Supreme Court No. 100253-0
(COA No. 37435-1-III)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAVIER CHAVEZ,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR BENTON COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Javier Chavez, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Chavez seeks review of the Court of Appeals decision dated August 31, 2021, a copy of which is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Did the government fail to present sufficient evidence of whether Mr. Chavez willfully violated a no-contact order when he was present at a location permitted by the court?

2. Did the government's singular and cumulative misconduct deprive Mr. Chavez of his right to a fair trial in a trial to the court when, among other

instances, it played to the passions and prejudices of the court, "testified" about the credibility of its key witness, asserted its opinion in closing arguments, and questioned Mr. Chavez about unrelated cases where he had the right to remain silent?

D. STATEMENT OF THE CASE

The court issued a no-contact order preventing Javier Chavez from contacting Patti Reyes, which Ms. Reyes asked the court to remove shortly afterward. 12/16/18 RP 24-25. The court modified the order to allow Mr. Chavez to live at his Jadwin Avenue residence after Ms. Reyes told the court she did not live there. *Id*.

The prosecution claimed Mr. Chavez violated the no-contact order on October 25, 2018, at his Jadwin home. 12/16/18 RP 28. On this date, Mr. Chavez and his stepdaughter Emily volunteered at the Salvation

Army. *Id.* at 39. When they got home, Emily realized Ms. Reyes was in the house. *Id.* at 39. Mr. Chavez did not enter the house and instead walked to the hospital to have his mental health evaluated for his stress and suicidal ideation. *Id.* at 45.

The prosecution claimed the second violation occurred on November 20, 2018, when Ms. Reyes returned to Mr. Chavez's home. 12/17/18 RP 42. Mr. Chavez did not know Ms. Reyes was in the house until he heard Emily fighting with Ms. Reyes. *Id.* at 43. Once awake, Mr. Chavez told Emily, "Let's go," and informed Ms. Reyes he planned to call the police, leaving so quickly that he did not put on his shoes or take his cell phone. *Id.* He went to a neighbor's house to call the police. *Id.* Mr. Chavez and Ms. Reyes were both arrested, as they each had no-contact orders against each other. *Id.* at 42.

Mr. Chavez waived his right to a jury. CP 5. As soon as the judge entered the courtroom, the prosecutor requested to switch tables because the government's first witness was "very frightened" of Mr. Chavez and would not be safe testifying from the witness stand, signifying to the court that Mr. Chavez was dangerous. 12/16/18 RP 4. Over objection, the court required Mr. Chavez to switch tables. *Id*. at 5.

The prosecutor told the court Mr. Chavez was "not a victim" of domestic violence, despite the evidentiary record showing otherwise. 12/17/18 RP 59, 65. Despite the existence of a no-contact order protecting Mr. Chavez from Ms. Reyes, the prosecutor opined, "We believe…this idea that Mr. Chavez is a victim is a work of fiction." *Id*. at 65. The prosecutor opined that Mr. Chavez was trying to "play off as [a

victim]," and the court should use this to judge Mr. Chavez's credibility. *Id* at 59.

Mr. Chavez testified. 12/17/18 RP 38. During cross-examination, the government questioned Mr. Chavez over pending charges on an unrelated matter with his stepdaughter. *Id*. at 49. Defense counsel objected on Fifth and Sixth Amendment grounds. *Id*. In response to Mr. Chavez's objection, the prosecutor reasoned that they asked Mr. Chavez about Emily because she testified earlier in the trial, and they were assessing Emily's credibility. *Id*. at 50. The court sustained the objection. *Id*. Nonetheless, the prosecution continued questioning Mr. Chavez on a claim that he assaulted Emily. *Id*. at 51.

In closing, the prosecutor stated, "I'll testify to this, Judge, the testimony here in trial by Patti Reyes is far more credible than the defendant's." 12/17/18 RP

71. The prosecutor also highlighted a witness tampering charge from beyond a decade ago and stated it was a crime of dishonesty that the judge could use to assess Mr. Chavez's credibility. *Id.* at 66.

In the findings of fact, the court wrote that the no-contact order was not amended to change Ms. Reyes' address to a home in Pasco until after the first claimed incident in October 2018. CP 16. However, the no-contact order was amended to change Ms. Reyes' address and allow Mr. Chavez to remain at the Jadwin Avenue residence on July 18, 2018. Trial Exhibit 1.

