his injuries were caused by his mother. Ford sought to 1) admit evidence that Juwan's mother was previously investigated by CPS for whipping Juwan's sister with an electrical cord and choking her with the cord; 2) present testimony by Juwan's sister that their mother beat her with an electrical cord; 3) question Juwan about whether his grandmother ever punished him to test his truthfulness; and 4) present testimony by Jeanette Williams that she knew Ford for 15 or 16 years and when she noticed marks and scars on Juwan, she helped Ford contact CPS to report the injuries. Unlike the speculative evidence in Downs, which failed to make any connection to the crime, evidence of the CPS investigation and Jakira's testimony would have revealed that Jakira was similarly beaten with an electrical cord by the mother not by Ford. Furthermore, because the case rested on the credibility of the witnesses, evidence that tested Juwan's veracity and supported Ford's testimony was critical and essential to Ford's defense.

As our Supreme Court emphasized cited in State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996), under the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington Constitution, a criminal defendant has the right to present his version of

the facts to the jury so that it may decide “where the truth lies.” The trial court’s exclusion of relevant and probative evidence denied Ford his fundamental and constitutional right to present a complete defense. Contrary to the State’s assertion, the record substantiates that the excluded evidence would have created a reasonable inference as to Ford’s innocence. See Brief of Appellant at 14-18.

Moreover, the accumulation of erroneous rulings in excluding an abundance of evidence resulted in a trial that was fundamentally unfair and consequently Ford is entitled to a new trial. In re Personal Restraint of Lord, 123 Wn.2d 296, 332, 868 P.2d 835, clarified, 123 Wn.2d 737, 870 P.2d 964, cert. denied, 513 U.S. 849 (1994).

B. CONCLUSION

For the reasons stated here, and in the opening brief, and as justice requires, this Court should reverse Mr. Ford’s conviction.

DATED this 8th day of May, 2009.

Respectfully submitted,



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Attorney for Appellant

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Melody Crick, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of May, 2009 in Kent, Washington.


Valerie Marushige
Attorney at Law
WSBA No. 25851

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