

No. 20-7644

Supreme Court, U.S.

FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

SKIP LEE HANSEN, *Pro Se*

PETITIONER

v.

COMMONWEALTH OF KENTUCKY

RESPONDENT

On Petition For Writ of Certiorari
To The Kentucky Court Of appeals

PETITION FOR WRIT OF CERTIORARI

ORIGINAL



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QUESTIONS PRESENTED

Did the Kentucky Court of Appeals allow Mr. Hansen's right to present a full and complete defense, which is protected by the Sixth and Fourteenth Amendments to the United States Constitution, be violated by the McCracken Circuit Court when the Court prohibited defense counsel from questioning multiple witnesses concerning the alleged victim's sending nude photos to other people, after the Commonwealth opened the door to this evidence?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Commonwealth v. Hansen, No. 18-CR-221, McCracken Circuit Court,
Judgement Entered January 16, 2019.

Hansen v. Commonwealth, No. 2019-CA-132-MR, Kentucky Court of Appeals, Opinion Rendered July 31, 2020.

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JURISDICTION

The Kentucky Court of Appeals Affirmed Mr. Hansen's conviction on July 31, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) which states,

"Final judgements or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

This Petition is timely filed pursuant to this Court's Order Entered March 19, 2020, extending the deadline to file a Petition for a Writ of Certiorari from 90 to 150 days.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Kentucky Rules of Evidence Rule 412

(a) Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (b) and (c): (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior. (2) Evidence offered to prove any alleged victim's sexual predisposition. (b) Exceptions: (1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules: (A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence; (B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and (C) any other evidence directly pertaining to the offense charged. (2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger to harm of any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim. (c) Procedure to determine admissibility. (1) A party intending to offer evidence under subdivision (b) must: (A) file a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative. (2) Before admitting evidence under this

rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

STATEMENT OF THE CASE

The Petitioner, Mr. Hansen had known the alleged victim, Anna Townsend, since she was four years old and as he dated her mother Sariah Cooper for ten years, he was like a father to Anna. Mr. Hansen and Sariah had an on and off relationship which had recently been stressed due to continuing arguments centered around both of them seeing other people. On January 17, 2018 Sariah and Mr. Hansen were arguing yet again.

Anna had spent the night at Mr. Hansen's residence that night which was a common occurrence and when she returned home, her mother Sariah began snooping through her phone. Sariah said she wanted to see if Mr. Hansen had been saying negative things about her to Anna. However, Anna had been at Mr. Hansen's residence the previous night so there would have been no logical reason for them to carry on conversations via messages on their cell phones. Nor would there be any logical reason for her to purposely send a nude photo of herself from her phone to his.

While searching through Anna's phone Sariah found a nude photo of Anna that she mistakenly sent to Mr. Hansen's phone sometime in the middle of the night. Sariah immediately went to the police to report this.¹

¹ Although, Sariah made other claims of inappropriate conduct Mr. Hansen allegedly committed against Anna over two years prior, which she chose not to report until the discovery of this photo.

This sparked an investigation wherein Mr. Hansen was indicted for Third-Degree Rape, First-Degree Sexual Abuse, and two Counts of Possess/View Matter Portraying Sexual Performance by Minor. After the initial indictment was issued a superseding indictment was issued, wherein Mr. Hansen ultimately sat on trial for two Counts of Third Degree Rape, Second Degree Unlawful Transaction With a Minor, Third Degree Sodomy, two Counts of First Degree Sexual Abuse, three Counts of Possessing/Viewing Matter Portraying a Sexual Performance by a Minor, and six Counts of Use of a Minor in a Sexual Performance.

The Commonwealth initially alleged that,

On or about December 23, 2017 in McCracken County, Kentucky, [Mr. Hansen] committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with [Annal], a minor less than sixteen (16) years of age (Count I);

On or about December 23, 2017 [] [he] committed the offense of First-Degree Sexual Abuse when he subjected [Annal], to sexual contact by forcible compulsion (Count II).

On or about July 13, 2016 [] [he] committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor (Count III);

On or about January 16, 2018 [] [he] committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor (Counts IV). (See Indictment in Appendix).

