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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45608
Plaintiff-Respondent,)	
)	KOOTENAI CTY NO. CR 2016-10755
v.)	
)	
STEVEN M. CHAMBERS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE SCOTT WAYMAN
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Steven Michael Chambers appeals from a judgment of conviction for battery with intent to commit a serious felony based upon the district court's error in excluding evidence of a false allegation of sex crimes made against another man which occurred subsequent to the incident with Mr. Chambers, but prior to trial. Mr. Chambers asserts the district court abused its discretion by excluding the same under Idaho Rules of Evidence ("IRE") 412 and 403, and violating his constitutional rights to present a defense and confront his accusers. Accordingly, his conviction must be vacated.

Statement of the Facts and Course of Proceedings

A detective from the Coeur d'Alene Police Department was contacted in the early morning hours of June 2016 about an allegation of rape. (R., p.17.) The alleged victim, Noelle Stutheit, a/k/a Armstrong, had called 911, reporting that she was raped by Steven Chambers at his residence in Coeur d'Alene. Ms. Stutheit, an eighteen-year old living at a group-assisted living environment, reported she met Mr. Chambers at a church function the day before and willingly began communicating with him. She exchanged text messages with him, and sent him sexually graphic photographs of herself. (R., p.26.) She accepted his 1:00 a.m. invitation to "hang out." (R., p.17.) She asked one of the care providers where she lived to drop her off at Mr. Chambers' house. (R., p.22.) She arrived at his house at 2:00 a.m.

According to Ms. Stutheit, once she was inside the home, Mr. Chambers gave her a tour of the house and they looked at photo albums of when he was a kid. (R., pp.18, 22-23.) They started kissing in the hallway. (R., p.18.) He told her to take her clothes off, but she refused because they had just met. (R., pp.18, 23.) She contends Mr. Chambers then punched her in the

stomach, pushed her into his bedroom and onto his bed, and then forcefully penetrated her vaginally with his fingers and penis. (R., pp.18-19.) After it happened, she stated she needed to go to the bathroom. Once in the bathroom, she considered escaping through the bathroom window, but could not get it open. She was able to run out the front door. (R., p.18.) After she escaped, she called 911. She was hysterical on the phone and complained of pain to her vagina. (R., p.19.) During her interview with police, Ms. Stutheit relayed that her sixteen-year old sister had made several false allegations of rape in the past. (R., p.23.) Mr. Chambers' account was dramatically different than Ms. Stutheit's.

Police contacted Mr. Chambers, and asked him to come to the police station and provide a statement. He agreed. (R., p.20.) During the officer's "rapport building" with Mr. Chambers, Mr. Chambers disclosed he was born addicted to drugs, that he could not speak until the age of 12 or 13, that he taught himself to talk because no one else did, that he graduated from high school with a 3.75 GPA and that he had two jobs. (R., p.26.) During the interview, it was obvious to the officer that Mr. Chambers had a speech impediment, but the officer believed Mr. Chambers could articulate himself and knew right from wrong. (R., p.26.) Mr. Chambers relayed he met Ms. Stutheit at a bible study and then conversed with her that night on Facebook. Their conversation became sexual; they sent each other nude photos and she told him she wanted to have sex. (R., p.26.) Ms. Stutheit came over to his house after they exchanged the messages. His grandfather was home and sleeping at the time and he asked her to be quiet. (R., p.26.) He thought that she wanted to have sex with him. They began kissing and each undressed. When they were in the bedroom, they had consensual sex, including intercourse, twice. (R., p.26.) During the second time, Ms. Stutheit became sick and went into the bathroom, and Mr. Chambers thought she might be throwing up. (R., p.26.) When she came out, she said she

did not feel well and was leaving. He gave her his tank top to wear. (R., pp.26-27.) Mr. Chambers volunteered the officers could view his Facebook page and cell phone, and he brought up Ms. Stutheit's Facebook page in their presence. (R., p.27.) The interrogating officer took a break from the interview and told Mr. Chambers to "think about things for a bit" until he returned. (R., p.27.)

Officers then confirmed the "sext" messages between Mr. Chambers and Ms. Stutheit, which included "fairly suggestive" language. For instance, Ms. Stutheit wrote, "I would so tap you," and when he asked if she would "sext and will you go out with me?" she responded, "No I dont [sic] sext, I do the real thing and yes I will go out with you." (R., p.27.) Mr. Chambers was questioned further, and volunteered that Ms. Stutheit probably said he raped her. (R., p.27.) The officer relayed he believed Mr. Chambers and Ms. Stutheit got to the point just before sex where she said no and Mr. Chambers probably "kept going." As the interview went on Mr. Chambers reported he and Ms. Stutheit initially engaged in sexual contact, but then while it was happening, Ms. Stutheit changed her mind. (R., pp.27-28.) Then, he admitted he "probably got carried away and soul [sic] not have kept going. I just kept going, going, and going." The officer kept on questioning and challenging Mr. Chambers, and eventually Mr. Chambers stated he did not like women because they had abused him his whole life, that sometimes he goes too far, and that he assaulted and raped Ms. Stutheit. (R., pp.25-28.) Mr. Chambers was then arrested. (R., p.29.)

Police also spoke to Ms. Stutheit's support person, Rhiannon Hulick, whose job it is to assist Ms. Stutheit with life decisions. She relayed although she assists Ms. Stutheit, she is able to make her own decisions and check herself out of the house after checking with an employee at the house. (R., p.32.) Ms. Hulick confirmed she gave Ms. Stutheit a ride to Mr. Chambers'

house and that she observed Ms. Stutheit was happy and wanted to go see Mr. Chambers. Ms. Hulick assumed that Ms. Stutheit was going to have sex with Mr. Chambers when Ms. Stutheit woke her up at 1:30 asking her to bring her to his house. (R., p.32.) Ms. Stutheit had known Ms. Stutheit for one week, knew her to have a lot of drama, knew she had lived with her boyfriend and knew Ms. Stutheit to have many boyfriends and sexual encounters. (R., p.32.) Ms. Stutheit's probation officer advised police Ms. Stutheit was trying to get pregnant and had baby clothes hanging in her closet. When Ms. Stutheit was questioned about the same, she appeared shocked at law enforcement's discovery of the baby clothes, and admitted sending text messages and nude photos of herself to Mr. Chambers that she deleted before she called 911. (R., p.24.)

