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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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

\_\_\_\_\_  
**REPLY 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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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	2
ARGUMENT .....	3
The District Court Erred By Excluding Evidence Related To N.S.'s Subsequent Claim Of Rape Against Mr. Chase .....	3
A. Mr. Chambers Preserved This Issue For Appeal .....	3
B. The District Court Erred By Inserting A Temporal Requirement In Rule 412(b)(2)(C) .....	8
CONCLUSION .....	11
CERTIFICATE OF SERVICE .....	12

**TABLE OF AUTHORITIES**

Cases

*Ada County Highway Dist. v. Brooke View, Inc.*, 162 Idaho 138 (2017) .....6

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

*State v. Armstrong*, 158 Idaho 364 (Ct. App. 2015) .....3

*State v. Briggs*, 162 Idaho 736 (Ct. App. 2017) .....6, 7

*State v. Garcia-Rodriguez*, 162 Idaho 271 (2017).....6

*State v. Hoskins*, No. 45134, 2018 WL 4169337 (Idaho Ct. App. Aug. 31, 2018) .....6

*State v. Jackson*, 151 Idaho 376 (Ct. App. 2017) .....6

*State v. Jones*, 151 Idaho 943 (Ct. App. 2011).....10

*State v. Molen*, 148 Idaho 950 (Ct. App. 2010).....9

*State v. Montgomery*, 163 Idaho 40 (2017).....9

*State v. Norton*, 134 Idaho 875 (Ct. App. 2000).....6

*State v. Schwartz*, 139 Idaho 360 (2003).....8

Rules

I.C.R. 2(a).....8

I.R.E. 403.....4, 11

I.R.E. 404.....4, 5, 7

I.R.R. 412 .....*passim*

Additional Authorities

Advisory Committee Notes to the 1994 Amendment to Fed. R. Evid.412.....9

<https://www.merriam-webster.com/dictionary/earlier> .....9

Introduction, 4 Wharton's Criminal Evidence § 32:1 (15th ed.) .....9

## STATEMENT OF THE CASE

### Nature of the Case

Pursuant to a plea agreement, Steven Chambers entered a conditional *Alford*<sup>1</sup> plea to battery with intent to commit a serious felony, reserving the right to appeal the district court's decision regarding evidence related to the complaining witness' subsequent false allegation of rape against another male.<sup>2</sup> The district court imposed a unified sentence of ten years, with two years fixed, and placed Mr. Chambers on supervised probation for three years. Mr. Chambers appealed, asserting the district court erred by excluding this evidence.

In its Respondent's Brief, the State contends Mr. Chambers failed to preserve arguments related to his constitutional right to present a defense and Idaho Rule of Evidence 412 ("IRE" or "Rule"). Mr. Chambers files this Reply Brief to address the State's argument regarding preservation of issues, and provide additional clarification regarding Rule 412.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Chamber's Appellant's Brief. They are incorporated herein by reference thereto.

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

<sup>2</sup>Mr. Chambers' oral and written motion, which included a several-page police report of the subsequent incident between Mr. Chase and the complaining witness in this case, N.S., incorporated a request to introduce not only evidence of a false allegation of rape made against Mr. Chase, but also N.S.'s destruction of evidence, N.S.'s report to the police, the circumstances surrounding her relationship with Mr. Chase, and other corroborating evidence. Therefore, while Mr. Chambers may refer to this evidence collectively hereafter as "evidence related to N.S.'s false allegation" for brevity sake, Mr. Chambers preserves, and in no way restricts, his motion to admit this broad-based evidence.

ISSUE

Did the district court err by excluding evidence related to N.S.'s subsequent claim of rape against Mr. Chase?

## ARGUMENT

### The District Court Erred By Excluding Evidence Related To N.S.'s Subsequent Claim Of Rape Against Mr. Chase

#### A. Mr. Chambers Preserved This Issue For Appeal

The State asserts Mr. Chambers did not fully preserve his argument for appeal because he failed to argue in the district court that exclusion of the evidence would violate his constitutional rights or that the proffered evidence did not fall under the purview of Rule 412. (Resp. Br., p.5.) “Appellate court review is limited to the evidence, theories, and arguments that were presented below. Issues not raised below generally may not be considered for the first time on appeal.” *State v. Armstrong*, 158 Idaho 364, 367 (Ct. App. 2015) (citations omitted). The appellant “cannot argue more grounds for that challenge [to a search] than were argued before the district court.” *Id.* Mr. Chambers did in fact properly preserve his arguments, as his written pleadings and oral arguments adequately incorporated the substantive arguments he raised on appeal.

