

**IN THE SUPREME COURT
OF THE STATE OF MISSOURI**

SC87069

STATE OF MISSOURI,

Plaintiff/Respondent,

v.

RONNIE REEDER,

Defendant/Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

TWENTY-SECOND JUDICIAL CIRCUIT

THE HONORABLE ROBERT H. DIERKER, JR., JUDGE

ON TRANSFER FROM THE MISSOURI COURT OF APPEALS

FOR THE EASTERN DISTRICT, ED84507

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTION STATEMENT

On March 4, 2004, Appellant, Ronnie Reeder, was found guilty after a three day jury trial before the Honorable Robert H. Dierker, Jr., Judge, 22nd Judicial Circuit, of three counts of statutory rape in the first degree, all A felonies and one count of attempted child molestation, a C felony. On April 22, 2004, the court sentenced Mr. Reeder to 10 years each on two of the statutory rape in the first degree counts to run concurrent with each other and a seven year sentence for the attempted child molestation count. The court sentenced Mr. Reeder to 15 years on the third count of statutory rape in the third degree, related to victim Tanya Wright, to be served consecutive to count one.

On May 3, 2004, Mr. Reeder filed his Notice of Appeal with the Missouri Court of Appeals for the Eastern District. That court affirmed Mr. Reeder's conviction on June 28, 2005. The Eastern District Court of Appeals granted Mr. Reeder's motion for transfer to the Missouri Supreme Court pursuant to Rule 83.02 on August 19, 2005. This Court now has jurisdiction to dispose of all aspects of the appeal under Mo. Const. Art. V, §10.

STATEMENT OF FACTS

Appellant, Ronnie Reeder, was charged with the present offenses by grand jury indictment on July 11, 2002. L.F. 8-11. Appellant was originally charged with four counts of statutory rape in the first degree, three counts of statutory sodomy, one count of child molestation first degree and one count of third degree assault. *Id.* Appellant was ultimately tried on one count of child molestation and three counts of statutory rape in the first degree. Appellant was tried by a jury before the Honorable Robert H. Dierker, Jr., Judge, 22nd Judicial Circuit.

The State's case-in-chief consisted of the testimony of four witnesses. Tanya Wright, the alleged victim in count VIII, testified that in or around November of 1999 she was living at 2017 Agnes in the City of St. Louis. T.R.136. Ms. Wright lived there with her Aunt Theresa, Theresa's two children and, on occasion, Appellant. *Id.* Wright testified that she slept in a basement bedroom with one of her young cousins. *Id.* Wright testified that at some point she had "sexual contact" with Appellant, but she was not sure when that incident occurred. T.R. 137. Wright stated that on some night during November of 1999, she was sleeping in her basement room at 2017 Agnes until she was awoken by Appellant shaking her arm. T.R. 138-39. Wright testified that Appellant lifted her onto a nearby dresser, placed himself between her legs and penetrated her vaginally. T.R. 139-143. She stated that the duration of the penetration was between one and two minutes. T.R. 143. Wright testified that she did not know whether or not Appellant had ejaculated. T.R. 146. According to Wright, Appellant then buttoned his pants and she went up stairs to sleep in the

living room with the entire encounter lasting roughly two minutes. T.R. 145-146. Wright did not remember if Appellant had left the basement or remained there for the rest of the night. T.R. 147. Wright stated that she reported the incident to her grandmother, Martha Reeder, the next day and that her grandmother told her not to tell anyone else because she would handle the situation. T.R. 150. Wright next spoke of the alleged abuse when she told her mother between two and ten months later, although she could not recall whether it was New Year's Day or the Fourth of July when this conversation occurred. T.R. 151-52, 149, 154. Wright testified that after telling her mother she spoke to the police about this event. T.R.155.