Mr. Chambers was then charged with one count of rape, in violation of I.C. § 18-6101(4). (R., pp.63-64.) A preliminary hearing was held on August 4, 2016, and Mr. Chambers was held to answer for the same crime. (R., pp.80, 94-95.) Prior to his plea, Mr. Chambers filed a motion in limine pursuant to Idaho Rule of Evidence ("IRE" or "Rule") 412, requesting a hearing to address admission of specific instances of the Ms. Stutheit's past sexual behavior, which included a false allegation of rape occurring after the incident with Mr. Chambers. (R., pp.129-130.) The motion was supported with a 12-page Coeur d'Alene Police Department report of alleged rape occurring December 10, 2016, made by Ms. Stutheit against Kenneth Chase. (R, pp.131-143.) The report revealed Ms. Stutheit admitted voluntarily staying at Mr. Chase's trailer, but she claimed at some point, he raped her, and more than once. (R., p.133.) Ms. Stutheit wanted to press charges. She stated she suffered from bi-polar disorder and depression and had previously been diagnosed with schizophrenia. (R., p.134.) When Mr. Chase was contacted, he told police he and Ms. Stutheit had been dating and had been

having consensual sex for a few days. At some point during intercourse, Ms. Stutheit complained of pain, whereupon he abruptly stopped. During his contact with Ms. Stutheit, she told him she was trying to get her child back, but he later learned she did not have a child. (R., p.139.) Mr. Chase showed police text messages and naked photos Ms. Stutheit had sent him over the course of several days. (R., p.134.) Another woman relayed to police that Ms. Stutheit had been staying with her for a while until she kicked her out because Ms. Stutheit started having sex with the woman's daughter's boyfriend. (R., p.137.) Other witnesses confirmed a belief that Ms. Stutheit and Mr. Chase were in a dating relationship. No arrests were made in that case, and an investigating officer opined in her report that, "it appears Stutheit was reluctant to tell the truth in regards to the events that occurred. It seems as though Stutheit and Chase had a previous sexual relationship and that she had attempted to delete the texts to prevent Officers from seeing that she had been sending him messages of a sexual nature." (R., p.137.)

The State filed its own motion to exclude evidence pursuant to Rule 412(B)(2)(C), asserting that Mr. Chambers' proffered evidence should be excluded because its relevance was "marginal" due to Mr. Chambers' admissions, its probative value was "slight," as concerning a different male individual, and the prejudice was great due to confusion, delay and a waste of time, essentially warranting a need for a "trial within a trial" (R., pp.148-152.)

The court held a hearing on the matter on June 12, 2017. (R., p.154.) No evidence was admitted. The State argued the proffered evidence should be excluded because "you're gonna have an issue with unfair prejudice," which might "create just a mess," because there would be "[a]nother trial within a trial. The sort of things that, you know, I think IRE 403 is designed to prevent." (Tr., p.33, Ls.4-12.)

Mr. Chambers argued the evidence fell within Rule 412, as a type of “specialized 404(a) or (b),” and that the evidence is “such unusual extraordinary human conduct that a person would do that once, you know it makes it more likely this is the kind of person who would do it again.” (Tr., p.33, L.18 – p.34. L.3.) Counsel further explained that Mr. Chambers was disputing all aspects of the case, including the voluntariness of his admissions based upon the manner in which the interrogation was performed in combination with Mr. Chambers’ cognitive defects, and contended consent was a key issue in the case. He argued the relevance was very high in a case which was basically a “he said/she said instance and when you have evidence that indicates that this is a person who is prone to make false allegations.” (Tr., p.34, Ls.4-12.).

Mr. Chambers also contended “past sexual behavior” was not limited to conduct occurring before the subject incident; inferred the similarity of the proffered evidence suggested a common plan; and generally contended Ms. Stutheit’s false allegation and subsequent commission of a crime through deletion of evidence (text messages and nude photos) was highly relevant; and that exclusion of the same would deny Mr. Chambers’ his right to present a defense and confront witnesses against him. (Tr., p.34, L.13 – p.36, L.10.) The court excluded the evidence in whole, stating:

The Court is being presented with a pretrial motion to rule on the admissibility or inadmissibility of certain evidence. Specifically, I am being asked to make a finding that prior false allegations of an alleged sexual offense involving a different person other than the defendant in this case not be allowed to be admitted at trial. . . [Court recites the language of 412 and 412(c)]. I haven’t found any Idaho appellate cases really defining that particular phrase and how it should be applied. But looking at Federal rules and looking at the remainder of Rule 12, particularly – or Rule 412, particularly section 2 – excuse me, (d) that was referred to by Mr. Walsh, it says, “For purposes of this rule, the term past sexual behavior means sexual behavior other than the sexual behavior with respect to which the sex crime is alleged.” **Here, whenever it took place between the victim and this other person, occurred before and didn’t have anything to do with the defendant in this case. And so the rule doesn’t really allow it, the way I read the rule. When you’re dealing with Federal Rules of**

Evidence, which are comparable to our rules, use that phrase, ‘past sexual behavior,’ and when it turns out that they were not made at an earlier time, they’re not admissible. Basically that’s what the State’s position is here. So I’m going to, under Rule 412, find that the allegations of false information -- or false accusations are not admissible under that rule. **Even if they were admissible under Rule 412, the Court had read the report over that was submitted by the defense and applying Rule 403 finds that the relevance of that information that I’ve been presented in support of and in opposition of having a false accusation to be admissible, is far outweighed by considerations of confusion of the issues, unfair prejudice, in the sense that we have another possibility of a mini trial** within the case, and it has that definite risk of misleading the jury as far as focusing on the charge against the defendant.

