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Division III
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No. 36396-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

THOMAS L. BRAMBLEE

Appellant.

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

The Honorable Timothy B. Fennessy

APPELLANT'S OPENING BRIEF

Laura M. Chuang, Of Counsel, #36707
Jill S. Reuter, WSBA #38374
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

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A. SUMMARY OF ARGUMENT

After a jury trial, Thomas L. Bramblee was convicted of attempted rape of a child in the second degree.

Mr. Bramblee challenges the trial court's erroneous evidentiary decision which hampered Mr. Bramblee's right to present a defense. Immediately after arrest, Mr. Bramblee made an exculpatory statement. Because the statement should have been admissible as a hearsay exception under excited utterance, failure to allow admission of the statement was an abuse of discretion. This error also implicated Mr. Bramblee's constitutional right to present a defense as he was unable to present admissible evidence supporting his defense theory. The case should be reversed and remanded for a new trial.

The trial court erred by entering community custody condition #12 because it is not directly crime-related, is overbroad, and violates Mr. Bramblee's First Amendment rights. The condition must be stricken.

Finally, the trial court erred by imposing \$200 in court costs and interest on legal financial obligations, and this Court should strike both because Mr. Bramblee was deemed indigent.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying admission of Mr. Bramblee's excited utterance and the ruling interfered with his constitutional right to present a defense.
2. The trial court erred in entering community custody condition #12. (CP 170).

3. The trial court erred in imposing \$200 in court costs.
4. The trial court erred by imposing interest on legal financial obligations.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether the trial court erred in denying the admission of Mr. Bramblee's exculpatory statement when such statement was an excited utterance and failure to allow admission was a violation of his constitutional right to present a defense.

Issue 2: Whether the court erred by entering a community custody condition (#12) that was not directly crime-related, was overbroad, and violates Mr. Bramblee's First Amendment rights.

Issue 3: Whether the trial court erred in imposing \$200 in court costs.

Issue 4: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.

D. STATEMENT OF THE CASE

On May 3, 2016, Thomas Bramblee posted an ad on Craigslist in the Tacoma area personals section under the subsection for casual encounters. (1RP 82-85; State's Ex. 8). The ad stated he was "lookin for girls into incest roleplay" such as "mom son, aunt nephew, father daughter, cousin, brother older sister, brother younger sister." (1RP¹ 85; State's Ex. 8). The ad did not indicate an interest in children or sex with children. (1RP 82-85; State's Ex. 8).

¹ "1RP" refers to Vols. I & II transcribed by Joe Wittstock and includes the court proceedings from 8/6/18, 8/7/18, 8/8/18, and 8/9/18.

"2RP" refers to a single volume transcribed by Amy Wilkins and includes the court proceedings from 4/20/18, 4/23/18, and 4/25/18.

"3RP" refers to a single volume transcribed by Jody Dashiell and includes the court proceedings from 10/4/18.

A Washington State Patrol detective part of the Missing and Exploited Children Task Force (MECTF) was attending undercover chat school at the time she came upon Mr. Bramblee's ad. (1RP 76-82). She responded to the ad, posing as "Kay C", the mother of a 12 year-old girl named "Anna." (1RP 88-89, 95; State's Ex. 9). The undercover detective explained she was not interested in roleplay, but was looking for someone who could have a relationship with her daughter that involved sexual experimentation. (1RP 91; State's Ex. 9). Mr. Bramblee and the undercover officer exchanged more information about themselves, with the detective using a story line she had developed about herself. (1RP 89-98).

Over about two months, the two exchanged several emails and text messages. (1RP 89-138; State's Exs. 9, 11, 12, 14). A lot of the messages centered around the two sharing information about their lives and themselves. (1RP 89-138; State's Exs. 9, 11, 12, 14). Towards the end, the messages asked whether "Anna" would be interested in certain sex acts, and inquired whether "Kay" would be interested in participating, too. (1RP 132-141).

On July 10, 2016, Mr. Bramblee agreed to meet with Anna and Kay at their alleged residence in Spokane. (1RP 132-141). Upon arriving he was arrested by law enforcement in the basement of the residence. (1RP 140-142).

