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No. 53518-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW WILLIAMS,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. The State failed to establish Mr. Pulliam's out-of-court statements to the SANE nurse qualified as medical hearsay under ER 803(a)(4).

- a. The State failed to establish the required foundation for the admissibility of Mr. Pulliam's statements to the SANE nurse.

The trial court erred in admitting Mr. Pulliam's out-of-court statements to the SANE nurse because the State did not establish the requisite foundation for admission under ER 803(a)(4).

On appeal the State claims it can be "inferred" that Mr. Pulliam went to the SANE nurse for purposes of treatment. Br. of Resp. at 13-14. Mere inference is not sufficient; the State has the burden to demonstrate "(1) the declarant's motive in making the statement is to promote treatment, and (2) the medical professional reasonably relied on the statement for purposes of treatment." *State v. Williams*, 137 Wn. App. 736, 746, 154 P.3d 322 (2007).

The State claims, without citation to the record, that when Mr. Pulliam went to the medical center and met with the SANE nurse, "he was an independent adult who had been injured and was experiencing pain." Br. of Resp. at 13. To the contrary, the record reflects that Mr. Pulliam's

father took him to the hospital after his father decided he should handle this the “correct way.” 8/30/18 RP 405-06; 457.

The State also claims that Mr. Pulliam “understood the difference between law enforcement and the hospital.” Br. of Resp. at 13 (citing RP 392). This was not the testimony elicited from Mr. Pulliam; he testified only that: “I talked to the hospital and I talked to the police.” 8/30/18 RP 392. This reveals nothing about his “understanding” of their difference. Mr. Pulliam’s father drove him to the hospital. 8/30/18 RP 405. Mr. Pulliam’s description of what took place at the hospital the day after he made his allegation against Mr. Williams sounds far more like investigatory measures than treatment. Mr. Pulliam stated that at the hospital, they “took pictures” and he filled out a “handwritten statement.” 8/30/18 RP 406. Mr. Pulliam testified that he was swabbed and checked head to toe. 8/30/16 RP 406. It is simply not enough, as claimed by the prosecutor, that “it may be inferred fairly that an adult understands that a hospital is where you go for emergent care.” Br. of Resp. at 13-14. It is also where a person goes to see a nurse who is specifically trained to collect forensic evidence, as occurred here. 9/4/18 RP 56.

The State misrepresents *State v. Scanlan* to stand for the generic proposition that “[w]hen medical professionals elicit the cause of injuries, they do so for treatment purposes.” Br. of Resp. at 14 (citing *State v.*

Scanlan, 193 Wn.2d 753, 768, 445 P.3d 960 (2019), *cert. denied*, 140 S. Ct. 834, 205 L. Ed. 2d 483 (2020)). The State omits the critical fact that in *Scanlan*,¹ the witnesses at trial established the purpose of the medical visit:

Dr. Britt, Dr. Endow, Friel, and Dr. Pierce all testified that knowing the mechanism of a patient’s injury is important because it affects the course of treatment. Dr. Britt stated that the mechanism of injury determines how serious it is and affects which tests he runs. Dr. Endow stated that knowing how the injuries occurred and the timing of the injuries is important for treatment. Friel testified that when treating patients, she needs to know whether she might need to do imaging to look for foreign bodies in the wound. Dr. Pierce stated that knowing the cause of wounds is important to help prevent wound recidivism, for which the rate among her patients.

Id. at 768 (emphasis added).

By contrast, the State’s citation to the SANE nurse’s testimony does not establish she elicited Mr. Pulliam’s statements for treatment. Br. of Resp. at 15. Ms. Brown told Mr. Pulliam she “would get out the evidence collection kit and take some swabs.” She stated she took some photographs of his injuries. 9/4/18 RP 68. She spoke to other medical personnel about follow-up and care. 9/4/18 RP 68-69. Immediately after talking to Mr. Pulliam’s family about how he could receive follow up care

¹*Scanlan* alleged a confrontation clause violation, not exclusion of out-of-court statements under ER 803(a)(4) at issue here. 193 Wn.2d at 766. In *Scanlan*, the Court analyzed the “primary purpose” of the statements made to medical professionals to determine whether they were testimonial.

elsewhere, she “took the evidence and went and packaged it appropriately and handed it off to the officer.” 9/4/18 RP 69. She measured, swabbed, collected samples and took pictures. RP 9/4/18 RP 61-62. Ms. Brown’s testimony established she was collecting evidence, not treating Mr. Pulliam. *Compare, Williams*, 137 Wn. App. at 747 (nurse testified a purpose of questions to her patient was to “identify treatable injuries”).