During cross-examination Wright stated that she had never made an accusation of sexual assault against any other individual. T.R. 157. She stated that she never accused her mother's boyfriend, Messiah Cross, of raping her. T.R.159-60. She also testified that she had never reported her mother to "Family Services" or the police. T.R. 161. The Defense attempted to introduce extrinsic evidence to contradict all of these statements, but the trial court ruled that extrinsic evidence could only be used to prove allegations of sexual misconduct made before the fall of 2000. T.R. 166-69.

Misty Owens, the victim charged in counts I, III and VII testified at trial for the State. T.R. 192. Owens testified that she was friends with Lisa Webb, Appellant's niece, and that she met Appellant through Webb. T.R. 193-94. Owens stated that she spent New Year's eve of 2001 at Lisa's house, 1420 St. Louis Ave., which is structurally connected to Martha Reeder's home. T.R. 196, 200. Lisa and another girl were drinking wine when one or more

one of them vomited. T.R. 199. Lisa then went to Martha Reeder's residence to get shampoo in order to clean up after getting sick. T.R. 200. Owens stated that she found herself in the dining room of the house with Appellant and that Appellant touched her breasts over her clothing. T.R. 203-04. Martha Reeder testified that she had met Owens at the door to her residence, gave her a small bottle of shampoo and then watched as she left the residence. T.R. 363-64. Owens also testified that later that night Appellant came into Lisa's bedroom in the residence adjoining Martha Reeder's and "started having sex" with her. T.R. 210-11. Owens had a great deal of trouble remembering what had occurred during these events, whether these events occurred and when they might have occurred. T.R.205-211. Owens testified that when Lisa Webb woke up Appellant left the room. T.R. 214. Owens also testified that on several occasions Appellant touched her breast in passing. T.R. 218-220. Additionally, she testified that Appellant place his fingers inside her vagina sometime in early 2002 while the two were sitting on a couch watching television. T.R. 230-32.

Lisa Webb is the cousin of Tanya Wright and the niece of Appellant as well as the friend Misty Owens was visiting on New Year's eve 2001 and in February of 2002. T.R. 253-56. Webb testified that Owens told her about having sex with Appellant on New Year's eve, that she perceived Appellant touching Owen's vagina under a blanket on February 2, 2002, and that she was awakened the night of February 2, 2002, by Appellant having sex with Owens. T.R. 261, 265, 267. Webb also testified that Owens used the word "rape" to describe what happened to her on February 2, 2002. T.R. 268.

Officer Janet McKern of the St. Louis City Police Department testified as to conversation she had with Misty Owens in which Owens made the same allegations that Appellant had touched or penetrated her on New Year's eve 2001 and February 2, 2002. T.R. 307-17. Officer McKern also testified that Owens originally claimed to have had sex with Appellant twice on February 2, 2002. T.R. 319.

Tina Marie Pulley attempted to testify that her daughter, Tanya Wright, had faked several pregnancies, but this evidence was excluded by the court as irrelevant. T.R. 331. Ms. Pulley attempted to testify that her daughter had previously burglarized the house of a boyfriend of Ms. Pulley, but this evidence was excluded by the court as irrelevant. T.R. 332. Ms. Pulley attempted to testify that her daughter, Tanya, had previously made a false allegation of abuse to the Division of Children and Family Services in response to discipline imposed by Ms. Pulley, but this evidence was excluded by the court. T.R. 334.

On March 4, 2004, Appellant, Ronnie Reeder, was found guilty after a three day jury trial before the Honorable Robert H. Dierker, Jr., Judge, 22nd Judicial Circuit, of two counts of statutory rape in the first degree related to Misty Owens, one count of statutory rape in the first degree related to Tanya Wright and one count of attempted child molestation related to Misty Owens. On April 22, 2004 the court sentenced Mr. Reeder to 10 years each on two of the statutory rape in the first degree counts to run concurrent with each other and a seven year sentence for the attempted child molestation count. The court sentenced Mr. Reeder to 15 years on the third count of statutory rape in the first degree, related to Tanya Wright, to be served consecutive to count I.

