Supreme Court No. 102650-1
(COA No. 83871-7-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

WILLIAM RAINS,
Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

William Rains petitions for review of the Court of Appeals's decision terminating review. RAP 13.4. The October 23, 2023, opinion and November 15, 2023, order denying reconsideration are attached. RAP 13.4.

B. ISSUES PRESENTED FOR REVIEW

1. Courts must make the law of self-defense manifestly clear to the average juror and give requested self-defense instructions when they are supported by "some evidence." Here, the Court of Appeals agreed the evidence entitled Mr. Rains to the no duty to retreat instruction that he requested and held the trial court erred in refusing to give it, leaving Mr. Rains with incomplete self-defense instructions. However, the Court of Appeals ignored this Court's precedent and affirmed Mr. Rains's conviction by applying the nonconstitutional harmless error standard.

The opinion conflicts with well-settled caselaw holding that the failure to give accurate or complete self-defense

instructions is a constitutional error requiring courts to presume prejudice and reverse unless the State proves beyond a reasonable doubt the error was harmless. Moreover, reversal was required because the improper denial of the no duty to retreat instruction prejudiced Mr. Rains under either standard. The Court of Appeals's erroneous opinion dilutes the prosecution's heavy burden to disprove self-defense and weakens the due process requirement that courts must make the law of self-defense manifestly apparent to the average juror. This Court should accept review of this important constitutional issue to address the Court of Appeals's conflict with firmly established caselaw. RAP 13.4(b)(1)-(4).

2. The constitutional right to freedom of speech requires courts to construe narrowly statutes that criminalize pure speech. Courts must therefore confine the harassment statute that criminalizes threatening speech to "true threats." The United States Supreme Court recently held this requires proof of a more culpable mental state than the "reasonable person"

standard previously used in Washington and instead require proof the speaker acted recklessly. Thus, the State must prove that when making the statements, the speaker consciously disregarded a substantial risk their communication would be viewed as threatening violence.

Mr. Rains's case presents this Court with the opportunity to align Washington's true threat standard with the First Amendment requirement and to address this important constitutional issue of substantial public interest. This Court should accept review because the State did not present sufficient evidence to prove Mr. Rains acted recklessly as required by the First Amendment, rendering his conviction unconstitutional. RAP 13.4(b)(3)-(4).

C. STATEMENT OF THE CASE

William and Brittany Rains were married for nine years, together for twelve, and share three children. RP 578, 848. They were experiencing challenging times when they lost their home and had to move in with Ms. Rains's father. RP 579,

851. Mr. Rains lived with his family and father-in-law for almost two months before moving out. RP 641, 849-51. He and Ms. Rains remained in regular contact and were trying to decide if they could reconcile. RP 582-83, 640, 855-56. They continued to see each other and texted regularly. RP 583, 855-56.

Mr. Rains explained that although he had moved out of his father-in-law's house, he was "welcome" there. RP 858. He said his father-in-law never told him he could not come to the property, and he continued to visit. RP 858-59, 890-92. Ms. Rains said she did not allow him there but agreed that she sometimes welcomed Mr. Rains to come over and sometimes did not. RP 594, 641.

On October 14, 2020,[1] Ms. Rains, hopeful the two could reconcile, sent Mr. Rains a video of her singing a love song she

[1] The communications began October 14, 2020, preceding the incident in the early hours of October 15, 2020. RP 583; CP 1.

wished would inspire his affection. RP 640-43. She was hurt when Mr. Rains, who did not see the video until later, did not immediately respond. RP 642-44, 856-57. She suspected Mr. Rains was seeing other women. RP 604, 646. In the hours leading up to their eventual meeting, the two exchanged hostile and unsavory messages back and forth, some of which Ms. Rains perceived as threatening, and the two argued. RP 583-93, 645-46.

Mr. Rains arrived at his father-in-law's property between 11 p.m. and 1:30 a.m. and parked in the driveway. RP 595, 861. Ms. Rains testified they did not have plans to meet. RP 594-95. When she heard Mr. Rains arrive, she went outside and saw him standing near her car. RP 595-97. Although she did not see him do anything, she assumed he was scratching her car. RP 596-603, 660-63. Mr. Rains denied scratching her car. RP 602. When Mr. Rains returned to his car, Ms. Rains followed him and put her hands on his windowsill, preventing him from rolling up the window. RP 603-04, 678-80. Ms.

Rains testified she "was begging and pleading" for him to "hear me out" and "talk to me" while trying to stop him from closing the window. RP 679-80.

Mr. Rains is 5'7," and Ms. Rains is 6'4". RP 594. Ms. Rains claimed they were both arguing when Mr. Rains grabbed onto her hands and pulled her into his car through the window she had prevented Mr. Rains from closing. RP 594, 603-07, 678-83. As the two struggled, she claimed Mr. Rains put his hands on her throat and said either, "I'm going to kill you" or "You're going to be killed" and "I'm going to take a shit on your grave." RP 609. Ms. Rains then "jumped out of the window," ran back to her house, and called 911. RP 609, 626.