So I have balanced the relevance which Mr. Walsh has placed of record here against the prejudice to the trial process here and the risk of confusion of the issues and waste of time and I find that the probative value is outweighed by considerations of undue delay, confusion of the issues, and a waste of time that a trial within a trial would cause in the context of this case.

(Tr., p.36, L.15 – p. 21, L.21.) (emphasis added.); (R., p.168.) Shortly after the court’s ruling, Mr. Chambers resolved his case through plea.

The parties entered into a Rule 11 agreement whereby Mr. Chambers entered a conditional *Alford*¹ plea to an Amended Information charging Battery with Intent to Commit a Serious Felony in exchange for the State’s maximum recommendation of a rider, with the remainder of the terms open. (R., pp.164-166.) Mr. Chambers reserved his right to appeal the court’s ruling regarding the evidence of Ms. Stutheit’s claim against Mr. Chase. (R., p.166.) At the plea hearing, Mr. Chambers advised the court that he was “special needs,” and he had a hard time understanding the English language, and that it takes him longer to understand and comprehend. Mr. Chambers relayed he had graduated from high school and did not have any mental health issues. (R., p.163.) Mr. Chambers was sentenced to an 8 year term, with 2 years

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

fixed, execution of sentence suspended, and placed on 3 years supervised probation. Mr. Chambers appeals his conviction.

ISSUES

Did the district court err in granting the State's motion to exclude evidence relating to Ms. Stutheit's subsequent claim of rape against Mr. Chase?

ARGUMENT

The District Court Erred In Excluding Evidence Related To Ms. Stutheit's False Claim Of Rape Against Mr. Chase

A. Introduction

Mr. Chambers entered a conditional *Alford* plea to battery with intent to commit serious injury only after the district court issued an order excluding relevant and damning evidence that the complaining witness, Noelle Stutheit, had made a subsequent accusation of forcible rape against another man. Further investigation of that incident revealed similarities with the case against Mr. Chambers. The false nature of those charges raised issues regarding Ms. Stutheit's credibility and motivation. Despite the highly relevant and probative nature of this evidence, the district court excluded the same entirely, under Idaho Rules of Evidence ("Rule" or "IRE"), and specifically, under Rule 412(b)(2)(C), determining it was inadmissible as a false allegation of a sex crime made at any earlier time because it failed to temporally qualify under the meanings "past sexual behavior," and "made at an earlier time." The court further found, under Rule 403, without explicitly ruling as to relevance or conducting a thorough balancing, that if such evidence was admissible, its probative nature would be outweighed by the danger of misleading the jury and causing confusion, because it would raise the "possibility of another mini trial within the case." (Tr., p.36, Ls.10-11.)

On appeal, Mr. Chambers contends that the district court's abused its discretion by failing to properly apply prevailing legal standards, specifically Rules 412 and 403, and such exclusion of the evidence violated Mr. Chambers' constitutional right to present a defense by hindering his ability to confront and cross-examine Ms. Stutheit about the alleged claims. Due to these errors, Mr. Chambers' conviction must be vacated.

B. Standards Of Review

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *State v. Raudebaugh*, 124 Idaho 758, 765 (1993). To determine whether discretion has been abused, the Court must ascertain first, whether the trial court correctly perceived the issue as one requiring the exercise of discretion; second, whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and third, whether the court reached its conclusion by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

Questions of law, including interpretation of a statute and constitutional issues, are subject to free review. *State v. Payne*, 146 Idaho 548, 575 (2008); *City of Boise v. Frazier*, 143 Idaho 1, 2 (2006).

C. Evidence Of Ms. Stutheit's Subsequent Rape Claim Was Not Made Inadmissible Under Rule 412

Mr. Chambers asserts the district court acted outside the bounds of discretion by misapplying Rule 412, and the Idaho Rules of Evidence as a whole, to the proffered false rape allegation evidence. Specifically, the court erred by determining that in order to be admissible, the false allegation evidence must have occurred prior to the subject offense; failing to consider the effect the exclusion of the evidence would have on Mr. Chambers' constitutional rights to present a defense; concluding the evidence was overly prejudicial to the State; and failing to conduct a meaningful analysis to ensure the proffered evidence actually fell within the purview of Rule 412.

Generally, evidence of a victim's prior sexual behavior is inadmissible. *State v. Orrellana-Castro*, 158 Idaho 757, 763 (2015); *see also* I.R.E. 412. Evidentiary statutes related to victims of sexual offenses such as Idaho's, commonly referred to as "rape shield" laws, have

been enacted in order to “safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details and the infusion of sexual innuendo into the fact finding process. By affording victims protection in most instances, the rule also encourages victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders.” § 32:1.Introduction, 4 Wharton's Criminal Evidence § 32:1 (15th ed.) (fn., quoting the Advisory Committee Notes to the 1994 Amendment to Fed. R. Evid.412.)

Idaho’s law is based upon an analogous rationale. *See State v. Molen*, 148 Idaho 950, 954 (Ct. App. 2010). However, the exclusion of evidence concerning a victim’s sexual behavior is not without limits. *Id.* Pursuant to the plain language of Rule 412, evidence of an alleged victim’s past sexual behavior **may be admissible** under certain conditions. It states in part:

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, **unless such evidence** other than reputation or opinion evidence is-

(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of--

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which the sex crime is alleged; or

(C) false allegations of sex crimes made at an earlier time; or

(D) sexual behavior with parties other than the accused which occurred at the time of the event giving rise to the sex crime charged.

