

NO. 64077-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANATOLIY STRIZHEUS,

Appellant.

2010 AUG 23 PM 4:36

CLERK OF COURT
JULIA M. HARRIS



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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT.

Vladimir Strizheus told police that he stabbed his mother Valentina and his father Anatoliy. Yet in the attempted murder prosecution of Anatoliy for the alleged stabbing of Valentina, the trial court concluded evidence of Vladimir's guilt was not admissible as other-suspects evidence because the court concluded the confession did not "clearly point to someone else" other than Anatoliy as the perpetrator of the crime.

The State's defends the trial court's refusal to admit Vladimir's confession with a fantastically circular argument. The State contends the confession was not relevant because it was hearsay and that it was hearsay because it was not relevant. Brief of Respondent at 11-12. The State's argument, as with the trial court's ruling, is based upon the incorrect premise that "other suspects" evidence must be corroborated. See e.g. Brief of Respondent at 11. But the Washington Supreme Court has expressly disavowed any such requirement.

Direct evidence which exculpates the defendant and inculpates a third person cannot be excluded under the Downs

doctrine.¹ State v. Maupin, 128 Wn.2d 918, 928, 913 P.2d 808 (1996). This type of evidence is “neither [merely] evidence of another’s motive nor mere speculation about the possibility that someone else might have committed the crime.” Id. This evidence tends to make a material fact more or less probable and is plainly relevant. Instead, the cases the State relies upon do involve direct evidence but merely circumstantial evidence of a third persons opportunity to commit the crime. In those circumstances more is required before such evidence may be admitted.

That State also argues, as it did at trial, that Vladimir’s confession was not reliable as he was drunk and subsequently recanted. Brief of Respondent at 11. But those are matters of weight for the jury to consider not admissibility.

The court excluded the evidence because it found the evidence (1) did not clearly point to someone else, (2) would confuse the jury, (3) concerned a collateral matter; (4) was not evidence that Vladimir committed the crime, and was insubstantial. 7/7/09 33, 69, 7/20/09 14, 27. There could be no more direct evidence than an admission of guilt. An admission of guilt to the

¹ State v. Downs, 168 Wash. 664, 13 P.2d 1 (1932).

crime is collateral only in the sense that it was not consistent with the State's theory that Mr. Strizheus stabbed his wife. Of course, that is not the standard of relevance. In fact that sort of inconsistency with the State's theory, is precisely what Maupin found most relevant with this sort of evidence. 128 Wn.2d at 928. Whatever rule the trial court believed it was applying, it was not the Downs doctrine, nor any rule that the Sixth and Fourteenth Amendment will tolerate. As Maupin made clear the trial court's exclusion of this evidence violated Mr. Strizheus's Sixth Amendment right to present a defense, his Fourteenth Amendment right to due process, and the corresponding right to present a defense under Article I, section 22.

The United States Supreme Court has held that exclusion of relevant evidence of third-party guilt violates the defendant's Sixth Amendment right to present a defense and the Fourteenth Amendment right to due process. If the "other suspects" rule in Washington permits a court to exclude a third person's confession to a crime, that rule is "arbitrary" and or "disproportionate to the purpose they are designed to serve." (Citations and internal quotations omitted) Holmes v. South Carolina, 547 U.S.319, 324-25, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006).

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, ___ Wn.2d. ___, 2010 WL 1492583, 6. “[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). The trial court’s unreasonable exclusion of extremely relevant evidence in this case deprived Mr. Strizheus of the right to present his defense and denied him due process of law.

B. CONCLUSION.

This Court must reverse Mr. Strizheus’s conviction.

Respectfully submitted this 20th day of August 2010.



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Washington Appellate Project
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent)	Court of Appeals No. 64077-1
)	
v.)	
)	
ANATOLIY STRIZHEUS,)	
)	
Petitioner.)	

DECLARATION OF SERVICE

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

1. THAT ON THE 23RD DAY OF AUGUST, 2010, A COPY OF **APPELLANT'S REPLY BRIEF** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL TO THE ADDRESSES INDICATED:

Brian Martin McDonald
King County Prosecuting Attorney
516 3rd Ave Ste W554
Seattle WA 98104-2362

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STATE OF WASHINGTON
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SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF AUGUST, 2010

X *Ann Joyce*