This indictment was followed by a superseding indictment wherein the Commonwealth alleged that,

On or about December 23, 2017 in McCracken County, Kentucky, [Mr. Hansen] committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with [Anna], a minor less than sixteen (16) years of age (Count I);

Between the dates of August 1, 2017 and October 31, 2017, [] [he] committed the offense of Third-Degree Rape when, being twenty-one (21) years of age or more, he engaged in sexual intercourse with [Anna], a minor less than sixteen (16) years of age (Count II);

Between the dates of August 1, 2017 and December 24, 2017, [] [he] committed the offense of Second-Degree unlawful transaction with a Minor when he knowingly induced, assisted, or caused [Anna] a minor, to engage in illegal controlled substances activity involving marijuana (Count III).

Between the dates of August 1, 2017 and December 24, 2017 [] [he] committed the offense of Third-Degree Sodomy when, being twenty-one (21) years of age or more, he engaged in deviate sexual intercourse with [Anna], a minor less than sixteen (16) years of age (Count IV);

On or about December 23, 2017 [] [he] committed the offense of First-Degree Sexual Abuse when, being twenty-one (21) years of age or more, he subjected [Anna], a minor less than sixteen (16) years of age, to sexual contact (Count V).

Between the dates of August 1, 2017 and December 24, 2017 [] [he] committed the offense of First-Degree Sexual Abuse when, being twenty-one (21) years of age or more, he subjected [Anna], a minor less than sixteen (16) years of age, to sexual contact (Count VI).

On or about July 13, 2016 [] [he] committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor (Count VII);

On or about September 1, 2017 [] [he] committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control

matter which visually depicted an actual sexual performance by a minor (Count VIII);

On or about January 16, 2018 [] [he] committed the offense of Possess/View Matter Portraying Sexual Performance by Minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he knowingly had in his possession or control matter which visually depicted an actual sexual performance by a minor (Counts IX, XII-XV);

On or about December 16, 2017 [] [he] committed the offense of Use of a Minor (Under 16) in a Sexual Performance when, he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance (Count X);

On or about December 15, 2017 [] [he] committed the offense of Use of a Minor (Under 16) in a Sexual Performance when, he employed, consented to, authorized or induced a minor, less than sixteen (16) years of age, to engage in a sexual performance (Count XI). (See Superseding Indictment in Appendix).

At trial, Anna made numerous allegations against Mr. Hansen, *inter alia* that while looking through her phone one day he found a nude photo of her and sent it to his phone from hers. Anna claimed that Mr. Hansen was always asking her for nude photos of herself and would offer things of value in exchange for nude photos. She claimed that she would accept Mr. Hansen's offers but after receiving payment would refuse to send the photos. Anna claimed that she had never sent any nude photos to Mr. Hansen but on multiple occasions admitted that she had sent nude photos to other people.

Approximately 1:18:00 into an interview on March 16, 2018 Anna admitted that she took nude photos and videos and sent them to other people. Approximately 1:20:00 into this interview Sariah stated that Anna was caught sending nude photos to other people at nine years old. Approximately 4:00 into an interview on January

18, 2018 Anna admitted that she had sent nude photos to her boyfriend. In an interview on May 31, 2018 at approximately 12:04 PM Anna admitted taking nude photos for other people. When the police attempted a controlled phone call between Sariah and Mr. Hansen on January 18, 2018 Sariah acknowledged that Anna had sent nude photos to over 1,000 people.

Although, not mentioned at trial, Anna had previously falsely accused Mr. Hansen of "touching" her in an attempt to get out of trouble. Anna admitted this in an interview on March 28, 2018. This information would have been extremely relevant and the basis of Mr. Hansen's defense² considering that he caught Anna and one of his sons having sex not long before the nude photo was found on his phone. Anna and Mr. Hansen's son begged him not to tell Anna's mother but Mr. Hansen chose to inform her of the situation nonetheless. This resulted in Anna again being in trouble with her mother for her ongoing sexual acts.

Prior to trial, the Commonwealth moved the Court to exclude evidence of Anna's other sexual conduct and sexual predisposition and on November 2, 2018 the Court Entered an Order excluding such evidence. (See Motion and Order in Appendix). However, at trial on November 26, 2018, the Commonwealth introduced and opened the door to the very evidence it previously moved the Court to exclude. The Commonwealth asked its witness, Anna's mother Sariah to read a text message Mr. Hansen sent her wherein he said "*I don't know why she sent it to me. I didn't ask*

² Mr. Hansen was not aware that the nude photo was sent to his phone and thus could not have knowingly been in possession of it.

her for it. She probably sent it to the wrong person. She sends nudes to everyone."³

This presumably led the jury to the belief that Mr. Hansen had knowledge that he possessed this photo on his phone, which in fact he did not know he was in possession of.

