

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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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

The trial court denied Sadie Huntoon her Sixth Amendment right to confront the State's witnesses.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The Confrontation Clause of the Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to the effective cross-examination of the government's witnesses. This right requires a defendant be allowed to cross-examine a codefendant who has pleaded guilty and is now testifying on the State's behalf with respect to the terms of the guilty plea and the sentence imposed as a consequence of that plea. The State presented the testimony of the Ms. Huntoon's codefendant who had pleaded guilty to a reduced charge and thereby received a 25% reduction in his sentence. Where the trial court barred Ms. Huntoon from cross-examining the State's witness on the potential benefits of his guilty plea, did the trial court deny Ms. Huntoon the right to confront the witness?

C. STATEMENT OF THE CASE

Phillip Flynn testified that the night after he looted a flooded apartment in Pacific he invited his then girlfriend, Sadie Huntoon to join him on his return to the apartment. 8/26/10 RP 32-33. A

Pacific police officer saw Mr. Flynn riding his bicycle away from the apartment complex. 8/26/10 RP 166-67. Knowing the apartments were flooded, that Mr. Flynn did not live there, and that Mr. Flynn “likes to do burglaries,” the officer stopped Mr. Flynn. 8/26/10 RP 167-68. Mr. Flynn then told the officer Ms. Huntoon had been with him in the apartment. 8/26/10 RP 167, 173.

The State charged Ms. Huntoon with residential burglary. CP 1-5.

After he was permitted to plead guilty to the lesser offense of residential burglary, Mr. Flynn testified Ms. Huntoon went into the apartment with him and took several items. 8/26/10 RP 35, 46-47. The trial court denied Ms. Huntoon the ability to cross examine Mr. Flynn regarding the benefits of his guilty plea. 8/26/10 RP 61, 67-68, 119.

A jury convicted Ms. Huntoon as charged. CP 68.

D. ARGUMENT

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

1. The trial court excluded relevant evidence of bias of the principle witness for the State. Officer Joshua Hong immediately

recognized Phillip Flynn as someone who did not live in the apartment complex and as someone who “likes to do burglaries.” 8/26/10 RP 167. Despite his history of burglaries, and admission to committing a burglary in this case, the State allowed Mr. Flynn to plead guilty to attempted residential burglary. 8/26/10 RP 46. 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.

2. Ms. Huntoon had the right to effective cross-examination.

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). "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." Id. at 316. Davis recognized "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Id. at 316-17.

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)). The trial court excluded relevant evidence in this case and denied Ms. Huntoon her right to confront the State's witnesses.

3. The trial court excluded relevant evidence and denied Ms. Huntoon her right to cross-examination. While a trial judge has discretion in determining the admissibility of evidence

that limitation cannot preclude a defendant from asking, not only “ *whether* [the witness] was biased” but also “to make a record from which to argue *why* [the witness] might have been biased.”

(Emphasis in original.) United States v. Schoneberg, 396 F.3d 1036, 1042 (9th Cir.2005) (quoting Davis, 415 U.S. 318). A defendant enjoys more latitude to expose the bias of a key witness. Darden, 145 Wn.2d at 619. See also, Gordon v. United States, 344 U.S. 414, 73 S.Ct. 369, 97 L.Ed. 447 (1952); Alford v. United States, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931).

This right to confrontation is even more important where the witness is an accomplice or codefendant who as entered a guilty plea to the crime for which the defendant is being tried. United

States v. Mayans, 17 F.3d 1174, 1184 (1994). The details of that plea agreement are relevant to establish the witness's motive or bias in their testimony. Id. (citing United States v. Roan Eagle, 867 F.2d 436, 443-44 (8th Cir.), cert. denied, 490 U.S. (1989)).

Bias is a term used in the "common law of evidence" to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest. Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.

U.S. v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984)

(Citations omitted.)