The State charged Mr. Bramblee with a single count of attempted rape of a child in the second degree. (CP 11).

According to the record, Mr. Bramblee immediately had stated he was “here for the mother” when he was arrested. (2RP 18). Before trial, the State sought to keep out and the defense sought to bring into evidence this statement. (CP 52-53, 78, 85, 88; 2RP 6-8, 19-27). The trial court opined the statement was not admissible unless Mr. Bramblee was available to testify. (2RP 20-21). Defense counsel countered that declarant availability was not part of the equation because Mr. Bramblee was seeking admission pursuant to an excited utterance exception, and not a state of mind exception. (2RP 21-22). The State took the position the statement was not an excited utterance at all, though the trial court seemed to be less certain. (2RP 25-26). After discussion with the parties, the court reserved on the ruling for more time to do research. (2RP 19-27).

Later, the hearsay admissibility issue was readdressed by the trial court. (2RP 64-71). Defense counsel pointed to case law stating a declarant need not be available for hearsay to come in under the excited utterance exception. (2RP 65); *State v. Palomo*, 113 Wn.2d 789, 783 P.2d 575 (1989). However, the trial court instead relied upon the *State v. Ammlung* case, concluding that because in that case the declarant “was obviously attempting to get the statement into evidence to support her contention” and theory of the case, a defendant cannot create her “own unavailability by electing not to give evidence on her own behalf.” (2RP 66) (citing *State v. Ammlung*, 31 Wn. App. 696, 644 P.2d 717 (1982)). The State agreed with defense counsel that availability of the declarant was not an issue, but

rather maintained it did still not think the statement qualified under the excited utterance exception. (2RP 68). Ultimately, the trial court still ruled the statement was not admissible unless Mr. Bramblee was available to testify. (2RP 69-71).

A mistrial was granted in the first jury trial due to evidence that had not been previously provided to the defense. (2RP 135-137).

The case proceeded to a second jury trial. (1RP 26-208). Mr. Bramblee did not testify. (1RP 26-208).

A Washington State Patrol sergeant from the MECTF testified at trial. (1RP 27-65). He explained law enforcement was running an operation in Spokane in July 2016 to look for individuals who wanted sex with children. (1RP 50-60). The sergeant was present when Mr. Bramblee was arrested, but he was not involved in any online communications. (1RP 60, 62).

The undercover detective pretending to be “Kay” testified at trial. (1RP 76-177). The detective stated she was also participating in the Spokane operation in July 2016. (1RP 78-79). Her job was to pretend she was the mother to a 12-year-old girl named “Anna.” (1RP 80, 95). The detective indicated she was using Craigslist to make contact with suspects. (1RP 80-81). She chose to respond to Mr. Bramblee’s ad because it mentioned the words “incest” and “girls” and “younger.” (1RP 85). The original ad stated:

lookin for girls into incest roleplay—m4w (your place)

Super horny and have fantasies about incest roleplay mom son, aunt nephew, father daughter, cousin, brother older sister, brother younger sister. I'm in my 20s lil heavy set not bad lookin and I WANT YOU!!! if you're getting wet thinkin about this message me send me pics and tell me what's going through your mind and if you have ANY fantasies let me know and I'll try to help you with them put FUN TIMES in the subject line

(1RP 85; State's Ex. 8) (emphasis in original removed). The undercover detective responded to this ad, stating she was the mother of a 12 year-old and she was interested in Mr. Bramblee's ad, but not role play, and if Mr. Bramblee was not interested she asked he not reply. (1RP 89; State's Ex. 9). Mr. Bramblee responded he did not understand what she meant. (1RP 90; State's Ex. 9). "Kay" responded, stating she had had an "incest experience" when she was young, and was looking for the same type of situation for her daughter. (1RP 90; State's Ex. 9). Mr. Bramblee expressed concerns he was being "set up". (1RP 92; State's Ex. 9). "Kay" indicated she was fearful of law enforcement, too. (1RP 93; State's Ex. 9).

