SUPREME COURT NO. 102531-9
COURT OF APPEALS NO. 84366-4-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

COREY JUSTIN THOMPSON,

Petitioner.

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

The Honorable Laura M. Riquelme, Judge
The Honorable Brian L. Stiles, Judge

PETITION FOR REVIEW

KEVIN A. MARCH
Attorney for Petitioner

NIELSEN KOCH & GRANNIS, PLLC
The Denny Building
2200 Sixth Avenue, Suite 1250
Seattle, WA 98121
(206) 623-2373

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

TABLE OF AUTHORITIES (CONT'D)

Page

RULES, STATUTES, AND OTHER AUTHORITIES

TABLE OF AUTHORITIES (CONT'D)

Page

A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Petitioner Corey Justin Thompson, the respondent below, seeks review of the Court of Appeals decision State v. Thompson, ___ Wn. App. 2d ___, 536 P.3d 682 (2023).[1]

B. ISSUES PRESENTED FOR REVIEW

1. Does the indecent exposure statute, RCW 9A.88.010, which criminalizes an "open and obscene exposure of his or her person" require actual nudity based on its plain language, its history, and in light of how it has consistently been interpreted and applied by Washington courts?

2. As applied to the fully clothed conduct at issue in this case, if RCW 9A.88.010 criminalizes conduct that falls short of actual nudity, is it unconstitutionally vague as applied to such circumstances?

[1] Mr. Thompson cites the Court of Appeals slip opinion, which is appended to this petition (along with the October 3, 2023 order granting the state's motion to publish) pursuant to RAP 13.4(b)(9).

3. Does the Court of Appeals decision conflict with principles of statutory interpretation and of vagueness analysis and does the question presented by this case present a significant constitutional question and a question of public importance, such that review should be granted under every RAP 13.4(b) criterion?

C. STATEMENT OF THE CASE

The facts are not in dispute, are recited in the trial court's findings of fact, and are cited accordingly.

Three children playing on an apartment complex playground saw Mr. Thompson in his own apartment through his sliding glass door. CP 56 (findings of fact 2-3, 6). They described seeing him "touching his privates and looking at them." CP 56 (finding of fact 8). One child described "seeing it but not seeing it" referring to Mr. Thompson's fully clothed penis, which she described "as circular and long" and demonstrated "the shape of a penis and how the defendant was rubbing it up and down against his thigh." CP 56 (finding of fact 10). The other two

children described Mr. Thompson "touching his genitals while fully clothed and making stroking motions with his hand over his clothing while watching them on the playground." CP 56 (finding of fact 11). The children indicated Mr. Thompson was fully clothed, his hand was always on the outside of his clothing, and the children never saw his unclothed genitals. CP 56-57 (findings of fact 7, 12-13).

Based on what the children saw, the prosecution charged Mr. Thompson with one count of indecent exposure. CP 1.

The defense moved to dismiss the case, arguing that the RCW 9A.88.010 was unconstitutionally vague as applied to Mr. Thompson's conduct. CP 28-37. The defense made two related arguments. First, it argued that interpreting the term "expose" in the statute to criminalize a fully clothed individual would not sufficiently define the proscribed conduct so that a person of ordinary intelligence would understand what was prohibited. CP 32-35. Second, the defense asserted that interpreting "expose" in the statute to criminalize a fully clothed individual did not

provide sufficiently ascertainable standards to protect against arbitrary enforcement. CP 35-37. At the hearing on the vagueness motion, the defense emphasized, "our statute does not cover anything that has to do with lewdness. It is particularly a sight crime of exposure." RP (Mar. 28, 2022) 4.

The trial court agreed that RCW 9A.88.010 was vague as applied to Mr. Thompson. Although it expressed concern that Mr. Thompson "may have engaged in lewd or obscene behavior by touching his clothed penis within the viewpoint of children," it noted that there was no evidence that Mr. Thompson's naked genitalia were visible at any time. CP 58 (conclusions of law 8-9). Given these circumstances, "Mr. Thompson would not have known that his actions were prohibited by [the] Indecent Exposure statute." CP 58 (conclusion of law 10). "The statute and relevant case law are vague and lack clarity to whether nudity is required for an open and obscene exposure." CP 58

(conclusion of law 11).[2] Thus, the trial court dismissed the prosecution. CP 59.

The prosecution appealed the dismissal order, challenging the trial court's conclusions of law 10 and 11. CP 60-64; Br. of Appellant at 1.

The Court of Appeals reversed the trial court, concluding that the indecent exposure statute and the term "open and obscene exposure" does not require an actual exposure of nudity. It eschewed traditional principles of statutory interpretation to discern what RCW 9A.88.010(1)'s term "open and obscene exposure of his or her person," meant, including the historical evolution of the indecent exposure crime, which was Mr. Thompson's focus. Instead, the Court of Appeals' conclusion rested primarily on a single sentence from a 1966 Supreme Court

[2] The trial court made this conclusion based solely on whether the statue defined the criminal offense with sufficient definiteness so that ordinary persons can understand what conduct it described, declining to reach the question of whether the statute lent itself to arbitrary enforcement. CP 57, 59 (conclusions of law 3, 12).

decision interpreting a different, precursor statute, concluding that the term "indecent or obscene exposure of his person" signifies and relates "'to a lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others.'" Thompson, slip op. at 9-12 (quoting State v. Galbreath, 69 Wn.2d 664, 668, 419 P.2d 800 (1966)). Focusing on Galbreath's term "lascivious exhibition," the Court of Appeals concluded that no nudity is required to commit the crime of indecent exposure. Thompson, slip op. at 10-11.

D. ARGUMENT IN SUPPORT OF REVIEW

A person of ordinary intelligence would not understand that RCW 9A.88.010 criminalizes fully clothed conduct, rendering the statute vague as applied to Mr. Thompson's conduct

The central question presented here is whether RCW 9A.88.010's term "open and obscene exposure of his or her person" requires actual nudity. Because the statute does not give fair warning that it proscribes fully clothed conduct, the statute is

unconstitutionally vague. Review should be granted pursuant to RAP 13.4(b)(3) to address this significant constitutional question.

