

NO. 45401-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

JAIME SILVA-ARROYO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 12-1-00855-6

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED July 17, 2014, Port Orchard, WA _____

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether Silva-Arroyo fails to meet his burden of showing that the prosecutor improperly appealed to the jury's passion or improperly attempted to shift the burden of proof, and further, even assuming any impropriety, whether he fails to meet his burden of showing prejudice where the State's evidence of guilt was overwhelming?

2. Whether the conditions of community custody that Silva-Arroyo challenges should be stricken? [Concession of Error]

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Jaime Silva-Arroyo was charged by information filed in Kitsap County Superior Court with the attempted second-degree rape of SM. CP

1. After trial, the jury found him guilty as charged. CP 78.

The trial court imposed a standard-range minimum term under RCW 9.94A.507. CP. 95. It also imposed a number of community custody conditions that Silva-Arroyo challenges on appeal. CP 98, 107-08. These conditions will be addressed in the argument portion of this brief.

B. FACTS

SM walked to Safeway on Bainbridge Island in the mid-afternoon of July 22, 2012. 2RP 329. While shopping she noticed a man, later

identified as Silva-Arroyo, appeared to be following her around the store.¹ 2RP 330. She finished shopping and then went to the Rite-Aid next door. 2RP 330. She again saw Silva-Arroyo in Rite-Aid. 2RP 331. Then, as she was walking home, she saw him again, walking, a little way up the block. 2RP 331.

She walked up High School Road toward Madison Avenue, where she saw Silva-Arroyo in the library parking lot. 2RP 331. He tried grabbed her arm and tried to talk to her, but she did not understand what he was saying. 2RP 332. He was speaking in Spanish, which SM did not understand. 2RP 332. Then he pulled out his wallet and started rifling through his cash. 2RP 332. She did not understand what he wanted, so she put her hands up to indicated that she wanted him to leave her alone, and crossed the street. 2RP 332, 334.

After crossing Madison, SM headed down Ihland Trail,² a pedestrian pathway. 2RP 298, 334, 344. A few feet down the pathway, SM was jumped from behind. 2RP 334-35. She fell onto her back and ended up with Silva-Arroyo on top of her, straddling her. 2RP 335, 344. She saw his face. 2RP 335.

SM struggled in an attempt to get away. 2RP 336. She hit him in

¹ SM did not know Silva-Arroyo, and had not seen him before that day. 2RP 334.

² The report of proceedings refers to the pathway as "Island Trail." This appears to be a typo or phonetic spelling. See Exh. 24, the map of the area, where it is identified as "Ihland Trail."

the face. 2RP 336. He hit her in the face and grabbed her throat and tried to cover her mouth. 2RP 336. Then he tried to pull her jeans down. 2RP 337.

She was wearing a red sweatshirt and flip-flops. 2RP 337. He was wearing tennis shoes, jeans, a hoodie, and a black and red baseball cap. 2RP 337.

She was yelling “stop” and then yelled fire, because she had been taught in grade school to do that in an emergency to get people to come. 2RP 338. When he loosened his grip on her mouth, she bit his hand really hard. 2RP 339. He kept shushing her and then got up and walked away. 2RP 339. Her backpack, her shoe and Silva-Arroyo’s hat were on the ground near her. 2RP 340. SM confirmed that the hat was the one in evidence. 2RP 341.

SM sat and cried for a bit and then called her boyfriend, who came and picked her up. 2RP 340. They went to her house, and she tried to calm down. 2RP 340. Then they went to the boyfriend’s parents’ house and they called the police. 2RP 340.

Bainbridge Island patrol officer Dale Johnson responded to the report. 1RP 151. He interviewed SM and noted that her lip was swollen and she had bruise on one ear and scratches on her neck. 1RP 153. He went with her to the scene of the assault, where he found the hat. 1RP

154-55. There were also a pair of flip-flops, which SM stated were hers. 1RP 155.