As the Commonwealth opened the door to this evidence Mr. Hansen's counsel requested the Court allow him to cross-examine Sariah concerning Anna previously sending nude photos to other people, curative admissibility now being necessary. The Court ruled that although the Commonwealth just opened the door to this evidence, it did not warrant the Court to allow Mr. Hansen's counsel to cross-examine Sariah concerning Anna sending nude photos to other people. The Court ignored the fact that the Commonwealth opened the door to this evidence and simply stated that it was not going to change its earlier ruling.

In misapplying the Rape Shield (KRE 412) to prohibit defense counsel from eliciting this relevant and constitutionally necessary testimony, the trial court impeded Mr. Hansen's right to present a complete defense to the charged offenses by explaining to the jury that Anna had previously made false allegations against him as well as explaining why Anna would be inclined to again make false allegations of sexual abuse against him. Mr. Hansen was also precluded from explaining to the jury that the nude photo was likely sent to him by mistake and that he was completely unaware that he was in possession of it.⁴ Mr. Hansen was effectively left with no

³ As the trial exhibits were sealed Mr. Hansen moved the Court to unseal the exhibits and provide him a copy. The Court denied Mr. Hansen's Motion and as a result he is unable to include a copy of this exhibit with his Petition. (See Motion to Unseal and Order Denying in Appendix).

⁴ Further, the Commonwealth did not and could not prove that Mr. Hansen ever viewed this photo.

plausible defense to these charges and as a result was convicted and sentenced to 18 years imprisonment for crimes he did not in fact commit.

REASONS FOR GRANTING THE PETITION

As stated in Rule 10 of the Rules of the Supreme Court of the United States, Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. Mr. Hansen presents compelling reasons for the Court to grant his Petition, among which are that a state court of last resort (the Kentucky Court of Appeals) has decided an important federal question in a way that conflicts with the decisions of other state courts of last resort and of United States courts of appeals. Further, the Kentucky Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. Mr. Hansen believes the following argument justifies this Court granting his Petition:

The right of a defendant in a criminal trial to confront and cross-examine the witness(s) against him is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and can only be infringed upon in certain narrow instances which in this case did not exist. By prohibiting defense counsel from questioning Sariah and other witnesses concerning Anna's previous sending of nude photos as well as her previously making false allegations against him, the trial court violated Mr. Hansen's right to present a complete defense, in that in attempting to send the nude photo to another person Anna sent it to Mr. Hansen by mistake and that he was completely unaware that he even possessed this photo.

Had the Court allowed this line of questioning the witnesses would have testified that Anna did in fact send nude photos to other people, and had been doing so for a long period of time, the jury also would have been informed of the fact that Anna admitted that she previously made false allegations of sexual abuse against Mr. Hansen in an attempt to get out of trouble. Had the jury received this testimony and been fully informed of Anna's previous sexual conduct and sexual predisposition, coupled with her admittance to making previous false allegations against the defendant, the jury likely would have believed Mr. Hansen and found him not guilty on all Counts. This testimony, coupled with the fact that he recently caught Anna having sex with one of his sons and had told Anna's mother Sariah, reasonably would have led the jury to conclude that these allegations like the previous allegations were false and nothing more than an attempt to draw the attention away from her own misconduct. The outcome of the trial would have been different beyond a reasonable doubt.

Kentucky's Rape Shield (Kentucky Rules of Evidence, Rule 412) generally precludes evidence offered to prove that any alleged victim engaged in other sexual behavior as well as evidence offered to prove any alleged victim's sexual predisposition. However, there are certain exceptions in criminal cases, among which are: (A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence; (B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by

the accused to prove consent or by the prosecution; and (C) any other evidence directly pertaining to the offense charged.

Before this type of evidence may be admitted the party intending to offer such evidence must: (A) file a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative. Also, before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard.