Mr. Rains denied threatening to kill Ms. Rains or threatening her at all. RP 877-80, 903. He testified Ms. Rains invited him over to spend the evening together after their children were asleep. RP 853-61, 891-92. However, he missed his intended ferry and arrived much later than planned. RP 859-61, 900. He lightly knocked on the door, but Ms. Rains

would not open it. RP 862-64. She told him, "Nope, it's too late. You need to go home. You're not welcome here." RP 864.

Mr. Rains returned to the driveway, left a watch he planned to give to Ms. Rains as a present on her car, and then got in his car. RP 864-66, 894-96. Ms. Rains came "flying" at him, yelling and angry. RP 865-66. She put her hands in Mr. Rains's car window, thwarting his effort to roll it up. RP 866-67, 899-900. Mr. Rains smelled alcohol on her and realized Ms. Rains had been drinking. RP 868-70, 897.

As Ms. Rains reached into Mr. Rains's car through the window she had forced to remain open, she made fun of his clothing and earring and said, "What are you, gay," before trying to rip his earring out. RP 871-72. She could not remove his earring but clawed at his face, leaving a large scratch. RP 681-82, 871-73; Exs. 22-23. When Mr. Rains grabbed her hands to stop her, she grabbed back, pushed herself through the window into the car, and tried to choke him. RP 873-75. Mr.

Rains squeezed her hands to get them off him and shoved her out of the window. RP 874-75, 903-04.

When Mr. Rains finally got Ms. Rains out of his car, he drove to his brother's firewood shop nearby. RP 876-77. When he saw how Ms. Rains had scratched his face, he sent her a picture and called her to say she assaulted him. RP 630-31, 680-82, 750, 755-56, 877-79; Exs. 22-23. The police officer who responded to the 911 calls was with Ms. Rains, heard the call and Mr. Rains's allegations, and saw the picture of his scratched face. RP 686-87, 746-50, 755-56, 879. However, Ms. Rains hung up on Mr. Rains when he accused her of assaulting him, and the officer did not get Mr. Rains's contact information or investigate his claims. RP 746, 757-61, 771-72.

The State charged Mr. Rains with felony harassment, threat to kill. CP 1. The court granted Mr. Rains's motion to instruct the jury on the lesser-included offense of misdemeanor harassment. RP 807-13; CP 89-90, 99. The court also agreed evidence supported Mr. Rains's argument that the jury could

conclude the alleged threat was spoken in self-defense in response to what Mr. Rains said was an unwarranted attack on him. RP 782-99, 821-28, 911-19. The court agreed to deliver self-defense instructions for both charges but refused to give the no duty to retreat instruction Mr. Rains requested. RP 798-99, 821-28, 911-19; CP 97-98, 208, 222.

The jury acquitted Mr. Rains of felony harassment but convicted him of misdemeanor harassment. CP 117-18.

D. ARGUMENT

1. The Court of Appeals disregarded well-settled precedent and applied the wrong standard to affirm Mr. Rains's conviction after the trial court improperly denied Mr. Rains's request for a no duty to retreat instruction and delivered incomplete jury instructions that did not make the law of self-defense manifestly apparent.

The Court of Appeals properly held Mr. Rains was entitled to a no duty to retreat instruction and concluded the trial court erred when it refused to instruct the jury as he requested. Slip op. at 3-6. But the court disregarded longstanding caselaw and improperly placed the burden on Mr.

Rains to demonstrate a reasonable probability the outcome of the trial was materially affected. Slip op. at 6-8. This Court's precedent, as well as published Court of Appeals cases, establish the State bears the burden to prove this constitutional error was harmless beyond a reasonable doubt. Because the court applied the wrong, lesser standard, in conflict with precedent, and because Mr. Rains was prejudiced under any standard, this Court should accept review. RAP 13.4(b)(1)-(4).

a. The opinion ignores controlling precedent and applies the wrong prejudice standard to assess the trial court's error in denying Mr. Rains a no duty to retreat instruction to which he was entitled.

For decades, this Court has required that jury instructions, "read as a whole, must make the relevant legal standard manifestly apparent to the average juror." *State v. LeFaber*, 128 Wn.2d 896, 900, 913 P.2d 369 (1996) (internal quotations omitted). Instructions "misstating" the law of self-defense or "omitting" applicable self-defense instructions do not "make the relevant legal standard manifestly apparent to the average jury." *Id.* Such erroneous or incomplete instructions

"amount[] to an *error of constitutional magnitude* and [are] *presumed prejudicial*." *Id.* (emphases added).

