SUPREME COURT NO. 102207-7
NO. 56077-1-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SIDNEY HICKLIN,

Petitioner.

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

The Honorable Lauren Erickson, Judge

PETITION FOR REVIEW

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RULES, STATUTES, AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Sidney "Sid" Hicklin asks this Court to grant review of the court of appeals' part-published decision in State v. Hicklin, __Wn. App. 2d__, 527 P.3d 1183 (2023), filed April 25, 2023 (Appendix A). The court of appeals denied Hicklin's motion for reconsideration on June 28, 2023 (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

In a courtroom closed to all spectators, the trial court took Hicklin's sworn testimony, which the prosecution later used to impeach Hicklin at trial. The court heard argument from the parties about admissibility of the defense-proposed evidence, which Hicklin asserted was critical to his Sixth Amendment right to present a defense. Then, still in a closed courtroom, the court excluded the evidence.

The trial court closed the courtroom without a Bone-Club[1] analysis because the rape shield statute requires it: "If the court

[1] State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 629 (1995).

finds that the [defendant's] offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and *the hearing shall be closed* except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court." RCW 9A.44.020(3)(c) (emphasis added). In the published portion of its opinion, the court of appeals held this mandatory closure provision does not run afoul of the public trial right, even though this Court has "already rejected the principle that a statute can mandate privacy where the constitution requires openness." State v. Chen, 178 Wn.2d 350, 355, 309 P.3d 410 (2013).

1. Is this Court's review warranted to resolve this issue of first impression, where the bounds of the public trial right presents a significant question of constitutional law (RAP 13.4(b)(3)); the press and the public have a substantial interest in the right to open court proceedings (RAP 13.4(b)(4)); and the court of appeals' decision appears to be in conflict with multiple

decisions of its sister divisions, this Court, as well as the United States Supreme Court (RAP 13.4(b)(1)-(2))?

2. Alternatively, should this Court remand for the trial court to strike the $500 victim penalty assessment (VPA) and $100 DNA fee from Hicklin's judgment and sentence?

C. STATEMENT OF THE CASE

1. **Closed Rape Shield Hearing**

The prosecution charged Hicklin with second degree rape of Katie Hawthorne by forcible compulsion, along with second degree assault by strangulation, felony harassment by a threat to kill, and unlawful imprisonment. CP 95-96. Before Hicklin's jury trial, the defense filed a written motion to admit evidence of past sexual history between Hicklin and Hawthorne. CP 89-94. The defense contended the evidence was admissible under Washington's rape shield statute, RCW 9A.44.020, because it was relevant to Hawthorne's consent to romantic activity on the evening in question, as well as Hicklin's state of mind at the time. CP 83-94.

The court heard the parties' motions in limine several months before trial. RP 16. When it came time to review Hicklin's motion, the prosecutor informed the court, "I believe the [rape shield] statute requires the hearing to be closed to the general public." RP 36. The court agreed. RP 36. The court ordered Hicklin's sister, who was present in the courtroom, to leave. RP 37-38. A representative for the prosecutor's office was allowed to stay on the phone, but the court ordered everyone else with her to leave "because this is now a closed courtroom." RP 37. The court then officially closed the courtroom at 10:33 a.m. RP 37; CP 152.

Although Hicklin had provided a written offer of proof, the court believed Hicklin needed to testify at the hearing. RP 38. Hicklin was sworn and took the witness stand. RP 38-39; CP 152. Hicklin testified he met Hawthorne approximately three years prior at their recovery meetings. RP 39. They started out as friends, but soon their relationship became a

sexual one. RP 39. Hicklin explained Hawthorne had previously been in his hot tub naked with him. RP 40.

Hicklin testified, on the night in question, Hawthorne came over again "to get naked in the hot tub." RP 41. Hicklin said Hawthorne brought a half gallon of vodka with her, but about half was gone already. RP 41. The two "started kissing and hands kinda all over the place," but did not have sex. RP 42. After about 10 to 15 minutes, Hicklin asked if Hawthorne would go to the store to get him more alcohol. RP 42. Hicklin testified Hawthorne left and never returned. RP 42-43.

After Hicklin's testimony concluded, the court heard from the parties about the admissibility of the proffered sexual history evidence. RP 44. The prosecutor contended the evidence was not admissible under the rape shield statute because Hicklin was not claiming he and Hawthorne had consensual intercourse that night. RP 45-46. Defense counsel countered that the evidence was relevant because Hicklin wanted to explain they "fooled around," consistent with

Hicklin's DNA on Hawthorne's neck, and they planned to get in the hot tub together. RP 47, 49-50. Counsel argued the evidence was critical to Hicklin's defense. RP 49-50.

The trial court excluded the evidence, ruling, "his defense isn't consent." RP 51. The court reopened the courtroom at 10:57 a.m., 24 minutes after closing it. RP 53; CP 152.

2. **Evidence Introduced at Trial**

On the Fourth of July, 2020, Hicklin texted his friend, Hawthorne, to see if she wanted to come over to get in the hot tub naked with him. RP 455, 648-49. Hawthorne had been over multiple times before. RP 647. Hicklin and Hawthorne met in the recovery community but, by July 4, both had relapsed on alcohol. RP 283, 649-50.

Hawthorne arrived that evening with a half-gallon of vodka. RP 650. She took swigs of vodka while Hicklin drank Mike's Hard Lemonade. RP 416, 650-51, 671. They sat on the couch together, talking and kissing. RP 652. Hicklin kissed Hawthorne on the mouth, cheek, and neck. RP 653.

After 15 or 20 minutes, Hicklin finished the last of his Mike's Hard Lemonade. RP 650. He asked if Hawthorne would go to the nearby AM/PM convenience store to buy him more. RP 650-51. Hawthorne agreed and Hicklin gave her his bank card to pay for the alcohol. RP 651.

Even though the AM/PM is only half a block from Hicklin's place, Hawthorne drove there. RP 475, 653. Surveillance video from the AM/PM indicated Hawthorne's driving was significantly impaired. RP 475. The video showed Hawthorne inside paying cash for alcohol and food. RP 480.