In the absence of a record establishing that Mr. Pulliam’s statements to the SANE nurse were made for the purpose of treatment, the State cites to law review articles discussing the benefits of SANE exams and how they are generally conducted, Br. of Resp. at 15-19, concluding “[t]he exam is patient care. Both the nurse and patient understand this.” Br. of Resp. at 19. These generalized conclusions based on academic articles are inadequate to establish the admissibility of out-of-court statements in a given case. *See, e.g., State v. Lopez*, 95 Wn. App. 842, 850, 980 P.2d 224 (1999) (when the record does not indicate the interviews with a social worker were pertinent to diagnosis or treatment, the out-of-court statements “lacked the indicia of reliability required for admission under ER 803(a)(4)”). The State’s generic claims about SANE nurses and medical treatment are irrelevant because they do not establish Mr. Pulliam’s “motive in making the statement [was] to promote treatment,”

or that the SANE nurse in this case “reasonably relied on the statement for purposes of treatment.” *Williams*, 137 Wn. App. at 746.

The party offering the evidence always bears the burden of proving admissibility. *State v. Smith*, 87 Wn. App. 345, 348, 941 P.2d 725 (1997) (the burden of establishing the foundation is on the state when seeking to admit hearsay evidence). The State failed to meet its burden here, and the trial court erred in admitting the hearsay statements under ER 803(a)(4).

- b. The State’s alternative basis for admission under ER 801(d)(1)(ii) must be rejected because the record is insufficient to establish admissibility under this theory which is advanced for the first time on appeal.

The prosecutor now claims, for the first on appeal, that Mr. Pulliam’s statements to the SANE nurse were alternatively admissible under ER 801(d)(1)(ii). Br. of Resp. at 19. The evidence does not establish there was an allegation of “recent fabrication” as required for admission of out-of-court statements under this rule.

If the State sought to admit Mr. Pulliam’s out-of-court statements under ER 801(d)(1)(ii), it would have had to establish a basis for admission under this rule to the trial court: “[i]t is the duty of a party offering evidence to make clear to the trial court what it is that he offers in proof, and the reason why he deems the offer admissible over the

objections of his opponent, so that the court may make an informed ruling.” *State v. Ray*, 116 Wn.2d 531, 539, 806 P.2d 1220 (1991).

The State did not argue below that Mr. Pulliam’s statements to the SANE nurse were admissible under ER 801(d)(1)(ii). Accordingly, the trial court did not have the opportunity to rule on whether they met the requirements for admission under this rule. “[T]he admission of prior consistent statements is a discretionary decision of the trial court.” *State v. Dictado*, 102 Wn.2d 277, 290, 687 P.2d 172 (1984). The State cites no authority allowing this Court to make this discretionary decision for the first time on appeal.

In the cases cited by the State, the trial court ruled the proffered statements were admissible under ER 801(d)(1)(ii) because the proffered facts allowed it to do so. Br. of Resp. at 19 (citing *State v. Makela*, 66 Wn. App. 164, 169, 831 P.2d 1109 (1992) (“By the time of the trial court’s ruling, it was abundantly clear. . . that the entire defense case was to be devoted to an intensive attack on the victim’s credibility and truthfulness,” which included a motive to fabricate); *Dictado*, 102 Wn.2d at 290 (“The trial court found that the cross-examination raised an inference that [the witness] did not come forward. . . until after [the date in question]”). Here, the State did not argue at trial that Mr. Pulliam’s statements to the SANE nurse were admissible under ER 801(d)(1)(ii) or proffer the facts

necessary to establish admissibility under this rule. Accordingly, the trial court did not rule on whether the out-of-court statements met the requirements for admission under this rule. This Court cannot affirm on that basis.