(c)(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is **relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible** in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term “past sexual behavior” means sexual behavior other than the sexual behavior with respect to which the sex crime is alleged.

I.R.E. 412 (emphasis added). Thus, it *may be* admissible after notice and hearing, when it is related to consent, the source of injury or semen, false allegations of sexual crimes, or sexual behavior with others occurring at the same time as the alleged offense. *Id.* When assessing whether to admit or exclude evidence under Rule 412, a court performs a two-part test, determining first whether the evidence is relevant, and if so, then determining whether its probative value outweighs the dangers of unfair prejudice. *State v. Meister*, 148 Idaho 236, 240 (2009). Mr. Chambers sought admission of the false claim of rape evidence under several subsections, including under Rule 412, and the court unreasonably denied his requests. He addresses Rule 412(b)(2) first.

1. The Evidence Related To Ms. Stutheit’s False Allegation Was Admissible Under Rule 412(b)(2)(C)

The proffered evidence related to Ms. Stutheit’s claim of rape against Mr. Chase made six months after the alleged rape with Mr. Chambers was not made inadmissible by Rule 412(b)(2)(C) because that subsection places no temporal limits requiring that the false allegation occur prior to the alleged offense. Subsection 412(b)(2)(C) refers to an alleged victim’s “false allegations of sex crimes made at an earlier time.” Here, the trial court misinterpreted and misapplied the law.

First, the court performed an unnecessary, confusing, and faulty analysis of the rule’s text, inferring temporal conditions which were not present. “Statutory interpretation begins with the statute’s plain language. . . . This Court considers the statute as a whole, and gives words their plain, usual, and ordinary meanings. . . . When the statute’s language is unambiguous, the

legislature's clearly expressed intent must be given effect, and we do not need to go beyond the statute's plain language to consider other rules of statutory construction." *State v. Owens*, 158 Idaho 1, 3 (2015) (citing *State v. Dunlap*, 155 Idaho 345, 361 (2013)). The plain language in Rule 412(b)(2)(C) is clear and unambiguous, but the court presupposed ambiguity.

The court's statements indicate it first determined the timing of the false allegations did not matter because it did not have anything to do with Mr. Chambers, but then appeared to conclude that when combining the phrases "past sexual behavior" and "false allegation made at an earlier time" together, the false allegation needed to have been made prior to the alleged crime in order to be admissible. ("Here, whenever it took place between the victim and this other person, occurred before and didn't have anything to do with the defendant in this case. And so the rule doesn't really allow it, the way I read the rule. When you're dealing with Federal Rules of Evidence, which are comparable to our rules, use that phrase, 'past sexual behavior,' and when it turns out that they were not made at an earlier time, they're not admissible.") (Tr., p.37, Ls.15-23.) Yet a plain reading of the rule indicates "made at an earlier time" does not conclusively mean the false allegation need to occur prior to the alleged crime.

The analysis should be restricted to the meaning of "false allegations of sex crimes made at an earlier time." The word, "earlier" has an everyday and ordinary meaning. "Early" means "near the beginning of a period of time, or beginning of a course, process or series; sooner than related forms. *See* <https://www.merriam-webster.com/dictionary/earlier> (last accessed June 12, 2018). "Earlier" is an adverb, modifying the noun "time," and is synonymous with ahead, before, formerly, previously. *Id.* The phrase falls under 412(b), dealing with the admission of evidence in a courtroom, and an earlier time is a time before the admission of the evidence. There is no further temporal limit contained within Rule 412 as a whole mandating that a false

allegation of sex crimes occur prior to the alleged offense. Moreover, there is no language therein causing syntactic ambiguity (uncertainty as a result of the arrangement of the words in the statute), or semantic ambiguity (uncertainty as a result of confusion between the meaning of a word). There are no dangling modifiers or restrictive modifiers, and there are no unclear subject pronouns (i.e. where the reader cannot discern if “he” refers to the plaintiff or the defendant). It is capable of only one interpretation, that “earlier” means “prior to admission of evidence.” Thus, the court improperly injected a temporal condition to the statute, and arrived at the wrong result.

Even assuming reference to other subsections within Rule 412 was instructive or necessary, such as when the district court analyzed “past sexual behavior” to determine the meaning of “made at an earlier time,” it leads to the same conclusion – that there is no temporal restriction that the proffered evidence occur prior to the alleged crime. Rule 412 defines “past sexual behavior” as only as behavior “other than the sexual behavior with respect to which the sex crime is alleged.” Ms. Stutheit’s sexual activity with Mr. Chase fell within this definition.² Even reference to the federal rules would lead to the same result, despite the differences in the law. Moreover, the court’s reference to the federal rules absent recognition of the changes between the two statutes further exemplifies its faulty analysis.

The court was accurate in noting no known Idaho case specifically deals with false allegations *made prior to trial but after the alleged crime*, but it appeared to rely upon the federal rules for guidance where such federal corollary did not actually aid the court. Idaho’s “rape

² Mr. Chambers acknowledges that any physical sexual contact Ms. Stutheit’s had with Mr. Chase consists of “sexual behavior,” but he preserves the argument below, *supra*, at C(3), that the conduct and facts surrounding Ms. Stutheit’s report of rape against Mr. Chase outside of sexual acts, such as her destruction of texts and photographs, her mental health, her motives, and her behavior that does not concern actual participation in a sexual act, is not “sexual behavior.”

shield” law is similar, but actually more expansive, than Federal Rule of Evidence 412 because it specifically delineates two grounds of possible admission of the alleged victim’s sexual behavior which are absent from the federal rule - false allegations of sex crimes as well as sexual behavior with others occurring at the same time as the subject incident. Rule 412(b)(2)(C)(D). Fed.R.Evid 412 does not.³ See also 4 Wharton’s Criminal Evidence § 32:14 (15th ed.) (opining that Idaho’s “rape shield” law is more expansive by including these additional bases, and by providing an alleged victim a right to be heard). Fed.R.Evid.412 does not even include a temporal limit such as “past” but rather contains the phrase “sexual behavior.” Therefore, comparison of the actual language of Fed.R.Evid 412 did nothing to assist the court.