The trial court convicted Mr. Chavez of both counts of a felony violation of a no-contact order. 12/17/18 RP 82. The Court of Appeals affirmed his conviction. This petition follows.

E. ARGUMENT

1. This Court should review whether the government presented sufficient evidence of willfulness.

Due process forbids convicting a person unless the prosecution proves all elements of a crime beyond a reasonable doubt. *In Re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Warren*, 165 Wn.2d 17, 26, 195 P.3d 940 (2008); U.S. Const. amend. XIV.; Const. art. I, § 3, § 22; RCW 9A.04.100.

The Court of Appeals held there was sufficient evidence of willfulness, relying on evidence that Ms. Reyes lived in the same home where Mr. Reyes resided. APP. 6-7. This Court should review this finding, as it looks past the trial court's modification of the no-contact order. That order allowed Mr. Chavez to live at the address where the contact between him and Ms. Reyes occurred.

In ruling against Mr. Reyes, the Court of Appeals issued an opinion in conflict with its prior opinion in *State v. Clowes*, 104 Wn. App. 935, 944, 18 P.3d 596 (2001). In *Clowes*, the Court of Appeals held that accidental or inadvertent contact does not violate the provisions of RCW 10.99.050 against contact with protected parties. *Id.* at 944. Like *Clowes*, the government only established Mr. Chavez's contact was accidental in both instances and that he left as soon as he realized he had contact with Ms. Reyes.

The Court of Appeals' decision also conflicts with *State v. Sisemore*, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002). In *Sisemore*, the court held that an accused person does not violate a no-contact order if they inadvertently or accidentally contact the protected party but immediately cease the contact. *Id.* at 78. The court agreed with its decision in *Clowes* that to prove

willfulness, the government must prove that the accused "knew the order existed and willfully, that is, knowingly and intentionally, contacted or remained in contact with [the protected party]." *Id.*; *see also* RCW 26.50.110(2); RCW 10.99.050(2)(a); RCW 9A.08.010(4). The accused in *Clowes* was convicted because he knew that the person he was walking down the street with was someone he was not allowed to have contact. *Sisemore*, 114 Wn. App. at 79.

The Court of Appeals' decision focuses on whether there was contact, which was never in dispute. APP. 7. Instead, this Court should accept review of the question of whether Mr. Chavez intended to have contact with Ms. Reyes. In examining this question, the answer is that he did not. Because the government failed to establish beyond a reasonable doubt that Mr. Chavez intended the contact to happen, the

government was unable to establish Mr. Chavez willfully violated the no-contact order. Because the Court of Appeals' resolution of this question conflicts with its prior case law, this Court should accept review.

2. This Court should review whether the government's misconduct throughout Mr. Chavez's trial requires reversal.

The Court of Appeals also held that the government's misconduct did not deprive Mr. Chavez of his right to a fair trial. App. 8. This Court should accept review of this issue, which is an issue of public importance that this Court should resolve.

In its opinion, the Court of Appeals cites *State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723 (1970), for the proposition that trial courts can disregard misconduct when making their decisions. This Court has recognized the limits of this analysis. In *State v. Jackson*, 195 Wn.2d 841, 852, 467 P.3d 97 (2020), this

Court recognized the limits of a judge's ability to put aside their biases in all of its decisions.

a. Appealing to the court's passion and prejudices by telegraphing how dangerous Mr. Chavez was before the trial.

Like *Jackson*, beginning a trial with a statement of how dangerous Mr. Chavez appeared to be to witnesses could not have been something the court could ignore, especially when the court was not acting only in the capacity of a judge but also as a fact-finder was misconduct.

Any fact-finder – jury and judge alike – has difficulty ignoring appeals to their biases. The best scientific evidence suggests that everyone, no matter how deeply they believe in their objectivity, has implicit biases that will, in some circumstances, alter their behavior. "They manifest everywhere, even in the

hallowed courtroom." Jerry Kang, et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1186 (2012).

This Court has recently highlighted the importance of harmful language presented to the fact-finder. *See State v. Loughbom*, 196 Wn.2d 64, 67, 470 P.3d 499 (2020). In *Loughbom*, the prosecution inflamed the prejudices and passions of the fact-finder by repeatedly referencing the "war on drugs" and portraying the accused as representative of the "war on drugs." *Id*. This Court held the prosecution's conduct was flagrant and ill-intentioned, depriving the accused of his right to a fair trial. *Id*.