Hawthorne was gone for a long time. RP 653. Frustrated and wanting his bank card back, Hicklin started texting and calling Hawthorne. RP 443, 458, 653. When Hawthorne finally called him back, Hicklin told her that he would call the police if she did not return his bank card. RP 443, 653, 662. That was the last time Hicklin talked to Hawthorne; she never returned to his place that night. RP 653, 663. Hicklin called the bank that night to report his card stolen. RP 671.

Hawthorne, on the other hand, denied she and Hicklin kissed before she went to AM/PM. RP 285. Hawthorne had only a "fuzzy" or "blank" memory of going to AM/PM, but claimed she returned to Hicklin's place afterwards. RP 291. Unable to find Hicklin's debit card, Hawthorne testified Hicklin became angry with her. RP 293.

Hawthorne claimed Hicklin put his hand around her neck as she sat on the couch and started to squeeze. RP 295. Hawthorne felt the weight of Hicklin's body on her, pushing her legs open. RP 299-300. Hawthorne recalled Hicklin telling her, "I will end you," and then inserting his penis inside of her. RP 300-01. Hawthorne said she felt stuck because of the choking and Hicklin's weight on top of her. RP 295-96, 301. Hawthorne testified Hicklin stopped when she convinced him she had money in her car. RP 303.

From her vehicle, Hawthorne called her boyfriend, Ashley "Ash" Messersmith, but did not tell him what happened. RP 279, 305, 360. Messersmith found Hawthorne and called

the police. RP 306-07. Hawthorne talked to the responding officer about her version of events. RP 308, 388-89.

The responding officer took Hawthorne to the hospital for a sexual assault exam. RP 309. The nurse noted some redness on Hawthorne's labia minora, as well as some bruising on her neck and posterior. RP 534. The nurse took DNA swabs from Hawthorne's neck and vaginal area. RP 521, 572-73. Hicklin's DNA was found on the neck swab, consistent with Hicklin's testimony that he kissed Hawthorne's neck. RP 573. Hicklin's DNA was not found on any of the other swabs, including the vaginal swab. RP 572.

Hicklin testified at trial, adamantly denying that any rape, assault, or threat occurred. RP 655-56. On cross-examination, the prosecution impeached Hicklin with inconsistencies between his testimony at the closed rape shield hearing and his testimony at trial. RP 664-66 (amount of alcohol Hawthorne brought with her), 669-70 (how many times he talked to Hawthorne once she left for AM/PM). The prosecution emphasized these

inconsistencies in closing argument. RP 742. The jury found Hicklin guilty as charged. CP 52-55.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. **This Court has never considered whether the mandatory courtroom closure provision in the rape shield statute violates the public trial right.**

This case presents the novel issue of whether the public trial right attaches at rape shield hearings. Appendix A, at 6 ("Washington courts have not addressed whether the public trial right is implicated in proceedings under the rape shield statute."). In the published portion of its decision, the court of appeals held that it did not. Appendix A, at 8. But, in so holding, the court of appeals considered only the label of the proceeding and failed to account for what actually occurred at the hearing in Hicklin's case. The court of appeals also gave too much credence to the sensitive nature of the proceeding, which may very well justify closure in some instances but cannot justify mandatory closure in all cases. Appellate decisions from every level—the court of

appeals, this Court, and the United States Supreme Court—demonstrate the Hicklin court's multiple errors of law.

Well-established case law holds the public trial right attaches at evidentiary hearings and contested pretrial hearings. E.g., Waller v. Georgia, 467 U.S. 39, 47, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984) (pretrial suppression hearing); Bone-Club, 128 Wn.2d at 257 (same); State v. Easterling, 157 Wn.2d 167, 174, 137 P.3d 825 (2006) (pretrial motion to sever); State v. Karas, 6 Wn. App. 2d 610, 623, 431 P.3d 1006 (2018) (contested motions in limine); see also Press-Enter. Co. v. Superior Court, 478 U.S. 1, 13, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (recognizing "the importance of public access to a preliminary hearing," especially because the jury is absent); State v. Sykes, 182 Wn.2d 168, 174, 339 P.3d 972 (2014) (noting pretrial motions "are presumptively open where they form a part of the court's decision making process"); State v. Lormor, 172 Wn.2d 85, 93, 257 P.3d 624 (2011) (emphasizing public trial right "extends to those proceedings that cannot be easily distinguished from the trial

itself," including "pre- and posttrial matters" like evidentiary hearings).

The court of appeals, however, refused to apply this case law, reasoning that doing so "would be forcing a specific proceeding into predefined factors rather than examining the actual proceedings, which undermines the reason for utilizing the experience and logic test." Appendix A, at 7. But the court of appeals fell into this very trap, looking only to the "label of the proceeding," rather than what actually occurred at that proceeding. Appendix A, at 6-7; State v. Sublett, 176 Wn.2d 58, 72-73, 292 P.3d 715 (2012); accord State v. Slert, 181 Wn.2d 598, 604, 334 P.3d 1088 (2014) ("[T]he mere label of a proceeding is not determinative.").

Namely, the court of appeals in its analysis ignored the fact that the trial court took Hicklin's sworn testimony at the rape shield hearing, which the prosecution later used to impeach Hicklin at trial. RP 38-44, 664-66, 669-70. The trial court further considered the admissibility of defense-proposed evidence

and excluded it. RP 49-51. Doing all this in a closed courtroom defies the very purposes of the public trial right: to help assure fair trials; to deter perjury and other misconduct; to temper biases and undue partiality; and to assure that "whatever transpires in court will not be secret or unscrutinized." Bone-Club, 128 Wn.2d at 261; State v. Wise, 176 Wn.2d 1, 6, 288 P.3d 1113 (2012). None of these goals are achieved when the trial court takes sworn testimony and then excludes defense-proposed evidence at a secret hearing the public has no opportunity to scrutinize.[2] See Sublett, 176 Wn.2d at 77 (holding the values of the public trial right were not violated by the proceeding at issue, where "no witnesses" were involved, "no testimony" was taken, and "no risk of perjury" existed).