The communication between the two continued, with a focus on exchanging information about each other and no mention of "Anna" for almost 20 email messages. (1RP 93-98; State's Ex. 9). It was "Kay" who brought the subject of her daughter up again. (1RP 98; State's Ex. 9). Mr. Bramblee asked for pictures and he briefly inquired about how the situation would occur with

“Anna.” (1RP 98-99; State’s Ex. 9). But then “Kay” and Mr. Bramblee spent the next several emails again discussing their lives. (1RP 99-100; State’s Ex. 9). The undercover detective brought up “Anna” again, stating “I guess I need to know if your interested in a real relationship with Anna or if your just a role play kind of guy.” (1RP 100; State’s Ex. 9). Mr. Bramblee asked “Kay” to explain what she meant: “What do you mean role play or real relationship?” (1RP 101; State’s Ex. 9). And a follow up message from Mr. Bramblee to “Kay” stated: “Just was wanting to be clear on what you meant and what the differences are of what you’re talking about....” (1RP 101; State’s Ex. 9). “Kay” never responded to this request for clarification. (1RP 101; State’s Ex. 9).

Next, pictures were exchanged. (1RP 101-103; State’s Ex. 9). “Kay” sent a picture of “Anna” to Mr. Bramblee, and he responded in turn with pictures of himself. (1RP 103; State’s Ex. 9). He requested a picture of “Kay”, which the undercover detective sent. (1RP 102-103). After a few more messages were exchanged, Mr. Bramblee shared with “Kay” that he has a huge heart that leads to him getting hurt and that he falls in love too easy and fast. (1RP 104; State’s Ex. 9). The detective reiterated she was seeking a relationship for “Anna” and not herself. (1RP 103-105; State’s Ex. 9).

Around May 20, 2016, the communication dropped off between the undercover detective and Mr. Bramblee for a few weeks. (1RP 106-109; State’s

Ex. 9). The detective reinitiated contact with Mr. Bramblee on June 9, 2016. (1RP 108; State's Ex. 9).

Mr. Bramblee reposted his Craigslist ad around July 5, 2016, with the exact same wording. (1RP 112-113; State's Ex. 13). Again the undercover detective responded to Mr. Bramblee's ad, indicating her interest in finding someone to have a sexual relationship with her 12 year-old daughter. (1RP 114-117; State's Ex. 14).

The communication between Mr. Bramblee and the undercover detective then turned to text messages. (1RP 122-140; State's Ex. 11). Eventually, Mr. Bramblee agreed to meet with "Kay" and "Anna" in person. (1RP 136-140; State's Exs. 11 & 12). At that point Mr. Bramblee was arrested. (1RP 140).

On the stand, the undercover detective admitted Mr. Bramblee was seeking "roleplay" and "fantasy" in his Craigslist ad. (1RP 160). Mr. Bramblee shared a lot of personal details about his life with "Kay". (1RP 162-165). He talked about camping, fishing, hunting, auto pros, racing, hiking, traveling, cars, and a bad gasket on his car. (1RP 162-164). He even gave information on his family—that his father had cancer and that his grandmother was not doing well because a close family member passed away. (1RP 162-165). The detective admitted Mr. Bramblee made some advances towards her during their communications, including one offer of a sex. (1RP 165, 168). The detective also acknowledged Mr. Bramblee never spoke to anyone posing as "Anna" or

communicated directly with her throughout the two months she and Mr. Bramblee were in contact prior to his arrest. (1RP 165).

A second detective—the one who arrested Mr. Bramblee—testified on the stand that Mr. Bramblee made a statement to him upon arrest. (1RP 188). That statement was never disclosed at trial. (1RP 188).

Defense witness Greg Ross testified he has known Mr. Bramblee his entire life and they are best friends. (1RP 206). Mr. Ross stated he conversed with Mr. Bramblee about a woman he had been communicating with online, and Mr. Ross advised Mr. Bramblee he should contact the police. (1RP 207).

The jury was instructed on the defense of entrapment:

Entrapment is a defense to a charge of Attempted Child Rape in the Second Degree if the criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and the defendant was lured or induced to commit a crime that the defendant had not otherwise intended to commit.

The defense is not established if the law enforcement officials did no more than afford the defendant an opportunity to commit a crime. The use of a reasonable amount of persuasion to overcome reluctance does not constitute entrapment.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

(CP 139; 1RP 232).

The jury found Mr. Bramblee guilty of attempted rape of a child in the second degree. (CP 143; 1RP 279).