Here, the Court of Appeals properly held Mr. Rains "had a right to be present for purposes of a no duty to retreat instruction" and ruled the trial court erred in refusing to deliver it. Slip op. at 6. But in assessing the prejudice from this error, the Court of Appeals wrongly held this was merely an "error in the failure to give a further instruction refining the definition of lawful force," applied the nonconstitutional error standard, and placed the burden on Mr. Rains to prove prejudice. Slip op. at 6-8. The Court of Appeals is incorrect and applied the wrong error standard.

Reviewing courts consistently apply the constitutional harmless error standard in cases where trial courts have given incomplete or erroneous self-defense instructions. Even when a court gives otherwise accurate self-defense instructions, improperly withholding a no duty to retreat instruction renders the instructions inadequate. A court's refusal to give requested

instructions to which the defense is entitled fails to make the law of self-defense manifestly clear to the jury and creates constitutional error.[2]

For example, in *State v. Allery*, the trial court provided the jury with self-defense instructions, but it refused to deliver a no duty to retreat instruction. 101 Wn.2d 591, 598, 682 P.2d 312 (1984). Because some evidence supported the proposed instruction, the court held, "The trial court erred in refusing to instruct the jury that the defendant had no duty to retreat." *Id.* This Court reversed the conviction and remanded for a new trial. *Id.* at 598-99. That the trial court delivered other self-defense instructions did not render the error nonconstitutional or harmless.

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[2] This is such an unremarkable, well-settled proposition of law that the prosecution conceded this was the appropriate standard in briefing. Br. of Resp't at 10, 20-22 (arguing court's refusal to give instruction was harmless and analyzing prejudice under constitutional harmless error standard). Every case cited in the briefing by both parties applies this standard. *See* Br. of Appellant at 25-29; Br. of Resp't at 20-22; Reply Br. at 6-10.

The same is true in *State v. Redmond*, this Court's most recent case to consider a no duty to retreat instruction. 150 Wn.2d 489, 78 P.3d 1001 (2003). In *Redmond*, the defendant and the complainant had an altercation in the parking lot of the complainant's school. *Id.* at 491. The trial court gave the standard self-defense instructions but denied the defense request to deliver a no duty to retreat instruction. *Id.*

This Court held the defense was entitled to the instruction because the defendant's testimony supported it. *Id.* at 494. Even though the evidence "arguably" indicated the defendant had "an easy opportunity to retreat" from the parking lot and the defense was "barely" entitled to self-defense instructions, the Court held, "The failure to provide a no duty to retreat instruction to the jury is reversible error." *Id.* at 494-95.

Similarly, in *State v. Williams*, the Court of Appeals applied the constitutional error analysis to the trial court's refusal to give the no duty to retreat instruction. 81 Wn. App. 738, 916 P.2d 445 (1996). It recognized, "Such an error can be

considered harmless if the court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result despite the error." *Id.* at 744. Because the State could not prove the absence of the instruction was a "trivial" error that "in no way affected the outcome of the case," the court reversed. *Id.*

The court also applied the constitutional harmless error test in *State v. Wooten*, 87 Wn. App. 821, 825-26, 945 P.2d 1144 (1997). The court recognized the improper withholding of a no duty to retreat instructions rendered the law on self-defense incomplete. Because it was not a "trivial, formal or merely academic error," the State did not prove beyond a reasonable doubt the jury would have reached the same result, absent the error. *Id.* at 826. Therefore, the court reversed.

Courts apply the constitutional harmless error standard to other missing self-defense instructions as well. *E.g.*, *State v. Espinosa*, 8 Wn. App. 2d 353, 438 P.3d 582 (2019) (refusal to

give defense of others instruction established constitutional error that the State could not prove was harmless).

Despite the legion of cases holding the failure to give complete and accurate self-defense instructions establishes constitutional error, the Court of Appeals ignored all of these cases. The opinion simply disregards the extensive body of law that recognizes "'An error affecting a defendant's self-defense claim is constitutional in nature and requires reversal unless it is harmless beyond a reasonable doubt.'" *State v. Ackerman*, 11 Wn. App. 2d 304, 315, 453 P.3d 749 (2019) (quoting *State v. Arth*, 121 Wn. App. 205, 213, 87 P.3d 1206 (2004)) (reversing and remanding because instructions diluted State's burden of disproving self-defense).

Instead, the Court of Appeals rejected controlling precedent from this Court, as well as its own cases, and supplanted this well-settled standard to hold courts should review erroneous or incomplete self-defense instructions under a nonconstitutional harmless error analysis. Slip op. at 6-8.

Moreover, the cases on which the opinion relied for the assertion that incomplete self-defense instructions do not present a constitutional error do not support that proposition. *State v. Lucero*, for example, held a defendant who *did not request* a no duty to retreat instruction could not challenge the absence of such an instruction on appeal. 152 Wn. App. 287, 217 P.3d 369 (2009).[3] Here, there is no dispute Mr. Rains requested the no duty to retreat instruction. RP 798-99, 821-28, 911-19; CP 208.