KRE 412 was enacted in 1990. Prior to its enactment the rape shield was codified in Kentucky Revised Statutes § 510.145. This Court previously addressed the rape shield in *Olden v. Kentucky*, 488 U.S. 227 (1988) granting Certiorari to the Kentucky Court of Appeals and reversing Olden's conviction because the Court violated his Sixth and Fourteenth Amendment rights to confront and cross-examine his accuser. This Court held that,

"[t]he Kentucky Court of Appeals failed to accord proper weight to Petitioner's Sixth Amendment right 'to be confronted with the witnesses against him'. That right, incorporated in the Fourteenth Amendment and therefore available in state proceedings, *Pointer v. Texas*, 380 U.S. 400 (1965), includes the right to conduct reasonable cross-examination. *Davis v. Alaska*, 415 U.S. 308, 315-316 (1974)."

Most states require that when exclusion of such evidence would serve to violate the defendant's Constitutional rights, the evidence must be admitted. The Supreme

Court of Connecticut held in *State v. Wright*, 320 Conn. 781, 816-17, 135 A. 3d 1 (2016) that the State's rape shield must yield to the defendant's Constitutional rights. The Florida Supreme Court has held that if the Rape Shield precludes a defendant from presenting a full and fair defense, "the statute would have to give way to [the defendant's] Constitutional rights." (*Roberts v. State*, 510 So. 2d 885, 892 (Fla. 1987)). West Virginia has held that "the Rape Shield Statute is expressly designed to yield to Constitutional protections that assure fair trials with just outcomes." (*State v. Guthrie*, 205 W. Va. 326, 337, 518 S.E. 2d 83, 94 (1999) (quoting *People v. Hill*, 289 Ill. App. 3d 859, 862, 225 Ill. Dec. 244, 247, 683 N.E. 2d 188, 191 (1997)).

The Supreme Court of Massachusetts has "recognized that where the rape shield statute is in conflict with a defendant's constitutional right to present evidence that might lead the jury to find that a Commonwealth witness is lying or otherwise unreliable, the statutory prohibition must give way to the constitutional right. (*Commonwealth v. Polk*, 462 Mass. 23, 37-38, 965 N.E. 2d 815 (2012)). The New Mexico Supreme Court held in *State v. Johnson*, NMSC36, P 24, 123 N.M. 640, 944 P. 2d 869 "[i]f application of the rape shield law or rule would conflict with the accused's confrontation right, if it operates to preclude the defendant from presenting a full and fair defense, the statute and rule must yield."

"[T]he Rape Shield Statute d[oes] not bar evidence of a victim's sexual conduct if the evidence [i]s offered for a purpose other than to attack the victim's morality." (*State v. Grovenstein*, 340 S.C. 210, 216, 530 S.E. 2d 406, 409 (Ct. App. 2000) (quoting *State v. Lang*, 304 S.C. 300, 301, 403 S.E. 2d 677, 678 (Ct. App. 1991)). The Rape

Shield Statute "was not designed to shield prosecutrix from the effects of her own inconsistent statements which cast a grave doubt on the credibility of her story." (*State v. Younger*, 306 N.C. 692, 697, 295 S.E. 2d 453, 456 (1982)). The Supreme Court of Maine has recognized, however, that the state's interest in protecting victims of sexual abuse "is neither absolute nor paramount." Rather, the state's interest must be weighed against constitutional right, emanating from the right of confrontation and the rights to compulsory process and to due process, to be afforded a meaningful opportunity to present a complete defense. (*State v. Jacques*, 558 A. 2d 706, 708, (1989) (citing *Davis v. Alaska*, 415 U.S. 308, 39 L. Ed. 2d 347, 94 S. Ct. 1105 (1974) (the state's interest in protecting Juvenile offender does not take precedence over defendant's right to effectively cross-examine)). The Court in *Jacques* also noted that when a prosecutor opens the door to evidence otherwise inadmissible pursuant to Rule 412 the admission of a defendant's evidence to the contrary may be constitutionally required. *Id.* at 708.

In *State v. McCoy*, 274 S.C. 70, 72 (1979), the Supreme Court of South Carolina held "we recognize that generally the right of counsel to cross-examine a prosecuting witness is of constitutional dimensions. Normally, cross-examination is essential to a fair trial as guaranteed by the Sixth Amendment and due process as required by the Fourteenth Amendment." This Court held in the case of *Smith v. Illinois*, 390 U.S. 129, 131, 88 S. Ct. 748, 749-750, 198 L. Ed. 2d 956 (1968), "As the court in *Pointer v. state of Texas*, 380 U.S. 400, 403, 85 S. Ct. 1065, 1068, 13 L. Ed. 2d 923], 'It cannot seriously be doubted at this late date that the right of cross-examination is included

in the right of an accused in a criminal case to confront the witnesses against him.' 380 U.S. at 404, 85 S. Ct. at 1068. Even more recently we have repeated that '[a] denial of cross examination without waiver * * would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.' *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S. Ct. 1245, 1246, 16 L. Ed. 2d 314." The defendant's right to due process of law is implicated by the application of a rule that would exclude relevant, exculpatory evidence. (*People v. Stanaway*, 446 Mich. 643, 662-680; 521 N.W. 2d 557 (1994)).

