

FILED  
MARCH 20, 2013  
Court of Appeals  
Division III  
State of Washington

No. 30717-4-III

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

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STATE OF WASHINGTON,

Respondent

v.

CHARLES MOE,

Appellant.

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

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APPELLANT'S REPLY BRIEF

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## **A. ARGUMENT**

The State admits that A.M. testified that the alleged assault occurred in the month of July 2011. Br. of Resp't at 9. The State nonetheless claims that because the trial court found A.M. not credible on this point, his testimony did not fix the time of the offense to that month. *Id.* The State thus argues that the finder of fact may avoid an alibi defense simply by discounting the credibility of the evidence fixing the date, and finding that the offense must instead have occurred at some other time. But that argument is meritless.

The whole point of *State v. Brown*, 35 Wn.2d 379, 213 P.2d 305 (1949), is that once the evidence fixes the date of the offense and the defendant presents an alibi for that date, the finder of fact is *not* free simply to ignore the date fixed by the evidence. Rather, "[w]hen the complaining witness has fixed the exact time when the act charged was committed, and the defense is an alibi, the commission of the crime on the exact date so fixed is the controlling issue, and the jury should be instructed that they must find the act to have been committed at that time." 35 Wn.2d at 383 (quoting *State v. Severns*, 13 Wn.2d 542, 560, 125 P.2d 659 (1942)); see also *State v. Coffelt*, 33 Wn.2d 106, 109-10, 204 P.2d 521 (1949); *State v. Morden*, 87 Wash. 465, 473-74, 151 P.

832 (1915). Indeed, the Supreme Court in *Brown* rejected the State's attempt to rely on a broader date range precisely because the State did so "for the purpose of escaping the date limitation which made the alibi defense effective." 35 Wn.2d at 308. *Brown* thus directly controls this case and dictates that Mr. Moe's conviction must be reversed.

The State also relies on the statement in *State v. Pitts*, 62 Wn.2d 294, 382 P.2d 508 (1963), that the State does not need to fix a precise time "when it cannot intelligently do so." Br. of Resp't at 8 (quoting *Pitts*, 62 Wn.2d at 299). The State's argument would be apposite here if, for example, A.M. claimed not to remember whether the offense happened in July 2011 but was sure that it happened sometime that summer. But that is not what happened in this case. Nor is this a case where different witnesses suggested that the offense occurred on different dates, and the court decided that one witness was more credible than the other. Rather, there was unequivocal testimony by a single witness as to the date, and no countervailing evidence to call that date into question. The evidence therefore fixed the date to July 2011, and the trial court's reliance on a broader range of dates violated Mr. Moe's right to present his alibi defense.

**B. CONCLUSION**

For the reasons above and those stated in his opening brief, Mr. Moe asks this Court to reverse his convictions for assault and indecent exposure.

DATED this 18th day of March, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rabi Lahiri', written over a horizontal line.

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	)	
CHARLES MOE,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 19<sup>TH</sup> DAY OF MARCH, 2013, 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 19<sup>TH</sup> DAY OF MARCH, 2013.

x \_\_\_\_\_ 

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