POINTS RELIED ON

- I. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO PRESENT A FULL DEFENSE WHEN THE TRIAL COURT RESTRICTED HIS USE OF PRIOR FALSE ALLEGATIONS BY THE COMPLAINING WITNESSES TO PROVE THAT THE ALLEGATIONS AT TRIAL LACKED CREDIBILITY. THE PRIOR FALSE ALLEGATIONS WERE LEGALLY RELEVANT AT TRIAL AS THE JURY'S ASSESSMENT OF THE CREDIBILITY OF APPELLANT'S ACCUSERS WAS KEY TO HIS CONVICTION AND THEREFORE APPELLANT SUFFERED SUBSTANTIAL PREJUDICE WHEN HE WAS DENIED THE VALID DEFENSE THAT THE CHARGES AGAINST HIM WERE FABRICATED.

State v. Long, 140 S.W.3d 27 (Mo. 2004)

State v. Ussery, 452 S.W.2d 146 (Mo. 1970)

Shepherd v. Consumer Cooperative Association, 384 S.W.2d 635 (Mo. banc 1964)

State v. Walker, 616 S.W.2d 48 (Mo. banc 1981)

Mo. Const. art. 1, section 18(a)

ARGUMENT

II. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO PRESENT A FULL DEFENSE WHEN THE TRIAL COURT RESTRICTED HIS USE OF PRIOR FALSE ALLEGATIONS BY THE COMPLAINING WITNESSES TO PROVE THAT THE ALLEGATIONS AT TRIAL LACKED CREDIBILITY. THE PRIOR FALSE ALLEGATIONS WERE LEGALLY RELEVANT AT TRIAL AS THE JURY'S ASSESSMENT OF THE CREDIBILITY OF APPELLANT'S ACCUSERS WAS KEY TO HIS CONVICTION AND THEREFORE APPELLANT SUFFERED SUBSTANTIAL PREJUDICE WHEN HE WAS DENIED THE VALID DEFENSE THAT THE CHARGES AGAINST HIM WERE FABRICATED.

a. Standard of Review

The trial court's bar on extrinsic evidence of prior false allegations by the complaining witnesses was objected to at trial. Tr. 166-67. However, this objection was not characterized as constitutional at trial and was not preserved in the motion for a new trial. L.F. 80-84.

This Court may *sua sponte* address a constitutional issue, not otherwise properly preserved, when an important constitutional right is implicated. **State v. Jackson, 495 S.W.2d 80, 81 (Mo.App. 1973)**. Furthermore, constitutional questions are to be raised at the earliest opportunity consistent with orderly procedure. **State v. Smith, 310 S.W.2d 845, 850 (1958)**.

In this case, Appellant seeks to vindicate his fundamental constitutional right to present a full defense. Additionally, the right Appellant seeks to vindicate was not recognized as such prior to this Court's decision in **State v. Long, 140 S.W.3d 27 (Mo.**

2004). Therefore, Appellant properly preserved his constitutional claim for review by this Court when he presented it for the first time in his direct appeal as the claim could not be cognized at any earlier time.

Appellant acknowledges that under normal circumstances an issue not included in the motion for a new trial is not reserved for appellate review. **Mo.R.Crim.P. 29.11**. Where an issue is not properly preserved for appeal, review is discretionary and only for plain error. **State v. Presberry, 128 S.W.3d 80, 85 (Mo.App. E.D. 2003)**. Relief under the plain error standard requires a manifest injustice or a miscarriage of justice. **State v. Dudley, 51 S.W.3d 44, 53 (Mo.App. W.D. 2001)**. As discussed below, Appellant's claim warrants relief, even under this highly restrictive standard, because the only evidence of his guilt presented at trial was the testimony of his alleged victims. Therefore, in the absence of any other evidence of guilt, Appellant's inability to effectively attack the credibility of his accusers must be considered outcome determinative.