Here, the prosecution's deliberate appeal to the judge's emotions was equally flagrant and ill-intentioned. Demanding to change tables because his witness was afraid of Mr. Chavez played into the same biases this Court condemned in *Loughbom* as it played

into traditional views of persons who are accused of domestic offenses. The prosecutor's demand biased the court against Mr. Chavez before the trial began, preventing him from receiving a fair trial. *See State v. Ramos*, 164 Wn. App. 327, 340, 263 P.3d 1268 (2011).

b. Vouching for Ms. Reyes' credibility by "testifying" she was telling the truth.

The Court of Appeals also held that the prosecutor was not vouching when he stated, "I'll testify to this, Judge, the testimony here in trial by Patti Reyes is far more credible than the [Mr. Chavez]." APP. 8.

This Court has held to the contrary. *State v. Lindsay*, 180 Wn.2d 423, 437, 326 P.3d 125 (2014). Prosecutorial statements that vouch for the credibility of witnesses and encourage the fact-finder to act based on considerations other than the facts of the case pose a real danger to the accused's right to a fair trial.

United States v. Weatherspoon, 410 F.3d 1142, 1152 (9th Cir. 2005).

And while the Court of Appeals held that this vouching did not prevent Mr. Chavez from receiving a fair trial, this decision conflicts with other decisions of the Court of Appeals, along with decisions of this Court. In a recent decision, the Court of Appeals held that the accused was prejudiced by the prosecutor's vouching for the credibility of a law enforcement officer. *State v. Hawkins*, 14 Wn. App. 2d 182, 184, 469 P.3d 1179 (2020). In *Hawkins*, the prosecution's case turned largely on the witness's credibility as the government did not call any independent witnesses or play any of the recorded videos from the incident. *Id.* at 185-86. Unlike here, the Court of Appeals held the prosecution's vouching prejudiced Mr. Hawkins' right to a fair trial. *Id.*

This case is also about credibility. Here, the prosecutor impermissibly vouched for Ms. Reyes when he "testified" about Ms. Reyes' credibility. 12/17/18 RP 71. By saying he would testify to Ms. Reyes' credibility, the prosecutor put the weight of the government behind the witness, which is improper. *Hawkins*, 14 Wn.App. at 188. This Court should accept review of whether this deprived Mr. Chavez of his right to a fair trial.

c. Questioning Mr. Chavez about unrelated charges, in violation of his right to remain silent.

The Court of Appeals found the prosecutor's questions to be potentially improper but found no prejudice. APP. 9. While the Court of Appeals focuses on the first questions the government asked, it does not address the questions posed by the government after the court sustained Mr. Chavez's objection. The

prosecutor was allowed to ask, "Is it fair to say, Mr. Chavez, that there's an allegation that you assaulted [Emily], and that incident led to …this separation between you?" 12/17/18 RP 51. Mr. Chavez had to answer in the affirmative, allowing the prosecutor to get in irrelevant and unduly prejudicial evidence. *Id.*

The prosecutor's line of questioning violated the Fifth Amendment. *State v. King*, 130 Wn.2d 517, 524, 925 P.2d 606 (1996). Mr. Chavez's statements on the claimed incident with Emily could have "exposed him to a realistic threat" of self-incrimination in subsequent proceedings, and the prosecution attempted to compel Mr. Chavez's incriminating statements. *Id.*; 12/17/18 RP 50-51.

The statement about the claimed incident between Mr. Chavez and Emily was unduly prejudicial and improperly admitted over Mr. Chavez's objection.

Consideration of material not correctly admitted as evidence vitiates a verdict when there are reasonable grounds to believe improperly admitted evidence may have prejudiced the defendant. *In re Glasmann*, 175 Wn.2d 696, 705, 286 P.3d 673 (2012). The focus must be on the misconduct and its impact, not on the evidence that was properly admitted. *Id*. at 711. The government violated Mr. Chavez's constitutional rights when it intentionally pursued this line of questioning. This Court should accept review of whether it deprived Mr. Chavez of his right to a fair trial.

d. Deprivation of the right to a fair trial.