On May 9, 2017, Mr. Chambers filed a Motion to Allow Specific Instances of the Alleged Victim’s Past Sexual Behavior pursuant to Rule 412. (R., p.129.) In that motion, Mr. Chambers moved for an order “allowing specific instances of the complaining witness’s past sexual behavior to be admitted at trial pursuant to I.R.E. 412,” specifically referring to the information contained in Coeur d’Alene police report 16C39767. (R., p.129.) Mr. Chambers attached the police report as an exhibit, which described N.S.’s false claim of rape against Mr. Chase, N.S.’s report to the police, her destruction of evidence prior to that notification, and corroborating evidence demonstrating that her claim was false. (R., pp.131-143.) In response, the State filed a motion to exclude pursuant to IRE 412(b)(2)(C), and supported that motion with a memorandum contending that evidence of a false allegation of a sex crime is controlled by IRE

412(b)(2)(C), and that a trial court's determination as to admission should be subjected to a Rule 403 analysis. (R., pp.148-152.) These written arguments were augmented at the hearing on the motion.

During the hearing, the State's argument was confined to the following: "basically, I think you're gonna have an issue here with unfair prejudice. And if the Court isn't satisfied by that factor, I think the issue that's – this factor, if it's allowed at trial, could create just a mess. Basically confusing the issues. Another 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.) Conversely, Mr. Chambers argued generally that the evidence was relevant and admissible under Rules 412 and Rule 404, and that admission of such evidence was necessary for him to present a defense and effectively confront and cross-examine his accuser. Counsel stated:

Thank you, your Honor. Well, I agree with Mr. Verharen that his brief is fairly self-explanatory. One of the problems, though, that I wanted to point out is that the relevance of the items described in the police report is not for impeachment.<sup>3</sup>

You know, as you look at 412, just the rule standing on its own, it lists a specific category of prior false accusations of sex offenses. Now, the reason for that make a lot of sense. It's kind of a specialized 404(a) or 404(b). A person who would do that, it's such – it's 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.

This is a case where everything in is in dispute. You know the State lists that there was a confession but we're stating it is a false confession. . . . so when you go to relevance, when you have 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, it's very relevant. It's highly relevant.

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<sup>3</sup> Although the transcript reads here that counsel stated the evidence was *not* for impeachment, Mr. Chambers submits this may be an inadvertent misstatement, as counsel's argument as a whole, indicates he did actually argue relevance under credibility and impeachment grounds.

With respect to the assertion that this happened after the alleged offense and therefore it doesn't fall into the category of the earlier offenses, I want to point the Court to 412(d) and I'll read that into the record . . .

Now, as you look at that term, it doesn't denote – you know it could have said, “prior to the offense conduct in question, the alleged offense conduct,” but that's not really how this rule is meant to be read. The rule is meant to be read as we stand here today, as we stand before a jury. This is prior conduct that certainly bears on whether or not she's made a prior false allegation.

. . . it's highly, highly, highly relevant. **I think that it also invokes the defendant's constitutional right to present a defense and to confront witnesses against him.**

Finally, Your Honor, there's nothing in 412 that forbids this evidence. Instead it has a specific category for this evidence to be allowed which is a prior false allegation. To that – and we have officers who could be called who would testify as to the nature of the allegations, the fact that in that case, like this case, she deleted these texts which, you know, is a crime. It's destruction of evidence in a criminal case.

(Tr., p.33, L.14 – p.36, L.7.) (emphasis added.) By virtue of his language and argument, Mr. Chambers' counsel sought admission of not only the false allegation N.S. made against Mr. Chase, but that she also sent nude photos and texts, that she destroyed this evidence prior to calling the police, that this evidence was relevant to consent and impeachment and to show a common plan or scheme due to the similarities between her report against Mr. Chambers, that the rule is meant to be read temporally as to the time of trial as opposed to the past, that N.S. has a habit of making false allegations, and that there are other witnesses who could corroborate that the relationship with Mr. Chase was consensual.

Lastly, Mr. Chambers argued exclusion would violate his constitutional rights. Thus, Mr. Chambers sufficiently raised the substantive issue of admission under Rules 404 and 412, as well as his Sixth and Fourteenth Amendments rights. The State posits Mr. Chambers waived these issues yet fails to acknowledge the clear language advanced in the oral and written motion. In his Appellant's Brief, Mr. Chambers merely provided additional legal support and argument

for these substantive arguments, which is permitted upon review. Meanwhile, the cases cited by the State do not support its argument.