This Court has held that "[w]hen a state rule of evidence conflicts with the right [of the accused] to present witnesses, the rule may 'not be applied mechanistically to defeat the ends of justice' but must meet the fundamental standards of due process. (*Rock v. Arkansas*, 483 U.S. 44, 55, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973))). "To the extent that [the rape-shield statute] operates to prevent a criminal defendant from presenting relevant evidence, the defendant's ability to confront adverse witnesses and present a defense is diminished." (*Michigan v. Lucas*, 500 U.S. 145, 111 S. Ct. 1746, 114 L. Ed. 2d 205 (1991)).

The "opening the door" doctrine comprises two doctrines governing the admissibility of evidence. (*State v. Gaudet*, 166 N.H. 396, 97 A. 3d 640 (2014)) (quotations omitted). The first doctrine, "curative admissibility", applies when inadmissible prejudicial evidence has been erroneously admitted, and the opponent seeks to introduce testimony to counter the prejudice. *Id.* (quotation omitted). The

second doctrine, “specific contradiction”, is more broadly applied to situations in which one party has introduced admissible evidence that creates a misleading advantage and the opponent is then permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. *Id.* (quotation omitted). (*State v. Mazzaglia*, 169 N.H. 489, 495 (2016)).

The Supreme Court of North Carolina held in *State v. Degreee*, 322 N.C. 302, 306 (1988) that if the state “opens the door” to such evidence of the victim’s sexual conduct with other people the defendant may request a Rule hearing to determine the admissibility of otherwise inadmissible evidence in order to impeach the complainant. “The third exception, [to Virginia’s rape shield statute] permits evidence of specific sexual conduct if ‘offered to rebut evidence of the complaining witness’s prior sexual conduct introduced by the prosecution’ [] If the Commonwealth opens the door to otherwise inadmissible evidence, the defendant may introduce contrary evidence over the prosecutor’s objection.” (*Commonwealth v. Beyerly*, 52 Va. Cir. 255, 257 (2000)).

Even Kentucky’s own Courts have rendered Opinions in contradiction with the holding in this case. The Kentucky Supreme Court held in *Perry v. Commonwealth*, 390 S.W. 3d 128 (Ky. 2012), that,

“[i]n any criminal case important constitutional rights are at stake, including the right to confrontation and due process, and the defendant’s continued liberty is at issue. In all criminal cases, the defendant has the right to make a complete defense. (See *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006)). In *Dennis v. Commonwealth*, 306 S.W. 3d 466, 473-474 (Ky. 2010) the Court held that the rules of evidence, of

course, may not be construed so as to usurp [the right to confrontation], and thus, although the United States Supreme Court has emphasized that the state and federal rule makers have broad latitude 'to establish rules excluding evidence from criminal trials,' *United States v. Scheffer*, 523 U.S. 303, 308, 118 S. Ct. 1261, 140 L. Ed. 2d 413 (1998), and that trial judges enjoy wide latitude 'to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant,' *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986), the court has also declared that that latitude has limits: 'whether rooted directly in the Due process Clause of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense....This right is abridged by evidence rules that infringe[...] upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve'. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) (citations and internal quotations omitted). 'Arbitrary' rules, the Court explained in *Holmes*, are those, 'that exclude [...] important defense evidence but that do[...] not serve any legitimate interests.' *Id* at 325. In determining whether an exclusion is 'disproportionate', other courts have weighed 'the importance of the evidence to an effective defense, [and] the scope of the ban involved,' *White v. Coplan*, 399 F. 3d 18, 24, (1st Cir. 2005) (citing *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 89 L. Ed. 2d 347 (1974) and *Van Arsdall*, Supra, against any prejudicial effects the rule was designed to guard against. *Barbe v. McBride*, 521 F. 3d 443 (4th Cir. 2008); *LaJoie v. Thompson*, 217 F. 3d 663 (9th Cir. 2000)."