Misconduct violates the "fundamental fairness essential to the very concept of justice." *Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974). Special weight is afforded to prosecutors due to their prestige and fact-finding

abilities. *Glasmann*, 175 Wn.2d at 706. Trained and experienced prosecutors "do not risk appellate reversal of a hard-fought conviction by engaging in improper trial tactics unless the prosecutor feels that those tactics are necessary to sway the jury in a close case." *State v. Fleming*, 83 Wn. App. 209, 215, 921 P.2d 1076 (1996).

From the start of Mr. Chavez's trial, the prosecution employed its power to deprive Mr. Chavez of his right to a fair trial. Even before the court heard any testimony, it knew Mr. Chavez was dangerous. And in a case that involved credibility, the prosecutor "testified" that its key witness was telling the truth. There is a substantial likelihood the prosecutor's statements in closing arguments affected the court's verdict. *Lindsay*, 180 Wn.2d at 440 (citing *State v.*

Emery, 174 Wn.2d 741, 760, 278 P.3d 653 (2012)). To address this error, this court should accept review.

F. CONCLUSION

Mr. Chavez requests that review be granted pursuant to RAP 13.4(b) based on the preceding.

This brief complies with RAP 18.7 and is approximately 2,533 words long.

DATED this 28th day of September 2021.

Respectfully submitted,

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APPENDIX

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FILED
AUGUST 31, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. JAVIER CHAVEZ, Appellant.	)))))))))	No. 37435-1-III UNPUBLISHED OPINION

PENNELL, C.J. — Javier Chavez was convicted at a bench trial of two felony violations of a no-contact order. We affirm.

FACTS

During fall of 2018, a domestic violence no-contact order (NCO) prohibited "Javier Chavez from contacting or coming within 200 feet of Patricia Reyes." Clerk's

Papers (CP) at 15; *see* Ex. 1 at 2. Mr. Chavez and Ms. Reyes "had been romantically involved and had multiple children in common." CP at 15. The NCO listed Ms. Reyes as residing at an address in Pasco, Washington. A previous NCO had listed Ms. Reyes's address as a residence on Jadwin Avenue in Richland, Washington.

On or around October 25, 2018, Mr. Chavez and Ms. Reyes were both present at the Jadwin Avenue home. Mr. Chavez knew he was at the same home as Ms. Reyes. They argued. Mr. Chavez contacted his pastor, and "went to the hospital" after his pastor arrived at the home. *Id*. Police responded to the home following Mr. Chavez's departure. When the police contacted Ms. Reyes at the house, she lied and said Mr. Chavez had not been present.

On November 20, 2018, Mr. Chavez and Ms. Reyes were again together at the Jadwin Avenue address. Ms. Reyes's oldest daughter ran over to a neighbor's home and complained Ms. Reyes was out of control and in violation of her own restraining order.[1] The police arrived and arrested both Mr. Chavez and Ms. Reyes. Ms. Reyes subsequently pleaded guilty to violation of a restraining order.

The State charged Mr. Chavez with two felony violations of the NCO for the incidents of October 25, 2018, and November 20, 2018. Just before the start of

[1] Ms. Reyes had been restrained from contacting her oldest daughter.

Mr. Chavez's bench trial, the prosecutor asked the court for permission to "switch tables." 1 Report of Proceedings (RP) (Dec. 16, 2019) at 4. The prosecutor explained Ms. Reyes was "[v]ery frightened of [Mr. Chavez]" and the switch would prevent her from sitting "directly across from him." *Id*. Mr. Chavez's defense attorney objected because the attorney "would rather not be moving" after having sat at the table "for quite a while waiting for the State to proceed." *Id*. at 4-5. When the attorney did not supply any further justification to deny the State's request, the court granted the request. It noted "the setup for this courtroom is not in the best circumstances with respect to the safety of everyone . . . because of just how the courtroom is designed." *Id*. at 6.

The State presented testimony from Ms. Reyes and her oldest daughter. According to both witnesses, Mr. Chavez and Ms. Reyes lived together in the Jadwin Avenue home during the fall of 2018. Ms. Reyes explained she lied about moving to Pasco because she did not want the NCO and did not want Mr. Chavez to get in trouble.