Without having sought admission below, the State now also claims that defense counsel's cross-examination of Mr. Pulliam that showed myriad inconsistencies between his prior statements and current testimony "would be a tenable basis for admission and a further reason to affirm the lower court's discretionary decision to admit the statements." Br. of Resp. at 21. But mere cross-examination of the witness cannot alone justify admission of prior consistent statements. *Dictado*, 102 Wn.2d at 290. The State does not provide any facts to support the critical aspect of the rule, which is that there must be "implied charge of recent fabrication or improper influence of motive." ER 801(d)(1)(ii).

Even if this Court were to rule on this evidentiary issue for the first time on appeal, there was no "tenable basis" for admission under ER 801(d)(1)(ii) because there was no implied charge of "recent fabrication," as required for admission under this rule. The State's new, alternative theory for admission should be rejected.

- c. The State's cursory conclusion that this was harmless error fails to address the critical fact that the State's scientific evidence contradicted Mr. Pulliam's statements to the SANE nurse.

The State claims, without citation to the record, that the numerous erroneously admitted statements contained information that "had already been admitted during the testimony of previous witnesses." Br. of Resp. at 22. Arguments that are not supported by any reference to the record or by citation of authority need not be considered. RAP 10.3(a)(6) & (b); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

The State does not address the importance of the DNA evidence that contradicted Mr. Pulliam's claims. Br. of App. at 19-21. Any inadmissible corroborating testimony would not be harmless, because of a lack of other corroborating evidence of Mr. Pulliam's allegation. Br of App. at 21. *See, e.g., State v. Vincent*, 131 Wn. App. 147, 155, 120 P.3d 120 (2005) (harmless error consideration includes the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, and the "overall strength of the prosecution's case.") This repetition of Mr. Pulliam's out-of-court statements was also harmful because it garnered sympathy for Mr. Pulliam. Br. of App. at 21.

This erroneous admission of this evidence cannot be harmless error, where the State's case rested only on witness testimony that was

undercut by its own scientific evidence. These inadmissible, corroborating claims were inflammatory, which encouraged the jury to convict based on passion, despite the weakness of the State's evidence.

2. Concealing Mr. Pulliam's identity in the "to-convict" instruction was an impermissible comment on evidence.

By identifying Mr. Pulliam as "J.P." in the "to-convict" instruction, the court told the jury that he was a victim of a sex offense, which was an impermissible comment on the evidence.

- a. The court's redaction of Mr. Pulliam's name in the "to-convict" instruction commented on a question of fact: whether Mr. Pulliam was the victim of a sexual assault.

Article IV, section 16 of the Washington Constitution states that "[j]udges shall not charge the juries with respect to matters of fact, nor comment thereon, but shall declare the law." Courts recognize that personal feelings on an element of the offense may be express or implied. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006).

The State wrongly believes *Levy* control this case. Br. or Resp. at 24. In *Levy*, the court found there was no comment on the evidence where the identity of the person whose property was stolen was not an element of the offense, and therefore inclusion of their full name in the "to-convict" instruction did not "improperly suggest to the jury that it need not find the property was taken from another." *Id.* at 722. *Levy's* holding does not

control this question, which involves a *redaction*, or concealing of the witness's identity when the jury deliberates, not the fact of including the witness's name in the instruction. *Levy* is clear that trial judges may not convey their personal attitudes toward the merits of the case to the jury. *Id.* at 721. Redaction to protect the identity of the person alleging a sexual assault is a comment that they are a victim in need of protection from public knowledge that that they were the victim of a shameful sexual crime.

The State cites to two unpublished cases finding the use of initials in the to-convict instruction was not error, but does not state why this Court should follow them. Br. of Resp. at 24 (citing *State v. Airhart-Bryon*, 13 Wn. App. 2d 1003, 2020 WL 1853477, *5 (2020); *State v. Staples*, 11 Wn. App. 2d 105, 2019 WL 7373500, *3 (2019)). These unpublished cases do not bind this Court, and in any event, they are wrongly decided. Both *Staples* and *Airhart-Bryon* relied on *State v. Alger*, 31 Wn. App. 244, 640 P.2d 44 (1982), which did not address redaction in a “to-convict” instruction. *Airhart-Bryon*, 2020 WL 1853477 at *5; *Staples*, 2019 WL 7373500 at *3. In *Alger* the court merely read a stipulation between the parties using the word “victim” during trial. *Alger*, 31 Wn. App. at 248-49. The *Alger* court “neither encouraged nor recommended” referring to a complaining witness as a “victim” at trial,

but under the facts and circumstances of that case, the agreed-to reference in a stipulation did not “prejudice the defendant’s right to a fair trial by constituting an impermissible comment on the evidence.” *Id.* at 249.

