

# EVIDENCE

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## What Role Does the Defendant's Constitutional Right to Present a Complete Defense Play in the Trial Court's Decision Whether to Admit Evidence Proffered by the Defense?

### Important Decisions of the United States Supreme Court:

*Holmes v. South Carolina*, 547 U.S. \_\_\_ (2006): Defendant's right to present a complete defense was violated by application of novel evidence rule, which required the exclusion of defense-proffered evidence of a third-party's guilt "where there is strong evidence of [the defendant's own] guilt." Courts long have excluded evidence of a third-party's guilt where the evidence itself is speculative or remote. But South Carolina's courts modified this rule unacceptably when they shifted the focus of the inquiry to the strength of the *state's* evidence. Courts legitimately may exclude evidence of a third-party's guilt on the ground that it lacks probative value; they may not exclude it on the ground that "there is strong evidence of [the defendant's] guilt."

*United States v. Scheffer*, 523 U.S. 303 (1998): Defendant's right to present a complete defense was *not* violated by a rule excluding all polygraph evidence. In upholding the wholesale exclusion of polygraph evidence, the Court said that the rule "serve[d] several legitimate interests in the criminal trial process" and was "neither arbitrary nor disproportionate in promoting these ends."

*Taylor v. Illinois*, 484 U.S. 400 (1988): Exclusion of witness as sanction for defense counsel's violation of pre-trial discovery order did not amount to a violation of the defendant's right to present a defense, where "the discovery violation was both willful and blatant" and where the record indicated that defense counsel had withheld the witness's identity in order to obtain a tactical advantage. The interests underlying a defendant's right to present a defense must be balanced against countervailing public interests, including "[t]he integrity of the trial process, which depends both on the production of reliable evidence and the rejection of unreliable evidence, the interest in the fair and efficient administration of justice, and the potential prejudice to the truth-determining function of the trial process." Moreover, where rules of general applicability are at issue, this balancing occurs at the categorical level, rather than at a case-specific level: "Evidentiary rules which apply to categories of inadmissible evidence – ranging from hearsay to the fruits of illegal searches – may properly be enforced even though the particular testimony being offered is not prejudicial." Accordingly, "[t]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence."

*Crane v. Kentucky*, 476 U.S. 683 (1986): Defendant's right to present a complete defense was violated by rule that barred defendant from attempting to show that his confession was obtained under circumstances that made it unreliable. The Supreme Court said, in invalidating this rule, that neither the prosecution nor the state courts had "advanced any rational justification for the wholesale exclusion of this body of potentially exculpatory evidence."

*Chambers v. Mississippi*, 410 U.S. 284 (1973): Defendant's right to present a complete defense was violated (1) by Mississippi's "voucher rule," which barred parties from impeaching their own witnesses; (2) by trial court's exclusion of proffered testimony of three witnesses that third person had confessed to committing the murder with which the defendant was charged. In striking down the voucher rule, the Court relied in part on the fact that the prosecution had not even attempted to explain the underlying rationale of the rule. In concluding that the defendant had a right to present the hearsay accounts of the other suspect's confession, the Court said "the hearsay rule may not be applied mechanistically to defeat the ends of justice."

*Washington v. Texas*, 388 U.S. 14 (1967): Defendant's right to present a complete defense was violated by Texas statute that barred a person who had been charged as a participant in a crime from testifying in defense of another alleged participant unless the witness had been acquitted. The Court held that this rule did not serve any legitimate state interest: the rule could not "even be defended on the ground that it rationally sets apart a group of persons who are particularly likely to commit perjury." It was in this case that the Court held that the Compulsory Process Clause of the Sixth Amendment protects the defendant's right "to put his witnesses on the stand" in addition to protecting his "right to compel their attendance in court."

#### Important Decisions of the Wyoming Supreme Court:

*Moe v. State*, 2005 WY 58, 110 P.3d 1206 (Wyo. 2005): Defendant's right to present a complete defense was not violated by exclusion of hearsay evidence proffered by defense counsel. At his trial on a charge of indecent liberties, defendant attempted unsuccessfully to introduce out-of-court statement by his roommate, who was unavailable to testify; roommate reportedly had told witness that the victim "had led [the defendant] by the hand into the bedroom." On appeal, the defendant argued that "denying admission of an eyewitness's statements that contradicted [the victim's] description that [the defendant] had coerced her and forced her into a bedroom and that were not available by any other means to show her consent prejudicially denied him his constitutional right to present a defense." The court rejected this argument, saying simply that the roommate's out-of-court statement lacked the sort of circumstantial guarantees of trustworthiness that would bring it within the "residual" exception to the hearsay rule.