Mr. Chambers’ interpretation, that “made at an earlier time” means prior to admission of the evidence, is corroborated by practical considerations, given that evidence related to credibility is used at trial. Mr. Chambers sought to introduce the proffered evidence as to Ms. Stutheit’s credibility when she testified at trial. Credibility has been described as follows:

Credibility depends on the witness’s willingness to tell the truth and his ability to do so. In turn, his ability to tell the truth as to an event of which he purports to possess personal knowledge is the product of his physical and mental capacity,

³ Fed. R. Evid. 412 states in part:

(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
- (2) evidence offered to prove a victim’s sexual predisposition.

(b) Exceptions.

(1) Criminal Cases. The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim’s sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim’s sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant’s constitutional rights.

actual employment of the capacity to perceive, record, and recollect, and his ability to narrate. Impeachment of a witness may be directed to one or more components of credibility. Thus the objective being pursued in any given situation may be to draw into question the accuracy of the witness's perception, recordation, recollection, narration, or sincerity.

§ 33. Introduction: Bolstering, impeachment, and rehabilitation, 1 McCormick On Evid. § 33 (7th ed.) (citations omitted). Evidence related to credibility that comes into existence after an alleged crime is still probative at trial because it is *during the trial (or other evidentiary hearing)* that credibility is assessed and the evidence weighed by the jury. During trial (or hearing) a witness' credibility may be attacked in various ways, depending upon the case – by showing the witness' untruthful character, describing untruthful acts, through contradictory or consistent statements, evidence of bias or motive to testify falsely, and even capacity to tell the truth. *See* IRE 404, 406, 601, 608, 609, 612, 613. For example, a witness' prior conviction may be offered to show whether his or her "character is such that he will be less likely to tell the truth than the average law-abiding citizen" and his or her "propensity to lie." 36 Am. Jur. Proof of Facts 2d 747 (Originally published in 1983) (footnotes omitted.); IRE 609.

Similarly, prior statements may be introduced into evidence and offered against or even in support of a witness despite the statements arose after the alleged event, i.e. deposition testimony or preliminary hearing testimony. *See State v. Richardson*, 156 Idaho 524 (2014) (holding preliminary hearing testimony of prosecution's witness who died before trial was admissible at trial.) There is no known general prohibition against using evidence obtained after a subject incident but before trial to attack credibility, and as illustrated, often the impeaching evidence is created after the subject incident.

As such, IRE 412(b)(2)(C) did not prohibit Mr. Chambers from introducing the proffered evidence simply because it occurred after the subject incident. Therefore, the district court erred

in excluding Ms. Stutheit's false allegations on the grounds they were not timely made prior to the alleged crime in this case.

2. Evidence Related To Ms. Stutheit's Claim Against Mr. Chase Was Admissible Under Rule 412(b)(1) And Constitutionally Required Pursuant To Mr. Chambers' Right To Present A Defense

Mr. Chambers' constitutional rights were violated when the district court excluded evidence regarding Ms. Stutheit's false allegations against Mr. Chase, particularly where the court failed to properly consider the relevance, weigh Ms. Stutheit's interests, weigh Mr. Chambers' interests, or even acknowledge Rule 412(b)(1). Per rule, evidence of an alleged victim's past sexual behavior other than reputation or opinion evidence is not barred if it is constitutionally required to be admitted. Rule 412(b)(1). The Sixth Amendment of the U.S. Constitution, through the Confrontation Clause, affords a defendant, including Mr. Chambers, the right to confront his accusers; this right is applicable to the states through the Due Process Clause of the Fourteenth Amendment. *Meledez-Diaz v Massachusetts*, 557 U.S. 305, 309 (2009); *State v. Shackelford*, 155 Idaho 454, 461 (2013). Cross examination "is critical for ensuring the integrity of the fact finding process" and "is the principal means by which the believability of a witness and the truth of his testimony are tested." *Kentucky v. Stincer*, 482 U.S. 730, 736 (1987); *Davis v. Alaska*, 415 U.S. 308, 316 (1974). The right is not absolute nor without limits, but "a defendant's right to confrontation may be violated if the trial court precludes an entire relevant area of cross-examination." *United States v. Lonedog*, 929 F.2d 568, 570 (10th Cir. 1991).

In determining whether exclusion of evidence violates a defendant's Sixth Amendment right to present a defense, Idaho appellate courts apply a two-part test. Since a defendant has no constitutional right to present irrelevant evidence, the court must determine whether the

proffered evidence is relevant. Next, the court must consider whether other legitimate interests outweigh a defendant's interest in presenting the proffered evidence. *State v. Ozuna*, 155 Idaho 697 (2013). This is akin to a Rule 403 analysis. This determination is based upon a case-by-case basis. *State v. Grist*, 147 Idaho 49 (2009). Here, the court performed a deficient analysis.

During its oral ruling, outside of the analysis as to "past sexual behavior" or "made at an earlier time," there is no actual analysis of relevance, much less the effect of the proffered evidence on Ms. Stutheit or Mr. Chambers. Instead, the court "balanced the relevance which Mr. Walsh has placed of record against the prejudice to the trial process here . . ." (Tr., p.38, Ls.14-16.) The court made a conclusory statement unsupported by facts or law, and through its exclusion of this evidence, Mr. Chambers' was prevented from vigorously challenging the credibility of the state's main witness in this "he-said, she-said" case, which gutted his defense.

