

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

IN RE DETENTION OF TREMAYNE FRANCIS:

STATE OF WASHINGTON,

Respondent,

v.

TREMAYNE FRANCIS,

Appellant.

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

The Honorable Frank E. Cuthbertson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court violated appellant's due process right to present a complete defense under the Fourteenth Amendment to the United States Constitution.

2. The court erred in excluding relevant evidence of appellant's awareness of the two strikes law.

Issue Pertaining to Assignments Of Error

Where appellant's risk of reoffense was a central issue at trial, whether the court violated appellant's constitutional right to present a complete defense in sustaining the State's objection to the question of whether appellant was aware of the two strikes law?

B. STATEMENT OF THE CASE

Shortly before Tremayne Francis finished his criminal sentence in a Department of Corrections (DOC) facility, the State sought his involuntary commitment pursuant to chapter 71.09 RCW. CP 1-50. Francis was previously convicted of two sex offenses in 1998, having pled guilty as a young man to second degree rape committed against a 17-year-old male and another second degree rape committed against a different 17-

year-old male. RP¹ 142; Ex. 1-5. Francis gave varying statements over the years about those events, ranging from past denial to current admission. RP 130-33, 138-41, 393; Ex. 35 at 32; Ex. 36 at 39-40.

Dr. Judd, a psychologist, testified for the State at the commitment trial. RP 74. In addition to the two offenses to which Francis pled guilty, Dr. Judd relied on other incidents that took place in prison in forming his expert opinion. RP 143-75.²

These incidents, as described by Dr. Judd, included: (1) 2005 rape of inmate Grey, which resulted in a jury acquittal following a criminal trial and a DOC administrative acquittal (RP 158-69); (2) 2000 rape of inmate Midland, resulting in administrative segregation without a hearing (RP 151-57, 315-16); (3) 2000 prison infraction for threatening inmate Arneson with violence if he did not do what Francis wanted him to do, resulting in administrative segregation (RP 143-48); (4) 2000 prison infraction for threats against inmates Woodward and Vassallo, which involved written contracts to do what he said and a threat to break Woodward's nose if did not perform oral sex on him, resulting in

¹ The verbatim report of proceedings is referenced as follows: RP - five consecutively paginated volumes consisting of 4/23/12, 4/24/12, 4/25/12, 4/26/12, 4/30/12, 5/1/12, 5/2/12 and 5/3/12.

² The jury was given a limiting instruction that the information Dr. Judd relied upon to form his opinion was not admitted as substantive evidence. RP 126-27.

administrative segregation (RP 148-51, 169); (5) 2003, 2006 and 2007 infractions for attempting to extort sexual favors by intimidation and extortion, resulting in administrative segregation (RP 157-58, 166-70). In addition, shortly after Francis's arrival at the Special Commitment Center (SCC) in June 2008, resident Pisoni alleged Francis, in exchange for drugs, attempted to "own him" for the purpose of sex and threatened him. RP 170-74. No action was taken at Pisoni's request. RP 326-27. Francis did not receive a behavioral modification report as a result of this allegation and never received an infraction for sexual misconduct at the SCC. RP 321, 498-99; Ex. 40 at 78.

As for the prison incidents relied upon by Dr. Judd in forming his opinion, Francis maintained the prison culture singles out sex offenders for harm and that he was the constant subject of false allegations of rape or threats as a result of "prison politics." Ex. 38 at 55-58, 66-67, 70-71. Francis denied raping Grey and Midland. Ex. 38 at 58-62, 64; RP 164-66, 324-25, 477. He denied threatening Woodward and Vasallo. RP 150, 599-600. Francis acknowledged threatening Arneson in response to something Arneson had said, but denied a sexual component. RP 145, 598; Ex. 38 at 68-70. At times in the past, Francis attributed some of his behavior to alternate personalities. RP 132-34, 139, 144-45, 154-56. He did not currently believe he had alternate personalities. RP 639.