Furthermore, Division Three has held the public trial right attaches to contested motions in limine. Karas, 6 Wn. App. 2d at 623. The Karas court explained "[p]ublic trust is advanced by

[2] Indeed, erroneous application of the rape shield statute can violate a defendant's constitutional right to present a defense. State v. Jones, 168 Wn.2d 713, 723, 230 P.3d 576 (2010).

giving attentive, interested members of the public the opportunity to know why evidence that seems relevant might be excluded for some countervailing reason." Id. This Court has likewise held the public trial right attached to a discussion in chambers regarding whether the defense could cross-examine a witness about being a police informant. State v. Whitlock, 188 Wn.2d 511, 522, 396 P.3d 310 (2017). The reasoning of both Karas and Whitlock indicates the public trial right must certainly attach to contested pretrial hearings on the admissibility of defense-proposed evidence at which sworn testimony is taken. The Hicklin decision cannot be squared with either.

The court of appeals further emphasized, since the legislature passed the rape shield statute in 1975, "hearings on the admissibility of evidence under the statute have been required to be held in a closed courtroom." Appendix A, at 7. In practice, however, this does not actually appear to be true. The case law reveals no prior instance of a rape shield hearing being held in a closed courtroom. One can assume that if rape shield hearings

were routinely held in closed courtrooms, this issue would have already been litigated and decided on appeal.

Moreover, in treating the longevity of the rape shield statute as definitive, the court of appeals ignored this Court's holding in In re Detention of D.F.F., 172 Wn.2d 37, 256 P.3d 357 (2011). At issue in D.F.F. was Superior Court Mental Proceeding Rule (MPR) 1.3, which mandated closure of all involuntary commitment proceedings. D.F.F., 172 Wn.2d at 38. Since its adoption in 1974—a year before the rape shield statute—MPR 1.3 required closure. ELIZABETH TURNER, 4A WASH. PRACTICE: RULES PRACTICE MPR 1.3 (8th ed. 2022). Despite the longstanding rule, the public trial right attached at involuntary commitment proceedings, where evidence and testimony are taken. D.F.F., 172 Wn.2d at 41-42. It is not clear why D.F.F. should not apply in this context, particularly given the sensitive nature of both types of proceedings.

The court of appeals also stressed the purposes of the rape shield statute, holding that "[a]llowing discussion on a rape

victim's past sexual conduct to be discussed in an open courtroom, especially when it may ultimately be inadmissible, would not encourage victims to prosecute." Appendix A, at 8. But the United States Supreme Court disavowed this very same reasoning in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982).

At issue in Globe Newspaper Co. was a statute that required courtroom closure during testimony of child sexual abuse victims. Id. at 607-09. The Supreme Court rejected the government's contention that mandatory closures encouraged minor victims to come forward and provide accurate testimony. Id. at 609. For one, the government offered "no empirical support" for such a claim. Id. For another, the government's claim was "open to serious question as a matter of logic and common sense." Id. at 610. The Court explained, although the statute barred the press and public from the courtroom during the minor's testimony, "the press is not denied access to the transcript, court personnel, or any other possible source that could

provide an account of the minor victim's testimony." Id. Nor did the statute at issue prohibit publicizing the substance of the minor's testimony. Id.

Thus, the Globe Newspaper Co. Court held, if the government's "interest in encouraging minor victims to come forward depends on keeping such matters secret, [the statute] hardly advances that interest in an effective manner." Id. The Court emphasized "[t]hat interest could be served just as well by requiring the trial court to determine on a case-by-case basis whether the State's legitimate concern for the well-being of the minor victim necessitates closure." Id. at 609. The court of appeals' decision seems to conflict with the United States Supreme Court's holding in Globe Newspaper Co.

Consistent with Globe Newspaper Co., this Court has repeatedly held a statute or court rule cannot mandate privacy where the constitution requires openness. See, e.g., Chen, 178 Wn.2d at 355 (statute could not mandate automatic sealing of competency evaluations); D.F.F., 172 Wn.2d at 41-42 (court rule

could not mandate automatic closure of involuntary commitment proceedings). For instance, this Court held unconstitutional a statute that required courts to redact identifying information of child sexual assault victims made public during trial or contained in court records. Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993). Instead, to pass constitutional muster, such determinations must be made on an individualized basis—notwithstanding the generally compelling interests of protecting child victims from further trauma and ensuring their privacy. Id.

These cases make clear even especially sensitive proceedings that may warrant closure cannot be categorically closed. Hicklin does not dispute the purpose and utility of the rape shield statute. Indeed, closure of a rape shield hearing may very well be justified in certain instances, perhaps where a complainant is reluctant to testify. But this goes to the first Bone-Club factor—the proponent must show a compelling interest for the closure—not to whether the proceeding is presumptively

open. 128 Wn.2d at 258 ("The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right." (alteration in original) (quoting Eikenberry, 121 Wn.2d at 210)). The discussion above demonstrates that even a compelling interest does not justify *mandatory* closure in all cases. See also id. at 261 ("[O]nly evidence of a particularized threat would likely justify encroachment into a defendant's constitutionally guaranteed fair trial rights.").

The apparent conflict of the Hicklin decision with these numerous cases militates in favor of review under RAP 13.4(b)(1) and (2). Furthermore, the case presents a significant constitutional question of first impression that implicates the public's right of access to the courts, deserving of this Court's definitive guidance under RAP 13.4(b)(3) and (4).

2. This Court should remand for the trial court to strike the $500 VPA and $100 DNA fee from Hicklin's judgment and sentence.

Finally, even if this Court does not grant review on the public trial issue, Hicklin respectfully requests that this Court remand for the $500 VPA and $100 DNA fee to be stricken from his judgment and sentence. At sentencing, the trial court found Hicklin indigent under RCW 10.101.010(3)(a) because he received public assistance. CP 12. Other than inadvertently imposed community supervision fees, the trial court imposed only the then-mandatory $500 VPA and $100 DNA fee because Hicklin had no prior felony history. RP 813; CP 15-16.