Officer Maurine Stich also responded on the evening of the incident and took photos of SM, which were shown to the jury. 2RP 228-29. The photos showed a red mark on her neck, and her bruised and swollen left earlobe. 2RP 232. SM indicated she had been punched in the ear. 2RP 233. The photos also the red scratch on SM's neck where she indicated that Silva-Arroyo had grabbed her neck. 2RP 233. Additionally the photos depicted her swollen and bruised upper lip, and a red scratch on her abdomen below her navel. 2RP 234. SM had to pull her pants down to take the last picture. 2RP 235. Finally, Stich took pictures of abrasions on SM's lower back, bruising to her thigh, bruising on her left big toe, which also had an injured nail, bruising to her hands, and a scratch on her chin near her mouth. 2RP 236.

The police were able to obtain security video from the Safeway that showed Silva-Arroyo following SM through the deli department and then out the doors of the store. *See* Exh. 36A; RP 218, 249, 253. A still photo of Silva-Arroyo was extracted from the video. Exh. 31; 2RP 251.

The next day, Bainbridge Island detective Michael Tovar, after receiving the reports from the officers, including the still from the video, drove around the area where the assault occurred. 2RP 261-62, 264. At

the intersection of Madison Avenue and Wallace Way, he noticed Silva-Arroyo, who looked like the suspect from the video, walking. 2RP 265, 267. The apartment complex where Tovar first encountered Silva-Arroyo was directly across Madison Avenue from Island Trail. 2RP 298.

Tovar, who was in plain clothes, approached Silva-Arroyo and identified himself as a police officer. 2RP 266. After checking Silva-Arroyo's ID, Tovar asked him if he could take his photo. 2RP 268. Silva-Arroyo consented. 2RP 269.

Tovar created a six-photo montage that included the photo of Silva-Arroyo. 2RP 269-70. Tovar showed the montage to SM, and she identified Silva-Arroyo as the man who attacked her. 2RP 273-74.

Tovar also took a number of photos depicting SM's still-visible injuries. 2RP 276-78. These pictures were shown to the jury.

Tovar then went to Silva-Arroyo's workplace and asked to see his hands. 2RP 278-79. Silva-Arroyo had a cut on his right hand that appeared to be a bite mark. 2RP 288. Tovar took photos of the bite marks, which were shown to the jury. 2RP 294.

Tovar arrested Silva-Arroyo. 2RP 288. After waiving his *Miranda* rights, Silva-Arroyo agreed to speak to Tovar. 2RP 293. Silva-Arroyo volunteered that he had been at the Safeway. 2RP 309. Silva-

Arroyo told him that after leaving the Safeway, he went to work. 2RP 293. He denied having any interaction with SM. 2RP 294.

The baseball cap was submitted to the State Patrol crime lab for DNA testing. 1RP 134, 138. A DNA profile from the hat matched reference swabs from Silva-Arroyo. 1RP 138, 140, 142. The probability rate was 1 in 1,000,000,000,000,000,000. 1RP 143.

Silva-Arroyo called his brother and sister to testify on his behalf. The brother, who lived on High School Road, testified that Silva-Arroyo knew about Ihland Trail, and used the path as a shortcut between their houses. 3RP 359-60. The sister testified that she had had conversations with Silva-Arroyo about getting cuts on his hands at work. 3RP 362.

Silva-Arroyo testified that he went to Safeway but did not buy anything because he realized he had forgotten to bring his wallet. 3RP 364. Then he left and went to his brother's to see if he had left the wallet there. 3RP 365. He took the path to get there. 3RP 366. He did not get there because he realized he was late for work. 3RP 366. He retraced his steps along the path and went to work. 3RP 366. He denied attacking SM. 3RP 369.

He also testified that he sometimes cut himself at work. 3RP 367. However he denied that he had cut himself at work on July 22 or 23. 3RP 368. He then asserted that the cut on his hand that Tovar noted was from a

scrub pad. 3RP 368. He also asserted that did not know what happened to his baseball cap. 3RP 368.

On cross, Silva-Arroyo admitted that he was in the Safeway video. 3RP 371. He also admitted that the hat in evidence was his. 3RP 31.