The Due Process Clause of the Fourteenth Amendment demands that statutes provide fair notice of the conduct they proscribe. Papachristou v. City of Jacksonville, 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972); City ov Spokane v. Douglass, 115 Wn.2d 171, 182, 795 P.2d 693 (1990). A statute is void for vagueness if it (1) "does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed" or (2) "does not provide ascertainable standards of guilt to protect against arbitrary enforcement." Douglass, 115 Wn.2d at 178. "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." United States v. Harriss, 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989 (1954); accord Douglass, 115 Wn.2d at 178. A statute does not provide the required notice if it "either forbids or requires the doing of an act in terms so vague that men

of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. Gen. Constr. Co., 269 U.S. 395, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926).

"If the statue does not involve First Amendment rights,[3] then the vagueness challenge is to be evaluated by examining the statute as applied under the particular facts of the case." State v. Coria, 120 Wn.2d 156, 163, 839 P.2d 890 (1992). Because of the inherent vagueness of language, it is appropriate to resort to principles of statutory interpretation and to case law to ascertain the meaning of a statute, which are considered presumptively available to all persons. Douglass, 115 Wn.2d at 180.

[3] Mr. Thompson does not concede that the indecent exposure statute does not involve First Amendment rights. The Court of Appeals' reading of the statute could render illegal artistic performances that involve grabbing and thereby exposing one's own clothed genitals or breasts. However, Mr. Thompson acknowledges he raised no First Amendment challenge below and, as he did below, addresses the statute only as applied to the particular facts of this case.

1. The plain and ordinary meaning of "exposure of his or her person" requires actual nudity

RCW 9A.88.010 criminalizes an "indecent exposure." It reads,

> A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

RCW 9A.88.010(1). Central here, guilt follows upon "any open and obscene exposure of his or her person."

Mr. Thompson does not dispute that his conduct might have been open or obscene. Even so, the term "exposure of his or her person" has a plain meaning in English that would not lead an ordinary person to conclude that it criminalizes clothed conduct. The Court of Appeals erred in failing to ascribe this plain meaning here.

The paramount duty of a court engaged in statutory interpretation is to ascertain and carry out the legislature's intent. State Barnes, 189 Wn.2d 492, 495, 403 P.3d 72 (2017). When a

term is undefined, the term is given its plain and ordinary meaning. Id. The plain and ordinary meaning is derived from the context of the entire act and from related statutes. Id.; see also Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). An undefined, nontechnical term may also be determined from a standard English dictionary. Barnes, 189 Wn.2d at 496. In addition, when determining the meaning of an undefined term, the court "will consider the statute as a whole and provide such meaning to the term as is in harmony with other statutory provisions." Heinsma v. City of Vancouver, 144 Wn.2d 556, 564, 29 P.3d 709 (2001).

"Exposure of his or her person" is a commonplace idiom in the English language that carries a very plain meaning. To expose oneself or one's person is "to show one's sexual organs in public." MERRIAM-WEBSTER ONLINE DICTIONARY, www.merriam-webster.com/dictionary/expose%20oneself (last visited May 3, 2023). To expose one's person is to expose unclothed genitalia or other private areas to view.

Applying this plain meaning, RCW 9A.88.010 does not provide fair notice that it criminalizes something other than nudity, something other than an exposure of one's person. As such, the statute is vague in application if can be read to criminalize fully clothed behavior.

The breast feeding provision in the statute provides contextual confirmation for this point. Cf. Heinsma, 144 Wn.2d at 564 (context matters in deriving plain meaning). RCW 9A.88.010 explicitly exempts breast feeding and expressing breast milk, both of which require nudity by exposing the breast to feed a baby or attach a pump. The fact that the legislature expressly exempted this particular form of nudity from criminal liability indicates that the legislature was concerned with nudity and only nudity by enacting RCW 9A.88.010.

The Court of Appeals did not engage in this plain meaning analysis, in conflict with innumerable Supreme Court and Court of Appeals decisions, meriting RAP 13.4(b)(1) and (b)(2) review. Instead, the Court of Appeals claims that Galbreath already

interpreted the term "exposure of his or her person," and that this interpretation extends to any "lascivious exhibition" of private parts. Thompson, slip op. at 7-11.

It does not. The legislature did not use the term "lascivious exhibition" in the statute. It used "open and obscene exposure of his or her person." The plain language in the statute must control.

Further, the Court of Appeals takes "lascivious exhibition" out of the context it was employed in Galbreath. Galbreath involved a vagueness challenge to the terms "indecent" and "obscene" contained in a former statute. 69 Wn.2d at 668. Rejecting this challenge, the court held that the phrase "indecent and obscene exposure" meant the "lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others." Id. (emphasis added). Galbreath's use of the term "lascivious exhibition" was applied to

and connected with genitals that were *not* kept covered, i.e., nudity.[4]

And Galbreath did not pass on the question presented in this case. It therefore does not resolve it, given that appellate courts "do not rely on cases that fail to specifically raise or decide an issue." In re Electric Lightwave, Inc., 123 Wn.2d 530, 542, 869 P.2d 1045 (1994). The Court of Appeals' reliance on one sentence in Galbreath conflicts with this basic principle. RAP 13.4(b)(1). Contrary to the Court of Appeals decision, Galbreath does not stand for the proposition that any lascivious exhibition, including those that fall short of actual nudity, is criminal under the precursor statute or under RCW 9A.88.010. The Supreme

[4] The Court of Appeals claims it's worth noting that the Galbreath court did not employ the term "naked." Thompson, slip op. at 9 n.6. Mr. Galbreath's conduct, however, was that he "deliberately and lewdly exposed his genitals to her" after enticing the complaining witness into a room. Galbreath, 69 Wn.2d at 666. Again, the phrase "exposing his genitals" can have no other idiomatic meaning other than the exposure of uncovered genitalia. This, in conjunction with Galbreath's emphasis on customarily keeping private parts covered, strongly indicates that actual nudity was indeed involved in Galbreath.