Airhart-Bryon’s holding also relies on *State v. Magers*, which is equally misplaced. *Airhart-Bryon*, 2020 WL 1853477 at *5. In *Magers*, reference to a “victim” was only used in a court’s limiting instruction, which referred to her victim status in relation to prior acts of domestic violence. *State v. Magers*, 164 Wn.2d 174, 186, 189 P.3d 126 (2008).

Staples and *Airhart-Bryon* fail to account for the “special status” of the “to-convict” instruction. *State v. Pope*, 100 Wn. App. 624, 630, 999 P.2d 51 (2000). It is the “yardstick” by which the jury measures guilt, provided after the jury has heard the evidence at trial. *State v. Mills*, 154 Wn.2d 1, 6, 109 P.3d 415 (2005). Throughout trial, Mr. Pulliam was referred to by his name, but after the close of the evidence, during jury deliberations, his identity was redacted. This indicated he was the victim of the crime in question, which constituted a comment on the evidence.

- b. The “to-convict” instruction is critically different than a routine “court filing.”

The State next compares the “to-convict” instruction to a “court filing” to justify redaction. Br. of Resp. at 24. Even if, as claimed by the State, it is “standard practice” to “avoid naming vulnerable witnesses in

court filings,” such as in the appellate opinions the State refers to, Br. of Resp. at 25, this has no bearing on whether the court may redact an alleged victim’s name in the “to-convict” instruction. This is because unlike in appellate opinion, (1) the status of complaining witness as a “victim” has not been decided when the jury is given the “to convict” instruction, and (2) an appellate opinion that shields the identity of a victim does not implicate the constitutional issue of the judge commenting on facts to the jury as does the “to convict” instruction.

The State’s citation to the unpublished opinion, *State v. Brown* is also irrelevant to this issue other than to support Mr. Williams’s argument that the redaction in the “to-convict” instruction is a comment on the evidence. Br. of Resp. at 25 (citing *State v. Brown*, 7 Wn. App. 2d 1061 (2019)). In *Brown*, the claim on appeal was that the prosecutor improperly argued “that the jury instructions referred to J.B. by his initials because Washington law requires child sex victims to be referred to only by their initials.” *Id.* at 4. The trial court told the jury that the child’s name was being redacted in the “to-convict” instructions because they were publicly filed documents. *Id.* The Court of Appeals deemed the misconduct issue waived because it was not objected to below, and could have been cured by an instruction. *Id.* There was no challenge to the jury instruction in that case, and the judge’s comment on the use of initials there does not apply

here, where as argued by the State, Mr. Williams was “an independent adult.” Br. of Resp. at 13. Unlike in *Brown*, where the jury was told about the need to maintain the anonymity of children in court proceedings, here there was no basis for shielding Mr. Pulliam’s identity, other than because the court deemed him to be the victim of sex crime.

The State cites to the authority that would ensure redaction of the prosecution’s file if made subject to an open records request, but still argues this is an “imperfect safeguard” justifying redaction of jury instructions “at the time of their creation.” Br. of Resp. at 26. By this logic, the State could have no documents in its file with an alleged sexual assault victim’s name on it. This speculative concern about the prosecutor neglecting its obligations under RCW 7.69A.030(4) is certainly not a basis for violating the accused’s constitutional rights under Art IV, § 16.

- c. The State’s concern for the “common and prudent” practice of shielding a sexual assault victim’s identity further illustrates the harm of the court identifying a witness this way in the “to-convict” instruction.

The State also cites to public policy and tradition of protecting the identity of sexual assault victims as justification for redacting a witness’s name in the “to-convict” instruction. Br. of Resp. at 26-29. Mr. Williams does not contest the value in according a sexual assault victim privacy. However, these measures have no place in a “to-convict” instruction. The

State's contention that "[a]ll of American society, not just the criminal justice system, treats rape victims differently" only underscores the significance of this message to the jury. Br. of Resp. at 27.

Redaction that follows the proper procedures *after* the jury's deliberation would avoid the conflict between these policy concerns and the constitutional prohibition on judicial comments on the evidence.