Mr. Chambers maintains that the first part of the test, whether the proffered evidence was relevant, is clearly satisfied. The Idaho Rules of Evidence provide that "relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." IRE 401. Evidence which bears on a witness' credibility at trial is always relevant. *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *see also State v. Arledge*, 119 Idaho 584, 588 (Ct. App. 1991) ("whenever evidence is introduced for purposes of impeachment, it necessarily involves a witness' credibility, and credibility is always relevant"). Mr. Chambers' offer of proof included several details crucial to the trier of facts' assessment of Ms. Stutheit's credibility and determination of consent.

To summarize the false allegation evidence, Ms. Stutheit apparently had begun a relationship with Mr. Chase and at some point moved into his trailer. During the relationship,

they exchanged sexual texts and nude photographs. She had consensual sex with him on multiple occasions. On one occasion, she claimed he raped her and she reported it to police. Those facts were surprisingly similar to the charged offense against Mr. Chambers. Ms. Stutheit admitted having initial contact with the men who allegedly raped her, but claimed each man (on separate occasions) pushed her on the bed, pulled her clothing down, and forced himself upon her. In both situations, she destroyed evidence before calling the police by deleting her text messages and nude photographs. (R., pp.133-134.) In both cases, she revealed a history of mental health challenges, including admitting after the Chase incident that she had previously been diagnosed with schizophrenia. (R., p.134.) No arrests were made in that case. (R., p.137.). Mr. Chambers, like Mr. Chase, contended he was engaged in consensual sexual contact with Ms. Stutheit, which resulted after they exchanged consensual sexually suggestive and explicit texts and photographs.

These facts, combined with other inconsistent aspects of her account, including her admission during questioning that she was aware her younger sister had a history of making false rape allegations, and her admission to her probation officer of her desire to have a baby, and her possession of baby clothes, surely was related to her credibility. Moreover, evidence of false statements to police is “intimately connected to credibility” because it “tends to show a willingness to tell self-serving lies even when doing so is illegal.” *State v. Bergerud*, 155 Idaho 705, 712 (Ct. App. 2013) (holding district court erred by failing to recognize its discretion to permit cross-examination of a witness regarding the underlying facts of his misdemeanor conviction for lying to police). The proffered evidence may have provided insight into her bias, prejudice, capacity, or her motive, particularly given the common facts. In order to give meaning to the right to confront witnesses, the defendant must be permitted to do more than

merely ask whether a witness is biased, but must be allowed to show why the witness might be biased by presenting the facts necessary to allow the jurors to form inferences regarding the witness' impartiality." *State v. Araiza*, 124 Idaho 82 (1993). As such, the proffered evidence was highly relevant. Whether the full extent of those facts would have been admitted into evidence remained to be seen, but the district court prevented Mr. Chambers from bringing in any of it.

The second prong of the two-part test is determining whether the probative value of the proffered evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. IRE 403. In this case, the district court adopted the contrite "trial within a trial" theory advanced by the State, without even seriously debating the real effect of the potential evidence. It stated:

Even if they were admissible under Rule 412, the Court has read the report over that was submitted by the defense and applying Rule 403 finds that the relevance of that information, based upon the information that I've been presented in support of and in opposition of having a false accusation to be admissible, is far outweighed by considerations of confusion of the issues, unfair prejudice, in the sense that we have another possibility of another mini trial within the case, and it has the definite risk of misleading the jury as far as focusing on the charge against the defendant.

(Tr., p.38, Ls.2-13.) The court then went on to summarily conclude the prejudicial effect from "undue delay, confusion of the issues, and a waste of time that a trial within a trial would cause in the context of this case." (Tr., p.38, Ls.14-21.) The court stated it conducted a balancing, yet saying it is so does not make it so.

Absent from the court's comments is an actual Rule 412 analysis. That statute is intended to provide protection to a victim but here, there was no consideration of the dangers to Ms. Stutheit's reputation or how facts related to her consensual sexual relationship with

Mr. Chase (which allegedly later became nonconsensual) would have been particularly harmful to her given she was an adult and admitted engaging in sexual relations with men. Nor did the court's comments evidence an awareness that the proffered evidence actually included facts beyond a physical, sexual act, such as Ms. Stutheit's lying, her mental health and motives, or her commission of the crime of evidence destruction and its effects.

The case of *State v. MacDonald*, 131 Idaho 367 (Ct. App. 1998) illustrates an example where the court engaged in a more lengthy, in-depth Rule 403 analysis, unlike here. The reviewing court upheld the trial court's exclusion of the teenage victim's later-recanted rape allegations against her mother's husband and adoptive father because in order to explain the recanted allegations, the victim would have to testify regarding her impregnation and her foster home. Further, the victim's mother was allowed to testify regarding the victim's truthfulness. *Id.* 371. The prejudicial analysis was key in that case; although that court too, relied upon the phrase "trial within a trial," it fully fleshed potential harm and confusion to the jury, and supported its findings with specific detail, unlike here. *Id.* at 371-372.

While it may be proper for a court to exclude evidence after conducting a full analysis of the potential harm to the alleged victim versus the effect on a defendant's right to present a defense, it is improper to completely strip and gut a defendant's whole argument as the district court did here. *See State v. Downing*, 128 Idaho 149 (Ct. App. 1996) (upholding district court's exclusion of the alleged victim's prior false allegations against a judge, attorney, and defendant in custody dispute at age 6, based upon remoteness and lacking probative value, when the subject incident occurred when she was age 12 and before the court at age 15, since defendant was still able to present defense witnesses attacking alleged victim's credibility). *See also State v. Harshbarger*, 139 Idaho 287, 293 (Ct. App. 2003) (holding defendant was not denied of right to

present a defense despite alleged victim's prior allegations that she was abused at age four and six by her uncle and cousin, where victim was age ten at trial, and defendant was still permitted to solicit testimony regarding alleged victim's reputation for truthfulness. *Id.* at 290. But here, unlike the *McDonald*, *Downing*, and *Harshbarger* Court, the district court here made a conclusory statement unsupported by actual analysis or consideration as to how admission of the proffered evidence would actually affect Ms. Stutheit or Mr. Chambers' constitutional rights.