b. *The Merits*

Under Missouri law a party may attack the credibility of a witness by demonstrating the witness' bad character for truth and veracity. **State v. Long, 140 S.W.3d 27, 30 (Mo. 2004)**. This rule has traditionally been construed as limiting cross-examination based on a witness' prior misconduct to the witness' answers on cross-examination without the aid of extrinsic evidence to prove that the witness is lying about an issue related to credibility. **Id.** *citing* **State v. Williams, 492 S.W.2d 1, 4 (Mo.App. 1973)**. However, **Long** reversed the traditional rule and held that:

Where...a witness' credibility is a key factor in determining guilt or acquittal, excluding extrinsic evidence of the witness' prior false allegations deprives the fact-finder of evidence that is highly relevant to a crucial issue directly in controversy; the credibility of the witness. An evidentiary rule rendering non-collateral, highly relevant evidence inadmissible must yield to the defendant's constitutional right to present a full defense.

Long, 140 S.W.3d at 30-31 *citing* Mo. Const. art. 1, section 18(a).

The proper means by which this Constitutional interest is protected is to admit extrinsic evidence of prior false accusations to attack the credibility of the witness.

Of course, the extrinsic evidence offered to prove a lack of credibility must still be relevant. Evidence is legally relevant if its probative value outweighs its costs as measured by prejudice, confusion of the issues, misleading effect on the jury, undue delay, waste of time or cumulativeness. **State v. Anderson, 76 S.W.3d 275, 276 (Mo. banc 2002)**. Prior false accusations are relevant to the witness' credibility and that relevance is derived from the fact that the allegation was false as opposed to the nature of the prior false allegation.

Long, 140 S.W.3d at 31. Dissimilarity between a present allegation and prior false allegation does not make the evidence irrelevant, but may still factor into the relevancy analysis in that a prior allegation may be so remote in time and circumstance as to be legally irrelevant. **Id.**

In the instant appeal, the trial court imposed two restrictions on extrinsic credibility evidence that violated Appellant's right to present a full defense. First, the trial court

expressly limited the defense to extrinsic evidence of false allegations of sexual assault:

THE COURT: You may explore the relationships within the family and you may inquire about...whether this witness made certain accusations or whether she did certain things in response to directions from a family member, but understand, Mr. Eisenhower, you're going to be bound by her answer, because I'm not going to allow you to bring in a bunch of collateral testimony on issues that are totally unrelated to her and the defendant

MR. EISENHAUER (Defense Counsel): Isn't that evidence of her character?

THE COURT: Character evidence is the opinion of the person and the reputation of the person for truth and veracity, not specific incidents—not some laundry list of specific incidents that has [sic] nothing to do with the defendant or any offense on trial.

Now, that is my understanding, so you may cross-examine this witness and you may ask her about whether she's made accusations in the past against family members, but I'm not going to entertain testimony about whether those accusations are true or false, unless they're accusations of sexual misconduct.

T.R. 166-67. In light of **State v. Long** it was a constitutional necessity that Appellant be allowed to attack the credibility of the complaining witnesses using extrinsic evidence of any of their prior false allegations. Appellant introduced evidence that he held a disciplinary position in relation to Tanya Wright and her friends when they were in her

mother's house. T.R. 336. Appellant sought to introduce evidence that others in a similar position of authority were repeatedly subjected to a variety of false allegations. T.R. 162 (“MR. EISENHAUER: I’m not talking about her sexual history, Judge. What I’m talking about is, when her mother tells her—when people tell her things that make her mad, she calls the authorities on them”). These prior allegations were not collateral, as they were characterized in the trial court, but central to the issue of credibility. In this case, there was no physical evidence tying Appellant to any crime. It was a legitimate expectation of Appellant that he would be permitted to impeach Tanya Wright and Lisa Webb using specific incidents of prior false allegations after they denied having made those allegations.