In *State v. Norton*, 134 Idaho 875, 880, 11 P.3d 494, 499 (Ct. App. 2000), the defendant's trial court theory against admissibility was the "best evidence" rule whereas on appeal, he argued lack of foundation. Mr. Chambers situation is dissimilar because he did not raise a completely new argument like in *Norton*. In *State v. Garcia-Rodriguez*, 162 Idaho 271 (2017), the State attempted to justify for the first time on appeal that defendant's detention was lawful under the 4<sup>th</sup> Amendment even though the State never asserted this in district court. The Idaho Supreme court rejected the State's last-ditch effort to justify the constitutional violation. *Id.* at 275. In *State v. Hoskins*, No. 45134, 2018 WL 4169337, at \*2-3 (Idaho Ct. App. Aug. 31, 2018), *review denied* (Oct. 3, 2018), the State once again unsuccessfully attempted to justify the warrantless search and seizure based upon an exception to the warrant requirement raised for the first time on appeal. "Because the State did not assert the plain view theory to the district court as an alternative basis for denying Hoskins' motion to suppress, we will not address it for the first time on appeal." *Id.* See also *Ada County Highway Dist. v. Brooke View, Inc.*, 162 Idaho 138, 142 n.2 (2017) (explaining that arguments in support of a position on a substantive issue may evolve on appeal so long as the "substantive issue" was raised below, and therefore ACHD's arguments citing to statutory provisions which had not been referenced below were properly made on appeal). Mr. Chambers did not raise for the first time on appeal a completely new theory like the aforementioned defendants.

The State's reliance upon *State v. Briggs*, 162 Idaho 736 (Ct. App. 2017), *review denied* (Nov. 15, 2017), and *State v. Jackson*, 151 Idaho 376 (Ct. App. 2017), is equally unsound because those cases are procedurally distinct. In *Briggs*, counsel moved in limine to admit the

sexual history of the victims to show they were sexually involved with individuals other than the defendant, and that they accused Briggs to protect the actual perpetrators. Briggs apparently did not brief the issue ahead of time, and initially argued at the hearing that such evidence was relevant to motive and credibility. *Id.* at 738. When asked during the hearing whether Rule 412 applied, Briggs argued that it would fall under Rule 412(b)(2)(D), relating to “sexual behavior with parties other than the accused which occurred at the time of the event giving rise to the sex crime charged.” *Id.* The trial court excluded the evidence on the grounds that consent was not an issue in the case, and therefore allegations about sexual contact between the victims and others was not relevant. Briggs failed to assert a constitutional right to present the evidence in question or cross-examine the victims on the matter, or specify any different or additional bases under Rule 412 to admit the evidence. *Id.* (“At no point did Briggs articulate that he had a constitutional right to present the evidence in question, cross-examine the victims on the matter, or specify any different or additional bases under I.R.E. 412 to admit the evidence.”) Therefore, when Briggs expanded his argument on appeal to encompass the Sixth Amendment or Rule 412(b)(1), the reviewing court rejected his claims because his trial court claim was narrowly construed as a statutory basis under Rule 412(b)(2)(D) as opposed to a constitutional basis. *Id.* at 739.

In Mr. Chambers’ in limine hearing, unlike Briggs’ counsel, Mr. Chambers’ counsel *did* raise a Sixth Amendment constitutional basis for admission and several statutory and rule-based reasons, i.e., Rule 412 generally, Rule 412(b)(2)(D) specifically, and Rule 404(b). Since Mr. Chambers raised both constitutional and statutory grounds for admission, unlike Briggs and the defendant in *Jackson*, any comparison to this line of cases is flawed due to the procedural distinctions. Arguments for admission or exclusion of evidence are not mutually exclusive to

statutory bases or constitutionally bases. Mr. Chambers raised both of these grounds and the State's contention should be flatly rejected.

B. The District Court Erred By Inserting A Temporal Requirement In Rule 412(b)(2)(C)

The State's second contention is that Rule 412(b)(2)(C) contains a temporal requirement which properly resulted in the exclusion of the evidence related to N.S.'s claim against Mr. Chase. The crux of the State's argument is that the rule is ambiguous because "earlier time" is capable of two interpretations, and the only interpretation that gives proper meaning is one which interprets "earlier time" to mean prior to the charged crime. (Resp. Br., pp.11-12.) Mr. Chambers contends that Rule 412(b)(2)(C) is not ambiguous, and is capable of proper and logical interpretation on its face, rendering further analysis unnecessary; further, that the district court abused its discretion through its erroneous interpretation and application.