State v. Chacon does not address either self-defense issues or a court's improper refusal to give requested instructions. 192 Wn.2d 545, 431 P.3d 477 (2018). Instead, in *Chacon* the court gave a reasonable doubt instruction, and the defense neither objected nor requested additional instructions. *Id.* at 547. When the defense tried to challenge the instruction as incomplete for the first time on appeal, the court held the

[3] This Court reversed *Lucero* on an unrelated sentencing error. 168 Wn.2d 785, 230 P.3d 165 (2010).

trial court's failure to provide the jury with additional language that no one requested did not satisfy manifest constitutional error under RAP 2.5(a)(3). *Id.* at 550-55.

These cases are properly understood as addressing whether a constitutional error is manifest for purpose of RAP 2.5(a)(3). They do not control the appropriate standard where the defense requested an instruction, the court erroneously refused to give it, and the jury was left with incomplete self-defense instructions, as occurred here. Nor do these cases consider the "high threshold for clarity" that applies specifically to self-defense instructions. *State v. Irons*, 101 Wn. App. 544, 550, 4 P.3d 174 (2000).

Contrary to a mountain of caselaw and both parties' briefing, the Court of Appeals relied on its own novel theory and applied a different, incorrect prejudice standard. *See* RAP 12.1(a) (appellate court will decide case based on arguments of parties); *Dalton M, L.L.C. v. North Cascade Trustee Servs., Inc.*, 2 Wn.3d 36, 50-51, 534 P.3d 339 (2023) (same).

Precedent and due process of law dictate that reviewing courts should apply the constitutional harmless error standard to the admitted error in refusing to give the no duty to retreat instruction Mr. Rains requested. This Court should accept review to address the conflict with these cases on this important constitutional issue of substantial public interest.

b. The trial court's improper denial of the no duty to retreat instruction left the jury with incomplete self-defense instructions and prejudiced Mr. Rains under any standard.

The Court of Appeals concluded the trial court's improper refusal to give the instruction did not prejudice Mr. Rains because he was still able to argue his case. Slip op. at 7-8. The court is wrong. First, that a defendant was able to argue some theory of the case, despite incomplete instructions, is not the test. *See LeFaber*, 128 Wn.2d at 903 ("A legally erroneous instruction cannot be saved" merely because it "permit[ed] Defendant to argue his theory of the case."); *Irons*, 101 Wn. App. at 559 (reversing and remanding based on court's refusal to give requested self-defense instruction even though the

instructions given "allowed Irons to argue his theory of the case"). When a court's failure to give requested self-defense instructions supported by the evidence "impaired" the defense's "ability to *fully* argue his theory of the case," the defense is prejudiced. *Espinosa*, 8 Wn. App. 2d at 363 (emphasis added).

Without complete instructions that made the law of self-defense manifestly apparent to the jury, Mr. Rains was left to argue his case "without the essential context of a legal theory" explaining how the evidence related to the relevant law. *See State v. Arbogast*, 199 Wn.2d 356, 381, 506 P.3d 1238 (2022). This did not permit him to *fully* argue his theory of the case. It meant Mr. Rains emphasized one theory—denying he ever made the threat—and minimized another theory—that if he made the threatening statement, it was in self-defense.

Complete and accurate self-defense instructions, including a no duty to retreat instruction, would have informed the jury that Mr. Rains was allowed to use threatening language to defend himself against Ms. Rains's assault because he had a

right to remain in his car and was not required to flee. *See* WPIC 17.05; CP 208. Mr. Rains was not able to fully argue this theory because he lacked the legal instructions to support it and explain it to the jury. Without the no duty to retreat instruction, the jury could have found the statement was unlawful because it thought Mr. Rains could have retreated further by driving away rather than stand his ground and defense himself by making a threatening statement.

This is precisely the harm the no duty to retreat instruction seeks to combat: When "a reasonable juror may well have concluded on th[e] record that the failure of the defendants to retreat constituted an excessive use of force," the no duty to retreat instruction is critical. *Williams*, 81 Wn. App. at 744. When "the *possibility of ... speculation* exists" the jury may think retreat was a reasonably effective alternative to the use or threat of force, the failure to give a requested no duty to retreat instruction could well have affected the final outcome of the case, and reversal is required. *Redmond*, 150 Wn.2d at 494-95.

Moreover, Mr. Rains *did* argue self-defense to the jury, along with denying that he made the threat entirely. RP 969 (explaining what self-defense would permit), RP 969 (explaining proportionality), RP 970 (explaining a person is allowed to make a threat to kill "in response" to being choked). The opinion's conclusion to the contrary is mistaken. Slip op. at 7-8.