Court should review the Court of Appeals erroneous plain language analysis under RAP 13.4(b)(1), (2), and (3).

2. That actual nudity is required by the plain language of the statute is confirmed by examining the history of the statute

The Court of Appeals refused to engage the history of the statute, again relying on the single sentence from Galbreath that "lascivious exhibitions" are what the statute proscribes and concluding that "our Supreme Court has examined the legislative history and intent of the term [obscene exposure], and has never held that nudity is an essential element of the crime."[5] Thompson, slip op. at 11. The Court of Appeals' refusal to grapple with history of the statute runs afoul of the Supreme Court's decision in Graffel v. Honeysuckle, 30 Wn.2d 390, 399, 191 P.2d 858 (1948), which long ago recognized that it is of "great importance in ascertaining the intention of the legislature"

[5] Again, no Washington court has held one way or another whether nudity is required because no Washington court has been asked to so hold.

to consider statutes that reenact, repeal, and/or revise earlier laws. Review is warranted under RAP 13.4(b)(1) for this reason alone.

Contrary to the Court of Appeals decision, the history of RCW 9A.88.010 *is* important. While the legislature is surely empowered to criminalize the conduct at issue here, the history of its enactments in this subject area shows that the legislature did not criminalize such conduct by enacting RCW 9A.88.010.

The legislature used to criminalize any "open or gross lewdness" (or the like) in statutes that eventually morphed into the modern indecent exposure law, which captured lewd behavior falling short of actual nudity. Because, starting in the 1970s, the legislature opted not to criminalize such behavior in future iterations of the law, including the current iteration of RCW 9A.88.010, the historical evolution of the statutes shows that the current indecent exposure statute requires nudity.

Before statehood, the Legislative Assembly of the Washington Territory criminalized more than just exposure of one's person. In 1854, the law read, "Every person who shall be

guilty of notorious lewdness or other public indecency, upon conviction thereof, shall be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only." CODE OF 1854, Acts Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. VII, § 117.

In 1881, the territorial legislature provided,

> If any man or woman not being married to each other lewdly and viciously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open or gross lewdness, or designedly make any open and indecent or obscene exposure of his or her person, or of the person of another, every such person shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding two hundred dollars.

CODE OF 1881, § 948, at 184. The 1881 law expressly criminalized the same conduct that is criminalizes now: the "open and indecent or obscene exposure of his or her person." But it also criminalized any "open or gross lewdness." The 1881 legislature thus criminalized broader conduct than open and

obscene exposure of one's person. It criminalized behavior that was openly and grossly lewd but did not amount to exposing one's naked body.

After statehood, the law remained substantively the same. The first overhaul of the criminal code occurred in 1909, when the legislature created the crime of "Lewdness," which read,

> Every person who shall lewdly and viciously cohabit with another not the husband or wife of such person, and every person who shall be guilty of open or gross lewdness, or make any open and indecent or obscene exposure of his person, or of the person of another, shall be guilty of a gross misdemeanor.

LAWS OF 1909, ch. 249, § 206. Here again, the legislature drew a distinction between exposing one's body and doing some other act that amounted to "open or gross lewdness."

This crime of lewdness, criminalizing both an open and gross lewdness and an open/indecent/obscene exposure of one's person remained unchanged for nearly 70 years until it was repealed effective July 1, 1976. See REMINGTON REV. STAT. § 2458; former RCW 9.79.120 (1973), repealed by LAWS OF 1975,

1st Ex. Sess., ch. 260, § 9A.92.010; State v. Eisenshank, 10 Wn. App. 921, 923, 521 P.2d 239 (1974) (discussing and explaining former RCW 9.79.120).

In the 1930s, however, another indecent exposure law based on the age of the victim took shape. Remington's Revised Statutes, published in 1932, contained a statute that criminalized indecent assault, one precursor to the modern indecent liberties law. REMINGTON'S REV. STAT. § 2442. The 1940 pocket part to Remington's included the crimes of "indecent assaults, liberties, or exposures":

> Every person who shall take any indecent liberties with or on the person of any female under the age of fifteen years, or make any indecent, or obscene exposure of his person, or of the person of another, whether with or without his or her consent, shall be guilty of a felony . . . .

REMINGTON'S REV. STAT. § 2442 (1940 Annual Pocket Part); see LAWS OF 1937, ch. 74, § 2(2) (amending section 2442 of Remington's Revised Statutes to the language reflected in the 1940 pocket part). Thus, in addition to the crime of lewdness,

which criminalized as a gross misdemeanor any open and indecent or obscene exposure of one's person (as well as "open and gross lewdness"), the Washington legislature criminalized as a felony an indecent or obscene exposure to a female under age 15. This law was codified in former RCW 9.79.080 (1973), amended by Laws of 1975, 1st Ex. Sess., ch. 260, § 9A.88.010. See Eisenshank, 10 Wn. App. at 922-23 (discussing differences between former RCW 9.79.080 and former RCW 9.79.120).

Former RCW 9.79.080 remained the same in substance until the 1970s. See LAWS OF 1955, ch. 127, § 1(2); LAWS OF 1973, 1st Ex. Sess., ch. 154, § 129. And, when the law was amended and recodified to RCW 9A.88.010 in 1975, the legislature created the crime of "Public Indecency,"[6] which criminalized "any open and obscene exposure of his person or the

[6] Following an interpretation that the exposure of one's person must be made in a public place in State v. Sayler, 36 Wn. App. 230, 673 P.2d 870 (1983), the legislature amended the title of the crime, changing it from Public Indecency to Indecent Exposure. LAWS OF 1987, ch. 277, § 1(1) (codified as amended at RCW 9A.88.010(1)).

person of another knowing that such conduct is likely to cause reasonable affront or alarm." LAWS OF 1975, 1st Ex. Sess., ch. 260, § 9A.88.010(1).

In reaching its present-day form, RCW 9A.88.010 has undergone other minor changes, but the statute remains mostly the same, criminalizing "any open and obscene exposure of his or her person."