III. ARGUMENT

A. SILVA-ARROYO FAILS TO MEET HIS BURDEN OF SHOWING THAT THE PROSECUTOR IMPROPERLY APPEALED TO THE JURY'S PASSION OR IMPROPERLY ATTEMPTED TO SHIFT THE BURDEN OF PROOF, AND FURTHER, EVEN ASSUMING ANY IMPROPRIETY, HE FAILS TO MEET HIS BURDEN OF SHOWING PREJUDICE WHERE THE STATE'S EVIDENCE OF GUILT WAS OVERWHELMING.

Silva-Arroyo argues that the prosecutor improperly appealed to the jury's passion by briefly referring to the attempted rape as every woman's "nightmare," and improperly attempted to shift the burden of proof by commenting on the lack of evidence supporting the defense theory of the case. This claim is without merit because neither comment was improper, and because even if the comments were improvident, Silva-Arroyo cannot show prejudice.

The burden is on the defendant to show that the prosecuting attorney's conduct was improper. *State v. Emery*, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). The prosecuting attorney has wide latitude in

making closing argument to the jury and may draw reasonable inferences from the evidence. *State v. Gregory*, 158 Wn.2d 759, 860, 147 P.3d 1201 (2006). On appeal, the Court reviews allegedly improper comments in the context of the entire argument, the issues in the case, the evidence addressed in the argument, and the instructions given. *State v. Bryant*, 89 Wn. App. 857, 873, 950 P.2d 1004 (1998). If the statements were improper, and if they elicited an objection at trial, the defendant must show that the misconduct resulted in prejudice that had a substantial likelihood of affecting the verdict. *Emery*, 174 Wn.2d at 760. If the defendant did not object at trial, the defendant is deemed to have waived any error, unless the prosecutor's misconduct was so flagrant*761 and ill intentioned that an instruction could not have cured the resulting prejudice. *Emery*, 174 Wn.2d at 760-61. Under this heightened standard, the defendant must show that (1) "no curative instruction would have obviated any prejudicial effect on the jury" and (2) the misconduct resulted in prejudice that "had a substantial likelihood of affecting the jury verdict." *Emery*, 174 Wn.2d at 761. Silva-Arroyo fails to meet his burden of showing either impropriety or prejudice.

1. The prosecutor's brief description of the crime as a "nightmare" was not an improper appeal to passion or prejudice.

Silva-Arroyo first claims that the prosecutor's statement that the circumstances of the crime was "every woman's worst nightmare," 3RP

406, was an improper appeal to passion. Taken in context, this contention fails. Instead, it is clear that prosecutor was properly discussing the issue of witness credibility and bias.

The comment arose in the context of the prosecutor's discussion of witness credibility. He began by discussing the fact that Silva-Arroyo had an interest in the outcome of the proceedings. 3RP 405. He then suggested that context was also important:

The other thing that you want to think about is context, and how does context play into this? Remember, your first instruction tells you that you can examine -- or you can look at a witness's testimony or evidence in light of all of the other evidence. Right? Okay. What you need to ask yourself is, when look at what the defendant said, in light of all of the other evidence in context, does it make sense? The answer is "no."

3RP 405. The prosecutor then recounted the evidence that supported this assertion. 3RP 305-06. After discussing that evidence, he briefly made the comment at issue:

Luckily, she stopped him. Luckily, she fought him off. Luckily, when she bit down on his hand, he let go. It's very lucky for her. Again, this scenario is every woman's worst nightmare. It really is. And what this scenario represents is an attack by a stranger. She didn't know him. She didn't know him. Right? *So I want to get to that in a second.* She did not know him.

3RP 406. After further discussion of the testimony of Silva-Arroyo's siblings, 3RP 406-07, the prosecutor, as promised, returned to the theme:

And, finally, [SM]. You saw her testify. She went through this scenario. She went through this horrible

incident, and think about what her interest and what her bias in the matter is. *She didn't know the defendant. Right? She didn't know anything about him.* You know, chances are, she probably didn't even realize what the defendant was doing when he was following her around in the store. She didn't -- I mean, she saw him there.

But think about her interest and her bias. She didn't know him. Right? This is just some guy off the street that attacked her. Right? So what is her interest and bias in the matter? Use that when you evaluate her testimony and the credibility that you give her testimony in light of what the defendant said.

3RP 407.