Finally, in assessing prejudice, the Court of Appeals failed to consider the State's closing argument. The prosecution's closing argument addressing self-defense may "exacerbate" a court's error in wrongly refusing to give self-defense instructions and create prejudice. *Espinosa*, 8 Wn. App. 2d at 363 (considering closing argument in assessing prejudice from absent instruction); *Williams*, 81 Wn. App. at 743 and n.3.

Here, the prosecution exploited the incomplete instructions by opportunistically arguing to the jury that Mr. Rains "had no right to be there." RP 940. Without the no duty

to retreat instruction, the incomplete self-defense instruction did not inform the jury Mr. Rains was entitled to act in his defense rather than leave. And the prosecutor's false argument that Mr. Rains "had no right to be there" exploited the incomplete instructions. Without the no duty to retreat instruction, Mr. Rains was unable to argue the self-defense theory fully and the jury was left to believe Mr. Rains should have retreated, rather than stand his ground, and therefore that he was not entitled to use threatening language to defend himself.

The prosecution also misstated the law of self-defense in closing, adding to the prejudice from the missing instruction. First, the prosecution told the jury it could not find Mr. Rains acted in self-defense when he claimed he did not make the statements. RP 948. This was incorrect. *See* slip op. at 9-10 (holding prosecution's statement was "improper"). When a person presents a self-defense claim, the prosecution must disprove it beyond a reasonable doubt. *State v. Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). A self-defense claim is

not defeated because the defendant testifies the act or statement did not occur. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000). Conflicting evidence and conflicting defense are presented in many cases, and it is for the jury to determine the evidence and whether the prosecution has proven each element beyond a reasonable doubt. *State v. Werner*, 170 Wn.2d 333, 337-38, 241 P.3d 410 (2010); *Espinosa*, 8 Wn. App. 2d at 362-63.

Second, the prosecution also misstated the law on self-defense when it attempted to revive its argument, properly rejected by the trial court, that self-defense could not apply because the prosecution charged Mr. Rains with harassment, not assault. RP 948-49. That argument was improper, legally erroneous, and contrary to the court's rulings. *See* slip op. at 9-10 (holding prosecution's statement was "improper").

The prosecution's misstatements of self-defense, RP 948-49, along with its improper argument that Mr. Rains "had no right to be there," RP 940, underscore the prejudice. The trial

court's refusal to give Mr. Rains's requested no duty to retreat instruction left the jury with incomplete instructions, and the prosecution's improper argument and misstatements of law capitalized on that failing, prejudicing Mr. Rains. The facts established prejudice under the proper constitutional harmless error standard or the inapplicable nonconstitutional error standard. This Court should grant review.

2. This Court should grant review to align Washington's law with the First Amendment and *Counterman*.

The State did not present sufficient evidence of a true threat as required by the First Amendment because it did not prove Mr. Rains made the alleged threat recklessly. That is, the State did not prove that when making the statement, Mr. Rains consciously disregarded a substantial risk that his communication would be viewed as threatening violence. Mr. Rains's conviction violates the First Amendment.

Washington's harassment statute criminalizes pure speech and must comply with the First Amendment. *State v. Kilburn*, 151 Wn.2d 36, 41, 84 P.3d 1215 (2004). Accordingly,

a person commits harassment only if they make a true threat. *Id.* at 48.

For decades, Washington has required only simply negligence under an objective standard. This Court has interpreted a "true threat" as "a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted … as a serious expression of intention to inflict bodily harm upon or to take the life of [another person]." *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001) (internal quotations omitted). It has explained this requires only "simple negligence." *State v. Schaler*, 169 Wn.2d 274, 287, 236 P.3d 858 (2010).

The recent case of *Counterman v. Colorado* rejects the objectively reasonable test previously used in Washington because it is incompatible with the First Amendment. 600 U.S. 66, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023). *Counterman* held the First Amendment is not satisfied by defining a true threat under an objective reasonable person standard. 600 U.S.

at 79-80. Instead, the speaker must at least recklessly convey a threat of violence. *Id.* *Counterman* explained, "A person acts recklessly, in the most common formulation, when he consciously disregard[s] a substantial [and unjustifiable] risk that the conduct will cause harm to another." *Id.* at 79 (internal quotations omitted) (alterations in *Counterman*). "[R]eckless defendants have done more than make a bad mistake. They have consciously accepted a substantial risk of inflicting serious harm." *Id.* at 80.

Washington's standard that a true threat may be based on a finding that an *objective person* would view the words as threats is equivalent to simple negligence. *Schaler*, 169 Wn.2d at 287. *Counterman* rejected this as too low a standard in light of the constitutional interests at stake. Unless the speaker is *subjectively* aware of a substantial risk that their words will be viewed as threatening violence and consciously disregarded that risk, the true threats exception to the First Amendment does not permit conviction. *Counterman*, 600 U.S. at 69, 80.