All of the prison infractions were for threats and strong-arming, and not categorized as sexual misconduct offenses. RP 320, 352, 492. There were no other prison incidents after March 2007. RP 169-70, 321.

Francis told Dr. Judd that he had not engaged in any kind of sexual behavior for 10 years. RP 178. He had not participated in treatment at the SCC but did perform work there. RP 178. Francis denied having any deviant sexual interests, fantasies or urges or that he was sexually aroused by coercion. RP 370, 502, 507.

Dr. Judd diagnosed Francis with paraphilia, not otherwise specified (NOS) (non-consent), and personality disorder, not otherwise specified (NOS) with antisocial and narcissistic traits. RP 74, 190, 197, 221-22.

A paraphilia, according to Dr. Judd, is a sexual disorder where a person has a pattern of urges, fantasies or behaviors in which there is a demonstrated arousal to atypical sexual stimuli. RP 190. Dr. Judd believed a paraphilia diagnosis could be made solely on the presence of behaviors and relied on behaviors alone in diagnosing Francis, while inferring the presence of urges and fantasies from those behaviors. RP 199-200, 244. Dr. Judd acknowledged experts in the field disputed the validity of the paraphilia (NOS) (non-consent) diagnosis. RP 204.

Dr. Judd opined that Francis would likely engage in future acts of predatory sexual violence if not confined in a secure facility. RP 250-51.

He relied on two actuarial instruments (Static-99 and SORAG) and clinical judgment involving dynamic risk factors in reaching his conclusion on risk of reoffense. RP 251, 302-08.

Based on an updated application of the Static-99 that accounts for Francis's increased age, Francis's risk of sexual reoffense (charged or convicted) was 20 percent in five years and 30 percent in 10 years. RP 282-83, 292. Francis's risk of being charged with a violent offense based on his SORAG score was 45 percent in seven years and 59 percent in 10 years. RP 292. The SORAG measures risk of violent reoffense in general rather than being limited to measuring risk of sexual reoffense. RP 361. Dr. Judd acknowledged available actuarial instruments were no better than moderately predictive. RP 356-57.

Dr. Judd concluded that Francis's paraphilia created difficulties in controlling his behavior. RP 242. The personality disorder, however, did not affect his volitional capacity in relation to sexual offending and therefore was not relied on as a condition to prove the commitment criteria. RP 246-47, 326-29.

Dr. Wollert, a psychologist testifying for the defense, sharply disagreed with Dr. Judd's opinion. RP 527. Dr. Wollert opined Francis did not suffer from a mental abnormality or condition that fit the commitment criteria. RP 539, 580. The reliability of a paraphilia (NOS)

diagnosis is terrible. RP 544-45, 642-43. The chance of being wrongly diagnosed with the condition is 95 percent. RP 545. According to Dr. Wollert, there was no scientific basis for a paraphilia (NOS) (non-consent) diagnosis. RP 634. Francis could not legitimately be diagnosed with a paraphilia because there was insufficient evidence of recurrent, intense sexually arousing fantasies or urges. RP 557-58. A valid diagnosis could not be made when based on behaviors alone. RP 553-56.

Relying on actuarial instruments (Static-99/99-R and ASRS, entered into the MATS-1 actuarial table), Dr. Wollert further opined that Francis was not likely to reoffend if released. RP 558-66, 571-73, 580. There was only an eight percent chance of reoffense within eight and a half years based on the actuarial scoring. RP 565-66. Clinical judgment had less chance of success in predicting reoffense than actuarial testing. RP 558. Dr. Wollert also believed Francis did not have serious difficulty controlling his behavior because he was responsive to contingencies and changed his behavior in response to punishment. RP 570-71, 639.

An uncle who had known Francis since he was born testified that he would be a source of support for Francis in the community. RP 438, 441-42. Francis had DOC-approved housing lined up. RP 499-500. His family gave him emotional and financial support. RP 499. He would be supervised for three years by the DOC and had already been approved for

sex offender treatment. RP 500. Francis's work supervisor at the SCC testified Francis never had inappropriate contact with staff or other residents. RP 454, 456.