The history of the law in this area demonstrates the lawmaking distinction between an open and obscene exposure and a mere open and gross lewdness. Compared with one another, the former clearly requires nudity whereas the latter clearly does not. Cf. In re Det. of Strand, 167 Wn.2d 180, 189, 217 P.3d 1159 (2009) ("no part of a statute should be deemed inoperative or superfluous unless it is the result of obvious mistake or error"); In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 821, 177 P.3d 675 (2008) ("When the legislature uses different words in the same statues, we presumed the legislature intends those words to have different meanings."); McGinnis v.

State, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004) ("The legislature is presumed not to include unnecessary language when it enacts legislation.").

The legislature repealed the crime punishing open and gross lewdness but retained the crime punishing an open and obscene exposure. This reflects a policy choice and, in turn, the intent behind RCW 9A.88.010. Any lewd behavior is not criminal; instead, the behavior must rise to the level of exposing one's person in an open and obscene manner. The intent is plainly to criminalize nudity.

The legislature is certainly empowered to criminalize other lewd behavior and in fact did criminalize any "open or gross lewdness" up until 1975 when it repealed that crime. The legislature could certainly reenact a crime penalizing lewd displays that do not involve nudity. See, e.g., UNIFORM MODEL PENAL CODE § 251.1 (2021) (suggesting model crime of "Open Lewdness" committed when a person "does any lewd act which

he knows is likely to be observed by others who would be affronted or alarmed").

However, the legislature has chosen not to criminalize lewd behavior falling short of an actual exposure of one's person. Based on the history of these statutes, in addition to the plain language employed by the legislature, no person of ordinary intelligence would conclude that RCW 9A.88.010 criminalizes anything but nudity by enacting RCW 9A.88.010. To the extent that RCW 9A.88.010 applies to fully clothed conduct, such an application renders the statute unconstitutionally vague.

3. Case law has never addressed the precise question of whether nudity is required to commit indecent exposure but would lead a person of ordinary intelligence to conclude it is

The Court of Appeals' discussion of case law is misfocused on whether any of the cases raised by Mr. Thompson hold that nudity is required for conviction under RCW 9A.88.010. Thompson, slip op. at 11-12. Of course they don't, because they never were asked to so hold. Again, cases that do

not specifically address an issue should not be relied on. Electric Lightwave, 123 Wn.2d at 541. But all the cases discussed, including Galbreath, State v. Vars, 157 Wn. App. 482, 237 P.3d 378 (2010), and State v. Stewart, 12 Wn. App. 2d 236, 457 P.3d 1213 (2020), led the trial court to conclude that RCW 9A.88.010 is vague insofar as it criminalizes fully clothed conduct, and rightly so.

As discussed, in Galbreath, the court was considering the terms "indecent" and "obscene," and concluded that an ordinary person would understand that such exposures relate to "lascivious exhibitions" of private parts that are "customarily kept covered in the presence of others." 69 Wn.2d at 668. Given the "kept covered" language, Galbreath suggests that the former statute it was interpreting meant that the exposure meant nudity.

The same goes for Vars. Mr. Vars wandered "naked through the streets" of Kirkland. 157 Wn. App. at 487. Witnesses reported seeing his buttocks but not his genitalia and, when police arrived, Mr. Vars held a garment over his genitalia.

Id. In rejecting Mr. Vars's sufficiency challenge, the court concluded that no one need actually have seen his genitals, given that the evidence "indicate[d] that Vars was 'nude' and was seen walking 'naked' through a residential neighborhood with his arms in the air, the record contains sufficient circumstantial evidence for a rational, objective trier of fact to conclude that Vars exposed his genitalia in the presence of another." Id. at 493. The analysis in Vars centered on whether he was naked in committing the crime of indecent exposure.

In Stewart, a woman saw Mr. Stewart's hands move back and forth around his penis but was unsure if she actually saw his penis, given that it was blocked by his hand. 12 Wn. App. 2d at 240-41. Mr. Stewart argued that the evidence was insufficient because he could have been masturbating outside his pants, resulting in no exposure of his penis. Id. at 242. This seemed to be the dispositive question for the Court of Appeals in Stewart: considering the evidence, "a rational, fair-minded person could concluded that Stewart was masturbating with his penis outside

his pants. Id. (emphasis added). Though neither Vars nor Stewart (nor Galbreath) *held* that an indecent exposure requires an exposure outside of clothing, they assumed that the statute did require this.

Any person considering this case law, the plain language of the statute, and the history of the legislature's enactments would have to guess that an indecent exposure could occur without an actual exposure, without actual nudity. The need to guess renders the statute unconstitutionally vague as applied to fully clothed conduct. If the legislature wishes to criminalize lewd behavior falling short of an exposure of nudity, it should do so in a way that leaves no doubt. The Supreme Court should decide this significant constitutional question pursuant to RAP 13.4(b)(3).

4. Criminalizing any clothed conduct under the indecent exposure statute presents a matter of substantial public interest that should be decided by the Supreme Court

Finally, the Court of Appeals claims that Mr. Thompson "stands up a field full of strawmen" and presents "not [] serious arguments" that its interpretation would mean that all manner of clothed visualizations of genitalia are now subject to prosecution. Thompson, slip op. at 14. As the defense asserted to the trial court, "Suddenly, fully clothed men are at risk for criminal prosecution or wearing items like running shorts, gym shorts, swimsuits, wrestling singlets, grey sweatpants, tight jeans, or other clothing items that could cause the outline and shape of their clothed penis to be seen." CP 36. The defense also expressed concern that prosecuting authorities would be empowered to prosecute based on whatever clothed conduct they determined was obscene, which would vary widely depending on "age, gender, ethnicity, [or] subjective[] religious [or] political beliefs, or socioeconomic status." CP 36-37.

In dismissing these concerns as insubstantial, the Court of Appeals assures us that "indecent exposure requires, not only exhibition of the genitals, but obscenity, i.e., lascivious behavior judged as improper by society. It is the exhibition *and the behavior* which are the gravamen of the crime. Vars, 157 Wn. App. 491."[7] Thompson, slip op. at 14. Thus, the court concluded that "[t]here would be no basis to prosecute the athletic, artistic, humorous, or celebratory display of the body . . . unless it would also be deemed lascivious." Thompson, slip op. at 14.