Nor does the statutory requirement that the person "knowingly threaten" another satisfy the First Amendment requirement. RCW 9A.46.020(1)(a). Knowledge or "awareness of a communication's contents" is not the same as knowledge or "awareness of [a communication's] threatening nature." *Counterman*, 600 U.S. at 72 n.2. This Court has already rejected arguments the word "knowingly" applies to the true threat element. *State v. J.M.*, 144 Wn.2d 472, 483-86, 28 P.3d 720 (2001). Instead, it held the knowledge requirement applies only to the utterance of the threatening words; it does not apply to the resulting fear. *Id.* at 485. Thus, the statute's knowledge element is insufficient to satisfy the First Amendment requirement of at least recklessness as to the result of the threat. *Counterman*, 600 U.S. at 79 & n.5.

Here, the prosecution did not prove that Mr. Rains was "aware that others could regard his statements as threatening violence and deliver[ed] them anyway." *See Counterman*, 600 U.S. at 79 (internal quotations omitted). In short, it did not

satisfy the reckless standard because it did not prove Mr. Rains "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 69. It is not enough that the prosecution proved a reasonable person would have been aware of the risk. *Id.* at 79 n.5.

Ms. Rains's claim that Mr. Rains said, "You're going to be killed and … I'm going to take a shit on your grave," RP 609, is consistent with "odious expressions of frustration" or hyperbole spoken with a "hurtful or vile" sentiment. *State v. D.R.C.*, 13 Wn. App. 2d 818, 820, 829, 467 P.3d 994 (2020). It is the sort of immature, hurtful statement one person hurtles at another during a heated argument at the end of a day of back-and-forth bickering. The context of this "mean-spirited," "hyperbolic expression[] of frustration" as two people struggled with the demise of decade-plus long relationship does not demonstrate a reckless disregard that a listener would take the juvenile, hurtful statements of frustration as a serious threat of

violence. *State v. Kohonen*, 192 Wn. App. 567, 582, 370 P.3d 16 (2016).

The prosecution did not present sufficient evidence that Mr. Rains consciously disregarded a substantial and unjustifiable risk that his conduct would cause harm to another. *See Counterman*, 600 U.S. at 79-81. The Court of Appeals's conclusion to the contrary lacks any analysis of the required constitutional standard and simply summarily concludes it has been met. Slip op. at 16-17.

This Court should accept review to explore the contours of the reckless standard and align Washington's cases with the First Amendment requirement.

E. CONCLUSION

For all these reasons, this Court should accept review. RAP 13.4(b).

Counsel certifies this brief complies with RAP 18.17 and the word processing software calculates the number of words in this document, exclusive of words exempted by the rule, as 4,859 words.

DATED this 14th day of December, 2023.

Respectfully submitted,

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APPENDIX A

October 23, 2023, unpublished opinion

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. WILLIAM RILEY RAINS, II, Appellant.	No. 83871-7-I DIVISION ONE UNPUBLISHED OPINION

BIRK, J. — William Rains, II, appeals his conviction of misdemeanor harassment. He argues (1) the trial court violated his due process right by failing to give a no duty to retreat jury instruction, (2) the State engaged in prosecutorial misconduct by misstating the law of self-defense, (3) the State engaged in prosecutorial misconduct by introducing evidence in violation of a pretrial ruling, (4) there was cumulative error, (5) the State presented insufficient evidence to convict under the First Amendment, and (6) the trial court erred in ordering the victim penalty assessment and DNA[1] fee. We affirm William's[2] conviction and remand for the trial court to strike the victim penalty assessment and the DNA fee.

I

The State alleged that on October 15, 2020, William threatened to kill his wife, Brittany Rains, from whom he was separated. The State charged William with

[1] Deoxyribonucleic acid.

[2] For clarity, we use first names to refer to William Rains and witness Brittany Rains, his former spouse. We do not intend disrespect.

felony harassment – domestic violence. At trial, Brittany and William provided different versions of what had occurred.

Brittany testified William arrived at her father's house between 12:00 a.m. and 1:30 a.m. Brittany testified she had not invited him over and had texted him " '[p]lease do not come to my dad's house. You are not welcome here.' " When she walked onto the porch, Brittany saw William park next to her vehicle and "start[] do[ing] something to the side of [her] car." Brittany told William to " '[g]et away from [her] car' " and to " 'get out of here.' " Once William returned to his vehicle, Brittany walked to hers and noticed a scratch down the side of her car that had not been there before. Brittany said she approached the driver's side of William's car and placed her hands on his window sill, begging and pleading for him to hear her out. Brittany testified that during the argument William became upset and grabbed onto her hands, putting "his fingernails into my skin, and he's . . . in my face saying these same sorts of threats" as he had made in text messages before he had arrived at the property. While attempting to get out of his grip, Brittany claimed she slid through the window and got into the car with him. Brittany testified "he puts his hands on my throat and he says—I can't remember [if] he said 'I'm going to kill you' or 'You're going to be killed,' " together with reference to action William would take after she was in the grave. Brittany jumped out of the window and ran into the house to call the police while William drove away.