A jury found Francis met the commitment criteria. CP 144. The court ordered Francis's indefinite confinement. CP 102. This appeal timely follows. CP 145.

C. ARGUMENT

1. THE COURT VIOLATED FRANCIS'S DUE PROCESS RIGHT TO PRESENT A COMPLETE DEFENSE IN EXCLUDING TESTIMONY ON HIS AWARENESS OF THE TWO STRIKES LAW.

The trial court did not allow Francis to testify about his knowledge of the "two strikes" law and how it impacted his risk of re-offense. In so doing, the court violated Francis's due process right to present a complete defense. The ruling prejudiced Francis's right to have the jury consider all relevant evidence in determining whether Francis met the commitment criteria. Reversal is required.

a. Those Subject To Involuntary Commitment Have The Due Process Right To Present A Complete Defense. The Claimed Denial Of Which Is Reviewed De Novo On Appeal.

Involuntary commitment under chapter 71.09 RCW is a significant deprivation of liberty triggering due process protection under the Fourteenth Amendment of the United States Constitution. In re Detention

of Thorell, 149 Wn.2d 724, 731, 72 P.3d 708 (2003) (citing Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992)), cert. denied, 541 U.S. 990, 124 S. Ct. 2015, 158 L. Ed. 2d 496 (2004). "A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955).

Notions of fundamental fairness require an accused be given "a meaningful opportunity to present a complete defense." State v. Wittenbarger, 124 Wn.2d 467, 474, 880 P.2d 517 (1994); see also In re Welfare of Hansen, 24 Wn. App. 27, 36, 599 P.2d 1304 (1979) (due process principles require party be given a full and meaningful opportunity to present evidence). "[T]he right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies" is a fundamental element of due process as protected by the Fourteenth Amendment. Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

Whether constitutional right has been violated is a question of law reviewed de novo. State v. Iniguez, 167 Wn.2d 273, 280, 217 P.3d 768 (2009). Whether a trial court's ruling excluding evidence violates the constitutional right to present a defense is therefore subject to de novo review. State v. Jones, 168 Wn.2d 713, 719, 230 P.3d 576 (2010).

b. The Trial Court Prevented Francis From Presenting A Complete Defense In Excluding Testimony On His Awareness Of The Two Strikes Law.

During the course of asking Francis about his release plans, defense counsel sought to counter the State's evidence on risk of reoffense by asking "Mr. Francis, are you aware of the Washington two strikes law for sex offenses?" RP 501-02. The State objected without stating a basis. RP 502. The court sustained the objection without explaining why. RP 502.

After Francis left the stand, defense counsel addressed the matter, stating "You sustained the State's objection when I asked him about Washington two strikes law, and I don't have a clue why, and I need to learn why." RP 512.

The court answered: "Okay. My concern was that the jury might be confused and would start to speculate about why – if he had pled guilty to two sex offenses, why he wouldn't be potentially subject to life in prison without parole, and I didn't want them speculating, and maybe improperly so, that the reason that he went to trial on Grey was because it would have been he'd be a persistent offender, and so I didn't want to open up those particular cans of worms. Plus I don't know – there was no foundation laid suggesting that Mr. Francis has any kind of expertise or personal knowledge about Washington statutes and whether or not he'd be

a persistent offender or could face life in prison . . . for a second offense."

RP 512.

Defense counsel responded, "I think . . . that was my question is if he was aware of those laws. And I had planned to ask him then if he has one strike from the 1998 cases and that another sex offense would result – a conviction would result in his being life without possibility of parole. That's where I had intended to go." RP 512-13.

"At the SVP determination trial, there is but one question for the finder of fact: Has the State proved, beyond a reasonable doubt, that the respondent is an SVP?" In re Detention of Post, 170 Wn.2d 302, 309, 241 P.3d 1234 (2010) (citing RCW 71.09.060(1)). To answer this question in the affirmative, the jury must determine three elements: (1) that the respondent "has been convicted of or charged with a crime of sexual violence," (2) that the respondent "suffers from a mental abnormality or personality disorder," and (3) that such abnormality or disorder "makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." Post, 170 Wn.2d at 309-10 (quoting RCW 71.09.020(18)).