Had the district court conducted the full and proper analysis, it would have concluded Mr. Chambers was entitled to present a credibility defense. While Rule 403 provides six different grounds upon which evidence might be considered overly prejudicial, none of those factors rose to a level meriting exclusion. The first factor, the risk of unfair prejudice, was slim, because, as argued above, Mr. Chambers only sought to introduce evidence of a consensual adult sexual relationship where Ms. Stutheit destroyed evidence and then claimed rape. Likewise, there was no prejudice *to the State*, given its ethical and moral duty to seek truth and justice and pursue cases that it can prove beyond a reasonable doubt rather than cases based upon lies and untruths. The remaining justifications for exclusion, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence, are likewise unsupported.

Had the district court permitted Mr. Chambers to bring in the proffered evidence, he may have called a few additional witnesses. Given the potential maximum sentence – that upon conviction for rape, Mr. Chambers might have to serve the rest of his entire life in prison, a few hours or even days of trial seems a *de minimis* burden on the court. Even if the court was reluctant to allow multiple witnesses, Mr. Chambers should have been allowed to conduct a vigorous cross-examination of Ms. Stutheit pursuant to his right of confrontation. This cross-

examination might have taken merely hours. Nor was the proffered evidence cumulative because it concerned a separate man and a separate date. It is highly unlikely a jury would become confused if they were presented evidence of Ms. Stutheit entering into a consensual relationship with another man, Mr. Chase, at a different time, at a different place, where she likewise sent solicitous text messages and nude photographs. The electronic media would presumably bear a different time and date and Mr. Chase could testify to the same. None of these risks substantially outweighed the probative value of confronting Ms. Stutheit about her motivation to report a rape where she admittedly had contact with Mr. Chambers, sent him sexual text messages, told him she wanted to have sex with him, asked her care provider to bring her over to his house at 1:00 a.m., destroyed evidence on her phone, and then reported a rape, where she then acted in a similar fashion with a completely different man.

While the Confrontation Clause does not guarantee effective cross-examination, it does guarantee *the opportunity* for effective cross-examination. *Delaware v. Van Arsdall*, 475 U.S. 673 (1986) (finding violation of defendant's confrontation rights by exclusion of evidence related to state's dismissal of charges against its witness, where the jury might have found the dismissal related to witness' motive). Similar to the defendant in *Van Arsdall*, Mr. Chambers was denied all inquiry related to Ms. Stutheit's claims against Mr. Chase, and it was clear error. Likewise, in *Davis v. Alaska*, the defendant sought to introduce evidence of juvenile probation status for burglary against a state witness who identified the defendant in a grand theft case because the witness' history was relevant to show possible motive for misidentifying the defendant – to shift suspicion away from himself and avoid probation revocation. The Supreme Court held that the state trial court had violated the defendant's right to confrontation by precluding the defendant's desired cross-examination. *Id.* at 311. The Ninth Circuit reached a

similar conclusion in *LaJoie v. Thompson*, 217 F.3d 663 (9th Cir. 2000), concluding trial court error in excluding evidence of the alleged victim's prior sexual abuse by others, because the excluded evidence could have provided the jury with a plausible alternative explanation for the child victim's familiarity with sexual acts. Idaho courts have followed this lead. *See also State v. Meister*, 148 Idaho 236 (2009) (holding trial court applied the wrong standard for the admission of alternate perpetrator evidence who made a confession, preventing defendant from calling the proffered alternate perpetrator or any witnesses to impeach the same, and denied him the opportunity to provide a "full and complete defense," warranting reversal); *State v. Ruiz*, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010) (vacating conviction based upon trial court's error in excluding relevance regarding leniency extended to prosecution witness because it bore directly on witness' credibility, where the district court failed to conduct a proper balancing of interests as required by IRE 403); *State v. Parker*, 112 Idaho 1, 5, 730 P.2d 921, 925 (1986) (reversing conviction due to trial court's error in excluding evidence of victim's admission of her belief she was pregnant because it related to consent.)

In this case, the district court conclusively determined all of the proffered evidence apparently fell within the confines of Rule 412(b)(2)(C), without actually considering the evidence related to non-sexual contact. This was a failure to apply the Idaho Rules of Evidence in general, including Rule 401, 402, and even 404. Several alternatives were available to the court, including sanitizing the conduct with Mr. Chase to its bare bones; for instance, permitting the jury to hear Ms. Stutheit made an allegation that was disputed, where police determined there was insufficient probable cause for arrest. Yet, the district court failed to even recognize the distinction. As such, Mr. Chambers' conviction should be vacated due to the district court's denial of his right to present a defense.

D. Ms. Stutheit's False Claims Of Rape Against Mr. Chase Did Not Consist Of Sexual Conduct Subject To Rule 412

Beyond a Rule 412 analysis, Mr. Chambers asserts the district court erred in excluding his proffered evidence of Ms. Stutheit's 911 report to the police and the facts attendant to the claim because it is not type of evidence that falls within Rule 412. Arguably, Ms. Stutheit's act of reporting a rape which did not occur, i.e., making statements to a 911 operator or law enforcement operator, is not actually "past sexual behavior," because the actual offending behavior is lying to police, and creating a made-up story about what occurred. In addition, there were other facts relevant to credibility that did not concern sexual contact which the court failed to consider: Ms. Stutheit was familiar with false rape claims through her sister, had a history of mental health issues, including potential instability (Mr. Chase relayed Ms. Stutheit told him she was seeking custody of her daughter, but did not have a daughter), and committed her own crimes (false statements and destruction of evidence) all of which could have assisted the jury.