At the time of Hicklin's sentencing, RCW 7.68.035(1)(a) mandated a $500 penalty assessment "[w]hen any person is found guilty in any superior court of having committed a crime," except for some motor vehicle crimes. RCW 43.43.7541 similarly mandated a $100 DNA collection fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." Both fees were mandatory regardless of the

defendant's indigency or inability to pay. State v. Duncan, 185 Wn.2d 430, 436 n.3, 374 P.3d 83 (2016); State v. Mathers, 193 Wn. App. 913, 918-21, 376 P.3d 1163 (2016).

In April of 2023, however, the legislature passed Engrossed Substitute House Bill 1169, amending RCW 7.68.035. The amendment provides, "The court shall not impose the penalty assessment under this section if the court finds that the defendant, at the time of sentencing, is indigent" as defined in RCW 10.101.010(3). Laws of 2023, ch. 449, § 1. The new law also eliminates the $100 DNA collection fee for all defendants. Laws of 2023, ch. 449, § 4. These amendments took effect on July 1, 2023. Laws of 2023, ch. 449, § 27.

Under this Court's decision in State v. Ramirez, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2018), and the court of appeals' decision in State v. Wemhoff, 24 Wn. App. 2d 198, 201-02, 519 P.3d 297 (2022), costs of litigation are not final until the termination of all appeals. Amendments to cost statutes therefore apply prospectively to cases like Hicklin's that are still pending

on appeal. Wemhoff, 24 Wn. App. 2d at 201-02. Because the $500 VPA and $100 DNA fee are not final until the termination of Hicklin's appeal, he is entitled to the benefit of the legislative amendments.

Hicklin recognizes the late hour of this request, but notes that the bill was not signed into law until May 15, 2023, after Hicklin filed his motion for reconsideration. Laws of 2023, ch. 449. He is therefore raising this issue at the earliest possible opportunity. And, while the amendments allow for individuals to make a motion in the trial court, Hicklin would have to do so without counsel. Because the court of appeals already ordered remand for a vague community custody condition and supervision fees to be stricken (Appendix A, at 18-19), the most efficient resolution would be for this Court to order the trial court to also strike the $500 VPA and $100 DNA fee from Hicklin's judgment and sentence.

E. CONCLUSION

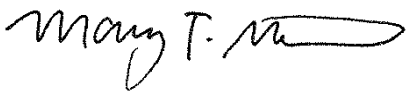
For the reasons discussed, this Court should grant review and reverse the court of appeals. Alternatively, this Court should remand for the trial court to strike the $500 VPA and $100 DNA fee from Hicklin's judgment and sentence.

DATED this 24th day of July, 2023.

I certify this document contains 3,782 words, excluding those portions exempt under RAP 18.17.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC



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Appendix A

Filed
Washington State
Court of Appeals
Division Two

April 25, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SIDNEY S. HICKLIN, Appellant.	No. 56077-1-II PART-PUBLISHED OPINION

LEE, P.J. — Sidney S. Hicklin appeals his convictions for second degree rape—forcible compulsion, second degree assault—strangulation, felony harassment—threats to kill, and unlawful imprisonment. Hicklin argues that the trial court violated his public trial right by closing the courtroom during a rape shield hearing. In the published portion of this opinion, we address Hicklin's public trial right argument and hold that, because a rape shield hearing does not implicate the public trial right, the trial court did not violate the public trial right.

In the unpublished portion of this opinion, we address Hicklin's argument that his convictions for second degree assault—strangulation, felony harassment—threats to kill, and unlawful imprisonment violate double jeopardy. Hicklin's convictions for second degree assault and felony harassment do not violate double jeopardy. However, the State concedes that Hicklin's conviction for unlawful imprisonment violates double jeopardy. We accept the State's concession and remand to the trial court to vacate Hicklin's conviction for unlawful imprisonment.

Also in the unpublished portion of this opinion, we address Hicklin's arguments that the trial court imposed an unconstitutionally vague community custody condition and improperly required him to pay community custody supervision fees. The State concedes that the challenged community custody condition and community custody supervision fees should be stricken. We accept the State's concession.

Accordingly, we affirm Hicklin's convictions for second degree rape—forcible compulsion, second degree assault—strangulation, and felony harassment—threats to kill, but we remand for the trial court to vacate Hicklin's conviction for unlawful imprisonment and to strike the challenged community custody condition and community custody supervision fees.

FACTS

A. BACKGROUND FACTS

On the evening of July 4, 2020, Officer Geraldine Smith of the City of Port Angeles Police Department was dispatched to an address on East 9th Street. When she arrived, Officer Smith contacted K.H.[1] K.H. was crying and visibly upset.

K.H. told Officer Smith that she went to Hicklin's apartment because he was a friend and needed some support. K.H. left to get some beverages for them at the store and, when she returned, Hicklin got angry and upset. K.H. told Officer Smith that Hicklin grabbed her by the throat and applied pressure to her neck multiple times. K.H. said she was afraid that Hicklin was going to kill her. K.H. also said that Hicklin raped her.

[1] We refer to the victim of a sexual assault by initials to protect their privacy.

Officer Smith brought K.H. to the police station for a formal interview. Officer Smith also took photographs documenting redness on K.H.'s neck and bruising on her thigh. Officer Smith then took K.H. to the hospital for a sexual assault exam by a sexual assault nurse examiner (SANE exam).

The State charged Hicklin with second degree rape—forcible compulsion, second degree assault—strangulation, felony harassment—threats to kill, and unlawful imprisonment.

B. RAPE SHIELD HEARING

Prior to trial, Hicklin filed a motion in limine seeking to admit evidence of K.H.'s prior sexual history with him. Hicklin provided a written offer of proof to support his motion in limine. The offer of proof asserted that Hicklin would testify that Hicklin became friends with K.H. while attending self-help meetings. Shortly after meeting, Hicklin and K.H. began having sex. On the night of the incident, Hicklin invited K.H. to his mother's house. Hicklin and K.H. had been naked in the hot tub at Hicklin's mother's house once before. When K.H. arrived at Hicklin's mother's house, they were both drinking and began kissing on the couch. When Hicklin wanted more alcohol, K.H. agreed to go get it. Hicklin stated that K.H. took his bank card to pay for beer, but K.H. never returned to the house.