Mr. Chavez's defense was based on the claim that Ms. Reyes had moved out of the residence and she was the one responsible for any unauthorized contact. Mr. Chavez testified that his contact with Ms. Reyes on October 25 and November 20 was inadvertent and he did his best to avoid contact with Ms. Reyes. During his testimony, Mr. Chavez stated he was tired of Ms. Reyes coming to the Jadwin Avenue home without permission.

He claimed Ms. Reyes was "chasing" him and the situation "wasn't fair." RP (Dec. 17, 2019) at 39-40. On cross-examination, Mr. Chavez agreed he felt he was "somewhat" "the victim" under the circumstances. *Id*. at 52.

During summation, the prosecutor focused on contrasting the testimony of Ms. Reyes and Mr. Chavez. He stated, "I think it's clear from the demeanor of the witnesses in this case who has the power in this relationship. Although Mr. Chavez has claimed to be the victim, you can see that Ms. Reyes was emotionally unstable, that she was hurting, that she was struggling." *Id*. at 58-59. The prosecutor continued, "She never wanted to be here . . . . She never tried to get [Mr. Chavez] in trouble. And that's why this situation is so complex." *Id*. at 59. The prosecutor rejected the idea that Mr. Chavez was "a victim of domestic violence." *Id*. The prosecutor later reiterated "the evidence shows that this idea that Mr. Chavez is a victim is a work of fiction." *Id*. at 65.

In rebuttal closing, the prosecutor further opined,

> I think the Court can look in there and find credibility in [the witnesses'] testimony by looking at the different facts and circumstances that surround this.
>
> And I'll testify to this, Judge, the testimony here in trial by Patti Reyes is far more credible than [Mr. Chavez]'s. She admits when she makes mistakes. She says, "Yes, I lied. I lied because I loved him. I wanted to stay with him."
>
> Here's what [Mr. Chavez] says, "No, I never talked to police. No, no. Officer Fancher, no, I don't know who that is. Well, yeah, I knew they

> were after me. Yeah, I fled them, but, you know, I didn't want to be there . . . ."
>
> He has a tampering with a witness conviction.[2] There are multiple reasons to doubt his credibility. All those came out on the stand, your Honor.

Id. at 71. Mr. Chavez did not object to the prosecutor's arguments.

The trial court made credibility findings regarding Ms. Reyes, her daughter, and Mr. Chavez. It found Ms. Reyes fully credible, and found her testimony partially supported by the credible testimony of law enforcement. The court made mixed credibility findings regarding Ms. Reyes's daughter and Mr. Chavez. Overall, it concluded the "most relevant portion" of the daughter's testimony was credible and Mr. Chavez "admitted to being within 200 feet of [Ms. Reyes] on both occasions." CP at 16. The court determined the State met its burden to show beyond a reasonable doubt that Mr. Chavez knowingly violated the NCO protecting Ms. Reyes and found him guilty of two felony violations of the order.[3]

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[2] The trial court admitted evidence Mr. Chavez had "a[t] least two prior convictions for violating protection orders." CP at 16; *see* Exs. 3-4 (October 1998 conviction for court order violation); Ex. 5 (four December 2009 convictions for protection order violations); Ex. 7 (March 2004 conviction for protection order violation). It also admitted evidence of Mr. Chavez's 2010 conviction for tampering with a witness. *See* Ex. 6.

[3] The trial court inadvertently referred to the October 25 incident as occurring on "October 23" and "the 23rd day of September" in its findings and conclusions. CP at 15-16; *see id*. at 7.

Mr. Chavez timely appeals.

ANALYSIS

Mr. Chavez argues his conviction should be reversed based on insufficiency of the State's evidence and multiple instances of prosecutorial misconduct. In his opening brief, Mr. Chavez also alleged the court had imposed an illegal sentence. The sentencing allegation has since been withdrawn. We therefore limit our review to Mr. Chavez's two challenges to his conviction.

Sufficiency of the evidence

Mr. Chavez argues the State failed to present sufficient evidence to prove he willfully violated the NCO in October and November 2018. Relying on his version of the events in question, Mr. Chavez argues he made every effort to comply with the NCO and did not willfully have contact with Ms. Reyes.

Mr. Chavez's analysis misses the mark as it fails to take into account the applicable standard of proof. We are not triers of fact. When faced with a sufficiency challenge, this court construes the facts in the light most favorable to the State and asks whether a reasonable fact finder could have found the elements of the offense beyond a reasonable doubt. *State v. Scanlan*, 193 Wn.2d 753, 770, 445 P.3d 960 (2019)

(quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (plurality opinion)), *cert. denied sub nom. Scanlon v. Washington*, 140 S. Ct. 834 (2020).