The third element — risk of reoffense — is implicated by the court's exclusion of testimony on the two strikes law. Whether Francis was more likely than not to reoffend was a central issue. Before the jury

could find Francis met the commitment criteria, it needed to decide whether the State had proven beyond a reasonable doubt that Francis's identified mental abnormality makes him "likely to engage in predatory acts of sexual violence if not confined to a secure facility." CP 89 (Instruction 5). The jury was instructed that this meant "the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition." CP 93 (Instruction 9).

Consistent with RCW 71.09.060(1), the jury was further instructed, "In considering whether Francis was likely to engage in predatory acts of sexual violence if not confined in a secure facility, you may consider all evidence that bears on the issue. In considering placement conditions or voluntary treatment options, however, you may consider only placement conditions or voluntary treatment options that would exist if the respondent is unconditionally released from detention in this proceeding." CP 93 (Instruction 9).

Francis's awareness of the two strikes law bears on the issue of re-offense. Under Washington's two strikes law, a persistent offender is sentenced to a term of total confinement for life without the possibility of release. RCW 9.94A.570; RCW 9.94A.030(37)(b). Francis would be sentenced to life without the possibility of release under the two strikes law if, for example, he were convicted of a committing or attempting to

commit first or second degree rape in the community after having previously been convicted of such a rape offense.³ Those are the two offenses that were at issue in the commitment trial because "sexual violence" was defined for the jury as first or second degree rape by forcible compulsion, including any attempt to commit such a crime. CP 94 (Instruction 10).

The ability to seek a criminal conviction resulting in a life sentence without the possibility of parole provided the State with a hammer over Francis's head to avoid reoffense. Evidence of his awareness of the two strikes law was relevant to whether the State proved beyond a reasonable doubt that Francis was "likely to engage in predatory acts of sexual violence if not confined to a secure facility." CP 89.

³ RCW 9.94A.030(37)(b) defines a "persistent offender" under the two strikes law as one who "(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and (ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection."

The issue here is similar to the one presented in Post. In that case, the Supreme Court held "evidence that a person who commits a '[r]ecent overt act,' as defined by RCW 71.09.020(12), could be subject to a new SVP commitment petition is relevant in an SVP determination trial." Post, 170 Wn.2d at 305 (some internal quotation marks omitted). Francis did not seek to admit evidence of his awareness of the State's ability to file a future petition based on a recent overt act, but the rationale for the relevancy of such evidence is the same for his awareness of the two strikes law.

A "recent overt act" is 'any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.' RCW 71.09.020(12). A prosecuting attorney may bring a petition to civilly commit "a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act." RCW 71.09.030(1)(e).

The Court of Appeals had rejected evidence of Post's awareness of the State's ability to file a petition based on a recent overt act as a "hypothetical" condition that would not actually exist if he were released

from custody. In re Detention of Post, 145 Wn. App. 728, 754, 187 P.3d 803 (2008), reversed, 170 Wn.2d 302, 241 P.3d 1234 (2010). The Supreme Court disagreed, recognizing "[e]vidence that a respondent in an SVP proceeding who is subsequently released could be subject to another SVP proceeding if he commits a recent overt act is relevant and is a condition that would exist upon placement in the community." Post, 170 Wn.2d at 316.

The Supreme Court reasoned "Post's knowledge of the consequences for engaging in such conduct may well serve as a deterrent to such conduct and, therefore, has some tendency to diminish the likelihood of his committing another predatory act of sexual violence. This likelihood, of course, is an element that the jury must address." Id. at 316-17. The possibility of a recent overt act petition was therefore relevant to the determination of whether Post was an SVP and constituted a condition to which Post would be subject if released. Id. at 317. "That the filing of a new petition is not certain to occur does not make the possibility irrelevant." Id.⁴

⁴ In holding the evidence was relevant and does not violate RCW 71.09.060(1), the Court refrained from deciding whether the evidence was admissible under ER 403, leaving that determination for the trial court on remand. Post, 170 Wn.2d at 317.