In context, the prosecutor was emphasizing that the victim had no personal bias against Silva-Arroyo. He did not suggest acquittal would send the “wrong message” to child sex victims as in *State v. Powell*, 62 Wn. App. 914, 918, 816 P.2d 86 (1991). He did not invoke Silva-Arroyo’s ethnicity or gang membership³ as in *Perez-Mejia*, 134 Wn. App. 907, 916, 143 P.3d 838 (2006). In that case, the prosecutor repeatedly told the jury that it should “pick up the torch” and “[s]end a message” to gang members that gang violence will not be tolerated and that such violence offends the values recognized in the Declaration of Independence; the prosecutor also “called further unnecessary attention to the defendant’s ethnicity.” *Perez-Mejia*, 134 Wn. App. at 917-18. Nor did he, as in *State v. Belgarde*, 110 Wn.2d 504, 507-08, 755 P.2d 174 (1988), refer to a group with which Silva-Arroyo was affiliated as a “group of madmen” and

³ Indeed there was no evidence of or argument regarding prior criminal or anti-social behavior on the part of Silva-Arroyo.

“butchers.” Indeed he in no way tied the phrase at issue in any way to any request to the jury, other than to consider the witnesses’ bias and motive for testifying. Even then, the comment was focused on the fact that the victim did not know Silva-Arroyo, and therefore had not bias against him, not on any attempt to scare the jury. Unlike in the cases Silva-Arroyo cites, the prosecutor’s statements here did not appeal to the jury’s civil or patriotic obligations to “protect the community” or “to send a message” to criminals. Nor did the prosecutor’s statements refer to facts not in evidence or seek a conviction for reasons unrelated to the charged crime. The argument was proper.

Even if the comment were improper, however, Silva-Arroyo fails to show prejudice. Because, contrary to his contention, Silva-Arroyo did not object to this comment below, he must meet the more stringent standard of showing that no curative instruction would have cured its prejudicial effect and that the comment had a substantial likelihood of affecting the jury verdict.

First it should be noted that the defense used very similar language in its closing and argued that the case was one of mistaken identity:

The defense is not here to tell you that Ms. McNulty was not attacked, that the person who jumped on top of Ms. McNulty held her down and tried to pull down her pants didn’t have something evil in mind. What we are telling you is it wasn’t Mr. Silva-Arroyo.

3RP 413-14. Silva-Arroyo further noted that “We are not disputing that it happened. We are not disputing that Ms. McNulty was a victim of a heinous crime.” 3RP 416. The defense plainly acknowledged the truism that a rape or attempted rape was a terrible ordeal to go through.

Both sides acknowledged that this was a terrible crime. The question then is whether, if the prosecutor’s comment were improper, was it so prejudicial as to have affected the verdict.

As noted, there was no dispute that SM was sexually attacked. There was no dispute that Silva-Arroyo was caught on tape following her out of the Safeway. Silva-Arroyo admitted it was he who was on the video. There was no dispute that Silva-Arroyo proceeded down High School Road from the Safeway. There was no dispute that he was familiar with the pedestrian path where the attack took place. There was no dispute that the hat found at the scene the day of the attack, which matched the one in the Safeway video, was Silva-Arroyo’s. The DNA test confirmed this and Silva-Arroyo admitted that it was his hat and that he was wearing it in the video. There was no dispute that Silva-Arroyo had a cut on his hand where SM said she bit him during the attack.

Additionally, SM testified that she got a good look at Silva-Arroyo when he was on top of her. She picked him out of a six-man photographic

montage.⁴ She identified him in court.

In defense, Silva-Arroyo testified that he bought nothing at Safeway because he forgot his wallet. He then claimed to take the pedestrian path to go to his brother's house to see if he left it there, but then changed his mind because he was late for work. This story was presumably to account for how his hat arrived at the scene of the crime.

The story makes no sense however. The brother testified he lived on High School Road. The Safeway was on High School Road. If he was in fact in a hurry to get to work, why would he have detoured off High School Road to go down the pedestrian path? *See* Exh 24.

Likewise, Silva-Arroyo's testimony about the cut on his hand was sketchy. First he denied cutting his hand at work the day of the incident or the following day when he was arrested. Then he asserted he scraped on a scrub pad.