At the hearing on Hicklin's motion in limine, the State noted that, under the rape shield statute, RCW 9A.44.020, a hearing on the victim's prior sexual conduct was required to be closed. The trial court closed the courtroom.

During the closed hearing, the trial court inquired about whether Hicklin needed to testify as part of the hearing. Initially, Hicklin's attorney stated they had filed an offer of proof but then agreed to have Hicklin testify.

During examination by defense counsel, Hicklin testified that he met K.H. about three years ago at self-help meetings in the recovery community. They started having sex after their second meeting. K.H. had previously been naked with Hicklin in the hot tub at his mother's house and previously had sex with Hicklin.

Hicklin also testified that, on the night of the incident, he invited K.H. over to "get naked in the hot tub." 1 Verbatim Rep. of Proc. (VRP) (Feb. 11, 2021) at 41. When K.H. arrived, she had a half gallon bottle of vodka that was half empty. K.H. drank from the bottle while she was with Hicklin. Hicklin and K.H. started kissing "and hands kinda all over the place," but they did not have sex. 1 VRP (Feb. 11, 2021) at 42. After about 15 minutes, Hicklin asked K.H. to go down the block to buy more alcohol because he was out of alcohol. K.H. took his bank card to buy the alcohol and left. K.H. never came back.

The trial court asked if the State had any questions. The State declined any cross-examination because it was an offer of proof.

The State argued that evidence of a past sexual relationship was not admissible because Hicklin was not alleging consent and was instead claiming that no sex occurred. The trial court agreed that the defense was not consensual sex with K.H and allowed the defense to submit a brief on the issue.[2] After the trial court heard argument on the admissibility of evidence of K.H.'s past sexual conduct with Hicklin, the trial court reopened the courtroom.

Hicklin appeals.

[2] There is no record that the defense submitted additional briefing or that the matter was further addressed by the trial court.

ANALYSIS

Hicklin argues that the trial court violated his public trial right by holding the rape shield hearing in a closed courtroom. We disagree.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a defendant's right to a public trial.[3] *State v. Whitlock*, 188 Wn.2d 511, 519-20, 396 P.3d 310 (2017). We review whether a defendant's public trial right was violated de novo. *Id.* at 520.

"A public trial is a core safeguard in our system of justice." *State v. Wise*, 176 Wn.2d 1, 5-6, 288 P.3d 1113 (2012). "We have recognized that the right to a public trial serves to ensure a fair trial, to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions, to encourage witnesses to come forward, and to discourage perjury." *State v. Sublett*, 176 Wn.2d 58, 72, 292 P.3d 715 (2012) (lead opinion); *id.* at 99 (Madsen, C.J., concurring). However, the right to a public trial is not absolute. *Wise*, 176 Wn.2d at 9. "Courts have recognized that while openness is a hallmark of our judicial process, there are other rights and considerations that must sometimes be served by limiting public access to a trial." *Id.*

We engage in a three-part inquiry to determine whether the right to a public trial has been violated, asking: "'(1) Does the proceeding at issue implicate the public trial right? (2) If so, was the proceeding closed? And (3) if so, was the closure justified?'" *Whitlock*, 188 Wn.2d at 520 (quoting *State v. Smith*, 181 Wn.2d 508, 521, 334 P.3d 1049 (2014)).

[3] Hicklin acknowledges that the rape shield statute requires a closed courtroom and argues that the rape shield statute "cannot trump the constitutional right to a public trial." Br. of Appellant at 19. Hicklin does not argue that the rape shield statute is unconstitutional.

Washington courts use the experience and logic test to determine whether a proceeding implicates the public trial right. *Smith*, 181 Wn.2d at 514. "Under the experience prong, we consider whether the proceeding at issue has historically been open to the public." *Whitlock*, 188 Wn.2d at 521. The logic prong asks "'whether public access plays a significant positive role in the functioning of the particular process in question.'" *Id.* (internal quotation marks omitted) (quoting *In re Det. of Morgan*, 180 Wn.2d 312, 325, 330 P.3d 774 (2014)). "If the answer to *both* prongs of the experience and logic test is yes, the public trial right 'attaches' and the trial court must consider the *Bone-Club*[4] factors on the record before closing the proceeding to the public." *State v. Wilson*, 174 Wn. App. 328, 341, 298 P.3d 148 (2013), *review denied*, 184 Wn.2d 1026 (2016). The experience and logic test allows the determining court to "'consider the actual proceeding at issue for what it is, without having to force every situation into predefined factors.'" *State v. S.J.C.*, 183 Wn.2d 408, 431, 352 P.3d 749 (2015) (quoting *Sublett*, 176 Wn.2d at 73).

Washington courts have not addressed whether the public trial right is implicated in proceedings under the rape shield statute. However, Hicklin asserts that we need not apply the experience prong because courts have already held that the public trial right is implicated by pretrial evidentiary hearings.

Although a hearing to admit evidence under the rape shield statute falls into the broad category of pretrial evidentiary hearings, a rape shield hearing is a very specialized type of hearing, governed by statute, and implicates a different set of rights and considerations than other, more generic, pretrial evidentiary hearings. *See* RCW 9A.44.020; *Wise*, 176 Wn.2d at 9. Forgoing the

[4] *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).

experience and logic test to address a hearing under the rape shield statute would be forcing a specific proceeding into predefined factors rather than examining the actual proceedings, which undermines the reason for utilizing the experience and logic test. *See S.J.C.*, 183 Wn.2d at 431. Accordingly, we apply the experience and logic test to determine whether a hearing to admit evidence under the rape shield statute implicates the public trial right.

The rape shield statute provides:

> Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

RCW 9A.44.020(2). If the court determines that a hearing on the admissibility of evidence under the rape shield statute is warranted, "the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court." RCW 9A.44.020(3)(c).