The same rationale applies to Francis's awareness of the two strikes law. A reasonable trier of fact could find that Francis's knowledge of the consequences for engaging in a future act of sexual violence (defined as rape by forcible compulsion in the jury instructions) diminished the likelihood of his committing another such act. The possibility of a new criminal rape charge and the certainty of being sentenced to life without the possibility of parole upon conviction is a condition that Francis would be subjected to if released. That the filing of a new criminal charge is not certain to occur does not make the condition less relevant to the risk of reoffense element of the State's case.

Defense evidence need only be relevant to be admissible. State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). If relevant, the burden is on the State to show the evidence is so prejudicial or inflammatory that its admission would disrupt the fairness of the fact-finding process at trial. Darden, 145 Wn.2d at 612; State v. Hudlow, 99 Wn.2d 1, 15-16, 659 P.2d 514 (1983). That is, the State bears the burden of demonstrating a compelling interest to exclude relevant evidence proffered by the defense. Hudlow, 99 Wn.2d at 15-16; Darden, 145 Wn.2d at 621.

Even so, "[e]vidence relevant to the defense of an accused will seldom be excluded, even in the face of a compelling state interest." State v. Reed, 101 Wn. App. 704, 715, 6 P.3d 43 (2000). Relevant evidence is

"evidence having any tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence." ER 401. All facts tending to establish a party's theory, or to qualify or disprove the testimony of an adversary, are relevant. Lamborn v. Phillips Pac. Chem. Co., 89 Wn.2d 701, 706, 575 P.2d 215 (1978).

Evidence that Francis was aware of the two strikes law was relevant to show he was not likely to reoffend based on the State's ability to file a criminal charge that would subject him to life in prison if he were to reoffend. Francis should have been allowed to present evidence and argue that his awareness of the two strikes law served as a deterrent to committing another rape. Such evidence supported his theory of the case and, if believed, provided an evidentiary basis to disprove the State's theory of the case. The court erred in excluding probative defense evidence without a compelling interest.

The two reasons the trial court gave for excluding the evidence do not bear scrutiny. The court said, "there was no foundation laid suggesting that Mr. Francis has any kind of expertise or personal knowledge about Washington statutes and whether or not he'd be a persistent offender or could face life in prison . . . for a second offense." RP 512. Defense counsel correctly pointed out that his question was

geared toward establishing that foundation. RP 512-13. No expertise is required. The law is simple and readily understandable to a layperson. If Francis commits or attempts to commit another first or second degree rape, he is subject to life without the possibility of parole upon conviction under the two strikes law. RCW 9.94A.570; RCW 9.94A.030(37)(b).

The court also said "My concern was that the jury might be confused and would start to speculate about why – if he had pled guilty to two sex offenses, why he wouldn't be potentially subject to life in prison without parole, and I didn't want them speculating, and maybe improperly so, that the reason that he went to trial on Grey was because it would have been he'd be a persistent offender, and so I didn't want to open up those particular cans of worms." RP 512.

The court's concerns in this regard were overblown. The jury already knew Francis was not currently subject to life in prison without parole. RP 142; Ex. 4, 5. Why Francis received a criminal sentence short of life imprisonment following conviction for the two rape offenses or why he chose to go to trial in the Grey case was irrelevant to anything the jury was instructed to consider in determining whether the State had proved Francis met the commitment criteria. Jurors are presumed to follow instructions. State v. Grisby, 97 Wn.2d 493, 499, 647 P.2d 6 (1982), cert. denied, 459 U.S. 1211, 103 S. Ct. 1205, 75 L. Ed. 2d 446

(1983). The jury was instructed to decide the case based on the evidence, not speculation. CP 83-85 (Instruction 1). Whatever speculative questions a jury could conceivably have had do not rise to the level of being so prejudicial or inflammatory that the fairness of the trial would have been impaired.