Here, the State's evidence was that Ms. Reyes was living at the Jadwin Avenue residence along with Mr. Chavez on October 25 and November 20, 2018. Accepting this evidence as true, Mr. Chavez's claim of incidental contact fails. Regardless of whether Mr. Chavez tried to separate himself from Ms. Reyes after the two came into conflict, the fact of the shared residence means Mr. Chavez could not have been surprised by Ms. Reyes's presence. Mr. Chavez's contact with Ms. Reyes was not incidental. It was the expected result of Mr. Chavez's continued willful presence at the Jadwin residence. The State amply proved its case.

Prosecutorial misconduct

For the first time on appeal, Mr. Chavez contends the prosecutor committed several instances of reversible misconduct during trial. Unpreserved claims of misconduct are generally not fertile grounds for relief on appeal. *State v. Hoffman*, 116 Wn.2d 51, 93, 804 P.2d 577 (1991). In the bench trial context, the burden is even more onerous, as we presume a trial judge understands the law and will disregard inadmissible matters. *See State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723 (1970).

Mr. Chavez's first claim of misconduct pertains to the prosecutor's request to have the parties switch tables during trial. We find no impropriety. The prosecutor had a tenable basis for making the request and the court had authority to arrange for courtroom security. *See State v. Jackson*, 195 Wn.2d 841, 852, 467 P.3d 97 (2020). We note judges are often privy to information about a defendant's background that would never be shared with a jury. For example, a judge may rule on bail decisions, issue a pretrial restraining order, or set conditions for accommodating incarcerated litigants. Such involvement is normal. It does not render a judge incapable of impartial adjudication. This case is no different. The prosecutor did nothing wrong in asking the court to have the parties switch seats for safety reasons. Mr. Chavez's misconduct claim fails.

Second, Mr. Chavez claims the prosecutor engaged in improper vouching when he stated, "I'll testify to this, Judge, the testimony here in trial by Patti Reyes is far more credible than the [Mr. Chavez]'s." RP (Dec. 17, 2019) at 71. The prosecutor's use of the word "testify" was unfortunate; however, we find no misconduct. Reviewed in context, it is apparent the prosecutor was arguing about Ms. Reyes's credibility. He was not personally vouching for Ms. Reyes's veracity. Given this was a bench trial, there was no reasonable danger the trial court might have been confused about the nature of the prosecutor's comments.

Mr. Chavez's next claim is that the prosecutor improperly asked Mr. Chavez about the pendency of unrelated charges involving Ms. Reyes's daughter. According to Mr. Chavez, the prosecutor's question improperly implicated his right to silence under the Fifth Amendment to the United States Constitution. Regardless of the merits of Mr. Chavez's claim, we find no prejudice. At trial, the court sustained an objection to the prosecutor's question about Mr. Chavez's conduct. As a result, Mr. Chavez only affirmed that there was an "allegation" he had assaulted Ms. Reyes's daughter. RP (Dec. 17, 2019) at 51. Mr. Chavez was never compelled to testify against himself in an unrelated matter and no prejudicial information was conveyed to the court. While the prosecutor's question about Ms. Reyes's daughter may not have been relevant, the question and Mr. Chavez's brief answer had no bearing on the merits of the case or the trial court's ultimate verdict.

Finally, Mr. Chavez argues the prosecutor improperly expressed an opinion on credibility when the prosecutor argued Mr. Chavez was not a victim of Ms. Reyes's domestic violence. We disagree with this assessment. The prosecutor's comments were proper argument, aimed at Mr. Chavez's testimony suggesting he was the victim of Ms. Reyes's misconduct. There was no misconduct.[4]

[4] Mr. Chavez also argues his conviction should be reversed based on multiple instances of prosecutorial misconduct. Because we do not find multiple errors, we reject this claim.

CONCLUSION

The judgment of conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, C.J.

WE CONCUR:

Fearing, J.

Staab, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 37435-1-III
	)	
JAVIER CHAVEZ,	)	
	)	
PETITIONER.	)	

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF SEPTEMBER, 2021, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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