Historically, rape shield hearings have never been open to the public. Since the inception of the rape shield statute, hearings on the admissibility of evidence under the statute have been required to be held in a closed courtroom. LAWS OF 1975 1st Ex. Sess., ch. 14 § 2. Therefore, the experience prong indicates that the public trial right would not attach to rape shield hearings.

Also, public access would not play "'a significant positive role in the functioning'" of rape shield hearings. *Whitlock*, 188 Wn.2d at 521 (internal quotation marks omitted) (quoting *Morgan*, 180 Wn.2d at 325). The purpose of the rape shield statute is "to encourage rape victims to

prosecute, and to eliminate prejudicial evidence of prior sexual conduct of a victim which often has little, if any, relevance on the issues for which it is usually offered, namely, credibility or consent." *State v. Carver*, 37 Wn. App. 122, 124, 678 P.2d 842, *review denied*, 101 Wn.2d 1019 (1984). Allowing discussion on a rape victim's past sexual conduct to be discussed in an open courtroom, especially when it may ultimately be inadmissible, would not encourage victims to prosecute. And it is likely that subjecting a victim's past sexual conduct to such public scrutiny would result in additional trauma and humiliation to rape victims.

Furthermore, a rape shield hearing is a particularly discrete and limited aspect of a criminal trial. Any admissible evidence continues to be subject to public scrutiny during the actual trial, which achieves the aims of the public trial right. *See Sublett*, 176 Wn.2d at 72 (lead opinion); *id.* at 99 (Madsen, C.J., concurring). And, when necessary, the conduct of the attorneys and the court is subject to the scrutiny of the appellate process. *See id.* Accordingly, the logic prong of the experience and logic test demonstrates that rape shield hearings do not implicate the public trial right. *See Whitlock*, 188 Wn.2d at 521.

Neither experience nor logic demonstrate that the public trial right attaches to hearings on the admissibility of evidence under the rape shield statute. Therefore, the public trial right is not implicated and our inquiry is at an end. *See id.* at 520. The trial court did not violate Hicklin's public trial right by closing the courtroom during the rape shield hearing.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

ADDITIONAL FACTS

A. JURY TRIAL

K.H. testified at trial that she knew Hicklin for about three years through the recovery community. She considered Hicklin a friend.

On July 4, K.H. was bickering with her significant other, A.M., about going to a barbecue. Ultimately, K.H. made plans to see Hicklin. K.H. wanted to see Hicklin to talk about the struggles she was going through. Prior to seeing Hicklin, she had two shots of vodka.

Hicklin was staying at his mother's house. When K.H. arrived, she and Hicklin sat on the couch and talked. After a time, Hicklin asked K.H. to go buy more alcohol. Hicklin gave K.H. his bank card to pay for the alcohol. K.H. denied kissing Hicklin prior to leaving to buy more alcohol.

K.H. went to a store a block away to buy the alcohol. After purchasing the alcohol with Hicklin's bank card, K.H. returned to Hicklin's mother's house. K.H. gave Hicklin the bag with the alcohol; she thought she had also put the bank card in the bag. When Hicklin realized the bank card was not in the bag he became very angry. Hicklin began pacing and yelling at K.H., asking where the bank card was.

K.H. testified that once Hicklin got angry about the bank card, everything happened very fast. K.H. was sitting on the couch, and Hicklin grabbed her around the neck. Although Hicklin was holding her down and squeezing her neck, K.H. testified "it wasn't a real hard squeeze" at that point. 1 VRP (June 2, 2021) at 295. K.H. explained that she only weighed 90 to 92 pounds and it simply was not possible for her to move when Hicklin was holding her. Hicklin's body weight was on K.H.'s legs, pushing them open.

Over time, the pressure on K.H.'s neck got harder, and it was difficult to breathe and talk. While Hicklin had his hands around K.H.'s throat, he told her, "I will end you." 1 VRP (June 2, 2021) at 300. K.H. believed Hicklin meant that he would kill her. K.H. wanted to get to the door, but she was unable to get up.

Then, Hicklin put his penis inside K.H. K.H. was unable to describe the details of how the incident went from Hicklin holding her throat to putting his penis inside of her. K.H. resisted a little, "like pushing someone off of you to let them know that it's not okay," but she did not try to physically fight. 1 VRP (June 2, 2021) at 302. K.H. explained:

> There was no way I'd win, there was—he would've hurt me more. I mean, it's just . . . .
>
> . . . .
>
> . . . Because he's a very big man and the position, it was the position alone was enough and it just there was no way.

1 VRP (June 2, 2021) at 302. K.H. remembered telling Hicklin that she had some money in her car and he stopped raping her.

K.H. was able to get out to her car, but Hicklin kept her keys. K.H. called A.M. from the car. A.M. called the police.

A.M., Officer Smith, additional investigating officers, the SANE nurse, and a forensic scientist also testified consistent with the background facts presented above.

Hicklin testified in his own defense. Hicklin testified that he had known K.H. for a little over three years. On July 4, 2020, Hicklin messaged K.H. to see if she wanted to hang out. Hicklin invited K.H. to come over to his mother's house and use the hot tub. K.H. accepted his invitation.

K.H. arrived with a full half-gallon bottle of vodka and was taking "chugs out of the bottle" while she was there. 2 VRP (June 7, 2021) at 650. Hicklin and K.H. sat on the couch kissing for approximately fifteen minutes. When Hicklin finished his beer, he asked K.H. if she would be willing to go get more beer. Hicklin then clarified it was not beer but a different alcoholic beverage. Hicklin gave K.H. his bank card to pay for the alcohol.

Hicklin testified that K.H. never returned from the store. Hicklin messaged and called K.H. several times trying to find out where she was. At one point, Hicklin spoke to K.H. and told her he would call the police if she did not bring his bank card back. He did not speak to K.H. again. Hicklin denied assaulting or raping K.H.

The jury found Hicklin guilty as charged.