William testified Brittany invited him over that night. When he arrived at the house, he knocked on the front door and heard Brittany yell from the front of the house " 'Nope, it's too late. You need to go home. You're not welcome here.' "

William testified that on the walk back to his vehicle, he attempted to open Brittany's car door to leave a present for her, but the vehicle was locked. Brittany ran outside and told William to get away from her car. As William got back into his vehicle, he testified Brittany ran up to the car and grabbed the window asking him to talk. William testified that during the conversation, Brittany became upset about the way William was dressed. Brittany attempted to rip William's earring out of his ear, before lunging at him and clawing at his face. Brittany grabbed William by the throat, choking him to the point where he could not breathe. William testified he squeezed Brittany's hands to get them off him and drove away.

The trial court granted William's motion to instruct the jury on the lesser included offense of misdemeanor harassment and agreed to deliver self-defense instructions for both charges. However, the trial court refused to give a no duty to retreat instruction based on lack of evidence that William had a right to be present, as opposed to only permission.

The jury acquitted William of the felony harassment charge, but found him guilty of misdemeanor harassment. During sentencing, the trial court imposed "the mandatory $500 victim impact fee and $100 DNA collection fee." William appeals his conviction and sentence.

II

William argues the trial court provided incomplete jury instructions by refusing to instruct on no duty to retreat. William argues that without the no duty to retreat instruction, the State was not held to its burden to disprove self-defense. We conclude that any error was harmless.

Because the trial court's refusal to provide an instruction was based on a legal conclusion, our review is de novo. See State v. Scherf, 192 Wn.2d 350, 400, 429 P.3d 776 (2018). Generally, a criminal defendant is entitled to an instruction on their theory of the case if there was evidence to support that theory. State v. Williams, 132 Wn.2d 248, 259, 937 P.2d 1052 (1997). In considering whether evidence is sufficient to support a jury instruction, we view the evidence in the light most favorable to the party that requested the instruction. State v. Fernandez-Medina, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000). "The law is well settled that there is no duty to retreat when a person is assaulted in a place where [they have] a right to be." State v. Redmond, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003). It is reversible error to decline a no duty to retreat instruction where "a jury may objectively conclude that flight is a reasonably effective alternative to the use of force in self-defense." Id. at 495.

The parties' arguments in the trial court focused on whether William had the "right" to be on the property, where he based that assertion on having Brittany's permission to be there. A possessor of property may explicitly or impliedly consent to a licensee's entry. See Singleton v. Jackson, 85 Wn. App. 835, 839, 935 P.2d 644 (1997). Consent may be implied through conduct or by application of local custom. Id. For instance, one implied license recognized by common law is a homeowner's implied license to third parties to approach a front door and knock in an attempt to make contact for a customary purpose. State v. C.B., 195 Wn. App. 528, 538-39, 380 P.3d 626 (2016) (citing Florida v. Jardines, 569 U.S. 1, 8, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013)). "This implicit license typically permits the

visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Jardines, 569 U.S. at 8.

In Harvey, the defendant shot and killed two men in the parking lot of an apartment building. In re Personal Restraint of Harvey, 3 Wn. App. 2d 204, 206-07, 415 P.3d 253 (2018). Neither Harvey nor the victims lived in the building or had an ownership interest in the property. Id. at 216. Analyzing whether Harvey had a right to be in the private parking lot, the court explained that conduct that would otherwise constitute a trespass will not be considered so if it is privileged. Id. Privilege can derive from "consent of the possessor or may be given by law because of the purpose for which the actor acts." Id. Because there was no evidence of express or implied consent to Harvey's entering the parking lot, the court held it was not erroneous to refuse the no duty to retreat instruction. Id. at 218.

Viewing the evidence in the light most favorable to William, there is some evidence William had consent from Brittany to be on the property at the time of the charged threat. William testified that before the incident he had permission to be on Brittany's property based on her express invitation to come over that night. William testified Brittany initially revoked that permission by demanding William leave the residence, but then she ran after him, placed her hands on his window sill, and pleaded for him to hear her out. Both William and Brittany testified that Brittany asked him to hear what she had to say, and the State argued the same thing in its closing argument. There was evidence William had express or implied

consent to be on the property at the time of the incident, and therefore had a right to be present for purposes of a no duty to retreat instruction.

However, failing to give a no duty to retreat instruction may be considered harmless error. Our standard of review depends on whether the trial court's error was constitutional or nonconstitutional. A constitutional error is harmless if we are "convinced beyond a reasonable doubt that any reasonable jury would have reached the same result, despite the error." State v. Aumick, 126 Wn.2d 422, 430, 894 P.2d 1325 (1995). Where the error is not of constitutional magnitude, we apply the rule that "error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." State v. Cunningham, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). We have previously held the absence of a no duty to retreat instruction does not give rise to a manifest error affecting a constitutional right. See State v. Lucero, 152 Wn. App. 287, 292, 217 P.3d 369 (2009) (error cannot be assigned for the first time on appeal for not giving an unrequested no duty to retreat instruction), rev'd on other grounds, 168 Wn.2d 785, 230 P.3d 165 (2010).