At sentencing the trial court entered the following community custody condition:

(12) That you do not access social media sites to include chat forums, dating sites, or solicit sex on the Internet.

(CP 170).

Also at sentencing the trial court ordered Mr. Bramblee pay \$200 in court costs as well as any interest on court-ordered legal financial obligations. (CP 183-184; 3RP 13).

Mr. Bramblee timely appealed. (CP 192-209).

E. ARGUMENT

Issue 1: Whether the trial court erred in denying the admission of Mr. Bramblee's exculpatory statement when such statement was an excited utterance and failure to allow admission was a violation of his constitutional right to present a defense.

Prior to trial Mr. Bramblee sought admission of an exculpatory statement he made to an arresting officer. (CP 52-53, 78, 85, 88; 2RP 6-8, 19-27, 64-71).

Mr. Bramblee asserts the statement was an admissible excited utterance. The trial court erred by denying admission of the statement, thereby violating Mr.

Bramblee's constitutional right to present evidence in his defense. (2RP 64-71).

The conviction should be reversed and remanded for a new trial.

Both the United States and Washington Constitutions guarantee the right to present a defense. U.S. Const. amend. VI; Wash. Const. art. I, §22; *State v. Hudlow*, 99 Wn.2d 1, 14, 659 P.2d 514 (1983); *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). “At a minimum . . . criminal defendants have . . . the right to put before the jury evidence that might influence the determination of guilt.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987). “A defendant’s right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic in our system of jurisprudence.” *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010) (citing *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)).

Generally, as a matter of constitutional due process of law, a trial court must allow a defendant to present his defense theory of the case, including through cross examination, so long as the law and evidence support it. *State v. Ginn*, 128 Wn. App. 872, 878, 117 P.3d 1155 (2005); *Darden*, 145 Wn.2d at 620-21.

Claims that the constitutional right to present a defense has been violated are reviewed de novo. *Jones*, 168 Wn.2d at 719. A trial court’s decision to exclude evidence is reviewed for an abuse of discretion. *City of Kennewick v. Day*, 142 Wn.2d 1, 5, 11 P.3d 304 (2000). “An abuse of discretion occurs if ‘discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for

untenable reasons.”” *Id.* (quoting *State v. McDonald*, 138 Wn.2d 680, 696, 981 P.2d 446 (1999)). To review whether a trial court’s ruling violated the constitutional right to present a defense, this Court reviews “whether the evidence satisfied evidence rule strictures.” *State v. Farnworth*, 199 Wn. App. 185, 206, 398 P.3d 1172 (2017), *reversed on other grounds*, 192 Wn.2d 468, 430 P.3d 1127 (2018). “An erroneous evidentiary ruling that violates the defendant’s constitutional rights . . . is presumed prejudicial unless the State can show the error was harmless beyond a reasonable doubt.” *State v. Franklin*, 180 Wn.2d 371, 377 n.2, 325 P.3d 159, 162 (2014).

Whether a statement is hearsay is reviewed de novo. *State v. Gonzalez-Gonzalez*, 193 Wn. App. 683, 689, 370 P.3d 989 (2016).

Hearsay is an out of court statement offered to prove the truth of the matter asserted. ER 801(c). Hearsay is inadmissible unless an exception or exclusion applies. ER 802.

Pursuant to ER 804, hearsay is admissible under limited circumstances when a declarant is “unavailable” as a witness. ER 804. In general five types of hearsay are admissible if a declarant is “unavailable” per the rule: (1) former testimony, (2) statements under belief of impending death, (3) statements against interest, (4) statements of personal or family history, and (5) statements offered due to forfeiture by wrongdoing. ER 804(b). None of those exceptions apply in this case.

Hearsay is also admissible pursuant to numerous exceptions laid out under ER 803(a)(1)-(23). These exceptions allow admission of hearsay “even though the declarant is available as a witness.” ER 803(a). An excited utterance is admissible if it is a statement “relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” ER 803(a)(2). The courts have recognized a three-part test for determining whether a statement qualifies as an excited utterance:

First, a startling event or condition must have occurred. Second, the statement must have been made while the declarant was under the stress or excitement caused by the startling event or condition. Third, the statement must relate to the startling event or condition... Often, the key determination is whether the statement was made while the declarant was still under the influence of the event to the extent that the statement could not be the result of fabrication, intervening actions, or the exercise of choice or judgment.