This analysis begs the question. Wearing certain clothing that "exposes" the outline of genitalia might certainly be deemed lascivious by some but not by others. And there is no ascertainable standard proposed by the Court of Appeals. Should

[7] Contrary to the Court of Appeals' apparent reading of Vars, Vars says nothing about requiring an exhibition "and the behavior." In fact, Mr. Vars was merely walking nude on a street, which caused affront or alarm. There was no evidence presented that he was engaged in "lascivious behavior" at all. He was prosecuted merely for being naked in public. Vars, 157 Wn. App. at 487 (noting that he walked naked except for shoes and/or a ski mask and the only gesture reported was that he "held his hands 'up in sort of a menacing kind of posture'").

a teenage boy with an uncontrollable erection visible through his pants be prosecuted? A couple making out in public whose erection(s) are visible? Risqué clothing that leaves nothing to the imagination? A famous performer who intentionally touches or flaunts their clothed genitalia with the very artistic purpose of lasciviousness? We've all seen such examples. The Court of Appeals should not be so quick to minimize concerns regarding an interpretation of indecent exposure that does not require any actual exposure, just the outline of genitalia through clothes. The public would be surprised to learn that the crime of indecent exposure can occur without any exposed nudity whatsoever. Because of the substantial public importance involved in properly interpreting RCW 9A.88.010, review should be granted under RAP 13.4(b)(4).

It is important for the Washington Supreme Court to decide what behavior is and is not criminal under the indecent exposure law. Because the Court of Appeals decision conflicts with principles of statutory interpretation and vagueness analysis

and because this case poses a question of constitutional significance and public interest, review should be granted pursuant to all RAP 13.4(b) criteria.

E. CONCLUSION

The Court of Appeals' novel and extratextual interpretation of the indecent exposure statute merits review under all the RAP 13.4(b) criteria. The Supreme Court should grant review and reverse the Court of Appeals.

DATED this 2nd day of November, 2023.

I certify this document contains 4,939 words. RAP 18.17.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

KEVIN A. MARCH, WSBA No. 45397
Office ID No. 91051
Attorneys for Petitioner

APPENDIX

FILED
10/3/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. COREY JUSTIN THOMPSON, Respondent.	No. 84366-4-I DIVISION ONE ORDER GRANTING MOTION TO PUBLISH

Appellant, State of Washington, moved for publication of the opinion filed on August 28, 2023. Respondent, Corey Justin Thompson, filed an answer to the motion, stating that the respondent takes no position on the motion to publish. A panel of the court has considered the motion and has determined that the motion to publish should be granted.

Now, therefore, it is hereby

ORDERED that the motion to publish is granted.

Díaz, J.

Birk, J.

Bowman, J.

FILED
8/28/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. COREY JUSTIN THOMPSON, Respondent.	No. 84366-4-I DIVISION ONE PUBLISHED OPINION

DÍAZ, J. — The State alleges that three 12-year-old girls playing in an apartment complex playground saw Corey Thompson "touching his privates while looking at them" from his own apartment. One of the girls vividly described Thompson's erect—but clothed—penis, and all three described him masturbating or touching himself over his clothing. The State charged Thompson with felony indecent exposure under RCW 9A.88.010, and Thompson twice moved to dismiss the information, arguing nudity is a required element of the crime. The trial court eventually granted the motion, finding that the law is unconstitutionally vague as applied to Thompson, who would not have known that his actions were prohibited. The State appeals. We reverse and vacate the trial court order dismissing the information, and remand the matter for further proceedings.

I. FACTS

In 2019, Thompson lived in an apartment complex in Mount Vernon, which abutted an open-air central yard and playground. Thompson's apartment had a sliding glass door with a direct view of the playground. Three minors, T.F., H.F., and M.R. (all under 14 years old), played on the playground and could see inside Thompson's apartment. At some point between May 1, 2019 and July 31, 2019, all three saw Thompson wearing gym shorts and a t-shirt, "touching his privates and looking at them."

Specifically, T.F. saw Thompson sitting in a chair in the doorway of the sliding glass door, "touching his privates." T.F. described "seeing it but not seeing" Thompson's penis, which she said was "circular and long," though fully clothed. T.F., H.F., and M.R. all said Thompson was rubbing his penis in "stroking motions" with his hand over his clothing while watching them on the playground.

After the children reported Thompson's actions, the Mount Vernon Police investigated. The State subsequently determined that a court had previously convicted Thompson of violating RCW 9A.88.010. In January 2020, the State charged Thompson with one count of felony indecent exposure (second or subsequent offense) under RCW 9A.88.010(1) and (2)(c).

In February 2022, Thompson brought a motion to dismiss.[1] Thompson

[1] This was Thompson's second motion to dismiss. In August 2021, Thompson moved to dismiss the charges for the first time. At oral argument, Thompson argued that, under State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986), there was insufficient evidence that he committed the crime of indecent exposure because the children saw "a fully clothed man with his hand outside of his clothing," adding that the "State is arguing that clothes is exposure. The defense is just arguing that exposed is not. That's it." The first trial judge denied Thompson's

argued that RCW 9A.88.010 was unconstitutionally vague as applied to him, in violation of the Fourteenth Amendment to the federal constitution and article I, section 3 of our state's constitution. He contended that the statute did "not sufficiently define the proscribed conduct so an ordinary person can understand the prohibition," insisting "the meaning of exposure means that it's open and that it's visible, that it's on display" and Thompson was fully clothed.

The court granted the motion, finding that on his "reading of the statute [and] of the cases [] there has to be some exposure of some sort." The court held that "the question under the statute is did an exposure occur . . . it doesn't appear that that happened."

The State timely appeals.