*Person v. State*, 2004 WY 149, 100 P.3d 1270 (Wyo. 2004): In trial for indecent liberties, trial court did not violate defendant's right to present a complete defense by excluding, as irrelevant, testimony that the minor victim "was often intimidated by his father and that he might be motivated to lie about the molestation incident because of

that.” Despite defendant’s insistence on appeal that this ruling “took the heart out of his defense that [the victim] was lying,” the Wyoming Supreme Court held that evidence was properly excluded as irrelevant given the absence of any other evidence suggesting that the victim had fabricated the claim of molestation.

*In the Interest of K.C.*, 2004 WY 74, 92 P.3d 805 (Wyo. 2004): Exclusion of testimony of two defense witnesses as sanction for witnesses’ violation of court’s ambiguous sequestration order amounted to a violation of defendant’s right to present a complete defense, where defendant had “played no part in the violation of the court’s order” and where case had been tried to a judge. Countervailing public interest advanced by sequestration rules is of little importance in a case that is tried to judge, given judge’s “experience in assessing the credibility of witnesses and weighing evidence.”

*Dysthe v. State*, 2003 WY 20, 63 P.3d 875 (Wyo. 2003): Exclusion of testimony of defense witnesses as sanction for defense counsel’s failure to meet deadline for identification of prospective witnesses amounted to violation of defendant’s right to present a complete defense. The witnesses were two drug-court employees, who would have testified that a prosecution witness had received favorable treatment from the prosecution in exchange for his testimony. Court said that, although a defendant’s right to present a defense does not “automatically and invariably outweigh countervailing public interests,” in this case the trial court had not conducted an adequate balancing of the defendant’s interests and the public interests.

*Lawson v. State*, 994 P.2d 943 (Wyo. 2000): Exclusion of testimony of alibi witness as a sanction for failure to serve timely notice of alibi witness amounted to a violation of defendant’s right to present a defense, where “the district court did not consider any factor other than the defense’s failure to comply with the rule’s time requirements.” Before excluding evidence, district court should have considered as well such factors as the “integrity of the adversary process, which depends both on the presentation of reliable evidence and the rejection of unreliable evidence, the interest in the fair and efficient administration of justice, and the potential prejudice to the truth-determining function of the trial process.”

*Towner v. State*, 685 P.2d 45 (Wyo. 1984): Exclusion of testimony as sanction for witnesses’ violation of court’s sequestration order violated defendant’s right to present a defense where defendant did not know of or procure witnesses’ violation of sequestration. “Exclusion should be allowed [as sanction] only when it is necessary to preserve the integrity of the fact finding process.”

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**Recent Decisions Applying Wyoming Evidence Rule 404(b).**

*Thomas v. State*, 2006 WY 34, 131 P.3d 348 (Wyo. 2006): Evidence of prior incidents of domestic violence between defendant and victim was admissible at defendant's trial for aggravated assault to show "course of conduct, identity, and absence of mistake or accident." Assault charge was based on evidence that defendant had dragged victim along a gravel roadway as she hung out of the passenger door of his car. Defendant's theory was that victim's injuries had occurred accidentally, when she leapt inexplicably from his moving car. Prior domestic violence was relevant to show, among other things, why the victim had tried to get out of the car.

*Bhutto v. State*, 2005 WY 78, 114 P.3d 1252 (Wyo. 2005): Evidence of prior incidents involving threats and physical violence between defendant and his girlfriend was admissible at his trial for her murder, to show motive, intent, and lack of accident. Court said evidence was relevant in part to counter defense theory that defendant had killed the victim in the heat of passion after she disclosed her unfaithfulness. Court also said that evidence was not too remote in time, where "the alleged incidents were all within five or six years of the charged crime."

*Brown v. State*, 2005 WY 37, 109 P.3d 52 (Wyo. 2005): Evidence of defendant's effort to force his way into the apartment of a woman who had complained about noise from party upstairs (where defendant was a guest) was admissible to help prove that defendant had committed felony interference with a peace officer a few minutes later, when an officer responded to noise complaint. Evidence showed defendant's state of mind a few minutes before confrontation with officer, and was also probative of "what was going on" when the encounter between defendant and officer occurred.

*Holloman v. State*, 2005 WY 25, 106 P.3d 879 (Wyo. 2005): Testimony about the defendant's angry, vengeful mood on the day before the charged murder, by a police officer and a x-ray technician who had had contact with the defendant in connection with an unrelated incident, was not admissible under Evidence Rule 404(b). Court said that the evidence "does appear to be directed solely at a tendency on [defendant's] part to be angry and violent, and having a desire for vigilante justice against whoever might cross his path." Court said the evidence was relevant only to show that the defendant "was a vengeful thug" and therefore was inadmissible.