In *D.W.H. V. State* 103 So. 3d 850 (2012) the Court of Criminal Appeals of Alabama reversed and remanded the defendants conviction because the trial court denied his request to present rebuttal witnesses in response to the testimony of the State's witness. In *Johnson v. Moore*, 472 F. Supp. 2d 1344 (2007) the United States

District Court for the Middle District of Florida, Tampa Division granted an inmates habeas corpus petition where the Petitioner was denied the right to have compulsory process for obtaining witnesses in his favor because the State arbitrarily denied him the right to put his witness on the stand. The Court held that “[t]he Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use.” *Id* at 1357.

In *People v. Williams*, 55 Ill. App. 3d 752 (1977) the Appellate Court of Illinois, First District, Fourth Division reversed and remanded because the Court violated the defendant’s Constitutional rights when it refused to allow the defense witnesses to testify. In *State v. Colburn*, 2016 MT 41 (2016) the Supreme Court of Montana reversed and remanded where the district court erred in its application of the Rape Shield Law to exclude evidence the defendant wished to present at trial. In *Sussman v. Jenkins*, 636 F. 3d 329 (2011) the United States Court of Appeals for the Seventh Circuit reversed and remanded with instructions where the Seventh Circuit found that the defendant’s rights under the Confrontation Clause had been violated.

In *State v. Shaw*, 312 Conn. 85 (2014)—perhaps the most closely related case to the case at bar—the Supreme Court of Connecticut reversed the defendant’s conviction where the defendant’s Sixth Amendment right to present a defense was violated when the trial court infringed upon the defendant’s right to present evidence of the alleged victim’s prior sexual conduct. The Court found that the testimony the defendant wished to present was not barred by the Rape Shield, that the Courts use

of the Rape Shield to preclude defendant from presenting his evidence violated his Sixth Amendment right to present a complete defense, and that had the evidence been present the outcome of the trial would have been different.

CONCLUSION

Mr. Hansen has an inviolate right protected by the Sixth and Fourteenth Amendments to this Country's Constitution to present a complete defense to any and all criminal charges he faces and is put on trial for. This inalienable right was violated when the trial court prohibited his counsel from questioning witnesses concerning the alleged victim's sending of nude photos to other individuals after the Commonwealth opened the door to this evidence through its witness. The Court's refusal to allow defense counsel to cross-examine the witness concerning her testimony and the alleged victim's previous sexual conduct barred Mr. Hansen from presenting a complete defense to the crimes he was charged with committing.

Had the trial court allowed defense counsel to examine the witnesses, counsel would have elicited testimony that the alleged victim had for a long period of time been in the habit of sending nude photos to multiple people and that she previously made false allegations that Mr. Hansen had sexually abused her. Mr. Hansen's defense that Anna likely sent this photo to him by mistake and that he was completely unaware that he even possessed the photo would have been accepted by the jury and he would have been acquitted of that charge.

Counsel would have followed by eliciting testimony regarding the alleged victim's previous false allegations against Mr. Hansen which she admitted that she

made up in an attempt to get out of trouble. The jury also would have heard testimony that Mr. Hansen had recently caught Anna and one of his sons having sex and had told her mother Sariah. Mr. Hansen's defense that Anna made up these allegations to shift attention away from herself and effectively "beat him to the punch" likely would have been believed by the jury and it is reasonably likely that Mr. Hansen would have been acquitted on all Counts.

The Opinion of the Kentucky Court of appeals Affirming Mr. Hansen's conviction and finding no error in the trial court prohibiting this line of questioning comparts from the general holdings of other state courts of last resort as well as other United States courts of appeals and therefore, Certiorari should be granted in this case. To allow this violation to go uncorrected would be of no advantage to our judicial system and would effectively defeat the purpose and design of the system.

"If there is in each state a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. There are endless diversities in the opinions of men. We often see not only different courts but the judges of the same court differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of different judicatories, all nations have found it necessary to establish one court paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice. This is the more necessary where the frame of government is so compounded that the laws of the whole are in danger of being contravened by the laws of the parts" (Alexander Hamilton, Federalist No. 22, December 14, 1787).

APPENDIX

Motion to Unseal.....App. 1-2

Order Entered November 25, 2020 Denying Motion to Unseal.....	App. 3-4
Indictment.....	App. 5-6
Superseding Indictment.....	App. 7-11
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