B. SENTENCING

At sentencing, Hicklin argued that his convictions violated double jeopardy or, alternatively, should be considered the same criminal conduct, and therefore, he should be sentenced with an offender score of zero. The trial court ruled that the convictions did not violate double jeopardy. However, the trial court found that the unlawful imprisonment was the same criminal conduct, resulting in an offender score of three on each conviction. The trial court found that Hicklin was indigent and stated that it would impose only the mandatory minimum legal financial obligations (LFOs).

The trial court imposed a standard range sentence of 136 months to life on the second degree rape—forcible compulsion conviction. The trial court also imposed standard range sentences on all other convictions to be served concurrently with the sentence on the second degree rape—forcible compulsion conviction. The trial court imposed lifetime community custody on

the second degree rape—forcible compulsion conviction. As a condition of community custody, the trial court ordered that Hicklin not "enter drug areas as defined by court or [Community Custody Officer (CCO)]." Clerk's Papers (CP) at 25. The judgment and sentence also included a provision requiring Hicklin to pay community custody supervision fees.

ANALYSIS

A. DOUBLE JEOPARDY

Hicklin argues that his convictions for second degree assault—strangulation, felony harassment—threats to kill, and unlawful imprisonment violate double jeopardy because they were the basis of proving the second degree rape—forcible compulsion conviction. The State concedes that the unlawful imprisonment conviction violates double jeopardy and should be vacated. We affirm Hicklin's convictions for second degree assault—strangulation and felony harassment—threats to kill, but we accept the State's concession and remand to vacate Hicklin's conviction for unlawful imprisonment.

1. Legal Principles

We review claims of double jeopardy de novo. *State v. Fuller*, 185 Wn.2d 30, 34, 367 P.3d 1057 (2016). The right to be free from double jeopardy protects a defendant from being punished multiple times for the same offense. *Id.* at 33-34. We apply a "three-step analysis to determine whether the legislature authorized multiple punishments for a single course of conduct." *State v. Thompson*, 192 Wn. App. 733, 737, 370 P.3d 586, *review denied*, 185 Wn.2d 1041 (2016). First, we attempt to determine legislative intent from the relevant statutes. *Id*. If the statutes are silent, then we apply the "same evidence" test. *Id*. Then, if applicable, we may apply the merger doctrine. *Id*. at 737-38.

As relevant here, a person is guilty of second degree rape if the person engages in sexual intercourse with another person by forcible compulsion. RCW 9A.44.050(1)(a).[5] A person is guilty of second degree assault if the person assaults another person by strangulation. RCW 9A.36.021(g). A person is guilty of felony harassment if the person harasses another person by threatening to kill that person. RCW 9A.46.020(2)(b)(ii). And a person is guilty of unlawful imprisonment if the person knowingly restrains another person. RCW 9A.40.040.

The relevant statutes do not contain any explicit statement indicating whether the legislature intended to punish the crimes at issue separately. Without a clear statement of legislative intent, we must then turn to additional doctrines to determine legislative intent. *See Thompson*, 192 Wn. App. 737-38.

2. *Blockburger* "Same Elements/Same Evidence" Test

When legislative intent is unclear, we may turn to the *Blockburger*[6] test, also referred to as the "same elements" or "same evidence" test. *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 816, 100 P.3d 291 (2004). Under the *Blockburger* test, "[i]f each crime contains an element that the other does not, we presume that the crimes are not the same offense for double jeopardy purposes." *State v. Freeman*, 153 Wn.2d 765, 772, 108 P.3d 753 (2005). However, we do not consider the elements of the crimes only on an abstract level. *Id*. "'[W]here the *same act or transaction* constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision *requires proof of*

[5] RCW 9A.44.050 was amended in 2021. However, no substantive changes were made affecting this opinion. Therefore, we cite to the current statute.

[6] *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

a fact which the other does not.'" *Id.* (alterations in original) (internal quotation marks omitted) (quoting *Orange*, 152 Wn.2d at 817).

As charged, second degree rape required proof of forcible compulsion. RCW 9A.44.050(1)(a). "'Forcible compulsion' means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped." RCW 9A.44.010(3).[7]

Here, K.H. testified that Hicklin's weight on top of her holding her down overcame her resistance. Therefore, K.H.'s testimony about Hicklin holding her down on the couch was the fact required to prove forcible compulsion. Because this fact was also required to prove unlawful imprisonment, the State properly concedes that Hicklin's convictions for both second degree rape and unlawful imprisonment violate double jeopardy.

However, given our record, neither proof of the second degree assault nor the felony harassment are required for the State to prove second degree rape by forcible compulsion. The record supports three separate actions by Hicklin that could have independently established forcible compulsion: holding K.H. down on the couch with his body, strangling K.H., or threatening to kill K.H. But only one of these actions was required to prove forcible compulsion. Since any of these actions could have independently proven forcible compulsion, Hicklin's double

[7] RCW 9A.44.010 was amended in 2022, and the definition of "forcible compulsion" was renumbered from subsection (6) to subsection (3). No substantive changes were made affecting this opinion. Therefore, we cite to the current statute.

jeopardy claim fails. *See State v. Lee*, 12 Wn. App. 2d 378, 399-400, 460 P.3d 701, *review denied*, 195 Wn.2d 1032 (2020).

As charged in this case, the State had to prove Hicklin assaulted K.H. by strangulation. RCW 9A.36.021(1)(g). "'Strangulation' means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe." RCW 9A.04.110(26). Proving strangulation was not required to prove forcible compulsion. Therefore, proof of second degree assault by strangulation was not required for the State to prove second degree rape—forcible compulsion.

Similarly, the State was not required to prove that Hicklin threatened to kill K.H. in order to prove forcible compulsion. As explained above, K.H. testified that Hicklin holding her on the couch with his body caused her to realize that fighting back or resisting would be ineffective. This was the evidence required to prove forcible compulsion, and the State was not required to prove that Hicklin made a threat to kill in order to prove the second degree rape charge.