II. ANALYSIS

We conclude the statute is not unconstitutionally vague as applied to Thompson because his behavior (of allegedly masturbating in front of children while fully clothed) is an "obscene exposure" under RCW 9A.88.010, despite his lack of nudity.

A. Law

1. Unconstitutional Vagueness

Washington has long recognized the basic principle that a criminal statute

---

Knapstad motion, noting "there isn't any sort of definition . . . there has to be a line someplace, but the legislature has not indicated what that law is. Given the uncontested facts for the purposes of this motion, this could potentially meet that." Although Thompson brought this first motion under the Fourteenth Amendment as well, the briefing, argument and ruling all revolved around the Knapstad analysis. Thus, we will refer to this first motion as Thompson's Knapstad motion.

must give fair warning of the conduct that makes it a crime. State v. Galbreath, 69 Wn.2d 664, 667, 419 P.2d 800 (1966). That standard, i.e., fair warning, protects individuals from being held criminally accountable for conduct which a person of ordinary intelligence could not reasonably understand is prohibited. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). "Accordingly, the test for whether the penal statute is sufficiently definite is common intelligence." Id. at 179.

Stated otherwise, a defendant challenging a statute as being unconstitutionally vague must show that the statute either (1) does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed or (2) does not provide ascertainable standards of guilt to protect against arbitrary enforcement.[2] State v. Peters, 17 Wn. App. 2d 522, 538, 486 P.3d 925, review denied, 198 Wn.2d 1014 (2021).

A statute can be challenged as being facially vague or vague as applied.[3] Id. "If the statute does not involve First Amendment rights, then the vagueness challenge is to be evaluated by examining the statute as applied under the particular facts of the case." State v. Watson, 160 Wn.2d 1, 6, 154 P.3d 909 (2007) (quoting State v. Coria, 120 Wn.2d 156, 163, 839 P.2d 890 (1992)). To evaluate a challenge to a statute for being vague as applied, we look at the actual conduct of the party challenging the statute, not to any hypothetical situation at the

[2] Because Thompson did not cross-appeal the trial court's decision to not reach the latter (whether the statute lent itself to arbitrary enforcement), we do not address or reach this prong of the vagueness analysis.
[3] At no point has Thompson challenged that the statute is vague on its face.

periphery of the rule's scope. Peters, 17 Wn. App. 2d at 538.

"'This is because while a statute may be vague or potentially vague as to some conduct, the statute may be constitutionally applied to one whose conduct clearly falls within the constitutional core of the statute.'" State v. Maciolek, 101 Wn.2d 259, 263, 676 P.2d 996 (1984) (internal quotations marks omitted) (quoting State v. Hood, 24 Wn. App. 155, 158, 600 P.2d 636 (1979)).

"[A] statute meets constitutional requirements '[i]f persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of disagreement.'" Watson, 160 Wn.2d at 7 (alteration in original) (quoting Douglass, 115 Wn.2d at 179). Even if there is a disagreement about the meaning of a statute, "'vagueness in the constitutional sense is not mere uncertainty.'" Id. (quoting Douglass, 115 Wn.2d at 179). Thus, due process does not require impossible standards of linguistic certainty because "'[s]ome degree of vagueness is inherent in the use of our language.'" Peters, 17 Wn. App. 2d at 538 (quoting Smith, 130 Wn. App. 721, 726, 123 P.3d 896 (2005)).

Moreover, "[b]ecause of the inherent vagueness of language, citizens may need to utilize . . . court rulings to clarify the meaning of a statute." Watson, 160 Wn.2d at 8. Such sources are considered "'presumptively available to all citizens.'" Id. (quoting Douglass, 115 Wn.2d at 180).

Finally, a statute is presumed to be constitutional, and the party challenging its validity must prove that it is unconstitutional beyond a reasonable doubt. Peters, 17 Wn. App. 2d at 538. "The standard for finding a statute unconstitutionally vague is high . . . '[T]he presumption in favor of a law's

constitutionality should be overcome only in exceptional cases.'" Watson, 160 Wn.2d at 11 (quoting City of Seattle v. Eze, 111 Wn.2d 22, 28, 759 P.2d 366 (1988)); see also Island County v. State, 135 Wn.2d 141, 147, 955 P.2d 377 (1998) (this standard arises from the court's "deference" to the legislature).

2. RCW 9A.88.010(1) and Principles of its Interpretation

Here, the statute in question states:

> A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

RCW 9A.88.010(1).

"The meaning of a statute is a question of law we review de novo." State v. Brown, 194 Wn.2d 972, 975, 454 P.3d 870 (2019). We seek to ascertain and carry out the legislature's intent. State v. Barnes, 189 Wn.2d 492, 495, 403 P.3d 72 (2017). "An undefined term is 'given its plain and ordinary meaning unless a contrary legislative intent is indicated.'" Brown, 194 Wn.2d at 976 (quoting Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 920-21, 969 P.2d 75 (1998)). "If the statute is susceptible to more than one reasonable interpretation, it is ambiguous and the court 'may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.'" Id. (quoting Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007)). "In determining whether a statute conveys a plain meaning, 'that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" Id. (quoting Dep't of

Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

B. Discussion

Thompson urges this court to affirm the trial court because the phrase "open and obscene exposure of his or her person" in RCW 9A.88.010(1) does not definitively set out what conduct is proscribed—i.e., whether actual nudity is required to make an open and obscene exposure—which makes the statute unconstitutionally vague as applied to Thompson.[4]

In support of this argument, Thompson first offers the dictionary definition of the term "exposure," which is defined as a "condition of being presented to view or made known," "open to view," or "not shielded or protected." From this definition, and that of the remaining terms in the phrase "open and obscene exposure of his or her person," Thompson concludes that the plain and ordinary meaning of RCW 9A.88.010(1) requires "actual nudity" for him to have committed indecent

[4] Thompson's first argument in his briefing was that there was insufficient evidence as a matter of law that he violated RCW 9A.88.010 "because [he] never exposed his person." Admittedly this argument was a request to reverse the first trial judge's denial of his earlier Knapstad motion. Thompson further argued on appeal that, if this court affirmed on this ground, it would "thereby vitiate[e] the need to decide the standalone issue of vagueness." However, Thompson did not present this issue to the second trial judge and did not cross-appeal the denial of the Knapstad motion, which precludes its review on appeal. Amalg. Transit Union Loc. 587 v. State, 142 Wn.2d 183, 202, 11 P.3d 762, 27 P.3d 608 (2000). Thus, we decline to address the merits of this specific argument under RAP 2.4(a). Furthermore, at oral argument, counsel for Thompson conceded that we need not reach the Knapstad issue if we resolve the constitutional challenge first. Wash. Court of Appeals oral argument, State v. Thompson, No. 84366-4-I (July 14, 2023), at 16 min., 46 sec. through 17 min., 34 sec., *video recording by* TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2023071111.

exposure.[5] Thus, because Thompson's genitalia remained covered by his shorts, according to Thompson, he "cannot" be, or could not have known he could be found, guilty of that crime.