The trial court imposed a second unconstitutional restriction upon the defense when the fall of 2000 was set as an arbitrary cut-off for cross-examination related to all non-sexual prior false allegations. The court only allowed defense counsel to inquire of the complaining witness as to incidents of prior false allegations that occurred during or before the fall of 2000. T.R. 168. The rationale for this cut-off is not immediately apparent from the record. It appears that the trial court believed relevance for impeachment purposes to be tied to the time of the initial complaint to the police. The reasoning then being that the witness’ propensity to lie is only relevant if that propensity existed at the time of the initial complaint as opposed to the time of testimony at trial. This conclusion is erroneous under **Long** as well as traditional Missouri evidence law. The crux of **Long**, and impeachment in general, is that the fact finder should not be shielded from evidence that bears directly on the credibility of the witness. **Long, 140 S.W.3d at 30-31.** The jury gauges the credibility

of the witness at the time the witness addresses testimony to the jury. Therefore, prior false allegations cannot be excluded as a result of being too close in time to the testimony, as this is the time most relevant to a witnesses credibility.

Long is on all fours with the facts of Appellant's case. In **Long** the defendant was convicted of one count of forcible rape. **Id. at 29**. The victim in that case reported that she had been raped by the defendant after a delay of two days. **Id.** There was no physical evidence indicating that the victim had been raped in the defendant's apartment as she claimed, although there was physical evidence indicating that the victim had in fact been raped recently. **Id.** Long sought to introduce evidence that the victim had previously made three separate false allegations against another man including that he had thrown a rock at her, had made threatening phone calls to her and had sexually assaulted her. **Id. at 29-30**. The trial court excluded each of these pieces of evidence on the grounds that they were not proper character evidence. **Id. at 30**. As stated above, the Missouri Supreme Court held that a criminal defendant may introduce extrinsic evidence of prior false allegations and that the rule is not limited to prior false allegations of sexual assault or abuse.

In this case, Appellant sought to introduce extrinsic evidence of prior false allegations made by the witnesses against him. This evidence was excluded by the trial court and, as in **Long**, this decision constituted a degree of prejudicial error warranting that the conviction be reversed and the cause remanded for a new trial.

c. Retrospective Application of Long

In **State v. Reeder**, 2005 WL 1513104 (MoApp. E.D. 2005) the Eastern District

Court of Appeals affirmed Appellant's conviction, holding that:

In the Long decision...the Supreme Court did not state whether the new rule should apply retrospectively. We thus determine whether the new rule articulated in Long is procedural or substantive. Because the new rule governs the admissibility of evidence, it is, as the Court held in Walker, procedural. Accordingly, it appears that we are required to apply Long prospectively only.

Id. at 5. By the appellate court's reasoning any new rule promulgated by this Court that touches the law of evidence is automatically procedural as opposed to substantive. The appellate court's decision leaves no room for examination of the seriousness of the constitutional deprivation or the extent and nature of the change in law mandated by the Supreme Court.

The rule in Missouri courts has long been that when a decision dealing with a rule of procedure is overruled the effect of the subsequent overruling decision is prospective only.

Shepherd v. Consumer Cooperative Association, 384 S.W.2d 635, 640 (Mo. banc 1964). When the issue is substantive the overruling decision applies retrospectively. **Id.** Substantive law has been defined as "that part of the law which creates, defines and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion." **Id.** (internal citation omitted).

The Reeder court cited to **State v. Walker** for the proposition that, "rules of evidence are procedural in nature and apply prospectively." **Reeder**, 2005 WL 1513104 at 5 citing **State v. Walker, 616 S.W.2d 48, 49 (Mo. banc 1981).** However, Walker only

held that “[r]ules of evidence are *generally* considered procedural in nature.” **Walker, 616 S.W.2d at 49** [emphasis added]. Furthermore, the Walker Court was not, as in this case, being asked to enforce a fundamental Constitutional right. Walker analyzed **State v. Biddle, 599 S.W.2d 182 (Mo. banc 1980)** which held that the results of a polygraph examination could not be admitted into evidence despite the parties voluntary stipulation to that effect. **Walker, 616 S.W.2d at 48**. Biddle was not based on a Constitutional deprivation or need to vindicate a fundamental trial right. Rather, the holding in Biddle related only to the scientific reliability of the polygraph test. **Biddle, 599 S.W.2d at 191**. The issue of scientific reliability is one that necessarily ebbs and flows as the current state of scientific knowledge evolves. A conviction obtained today would not be questioned because of a finding at some time in the future that polygraph had developed into a reliable technology. Likewise, the Biddle Court’s holding that polygraph tests are scientifically unreliable did not implicate earlier cases.