State v. Pavlik, 165 Wn. App. 645, 654, 268 P.3d 986 (2011) (citations & internal quotations omitted). “The excited utterance exception allows for a statement to be admitted without any showing that the declarant is unavailable as a witness.”

State v. Chapin, 118 Wn.2d 681, 686, 826 P.2d 194 (1992). The “hearsay exception for excited utterances, which rests upon circumstantial reliability . . . does not require a showing of unavailability.” *State v. Palomo*, 113 Wn.2d 789, 797, 783 P.2d 575 (1989).

In *State v. Pavlik*, the defendant made exculpatory statements after shooting a person in and act the defendant claimed was self-defense. 165 Wn. App. at 647-648. The defendant wanted admission at trial of statements he immediately made to law enforcement at the scene, wherein he stated he had been acting in self-defense. *Id.* at 648. Therein, the Court agreed a trial judge could have found one of the defendant's statements² qualified as an excited utterance; but ultimately the Court did not reverse due to harmless error. *Id.*

The *Pavlik* Court also explained there is no "self-serving" hearsay rule that bars otherwise admissible statements. *Pavlik*, 165 Wn. App. at 653.

The case of *State v. Ammlung*, 31 Wn. App. 696, 644 P.2d 717 (1982), involved a similar situation. 31 Wn. App. 696, 644 P.2d 717 (1982). There, the defendant made statements at the time of her arrest. *Id.* at 702-703. The statement was one she made to an officer, and she wanted the statement admitted at trial via the officer's testimony, though she herself was apparently unwilling to testify. *Id.* at 703. She sought admission of the hearsay via two means: (1) that the hearsay statement was against her penal interest and therefore admissible pursuant to ER 804(3)³, and the statement was probative of her state of mind at

² For reasons not relevant to this appeal, the Court in *Pavlik* refused to address all of the defendant's statements and only reviewed one statement on appeal. *Id.* at 651.

³ ER 804(3) appears to have been a prior version from the rules published in 1979.

the time of the arrest pursuant to the hearsay exceptions under ER 803(a)(3). *Id.* at 703. The court rejected both claims. *Id.* First, the court stated the hearsay exception pursuant to 804(3), statement against penal interest, was not admissible because the declarant had to be unavailable for that hearsay exception to apply. *Id.* at 703. The court declared the defendant could not create her unavailability by “electing not to give evidence on her own behalf.” *Id.* at 703. Second, the court found the hearsay inadmissible pursuant to ER 803(a)(3) because the defendant’s state of mind was not at issue. *Id.* at 703.

Ultimately, it was *Ammlung* which the trial court in this case erroneously relied upon and misinterpreted. (2RP 65-66). The trial court concluded Mr. Bramblee could not create unavailability by refusing to testify, and thus no hearsay exception applied to allow admissibility. (2RP 65-66). This decision was manifestly unreasonable, and was based on untenable grounds and for untenable reasons. ER 802 provides hearsay is not admissible “except as provided by these rules....” ER 802. Any exception which allows hearsay admissibility is permissible. ER 802. Mr. Bramblee did not seek admission of the hearsay statement pursuant to ER 804, but rather, he sought admission of the hearsay statement pursuant to ER 803(a)(2), the excited utterance exception.

The trial court applied the wrong analysis by stating self-created unavailability of the declarant barred admission of the hearsay. (2RP 65-66). The trial court abused its discretion by so ruling, because ER 803 does not require a

finding of unavailability of the declarant in order for the hearsay exceptions under ER 803(a)(1) through (23) to apply. ER 803(a) specifically notes the types of statements which are exceptions “even though the declarant is available as a witness”—which does not mean the declarant must be unavailable as a witness. ER 803(a). If a declarant were required to be unavailable under ER 803, the rule would so state just as such a requirement is set forth under ER 804. Moreover, our Washington State Supreme Court recognized ER 803 does not require the declarant to be unavailable, either. *Chapin*, 118 Wn.2d at 686; *Palomo*, 113 Wn.2d at 797.