In turn, to the extent that RCW 9A.88.010(1) permits prosecution for anything else but nudity, he contends that statute is unconstitutionally vague as applied to him. In other words, if he is prosecuted despite being fully clothed, Thompson would "necessarily have to guess at this language's meaning and differ as to its application to conclude that the statute penalizes clothed 'exposures' of genitalia."

Thompson's deconstruction of the phrase "open and obscene exposure of his or her person" fails for two major, initial reasons. First, the terms "nudity" or "nude" or "clothed" or "unclothed" (or any synonym thereof) do not appear anywhere in the statute. If the legislature wanted to "criminalize nudity," as Thompson claims, it certainly knew how. See McGinnis v. State, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004) ("The legislature is presumed not to include unnecessary language when it enacts legislation.")

Second, our courts consistently have defined the phrase "obscene exposure," not by breaking down the definition into its constituent parts as

[5] Thompson also argues that, because "RCW 9A.88.010 explicitly exempts breast feeding and expressing breast milk from the definition of indecent exposure," this must mean nudity is required because "breast feeding and expressing breast milk both require nudity." This claim is factually inaccurate, as either activity can be concealed, and yet the legislature felt required to exclude these practices. As will be discussed below, the statute could have referred to "exposed" breast feeding/expressing but it did not. This conclusion too suggests that nudity is not the gravamen of the crime.

Thompson does, but by interpreting the phrase as a whole.

Namely, in Galbreath, the defendant was convicted of violating, and then challenged the constitutionality of, former RCW 9.79.080 (1955) for deliberately displaying his genitals to children under 15 years old.[6] Galbreath, 69 Wn.2d at 666. Our Supreme Court held that "the words 'indecent' and 'obscene' are common words, of common usage, and enjoy a commonly recognized meaning among people of common intelligence." Id. at 668. It went on to find that, "[c]ertainly, in the annals of the law *the phrase* 'indecent or obscene exposure of his person,' has, through usage, developed a traditional and well-settled meaning, which undoubtedly compares favorably to the meaning attributed thereto by the average layman." Id. at 668 (emphasis added). Specifically, "legal writers and scholars have long conceived *the phrase* [obscene exposure] to signify and relate to a *lascivious exhibition* of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others." Id. (emphasis added).

The phrase "obscene exposure," in other words, is a legal term of art; it is the "exhibition" of something customarily kept private, i.e., genitals, which are

[6] Former RCW 9.79.080 (1955) was the predecessor statute in effect at the time, which read "Every person who takes any indecent liberties with or on the person of any child under the age of fifteen years, or makes any indecent or *obscene exposure* of his person, or of the person of another, whether with or without his or her consent, shall be guilty of a felony . . . ." Former RCW 9.79.080(2) (1955) (emphasis added). At oral argument, counsel for Thompson conceded that Galbreath is still good law despite the fact it was interpreting this statute, which the legislature later significantly amended. Wash. Court of Appeals oral argument, supra, at 3 min., 44 sec., through 5 min., 21 sec. It is also worth noting that nowhere in Galbreath was the exposure described as "naked."

exhibited for lascivious reasons.

The next decade, around the same time as the renaming and recodification of this statute, this court defined the phrase "obscene exposure" consistent with Galbreath and flatly held that "[i]t is sufficient if the acts are such that the common sense of society would regard the specific act performed as indecent and improper." State v. Eisenshank, 10 Wn. App. 921, 924, 521 P.2d 239 (1974) (defining the phrase also as "the lascivious *exhibition* of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others") (emphasis added). Explaining what it meant by "sufficient," this court clarified that "the crime is *completed* when the inappropriate *exhibition* takes place in the presence of another."[7] Id. (emphasis added).

In short, our courts have defined the phrase "obscene exposure," not as nudity, but as a kind of wrongful exhibition. More specifically, the question is whether our common shared sense of societal decency would judge a given lascivious exhibition of a sexual organ as indecent or improper.

To dig into those terms further, "lascivious" is defined as "filled with or showing sexual desire." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/lascivious; Barnes, 189 Wn.2d at 496 (an undefined, nontechnical term may also be determined from a standard

[7] As in Galbreath, Eisenshank does not suggest, let alone mention, that nudity was an essential element of the crime there. Thus, it is inaccurate to suggest, as Thompson does, that the "case law . . . has always assumed that nudity is required to violate RCW 9A.88.010." That is ascribing an assumption to those cases that is just not present.

English dictionary). "Exhibition" is defined as "to show or display outwardly." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/exhibition. There is no per se requirement for nudity in the term "exhibition." The key is if the person is "displaying" his genitalia in a certain way, i.e., sexually and contrary to our common sense of decency.

Here, the State alleges that Thompson publicly showed his clearly erect, though clothed, penis in a highly sexualized way, namely, masturbation. We hold that our common sense of societal decency would judge the sexualized "display" and stroking of his erect genitalia as improper, and that those acts would be commonly understood as such by a person of ordinary intelligence. Galbreath, 69 Wn.2d at 667; Eisenshank, 10 Wn. App. at 924. "Particularly [does] this appear to be so [because] the exposure condemned refers to behavior in the presence of children of tender years." Galbreath, 69 Wn.2d at 668. These allegations also fall within the "core" of the statute for purposes of our vagueness analysis. Maciolek, 101 Wn.2d at 263. Thus, the alleged actions are not unconstitutionally vague as applied to Thompson.