- d. Federal case law supports the conclusion that redaction of an alleged victim's identity at trial is a judicial comment on the evidence.

The State misses the significance of the federal cases cited in Appellant's opening brief, which establish that the use of a pseudonym constitutes a judicial comment on the evidence. Br. of Resp. at 29 (citing *Doe v. Cabrera*, 307 F. R. D.1, 10 (D.D.C. 2014); *Does I through XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000)). Even if these cases ultimately involved testifying witnesses, they are instructive because they also address the underlying concern in this case, which is whether hiding the identity of the testifying witness is a prejudicial comment on the evidence. It is the jury's perception of witness anonymity that was the trial court's concern in *Cabrera*, which implicates the same concerns at issue here. *Cabrera*, 307 F.R.D. at 6.

- d. Redaction of the accuser's name in the "to-convict" instruction undermines the presumption of innocence.

Mr. Williams has the fundamental due process right to the presumption of innocence, which redaction to protect the accuser in a jury instruction undermines. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. Br. of App. at 25-26. The State failed to respond to this constitutional claim raised by the Appellant, which may be deemed a concession by this Court. *State v. E.A.J.*, 116 Wn. App. 777, 789, 67 P.3d 518 (2003) (the appellate court treats the State's failure to respond to argument as a concession). Because it is reversible error to instruct the jury in a manner that would relieve the State of this burden, Mr. Williams's conviction must be reversed and remanded for a new trial. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995).

3. The trial court's use of initials in court documents violated article I, section 10 of the Washington Constitution.

The use of Mr. Pulliam's initials in critical court documents without first applying the *Ishikawa*² factors violated the open courts doctrine, which provides an independent grounds for reversal and remand.

The Supreme Court recently ruled that "names in pleadings are subject to article I, section 10 and redaction must meet the *Ishikawa*

² *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 32, 640 P.2d 716 (1982).

factors.” *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 201, 410 P.3d 1156 (2018). Similarly, using initials in lieu of a name is a redaction. *Hundtofte v. Encarnacion*, 181 Wn.2d 1, 5-6, 330 P.3d 168 (2014); GR 15(b)(4)-(5). It cannot be seriously be argued that the court filings which used initials to shield Mr. Pulliam’s identity are not a redaction as claimed by the State. Br. of Resp. at 32.

The State also argues the redacted use of Mr. Pulliam’s name was mere “personal compositional choice.” Br. of Resp. at 33. When a stylistic choice violates the constitution, the constitutional right must prevail. It is the court’s obligation to ensure this does not happen. *Hundtofte*, 181 Wn.2d at 9 (a court has the “independent obligation to protect the open administration of justice” as required by Art. I, § 10).

In *Staples*, the Court of Appeals properly recognized efforts to conceal the identity of case participants implicates Article I, section 10. 2019 WL 7373500 at *3. However, the court reasoned no violation occurred because other portions of the trial and record were open to the public. *Id. Airhart-Bryon* reached the same conclusion. WL 1853477 at *4. These conclusions ignore *Ishikawa*’s holding, which requires application of its framework “each time” there is a restriction on access. 97 Wn.2d at 37. Thus, a violation occurs by any an improper redaction or sealed record even if the information might be shared in open court or is

available in other ways. *Id.* It does not matter under *Ishikawa* that other portions of the proceeding or record do not contain similar restrictions.

Staples and *Airhart-Bryon* excuse the trial court's failure to comply with *Ishikawa* and Article I, section 10. By the logic of these opinions, no violation occurs unless the entirety of the proceedings and record is closed. They are wrong to hold that as long as the information is available somewhere else, *Ishikawa* need not be followed. This conclusion renders *Ishikawa* and Article I, section 10 meaningless. This Court should reject this reasoning and find the redaction is a court closure that violates *Ishikawa*.

4. The trial court's basis for denying Mr. Williams's CrR 7.5 motion was untenable.

Mr. Williams challenges the court's denial of his CrR 7.5 motion because the court mistakenly ruled it could not evaluate the credibility of Mr. Williams's assertions based on his own perceptions because this was hearsay, that Mr. Williams was not prejudiced by his counsel's failure to call witnesses, and that the absence of Mr. Ramirez's testimony did not render the verdict unreliable. Br. of App. at 38-40. It is immaterial that after six weeks, Mr. Ramirez could not be found. Br. of Resp. at 38. The trial court's basis for denying his motion was untenable, because Mr.