Mr. Bramblee’s statement at the time of arrest that he was “here for the mother” should have been admissible as an excited utterance exception to the hearsay rules. ER 803(a)(2). The statement was made during a startling event when Mr. Bramblee was being arrested, Mr. Bramblee was obviously under the stress or excitement of being arrested, and the statement was made in relation to the startling event of arrest. *Pavlik*, 165 Wn. App. at 654 (setting forth 3 part excited utterance test). The trial court should have found this hearsay exception applied and allowed the arresting officer to testify as to the statement. (2RP 64-71).

Moreover, the trial court’s failure to allow admission of the statement affected Mr. Bramblee’s constitutional right to present his defense. Mr. Bramblee sought admission of the statement before trial, and the statement was one which

would have supported his theory of the case that he was not there to actually commit the crime of second degree rape of a child; rather he was there in answer to a role play and fantasy ad he had placed online, and to meet “Kay.” (1RP 258-259, 262-264). Mr. Bramblee flirted with “Kay” and made advances towards her, shared personal information about his family and himself with “Kay”, and never actually communicated with the fictitious “Anna.” (1RP 162-165, 168, 262-264). The statement that he was “there for the mother” would have supported his defense theory that he was not pursuing a physical relationship with a child, and that he was entrapped because he was lured or enticed by law enforcement to commit a crime. (CP 139; 1RP 232). Because the trial court’s exclusion of the excited utterance was erroneous and violated Mr. Bramblee’s right to present his whole defense case, the error is presumed prejudicial and the State cannot show it was harmless beyond a reasonable doubt. *Franklin*, 180 Wn.2d at 377 n.2.

Mr. Bramblee had the right to put evidence before the jury that might influence its determination of guilt. *See Ritchie*, 480 U.S. at 56. This Court’s de novo review of the constitutional error in this case should result in a new trial. *See Jones*, 168 Wn.2d at 719.

Mr. Bramblee respectfully requests this matter be reversed and remanded for a new trial so he can exercise his constitutionally protected right to fully present his defense.

Issue 2: Whether the court erred by entering a community custody condition (#12) that was not directly crime-related, was overbroad, and violates Mr. Bramblee’s First Amendment rights.

The court imposed the following community custody condition that was not crime-related, is overbroad, and is a violation of Mr. Bramblee’s First Amendment right to freedom of speech:

(12) That you do not access social media sites to include chat forums, dating sites, or solicit sex on the Internet.

(CP 170).

Defendants can object to community custody conditions for the first time on appeal. *State v. Padilla*, 190 Wn.2d 672, 677, 416 P.3d 712 (2018). Trial courts may impose community custody conditions only if they are authorized by statute. *State v. Warnock*, 174 Wn. App. 608, 611, 299 P.3d 1173 (2013) (citation omitted). Community custody conditions are reviewed for abuse of discretion and are reversible only if they are “manifestly unreasonable.” *Padilla*, 190 Wn.2d at 677 (citations and internal quotations omitted). “A trial court abuses its discretion if it imposes an unconstitutional condition.” *Id.*

Pursuant to RCW 9.94A.703, in pertinent part, the court may order an offender to “[c]omply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). “Crime-related prohibition” means:

an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted....

RCW 9.94A.030(10); *Padilla*, 190 Wn.2d at 682. A community custody condition may be considered unconstitutionally overbroad where it encompasses matters that are not crime related or restricts lawful conduct not directly related to the crime. *See e.g. State v. Bahl*, 137 Wn. App. 709, 714-15, 159 P.3d 416 (2007), *reversed in part on other grounds*, 164 Wn.2d 739 (2008). “If necessary, the sentencing court may restrict the material an offender may access or possess, but such a restrictive condition must be reasonably necessary to accomplish essential state needs and public order.” *Padilla*, 190 Wn.2d at 683 (citations and internal quotations omitted). When the conditions implicate First Amendment speech, “it must be narrowly tailored to further the State’s legitimate interest.” *Id.* at 683 (citations omitted).