In short, Silva-Arroyo's defense was simply not credible. On the other hand, nothing was elicited that in any way called SM's credibility into account. Finally, the overwhelming bulk of the prosecutor's argument was devoted to a calm assessment of the evidence and how it met each element of the offense. Even assuming impropriety, the alleged misconduct could certainly have been cured with an instruction and most

⁴ Silva-Arroyo conceded at trial that the montage was not unduly suggestive. 2RP 312.

assuredly did not affect the verdict. This claim should be rejected.

2. The prosecutor did not impermissibly shift the burden of proof by noting that the defense theory of the case lacked evidentiary support.

Silva-Arroyo next argues that the prosecutor attempted to shift the burden of proof. He fails to meet his burden of showing either impropriety or prejudice.

“The mere mention that defense evidence is lacking does not constitute prosecutorial misconduct or shift the burden of proof to the defense.’ A prosecutor is entitled to point out a lack of evidentiary support for the defendant’s theory of the case.” *State v. Sells*, 166 Wn. App. 918, 930, 271 P.3d 952 (2012) (quoting *State v. Jackson*, 150 Wn. App. 877, 885-86, 209 P.3d 553 (2009)). In *Jackson*, during closing argument, the prosecutor stated “there was not a single shred of testimony in this case to corroborate [the defendant’s girl friend’s] story and ... the jury should compare Jackson’s evidence with the State’s evidence.” *Jackson*, 150 Wn. App. at 885. Because the mere mention that evidence is lacking does not constitute prosecutorial misconduct and because the prosecutor in *Jackson* clearly explained to the jury that the State had the burden of proof, this court held the prosecutor did not commit misconduct. *Jackson*, 150 Wn. App. at 885-86.

Similarly, in *Sells*, the defendant was charged with second degree

identity theft, and during closing argument the prosecutor commented on the lack of evidence to show that the North Beach School District superintendent's name was not on the Visa card the defendant allegedly stole from the school district. *Sells*, 166 Wn. App. at 929-30. This Court held the prosecutor's statement was not improper and did not constitute misconduct. *Sells*, 166 Wn. App. at 929-30.

Here, Silva-Arroyo did object to these comments, but they were overruled:

The defense is giving you a lot of reasons. He is giving you a lot of explanations. And, you know, that is all to the good, but what he hasn't provided is reasonable doubt. You will –

MR. RAMSDELL: Objection, Your Honor.

MR. SALAMAS: How can I not – I can argue that.

MR. RAMSDELL: It's not defense's burden to provide –

3RP T433-34. The Court then excused the jury and the following occurred:

MR. RAMSDELL: Your Honor, by stating that the defense has failed to provide reasonable doubt, it is burden-shifting.

MR. SALAMAS: I just said that he is –

THE COURT: I'm sorry. The court reporter, mine is not going up. Can you read back the last statement the prosecutor said?

[WHEREUPON, the Court Reporter read the question and answer on page 78, lines 14 through 17 as requested.]

MR. SALAMAS: Your Honor, I am just saying that

he is giving a reason and explanation. I am not shifting the burden. There's no attempt to shift the burden here.

THE COURT: All right. I just had it read back. I tend to agree. How is that shifting the burden to you?

MR. RAMSDELL: Well, Your Honor, it says, Instruction No. 3, "State of Washington is the plaintiff and has the burden of proving each element beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists." And he is saying right there, defendant has not given you reasonable doubt and that –

THE COURT: That is not what it just said. The defendant has not given you reasonable doubt. Read it back again.

[WHEREUPON, the Court Reporter read the question and answer on page 78, lines 14 through 17 as requested.]

MR. SALAMAS: Your Honor, I can argue that the defense's argument does not create a reasonable doubt. I can. I don't see how I can't argue that. It doesn't make any sense.

THE COURT: You, in your argument, argued that there was reasonable doubt. He is entitled to argue there isn't. I'm sorry, I said that backwards. But reasonable doubt is the burden of proof that both of you are free to argue, according to the evidence, you know, in favor of your client.