In response, Thompson first contends the legislative history of RCW 9A.88.010 supports his assertion that the statute requires actual nudity. However, it is unnecessary for us to review the legislative history in such detail because (a), as Thompson recognizes, through all the changes enacted over the decades, the essential phrase "obscene exposure" has been retained and not changed, and (b) our Supreme Court has examined the legislative history and intent of the term, and has never held that nudity is an essential element of the crime. Galbreath, 69

Wn.2d at 668.

If anything, as Thompson noted, the legislature changed the title of the crime from "Public Indecency" to "Indecent Exposure" in response to a holding of this court, which (as Thompson urges us to do here) focused on the pure dictionary definition of the term "public," and held that the exposure of one's person had to be made in a public place. LAWS OF 1987, ch. 277, § 1(1) (codified as amended at RCW 9A.88.010(1)); State v. Sayler, 36 Wn. App. 230, 673 P.2d 870 (1983). This evinces the legislature's intent to focus the citizenry and the courts on more than just the location of the crime, including its "public nature" and focus on the type of behavior society would find improper. We decline Thompson's invitation to myopically focus on whether, strictly-speaking, nudity occurred.

Thompson further argues that two more recent cases posit a nudity requirement in the statute: State v. Vars and State v. Stewart. Neither, however, holds that nudity is a *requirement* for conviction under RCW 9A.88.010. State v. Vars, 157 Wn. App. 482, 237 P.3d 378 (2010), State v. Stewart, 12 Wn. App. 2d 236, 457 P.3d 1213 (2020).

In Vars, the defendant was seen walking around residential neighborhoods naked, but no particular witness could testify they saw his genitals. Vars, 157 Wn. App. at 489. Thompson makes much of the fact that, unlike in Galbreath and Eisenshank, this court mentioned the defendant's actual nudity. However, in Vars, this court was addressing the narrow issue of whether a witness must observe naked genitalia as an element of the crime of indecent exposure. Id. at 489. This court found the witness did not need to observe the actual genitalia when

circumstantial evidence was sufficient to infer the defendant's genitalia was likely "exposed." Id. at 486.

The question here is different: whether a defendant's genitals *must be nude*. Vars did not need to reach or define the phrase "any open and obscene exposure of his or her person." Vars simply returned to the understanding of obscenity first announced in Galbreath, when finding that "the gravamen of the crime is an intentional and 'obscene exposure' in the presence of another that offends society's sense of 'instinctive modesty, human decency, and common propriety.'" Id. at 491 (quoting Galbreath, 69 Wn.3d at 668). Vars does not disturb our more holistic understanding of the phrase "obscene exposure" above.[8]

The second case Thompson relies on is State v. Stewart, where this court examined again whether there was substantial evidence of indecent exposure. Stewart, 12 Wn. App. 2d at 23. In Stewart, the defendant was seen crouching in an alleyway (from behind) with his hand moving "rapidly" in front of his pants. Id. at 240-41. Witness testimony was unclear for whether his pants were on. Id. at 240. The witness did not see his genitalia. Id. at 238. The court concluded, despite that fact, there was substantial evidence he was indecently exposing himself in public "outside his pants," through the totality of the evidence. Id. at 242. As in Vars, however, this court was not preoccupied with the question whether, and did not find as a matter of law, masturbation must occur on the outside of the

[8] Vars also occurred in a different procedural posture where the question was whether there was sufficient evidence of indecent exposure, and not whether indecent exposure occurred as a matter of law with or without nudity. Vars, 157 Wn. App. at 489.

pants to find a defendant guilty of indecent exposure.

Finally, Thompson stands up a field full of strawmen, arguing that, under this understanding of the phrase "obscene exposure," "any time the outline of one's genitalia can be seen through clothing, a crime occurs." He contends that men in "wrestling singlets," women in "skintight compression leggings," and even an "involuntary erection while sleeping" could be actionable under this interpretation of the term.

We conclude that this is not a serious argument. As a matter of law, indecent exposure requires, not only exhibition of the genitals, but obscenity, i.e., lascivious behavior judged as improper by society. It is the exhibition *and the behavior* which are the gravamen of the crime. Vars, 157 Wn. App. 491. There would be no basis to prosecute the athletic, artistic, humorous, or celebratory display of the body, which in most contexts "common decency" requires a person not to display, unless it would also be deemed lascivious (i.e., filled with sexual desire) and improper by the common person.

Conversely, under Thompson's logic, a barely veiled erect penis used in the most sexualized and unwelcome manner imaginable would not be considered obscene because the genitalia is at least not naked. Our interpretation of the statute does not allow such absurd results. Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) (this court "must also avoid constructions that yield unlikely, absurd or strained consequences.").

III. CONCLUSION

We conclude the trial court erred in dismissing the charge at issue as

unconstitutionally vague as applied to Thompson. We, thus, reverse and vacate the order dismissing the information, and remand the matter for further proceedings.

Díaz, J.

WE CONCUR:

Bjelkeman, J.

Brunner, J.

NIELSEN KOCH & GRANNIS, PLLC

November 02, 2023 - 3:39 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84366-4
Appellate Court Case Title:	State of Washington, Appellant v. Corey Justin Thompson, Respondent
Superior Court Case Number:	20-1-00089-1

The following documents have been uploaded:

- 843664_Petition_for_Review_20231102153852D1725619_7916.pdf
  This File Contains:
  Petition for Review
  The Original File Name was PFR 84366-4-I.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- rosemaryk@co.skagit.wa.us
- skagitappeals@co.skagit.wa.us

Comments:

Sender Name: Kevin March - Email: marchk@nwattorney.net
Address:
2200 6TH AVE STE 1250
SEATTLE, WA, 98121-1820
Phone: 206-623-2373

Note: The Filing Id is 20231102153852D1725619