Whether the factual basis for the crime-related community custody condition is appropriate, the condition is reviewed under a “substantial evidence” standard. *Padilla*, 190 Wn.2d at 683 (citation and internal quotations omitted). “The court will strike the challenged condition if there is no evidence in the record linking the circumstances of the crime to the condition.” *Id.* (citation omitted).

Here, the majority of the community custody condition listed under subsection 12 is not crime-related.⁴ Mr. Bramblee was not on a social media site when he posted his ad on Craigslist—Craigslist is a website where one “can answer ads or post ads.” (1RP 33). Typically the site⁵ is used by individuals to sell or purchase items. The site is not a social media platform, chat forum, or dating site. There is not a direct connection between Craigslist and the types of sites the community custody condition prohibits. Thus, the trial court abused its discretion by imposing community custody condition #12 because it is not directly crime-related and is overbroad.

In *State v. Johnson*, the court reversed finding the defendant’s community custody conditions restricting access to nude images and “images of children wearing only undergarments and/or swimsuits, [were] invalid in that they [were] both overbroad and not crime related.” 4 Wn. App. 2d 352, 359, 421 P.3d 969 (2018). The court determined the conditions encompassed “broad swaths of materials with significant social value” such as “medical text books, health-related internet sites, and most

⁴ Arguably, the portion of the condition prohibiting Mr. Bramblee from soliciting sex on the internet is crime-related. (CP 170).

⁵ <https://www.craigslist.org>

art museums” as well as “countless advertisements for diapers and sunscreen that are depicted in newspapers and magazines.” *Id.* at 359. The court recognized there is “no indication that such a broad prohibition on constitutionally-protected materials is reasonably necessary for public order or safety.” *Id.* The court further acknowledged that while it had previously upheld similar conditions, the recent decision in *Padilla* compelled the court to “reverse course.” *Id.* at 359-360 (citing *Padilla*, 190 Wn.2d 672, 416 P.3d 712 (2018) with approval and citing *State v. Magana*, 197 Wn. App. 189, 389 P.3d 654 (2016) with disapproval).

Moreover, the community custody condition (#12) is a violation of Mr. Bramblee’s First Amendment right to free speech. U.S. Const. amend I. The condition disallowing Mr. Bramblee to access social media sites, chat forums, or dating sites is not narrowly tailored to further a legitimate State interest. *Padilla*, 190 Wn.2d at 683. According to the condition, Mr. Bramblee may not be able to access legitimate and lawful resources and sites for support, friendship, or community resources. The restriction is so broad as to affect Mr. Bramblee’s right to freely and legally associate with other adults online. U.S. Const. amend. I; *see Padilla*, 190 Wn.2d at 683-684. The community custody condition prohibits legal freedom of speech and the State has not demonstrated on the record how this

provision is narrowly tailored to further a legitimate State interest. The condition must be struck.

The community custody condition #12 must be stricken. It is not directly crime-related, is overbroad, and is a violation of Mr. Bramblee's constitutional right to freedom of speech.

Issue 3: Whether the trial court erred in imposing \$200 in court costs.

The trial court imposed \$200 in court costs on Mr. Bramblee. The law now prohibits trial courts from imposing \$200 in court costs on defendants who are indigent at the time of sentencing. This change in the law applies prospectively to cases on direct appeal at the time the law changed. Therefore, the \$200 in court costs should be stricken.

At the time of Mr. Bramblee's sentencing on October 4, 2018, the trial court was no longer authorized to impose a \$200 criminal filing fee on indigent defendants. Effective June 7, 2018, by House Bill 1783, our Legislature amended RCW 36.18.020(2)(h) to prohibit the imposition of the \$200 criminal filing fee on indigent defendants:

(2) Clerks of superior courts shall collect the following fees for their official services . . . (h) Upon conviction . . . an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, *except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).*

Laws of 2018, ch. 269, § 17 (emphasis added).

Here, Mr. Bramblee was sentenced after the effective date of House Bill 1783, and therefore, he is entitled to benefit from the statutory changes in House Bill 1783. *See* Laws of 2018, ch. 269, § 17; *see also State v. Ramirez*, 191 Wn.2d 732, 745-749, 426 P.3d 714 (2018) (holding these statutory amendments apply prospectively to cases on direct appeal at the time the amendment was enacted).