Statutory interpretation always begins with the literal words of the statute. The words are given their plain, usual and ordinary meaning, the statute is construed as a whole, and if the statute is not ambiguous, a court does not construe the statute but rather and simply follows the law, *State v. Schwartz*, 139 Idaho 360, 362 (2003) (citations omitted). Here, however, since the district court was interpreting a court rule, a slightly modified standard applies:

We are not constrained by the constitutional separation of powers when interpreting rules promulgated by the Court. Today we make it clear that while the interpretation of a court rule must always begin with the plain, ordinary meaning of the rule's language it may be tempered by the rule's purpose. We will not interpret a rule in a way that would produce an absurd result. Instead, in keeping with the Idaho Criminal Rules' aim of "provid[ing] for the just determination of every criminal proceeding." I.C.R. 2(a), we construe the rules "to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay." *Id.*

*State v. Montgomery*, 163 Idaho 40, 44 (2017). Had the district court applied this standard, it would not have determined the false allegation had to occur prior to the conduct involving Mr. Chambers in order to be admissible.

As asserted in Mr. Chambers' Appellant's Brief, 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.* A false allegation made at an earlier time means a false allegation made prior to the present, or in the context of this motion, prior to the motion hearing. There is no other language within the section as a whole which places a restriction as to when the false allegation must have been made in order to be admissible against a complaining witness. See IRE 412, generally. There was no occasion for the district court to insert language or meaning into an already clear statute. Even assuming the district court took into consideration the purpose behind Rule 412, it would have determined admission was proper.

As argued in Appellant's Brief, the purpose behind rape shield law is to provide privacy protections to alleged victims and encourage them to participate in the legal process. See § 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.); *State v. Molen*, 148 Idaho 950, 954 (Ct. App. 2010). Applied in this context, the false claim of rape and conduct engaged in by N.S. with Mr. Chase proffered by Mr. Chambers relates to her credibility, and there is no real risk that a jury, upon hearing the same, is going to engage in sexual stereotyping of N.S. given the conduct relates to a relationship with one man. Common sense also dictates that a false claim

of rape, on its face, is relevant to credibility. There is no known Rule 412 purpose or overriding policy rationale to suggest that credibility concerns of the star witness become at some point irrelevant in the context of criminal guilt or innocence, and interpretation of Rule 412 under Mr. Chambers does not lead to an absurd result.

The State makes a new argument on appeal that Rule 412 was recently amended, effective July 1, 2018, and that such amendment provides support under an ambiguous rule theory to clarify the drafters' intent and supply a more precise meaning, where "false allegations of sex crimes made at an earlier time" became with the 2018 amendment "an alleged victim's prior false allegations of sex crimes made at an earlier time." (Resp. Br., p.12.) Yet the word "prior" before "false allegation" does not add a temporal requirement as to when the false allegation must have occurred, other than prior to trial. And any benefit should be afforded to Mr. Chambers, rather than the State. *See State v. Jones*, 151 Idaho 943, 947, 265 P.3d 1155, 1159 (Ct. App. 2011) ("The rule of lenity requires that ambiguous criminal statutes should be read narrowly and be construed in favor of the defendant.")

Lastly, the district court decision was based upon a different and faulty reason, and reference to non-instructive subsections within IRE 412 and Federal Rules of Evidence 412. (Tr., p.36, L.15 – p. 38, L.21.) Specifically, the court indicated that it searched for Idaho appellate cases defining "past sexual behavior" but did not likewise indicate it searched for "false allegations made at an earlier time." The district court also discussed consideration of the federal rules' definition of "past sexual behavior," yet the federal rule does not contain the phrase "past sexual behavior" to enable a comparison. (Tr., p.37, Ls.6-14.) It is unclear how reference to FRE 412 could be instructive.<sup>4</sup> Further, the trial court failed to conduct a proper weighing under

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<sup>4</sup> Federal Rule of Evidence 412 states in pertinent part:

Rule 403, by contemplating the effect of exclusion on Mr. Chambers' constitutional rights, including those of confrontation, cross-examination, presentation of a defense and due process and a fair hearing. (Tr., p.37, L.15 – p.38, L.21.) As such, the district court abused its discretion by failing to apply the applicable legal standard, and unreasonably omitting any analysis regarding defendant's interests and right to present a defense.

### CONCLUSION

Based upon the foregoing, Mr. Chambers requests this Court to vacate the district court's order excluding the evidence related to N.S.'s false claims of rape against Mr. Chase, and remand the case to the district court with instructions to admit the proffered evidence.

DATED this 10<sup>th</sup> day of December, 2018.

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

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(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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of December, 2018, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
\_\_\_\_\_  
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LEA/eas