I agree with you. If he said the defendant hasn't proved his innocence or hasn't proved the absence of reasonable doubt, that is shifting, but you didn't say that the defendant has failed – I am trying to paraphrase what you think that he said.

3RP 434-36. A trial court's decision on prosecutorial misconduct is given deference on appeal. *State v. Luvene*, 127 Wn.2d 690, 701, 903 P.2d 960 (1995). Here, the trial court did not perceive that the argument was an

attempt to shift the burden of proof. An examination of this rebuttal argument in context backs up the trial court's conclusion.

Before the comment in question, the prosecutor had just finished discussing that the evidence showed Silva-Arroyo's guilt. Before making the comment he summarized his point:

This is not a case about mistaken identity. This is not a case about the police investigation. They investigated the crime and found a suspect. That is what happened in this case. The evidence is there. Do not be confused. The evidence is there. Think about the tools you have. Think about the context. Think about the corroboration. Mr. Ramsdell wants you to think this is all about her word against him. This is about these two people.

* * *

Okay. That is what he wants this to come down to, right? But what it is really about is the corroboration. Okay? [SM] identified her attacker in court. After this crime happened, [SM] picked him out of a photo montage. The defendant, himself, is the person in the Safeway video. He said that himself. It's his hat found at the scene after the attack. That was the hat her attacker was wearing, right? That is the hat the defendant was wearing when he pushed her on the ground and tried to rape her. There is no question about it. This is not a "who done it." The defendant committed this crime, okay?

3RP 432-33. Moreover, after the ruling on the objection, the prosecutor explicitly cited to the instruction on reasonable doubt:

Again, I want you to use your common sense. Your instructions tell you the standard is beyond a reasonable doubt. It's not beyond any doubt. Okay? It's beyond a reasonable doubt. You know what that standard is. It's defined for you. It is in your instructions. "If you have an abiding belief in the truth of the charge," that is the definition. That is the definition.

3RP 437. He also repeatedly referred to the State's burden and the instruction in his argument. 3RP 395, 400, 410.

The argument was plainly in response to the evidence that Silva-Arroyo presented in court and argued in closing. It in no way suggested that Silva-Arroyo bore any burden of proof. To the contrary, it merely, and properly, argued that none of his evidence or argument took away from the fact that the State had met *its* burden.

Furthermore, as discussed with regard to the previous claim, the State's evidence was strong and compelling. Silva-Arroyo's defense was not. He therefore also fails to meet his burden of showing prejudice. This claim should be denied.

B. THE CONDITIONS OF COMMUNITY CUSTODY THAT SILVA-ARROYO CHALLENGES SHOULD BE STRICKEN.

Silva-Arroyo next claims that two conditions of his community custody were not crime-related. The first condition is that he not have unsupervised contact with minors. CP 98. The second requires that he not enter into a romantic relationship without the prior permission of his community corrections officer. CP 108. The State concedes error.

The term "crime related prohibition" is defined in RCW 9.94A.030. Under that section, no causal link need be established between

the prohibition imposed and the crime committed, so long as the condition relates to the circumstances of the crime. *State v. Llamas–Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). Sentencing conditions, including crime-related prohibitions, are reviewed for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 36–37, 846 P.2d 1365 (1993).

As Silva-Arroyo correctly notes, the Supreme Court held *State v. Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1998), *abrogated on other grounds*, *State v. Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010), that a condition of community custody prohibiting a defendant convicted of an adult rape from having contact with minors was not a proper crime-related prohibition. The State has located no authority directly on point regarding the second prohibition. However, following the reasoning of *Riles*, it is difficult, at least on this record, to see how this prohibition can be deemed crime-related.⁵ The State therefore concedes that these two prohibitions should be stricken on remand.

⁵ The State could conceive of situations where such a prohibition might be justifiable, for example, where a treatment professional found that the defendant’s act and psychological makeup made him a danger to both strangers and intimate partners, but there is nothing in the present record to support such an argument.

IV. CONCLUSION

For the foregoing reasons, Silva-Arroyo's conviction and sentence should be affirmed, except that on remand the conditions relating to contact with minors and romantic relationships should be stricken.

DATED July 17, 2014.

Respectfully submitted,
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