The issue in this case is the right of a defendant to present a full defense as guaranteed by the Missouri Constitution. **Long, 140 S.W.3d at 31** *citing* **Mo. Const. art. 1, section 18(a)**. The fact that vindication of a constitutional right requires a change in the law of evidence does not render that change purely procedural. In **State v. Ussery, 452 S.W.2d 146 (Mo. 1970)** this Court made a new rule of evidence, promulgated by the United States Supreme Court, retroactive for purposes of collateral review based on the importance of the right at issue. In **Jackson v. Denno, 378 U.S. 368 (1964)** the United States Supreme Court held that a New York rule of evidence empowering the jury, and not

the judge, to make a determination as to the voluntariness of a confession was unconstitutional and required the procedural remedy of a hearing as to the voluntariness of any confession.

The Missouri Supreme Court made this rule retroactive for purposes of collateral attack after noting that it met a number of standards for granting retroactive status. The Ussery Court stated that retroactivity was justified when the rule “affected the very integrity of the fact-finding process and averted the clear danger of convicting the innocent.” **Ussery, 452 S.W.2d at 150** [internal citation omitted]. Long requires the admission of extrinsic evidence of prior false allegations because barring this evidence shields “the fact-finder not from collateral issues, but from a central issue in the case,” thus creating a substantial risk of convicting the innocent. **Long, 140 S.W.3d at 40**. The Ussery Court cited with approval the United States Supreme Court pronouncement that, “We have retroactively applied rules of criminal procedure fashioned to correct serious flaws in the fact-finding process at trial.” **Ussery, 452 S.W.2d at 150** *citing* **Roberts v. Russell, 392 U.S. 293, 294 (1968)**. The inability of defendants to effectively attack the credibility of their accuser, when that credibility is the core issue in the case, is a serious flaw in the fact-finding process that has been remedied by Long. Finally, the Ussery Court stated that the most important factor to be considered is the purpose served by the new Constitutional rule. **Ussery, 452 S.W.2d at 151**. This Court has already decided that the admission of extrinsic evidence of prior false allegations is crucial to the preservation of a defendant’s right to a fair trial as guaranteed by the Missouri Constitution. **Long, 140**

S.W.3d at 31. This purpose is significant enough to warrant retrospective application of the rule.

CONCLUSION

This Court should give retrospective effect to the rule established in State v. Long requiring the admission of relevant prior false accusations by a complaining witness. The right to present a full defense is guaranteed by the Missouri Constitution and can not be enforced when the fact-finder has been shielded from highly relevant non-collateral evidence of innocence. Furthermore, in this case, the only evidence supporting conviction was testimony from the alleged victims. Because Appellant was not allowed to attack this evidence, his conviction is subject to reversal under any standard of review this Court may employ.

WHEREFORE, Appellant respectfully asks that his conviction and sentence be reversed and that this cause be remanded for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Substitute Brief of Appellant and a floppy disk was hand delivered to the Attorney General, State of Missouri, P.O. Box 899, Jefferson City, MO 65102 on this 7th day of September, 2005.

MARK W. LYONS, BAR #56649
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Counsel certifies that:

- 1) The floppy disk filed with this brief has been scanned for viruses and is virus-free;
- and
- 2) The brief complies with the limitations contained in Rule 84.06(b) in that it contains 4,466 words.

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APPENDIX

Sentence and JudgmentA 1-4

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