*Watters v. State*, 2004 WY 155, 101 P.3d 908 (Wyo. 2004): Testimony by defendant's foster daughter about prior uncharged incidents of sexual contact between her and defendant was admissible at defendant's trial for sexual assault on her. Court said the evidence was admissible to set the scene for the charged assault; specifically, it

was admissible to show why, on the day of the charged assault, the victim had reacted to defendant's arrival at the group home by running downstairs and closing her door. The charged assault (said the court) "did not happen in a vacuum." The court also held that the evidence of the prior assaults was relevant to show that the defendant had used his position of authority over her to cause her submission.

*Blakeman v. State*, 2004 WY 139, 100 P.3d 1229 (Wyo. 2004): At defendant's trial for taking indecent liberties with a 12-year-old girl, evidence of the defendant's sexual overtures to the victim's 13-year-old friend on the day of the offense were admissible "under the course of conduct exception because it was necessary to provide the jury with a full account of the parties' activities on the day in question." The evidence also was admissible to show that the defendant's sexual comments to the victim "were not simply hypothetical discussions," but were instead part of a broader plan to engage in sexual contact with one of the two girls.

*Williams v. State*, 2004 WY 117, 99 P.3d 432 (Wyo. 2004): Trial court erred in admitting testimony about defendant's prior theft of saddles at his trial for unauthorized use of a vehicle. Because the prosecutor failed to provide adequate pre-trial notice of intent to introduce the uncharged misconduct evidence, and because the prosecutor in urging the admission of this evidence at trial merely "recited the laundry list [of permissible purposes] that is contained in Rule 404(b)," the appellate court was "unable to conduct meaningful appellate review" of the ruling admitting the evidence. The *Williams* opinion contains an extremely thorough review of the appropriate procedures for the admission of uncharged misconduct evidence.

*Kenyon v. State*, 2004 WY 100, 96 P.3d 1016 (Wyo. 2004): Evidence of numerous prior instances of violence by defendant against his girlfriend and his former wife was admissible at defendant's trial for murder of girlfriend's brother. Court held that evidence of abuse was relevant to show "course of conduct" and to rebut defendant's claim that he had shot girlfriend's brother accidentally.

*Moore v. State*, 2003 WY 153, 80 P.3d 191 (Wyo. 2003): Evidence of defendant's physical abuse of girlfriend during the six years that preceded the charged offenses was admissible at his trial on charges of burglary, aggravated assault, and kidnapping. Court said the evidence was admissible to show "course of conduct" and to enable the jury to evaluate the credibility of the girlfriend and of the other kidnapping victim. In particular, the evidence was relevant to show why the kidnapping victims had not tried to escape from defendant when they had the chance.

*Belden v. State*, 2003 WY 89, 73 P.3d 1041 (Wyo. 2003): Evidence that the defendant had faced rape charges in 1976 and 1984, but had been acquitted, was admissible at his trial on an unrelated 1985 rape and felony murder, to show that the defendant "had a motive to kill the victim because he had been accused in the past of rape after engaging in sexual intercourse with other women." At his trial, the defendant admitted that he had engaged in sexual intercourse with the victim on the day of her

death, but he argued that she had been alive when he left her. Evidence of his motive was therefore relevant to the question of the murderer's identity.

*Hart v. State*, 2002 WY 163, 57 P.3d 348 (Wyo. 2002): At defendant's trial for taking indecent liberties with his 16-year-old niece, evidence that defendant had sexually abused two other females relatives nearly 30 years before was admissible (1) to prove motive (i.e., the defendant's sexual attraction to children); (2) to prove that the touching was not accidental; and (3) to bolster the credibility of the victim. The trial court erred, however, in concluding that the evidence was relevant to the question of the "identity" of the abuser. The evidence would not have been admissible on the question of identity, since the defendant acknowledged that he was the person who was seated next to his niece in the car when the abuse allegedly occurred. The Wyoming Supreme Court, in concluding that the prior misconduct was admissible despite its remoteness in time, emphasized the similarity of the prior misconduct to the charged abuse.

*Gleason v. State*, 2002 WY 161, 57 P.3d 332 (Wyo. 2002): At defendant's trial for taking indecent liberties with his 11-year-old stepdaughter, evidence of defendant's other sexually abusive and inappropriate conduct toward other children (including, for example, his repeated acts of sexual intercourse with his own three-year-old daughter) was admissible to prove a motive based on pedophilia.