Hicklin asserts that the mere possibility that his acts of strangulation or threatening to kill K.H. could have been viewed by the jury as proof of the forcible compulsion required to convict him of second degree rape requires us to reverse both the second degree assault and felony harassment convictions in addition to the unlawful imprisonment conviction. In essence, Hicklin argues that it is the State's burden to establish that the jury did not base its verdict on the rape charge on Hicklin's acts of second degree assault or felony harassment. Hicklin's argument fails because "[i]t is his burden to affirmatively establish that he faces multiple punishments for the same offense." *Lee*, 12 Wn. App. 2d at 399.

Because evidence of the strangulation or threat to kill was not *required* to prove the second degree rape by forcible compulsion charge, the second degree assault and felony harassment are not the same in fact as the second degree rape. *See State v. Nysta*, 168 Wn. App. 30, 48-49, 275 P.3d 1162 (2012) (holding that felony harassment and second degree rape were not the same in fact where jury did not have to rely on death threats for forcible compulsion because there was ample evidence that defendant used physical force to overcome victim's resistance), *review denied*, 177 Wn.2d 1008 (2013). Accordingly, Hicklin's convictions for second degree rape and felony harassment do not violate double jeopardy under the *Blockburger* test.

3. Merger

The merger doctrine is an additional tool to help determine legislative intent. *Freeman*, 153 Wn.2d at 772. "Under the merger doctrine, when the degree of one offense is raised by conduct separately criminalized by the legislature, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime." *Id.* at 772-73.

Here, forcible compulsion increases the degree of rape from third degree to second degree. *See* RCW 9A.44.060, .050. However, as discussed above, the strangulation required to prove second degree assault and the threats required to prove felony harassment were not required to prove forcible compulsion. Therefore, the conduct that is criminalized as second degree assault or felony harassment did not raise the degree of the rape in this case. Accordingly, the merger doctrine also indicates that the legislature intended for the second degree rape—forcible compulsion to be punished separately from the second degree assault—strangulation and the felony harassment—threats to kill.

4. Independent Purpose or Effect

Even if either the *Blockburger* test or the merger doctrine indicated that the legislature intended for these offenses to be punished as one crime, or on an abstract level, the "two convictions appear to be for the same offense or for charges that would merge, if there is an independent purpose or effect to each, they may be punished as separate offenses." *Freeman*, 153 Wn.2d at 773.

Hicklin argues that there was no independent purpose or effect of the second degree assault—strangulation or felony harassment—threats to kill because they were all used to effectuate the rape. However, the record belies this argument. K.H. testified that the strangulation and threats to kill occurred when Hicklin was yelling at her and asking where his bank card was. K.H.'s testimony shows that Hicklin's strangulation and threats to kill were due to K.H. not giving the bank card back, not for the purpose of overcoming her resistance to the rape. Therefore, there was an independent purpose and effect that supports punishing each conviction as a separate offense.

5. Rule of Lenity

Despite the fact that the strangulation and threats to kill were not *required* to prove second degree rape—forcible compulsion, Hicklin argues that the rule of lenity requires the ambiguous jury verdicts to be interpreted in his favor.

When the evidence and jury instructions create "an ambiguity in the jury's verdict," the ambiguity must, "under the rule of lenity, . . . be resolved in the defendant's favor." *State v. Kier*, 164 Wn.2d 798, 811, 194 P.3d 212 (2008). Determining whether there is ambiguity in the jury's

verdict requires examining how the case was presented to the jury, including the specific evidence presented. *Id.* at 808.

Here, looking at the jury instructions in isolation, it appears there would be ambiguous verdicts. The jury was instructed only that it needed to find forcible compulsion to find Hicklin guilty of second degree rape. The jury instructions did not specify what act was alleged to be the forcible compulsion, and the jury verdicts did not specify what act the jury found was forcible compulsion. However, K.H.'s testimony clearly established that the restraint was what overcame her resistance to the rape. The evidence in this case is distinguishable from *Kier*, where the evidence established that the assault victim was one of two potential robbery victims and it was unclear if the assault elevated the robbery to first degree robbery. 164 Wn.2d at 808-813. Based on the evidence presented in this case, we decline to apply the rule of lenity.

B. COMMUNITY CUSTODY CONDITION AND SUPERVISION FEES

Hicklin argues that the community custody condition requiring that he "not enter drug areas" is unconstitutionally vague. Hicklin also argues that his judgment and sentence improperly includes a provision requiring him to pay supervision fees. The State concedes these provisions should be stricken from Hicklin's judgment and sentence. We accept the State's concession.

A community custody condition is unconstitutionally vague if it does not define the violation with sufficient definiteness that ordinary people can understand what is prohibited or does not provide ascertainable standards to prevent arbitrary enforcement. *See State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). Here, the community custody provision requiring Hicklin to not "enter drug areas as defined by court or [CCO]" does not sufficiently define that violation such that ordinary people can understand what is prohibited. CP at 25. Further, it does

not contain ascertainable standards to prevent arbitrary enforcement. Therefore, the State properly concedes that the community custody provision should be stricken.

The judgment and sentence also imposes community custody supervision fees. The community custody supervision fee is a discretionary LFO. *State v. Markovich*, 19 Wn. App. 2d 157, 176, 492 P.3d 206 (2021), *review denied*, 198 Wn.2d 1036 (2022). The trial court found that Hicklin was indigent and intended to impose only mandatory LFOs. Therefore, the State properly concedes that the provision requiring Hicklin to pay community custody supervision fees should be stricken.

CONCLUSION

We affirm Hicklin's convictions for second degree rape—forcible compulsion, second degree assault—strangulation, and felony harassment—threats to kill, but we remand to the trial court to vacate Hicklin's conviction for unlawful imprisonment and to strike the challenged community custody condition and community custody supervision fees.

Lee, P.J.

We concur:

Veljacic, J.

Price, J.

Appendix B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SIDNEY S. HICKLIN, Appellant.	No. 56077-1-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Sidney S. Hicklin, filed a motion for reconsideration of this court's published opinion filed on April 25, 2023. After consideration, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT: Jj. Lee, Veljacic, Price

LEE, J. JUDGE

NIELSEN, BROMAN & KOCH P.L.L.C.

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