Despite the plain evidence, including his own confession establishing that he had committed residential burglary, Mr. Flynn was permitted to plead guilty to a charge attempted residential burglary. The plea reduced his sentence by 25%. RCW 9.94A.533(2). The State permitted this despite his history of prior burglaries. Although he pleaded guilty to a lesser offense, the State elicited Mr. Flynn's testimony that he had not received any benefit from his plea. The deputy prosecutor claimed in her closing argument that Mr. Flynn got nothing from his plea and that he was

completely open about his involvement. But when Ms. Huntoon sought to present to the jury evidence that Mr. Flynn had received a benefit the trial court sustained the State's objections.

Ms. Huntoon's right to confrontation did not require her to simply accept Mr. Flynn's claim that he had not received a benefit for his plea. Instead, her right to confront him allowed her to explore what benefit he received and to allow the jury, not the deputy prosecutor or even Mr. Flynn, to determine whether the 25% reduction in his sentence impacted his credibility or created a bias or motivation for testimony. As the Supreme Court held in Abel, evidence of bias is always relevant. 469 U.S. at 52.

Despite the State's claim that Mr. Flynn was being completely open about his involvement, there seems at least an equal chance that his decision to plead guilty to the lesser offense was motivated by the 25% reduction in his sentence rather than his overwhelming sense of guilt. At a minimum, Ms. Huntoon was guaranteed the right to ask that question and to permit the jury to hear the response and determine its impact on his credibility. Ms. Huntoon was entitled to put that evidence before the jury so that it could be considered in conjunction with Mr. Flynn's testimony against his ex-girlfriend.

Even if the evidence was not relevant on its own, the State plainly opened the door to its admission when it asked Mr. Flynn whether he had received any benefit from his guilty plea. Once a party addresses a topic in her examination of a witness, she opens that topic to further examination by the other party. State v. Gefeller, 76 Wn.2d 449, 455, 458 P.2d 17 (1969). Gefeller explains:

It would be a curious rule of evidence which allowed one party to bring up a subject, drop it at a point where it might appear advantageous to him, and then bar the other party from all further inquiries about it. Rules of evidence are designed to aid in establishing the truth. To close the door after receiving only a part of the evidence not only leaves the matter suspended in air at a point markedly advantageous to the party who opened the door, but might well limit the proof to half-truths.

Gefeller, 76 Wn.2d at 455. That is precisely what the State attempted to do here, asking Mr. Flynn whether he received any benefit from his plea, and then claiming his “no” answer ended the inquiry.

Because the evidence was plainly relevant, the Confrontation Clause would permit its exclusion only if the State established the evidence was so prejudicial as to undermine the fairness of the proceeding. Jones, 168 Wn.2d at 720. The State

did not meet this burden, nor did the trial court ever apply this analysis. The court denied Ms. Huntoon her right to confront witnesses.

4. The Court must reverse Ms. Huntoon's conviction. The trial court's violation of Mr. Huntoon's right to fully and fairly confront the State's witnesses requires this Court to reverse Ms. Huntoon's conviction unless the State can establish beyond a reasonable doubt the error "did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); United States v. Neder, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). The State cannot meet that burden here.

Mr. Flynn's testimony was the sole evidence of Ms. Huntoon's intent to commit a theft inside the residence, and thus was the only proof of burglary. If the jury discounted Mr. Flynn's claim that Ms. Huntoon intend to steal items, the most the State could prove is criminal trespass. That the principal actor in the crime received a reduced sentence and was now testifying against a minor actor - his ex-girlfriend - gave the jury reason to doubt his credibility. The State cannot prove beyond a reasonable doubt the

trial court's refusal to allow that testimony did not affect the jury's verdict. This Court must reverse Ms. Huntoon's conviction.

E. CONCLUSION

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

Respectfully submitted this 18<sup>th</sup> day of March, 2011.



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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 66015-2-I
v.	)	
	)	
SADIE HUNTOON,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18<sup>TH</sup> DAY OF MARCH, 2011, I CAUSED THE ORIGINAL **OPENING 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:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> SADIE HUNTOON 405 3 <sup>RD</sup> AVE SE PACIFIC, WA 98047	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF MARCH, 2011.

X \_\_\_\_\_ *for*

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