The burden is on the State to show the evidence is so prejudicial or inflammatory that its admission would disrupt the fairness of the fact-finding process at trial. Darden, 145 Wn.2d at 612; Hudlow, 99 Wn.2d at 15-16. Neither the State nor the trial court identified a compelling interest to exclude the evidence. Francis's awareness of the two strikes law was probative of the defense theory that he was not likely to reoffend if released into the community. The court violated Francis's due process right to present a complete defense in excluding this evidence. U.S. Const. amend. XIV.

c. The State Cannot Prove The Error Was Harmless Beyond A Reasonable Doubt.

The denial of the right to present a complete defense is constitutional error. Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986). "Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless." State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985),

cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986).

"The presumption may be overcome if and only if the reviewing court is able to express an abiding conviction, based on its independent review of the record, that the error was harmless beyond a reasonable doubt, that is, that it cannot possibly have influenced the jury adversely to the defendant and did not contribute to the verdict obtained." State v. Ashcraft, 71 Wn. App. 444, 465, 859 P.2d 60 (1993).

The State cannot overcome the presumption of prejudice here. Expert psychiatric or psychological testimony is central to the ultimate question of whether Francis suffers from a mental abnormality or personality disorder that makes him likely to engage in predatory acts of sexual violence. In re Detention of Twining, 77 Wn. App. 882, 890, 894 P.2d 1331 (1995), overruled on other grounds, In re Detention of Pouncy, 168 Wn.2d 382, 229 P.3d 678 (2010). The evidence against Francis was not overwhelming. This was a case involving dueling experts. Both sides presented expert testimony on whether Francis was likely to reoffend and reached diametrically opposed conclusions.

Dr. Judd, testifying for the State, relied on two actuarial instruments and his clinical judgment to conclude Francis was likely to reoffend. RP 250-51, 282-83, 292, 302-08, 361. Dr. Judd acknowledged available actuarial instruments were no better than moderately predictive.

RP 356-57. Dr. Wollert, testifying for the defense, disagreed with Dr. Judd's assessment. Relying on the Static-99/99-R and ASRS instruments as entered into the MATS-1 actuarial table, Dr. Wollert opined that Francis was not likely to reoffend if unconfined. RP 558-66, 571-73, 580.

Dr. Wollert believed Francis did not have serious difficulty controlling his behavior because he was responsive to contingencies and changed his behavior in response to punishment. RP 570-71, 639. The excluded two strike evidence would have buttressed Wollert's opinion by providing a basis for a rational juror to find that Francis's awareness of the two strikes law reduced his risk of reoffense. Francis's awareness of the two strikes law, had it been allowed into evidence, rebutted the State's insistence that Francis was more than likely to reoffend.

Dr. Judd found it relevant to volitional control that Francis continued to engage in sexual strong-arming behaviors resulting in administrative segregation while incarcerated. RP 203, 242, 353. But there is a significant difference between being subject to administrative segregation for a few weeks or months versus being confined for the rest of life without the possibility of release. Francis was only 40 years old at the time of trial, so he was subject to decades, not months, of imprisonment should he reoffend. RP 475. The deterrent effect of the two strikes law and its attendant life sentence is greater.

The trial court, acting as evidentiary gatekeeper, deprived the jury of fairly judging whether the State had proven its case based on all relevant evidence, including evidence that supported the defense theory of the case that Francis was not likely to commit an act of sexual violence if released. The denial of Francis's constitutional right to present a complete defense distorted the fact-finding process. Reversal is required because the State cannot show the error was harmless beyond a reasonable doubt.

D. CONCLUSION

For the reasons stated above, Francis requests that this Court vacate the commitment order and remand for a new trial.

DATED this 15th day of May 2013.

Respectfully submitted

NIELSEN, BROMAN & KOCH, PLLC

CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC

May 15, 2013 - 3:09 PM

Transmittal Letter

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Case Name: In re Detention of Tremayne Francis

Court of Appeals Case Number: 43404-1

Is this a Personal Restraint Petition? Yes No

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