Several jurisdictions have determined that false accusations do not fall within the purview of its rape shield law. *See State v. LeClair*, 1986, 83 Or.App. 121, 730 P.2d 609 (1986), review denied 303 Or. 74, 734 P.2d 354 ("Evidence of previous *false accusations* by an alleged victim is not evidence of *past sexual behavior* within the meaning of the Rape Shield Law and, therefore, is not inadmissible under OEC 412 [Oregon Evidence Code 412]. *See Cox v. State*, 51 Md.App. 271, 281 (1982); *see also Com. v. Bohannon*, 376 Mass. 90, 95 (1978); *State v. Baron*, 58 N.C.App. 150, 153, 292 S.E.2d 741 (1982)."); *see also State v. Martin*, 1999 UT 72, ¶ 16, 984 P.2d 975 (1999) ("Nothing in Rule 412 would exclude evidence of an alleged rape victim's previous false allegations of rape. Evidence of a false accusation would be relevant to Egan's credibility. The refusal of the trial court to allow Martin the opportunity to uncover such evidence was error. It was not harmless error because such strong impeachment evidence would

go to the central issue of the case—which of the two parties to believe about the circumstances of this sexual contact. We therefore remand.”). The finding that false allegations do not constitute sexual behavior is consistent with holdings of decisions in several other different jurisdictions, as was summarized in 2003 by a New Jersey court. *State v. Bray*, 356 N.J. Super. 485, 494–95, 813 A.2d 571, 577–78 (App. Div. 2003)⁴ See also *State v. Thompson*, 139 N.C.

⁴The *Bray* Court went on to summarize the holdings in Arkansas, Georgia, Hawaii, Indiana, Louisiana, Nevada, North Carolina, Utah, West Virginia, Colorado, and Montana. “Moreover, we are persuaded by the overwhelming weight of authority in other jurisdictions that prior false allegations of sexual abuse made by the victim cannot be classified as “previous sexual conduct” under our Rape Shield Law, and now so rule. See, e.g., *Booker v. State*, 334 Ark. 434, 976 S.W.2d 918, 919 (1998) (prior false allegations by victim of sexual conduct is not evidence of “prior sexual conduct” that is excluded by the rape shield statute but instead is evidence of prior misconduct of the alleged victim that has a direct bearing upon the alleged victim’s credibility); *Smith v. State*, 259 Ga. 135, 377 S.E.2d 158, 160 (1989) (evidence of previous false allegations of sexual abuse by the victim does not fall within the proscription of the rape-shield laws); *State v. West*, 95 Hawai‘i 452, 24 P.3d 648, 654 (2001) (false allegations of unrelated sexual assaults are not excluded by the rape shield statute); *State v. Walton*, 715 N.E.2d 824, 826 (Ind.1999) (evidence of prior false accusations of rape made by a complaining witness does not constitute “prior sexual conduct” for rape shield purposes); *State v. Smith*, 743 So.2d 199, 202–03 (La.1999) (prior false allegations concerning sexual behavior do not constitute “past sexual behavior” under the rape shield laws and are admissible for impeachment purposes); *Miller v. State*, 105 Nev. 497, 779 P.2d 87, 89 (1989) (prior false allegations of sexual abuse or sexual assault by complaining witnesses do not constitute “previous sexual conduct” for rape shield purposes); *State v. Thompson*, 139 N.C.App. 299, 533 S.E.2d 834, 841 (2000) (the rape shield statute is only concerned with the sexual activity of the complainant, and its rule of exclusion is inapplicable to false accusations); *State v. Martin*, 984 P.2d 975, 979 (Ut.1999) (rape shield statute does not exclude evidence of alleged rape victim’s previous false allegations of rape); and *State v. Quinn*, 200 W.Va. 432, 490 S.E.2d 34, 40 (1997) (when trial court finds a strong probability that the victim has made prior false accusations of sexual misconduct, evidence relating to those statements may be considered outside the scope of the rape shield law), *cert. denied*, *Quinn v. West Virginia*, 522 U.S. 1004, 118 S.Ct. 577, 139 L.Ed.2d 416 (1997). Where the trial court is satisfied that the victim has made allegations of sexual misconduct by others in the past that are probably false, the evidential preclusions of the Rape Shield Law are inapplicable, since “false allegations” cannot constitute “previous sexual conduct” as defined in *N.J.S.A. 2C:14–7f*. We also conclude that the “preponderance of evidence” standard of proof governs a defendant’s attempt to establish the probable falsity of the victim’s prior allegation. See *People v. Wallen*, 996 P.2d 182, 185 (Colo. App. 1999); *State v. District Court*, 277 Mont. 349, 922 P.2d 474, 479 (1996); *Miller v. State*, 105 Nev. 497, 779 P.2d 87, 90 (1989).” *Id.* at 494.

App. 299, 309 (2000) (“The rape shield statute, codified in Rule 412 of our Rules of Evidence, is only concerned with the *sexual activity* of the complainant (cite). Accordingly, the rule only excludes evidence of the actual sexual history of the complainant; it does not apply to false accusations (cite) or to language or conversations whose topic might be sexual behavior, Furthermore, the sexual activity contemplated by the rule is that activity of the victim “other than the sexual act which is at issue in the indictment on trial.” *Id.*

Here, the district court did not recognize the proffered evidence did not include past sexual behavior, or even that it was not all past sexual behavior. This failure was error.

CONCLUSION

Based upon the foregoing, Mr. Chambers requests this court vacate his conviction for battery with intent to commit a serious felony and remand this case back to the district court with instructions to admit evidence related to Ms. Stutheit’s false allegation of rape against Mr. Chase.

DATED this 23rd day of July, 2018.

/s/ Lara E. Anderson
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

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/s/ Evan A. Smith
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LEA/eas