Williams's observations were not hearsay, and the missing testimony was critical to his defense. Br of App. at 37-40.

5. This Court should reject the State's legally baseless attempt to circumvent the plain holdings of *Ramirez* and *Blazina*.

Contrary to established case law, the State first suggests a challenge to courts costs may not be raised for the first time on appeal. Br. of Resp. at 42. The State cites to the Court of Appeals opinion in *State v. Duncan* to support its claim that this issue may be not reviewed for the first time on appeal. Br. of Resp. at 41 (citing *State v. Duncan*, 180 Wn. App. 245, 253, 327 P.3d 702 (2014), *aff;d and remanded*, 185 Wn.2d 430, 374 P.3d 83 (2016). However, the Supreme Court reversed on this very issue, holding "the imposition and collection of LFOs have constitutional implications and are subject to constitutional limitations." 185 Wn.2d at 434. *Duncan* reaffirmed *Blazina*'s review of a court's imposition of courts costs for the first time on appeal, remanding for the court to inquire into the defendant's ability to pay when not raised below. *Id.* at 437-38; *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015). The State's claim this is not subject to review under RAP 2.5(a)(3) has no merit.

Ramirez held that courts are prohibited from imposing the \$200 filing fee on indigent defendants. *State v. Ramirez*, 191 Wn.2d 732, 746, 426 P.3d 714 (2018). The State ignores *Blazina*'s mandate that courts

conduct an adequate inquiry of indigency before imposing discretionary costs, instead arguing that because the trial court did explicitly find Mr. Williams was indigent, the court's finding of indigence for appeal and appointment of counsel may be construed to mean that the court only found he was indigent under RCW 10.101.010(3)(d). Br. of Resp. at 43. The State then wrongly infers that this "finding" under (3)(d) of the statute means that Mr. Williams is not indigent under section (a)-(c) of the statute. Br of Resp. at 43.

The cases cited by the State do not support these flawed inferences. Br. of Resp. at 43. *State v. Jenks* does not involve the issue here—it held that an entirely different statute, RCW 9.94A.030(33), "cannot be applied to this appeal regardless of whether the amendment is remedial." *State v. Jenks*, 12 Wn. App. 2d 588, 600, 459 P.3d 389 (2020). The State also cites to the unpublished decision, *State v. Kalama*, but there the trial court found the defendant was not indigent under RCW 10.101.010(3)(a)-(c), and thus it was not error for the court to impose the criminal filing fee based on the trial court's explicitly limited finding of indigency under RCW 10.101.010(3)(d). 13 Wn. App. 2d 1050, 2020 WL 2128696 *3 (2020). Under *Blazina*, if a court fails to conduct the necessary inquiry for indigency, this requires reversal and remand, not presupposition that the

person is not indigent. 182 Wn.2d at 839. This Court should reject the State's efforts to circumvent the plain holdings of *Ramirez* and *Blazina*.

Rather than concede the judgement and sentence should be corrected to remove interest on Mr. Williams's LFOs, the State claims, without citation to any authority or evidence, that those with a JIS account and training "can view the information at JIS and tell the interest accrual provisions have all been turned off in the in Defendant's case." Br. of Resp. at 46. Even if this were true, this may not always be the case. This erroneous provision should be stricken from the judgment and sentence.

C. CONCLUSION

The court's admission of Mr. Pulliam's out-of-court statements without the State laying the requisite foundation under ER 803(a)(4) was reversible error. So too was the court's "to-convict" instruction that accorded Mr. Pulliam the status of sexual assault victim in need of protection. This was an impermissible comment on the evidence that also deprived him of the presumption of innocence and violated the open courts doctrine. These errors, and the court's denial of Mr. Williams's CrR 7.5 motion warrant reversal and remand for a new trial. Alternatively, the court should strike the discretionary legal financial obligations or reverse and remand for the court to conduct an inquiry into Mr. Williams's ability to pay them.

DATED this 4th day of August, 2020.

Respectfully submitted,

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 53518-1-II
v.)	
)	
MICHAEL WILLIAMS,)	
)	
Appellant.)	

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