Mr. Bramblee was indigent at the time of resentencing. (CP 214-215); *see also* RCW 10.101.010(3)(a)-(d) (defining indigent). Therefore, the trial court erred in imposing \$200 in court costs. *See* RCW 36.18.020(2)(h).

This court should remand this case for the trial court to strike the \$200 in court costs from Mr. Bramblee's judgment and sentence.

Issue 4: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.

The provision of the judgment and sentence imposing interest on all legal financial obligations (LFOs) is contrary to recent statutory amendments and must be stricken.

Illegal or erroneous sentences can be challenged the first time on appeal. *See State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *see also State v. McCorkle*, 137 Wn.2d 490, 495-496, 973 P.2d 461 (1999).

Mr. Bramblee's judgment and sentence was entered on October 4, 2018. (CP 176-190; 3RP 2-18).

House Bill 1783, effective June 7, 2018, modified Washington’s system of LFOs, addressing “some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Among other changes, House Bill 1783 eliminates interest accrual on the non-restitution portions of LFOs. *See* Laws of 2018, ch. 269, § 1; *see also Ramirez*, 191 Wn.2d at 747 (noting this change). Specifically, House Bill 1783 amended RCW 10.82.090 as follows:

Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. *As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.*

RCW 10.82.090(1) (emphasis added); *see also* Laws of 2018, ch. 269, § 1.

Thus, following the changes made by House Bill 1783, the statute now prohibits the accrual of interest on non-restitution LFOs. RCW 10.82.090(1).

The provision in Mr. Bramblee’s judgment and sentence requiring payment of interest, entered after June 7, 2018, violates this provision of amended RCW 10.82.090. (CP 184). Interest cannot accrue on the non-restitution LFOs imposed on Mr. Bramblee. *See* RCW 10.82.090(1); *see also* Laws of 2018, ch. 269, § 1.

This Court should remand with instructions to modify the judgment and sentence to strike the provision imposing interest on all LFOs.

F. CONCLUSION

The trial court erred by disallowing admissible evidence which would have aided in Mr. Bramblee's defense, thereby violating Mr. Bramblee's constitutional right to present a defense. Mr. Bramblee's conviction for attempted rape of a child in the second degree should be reversed and remanded for a new trial.

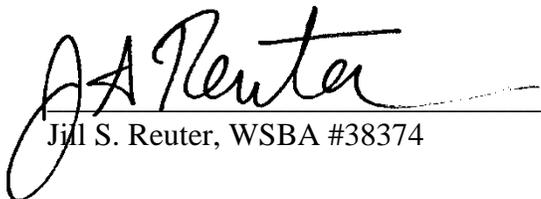
The trial court erred by entering community custody condition #12 because it is not directly crime-related, is overbroad, and violates Mr. Bramblee's First Amendment rights. The condition must be stricken.

The trial court also erred by imposing \$200 in court costs. The trial court also erred by imposing interest on Mr. Bramblee's legal financial obligations. Mr. Bramblee requests this Court strike the \$200 court costs and interest.

Respectfully submitted this 24th day of June, 2019.



Laura M. Chuang, WSBA #36707
Of Counsel



Jill S. Reuter, WSBA #38374

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

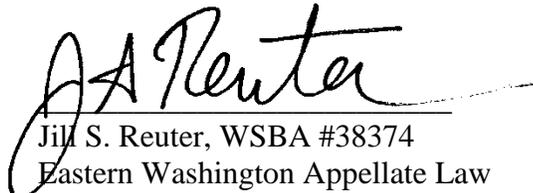
STATE OF WASHINGTON) COA No. 36396-1-III
Plaintiff/Respondent)
vs.) Spokane Co. No. 16-1-03094-1
)
THOMAS L. BRAMBLEE,) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on June 24, 2019, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Thomas Lee Bramblee DOC #409990
Coyote Ridge Corrections Center D-A31
PO Box 769
Connell, WA 99326

Having obtained prior permission, I also served a copy on the Respondent at SCPAappeals@SpokaneCounty.org using the Washington State Appellate Courts' Portal.

Dated this 24th day of June, 2019.



Jill S. Reuter, WSBA #38374
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

OF COUNSEL NICHOLS LAW FIRM PLLC

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