According to William, the absence of a no duty to retreat instruction presents an error of constitutional magnitude. We disagree. The trial court instructed on self-defense. This instruction informed the jury it is lawful to use force when a person "reasonably believes that he or she is about to be injured" and when "the force is not more than is necessary." The State was required to prove that William did not "employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into

consideration all of the facts and circumstances known to the person at the time of and prior to the incident." For purposes of due process, the State was held to its burden. State v. Chacon explains, "To satisfy due process under the Fourteenth Amendment, the prosecution bears the burden of proving every element of every crime beyond a reasonable doubt." 192 Wn.2d 545, 549, 431 P.3d 477 (2018). But Chacon rejected a claim that the constitution required definitional language further reinforcing the reasonable doubt standard and presumption of innocence so long as the instructions "adequately relayed the State's burden of proof beyond a reasonable doubt and the defendant's presumption of innocence." Id. at 549, 553. Here, the State proved that William did not use lawful force. Any error in the failure to give a further instruction refining the definition of lawful force is not a constitutional one.

We therefore ask whether, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected. The lack of a no duty to retreat instruction was harmless under this standard. William did not rely on self-defense as his theory of the case. In his opening statement, William argued he did not threaten Brittany. While testifying, William denied ever threatening to kill Brittany. Consistent with this, he did not argue that he made a threat in self-defense. In closing, William emphasized the jury was instructed on self-defense because

> if [William] is being choked by somebody, okay, and he grabs them and takes their hands off, that is conduct; right? And so he is allow[ed] to defend himself when [he] is being assaulted, and you can't use that

> conduct against him when judging whether or not he's guilty of felony harassment. *That's why it's in there*.

(Emphasis added.) This closing argument asked the jury not to use defensive actions as evidence that William made the charged threat, but did not argue that making the threat was in self-defense. Additionally, the jury's verdict indicated the jurors believed Brittany's testimony that William verbally threatened her. There is no reasonable probability the jury would have reached a different verdict had the trial court given a no duty to retreat instruction. Therefore, any error in refusing to give a no duty to retreat instruction was harmless.

III

William next argues he was denied a fair trial when the prosecutor misstated the law of self-defense during closing arguments and when the prosecutor introduced evidence of William's activity with the "cartel." We disagree.

Our federal and state constitutions guarantee persons accused of a crime the right to a fair trial. U.S. CONST. amends. VI, XIV; WASH. CONST. art. I, §§ 3, 22. "A defendant arguing that prosecutorial misconduct violated his or her right to a fair trial has the burden of showing the prosecutor's conduct was both improper and prejudicial in the context of the entire trial." State v. Walker, 182 Wn.2d 463, 477, 341 P.3d 976 (2015). To show prejudice requires that the defendant show a substantial likelihood that the misconduct affected the jury verdict. In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). However, if a defendant is raising prosecutorial misconduct for the first time on appeal, an error is waived unless the defendant establishes "that the misconduct was so flagrant and ill intentioned that an instruction would not have cured the prejudice." Id. If

the prejudice could have been cured by a jury instruction, but the defense did not request one, reversal is not required. State v. Russell, 125 Wn.2d 24, 85, 882 P.2d 747 (1994).

A

During the State's closing arguments, the prosecutor addressed the self-defense jury instruction. The prosecutor argued, "[B]y the defendant's own testimony, he said he never put his hands on her throat, he never threatened her. He said he would never threaten his wife. Self-defense, implicit in the instruction, says that he must match the force when he perceives a threat." William did not object. The prosecutor further questioned

> how can you find that he was acting in self-defense, if by his own admission, he did nothing? He said nothing, he didn't place his hands on her neck. [William] is not charged with assault. [William] is charged with felony harassment. At the heart of that harassment threat, is the threat to kill. So unless Brittany made threats to kill him and made an action in concordance with that and [William] responded with equal force to stop that injury, then there is a self-defense claim here. It does not apply. [William] did not act in self-defense here.

William again did not object.

Both statements were improper. First, it was not accurate to suggest that self-defense could be not be relied on if the jury did not believe William's denial of using any force, nor that force used in self-defense "must match" the injury threatened. Rather, as the trial court instructed the jury, a person may use "such force" as a reasonably prudent person would use under the same or similar conditions. Second, it was not accurate to say that the defense did not apply to the charged threat unless Brittany had made a threat. Again, as the trial court

instructed the jury, it was a defense to a charge of harassment if William "offer[ed] to use force" in self-defense.

Despite these misstatements, William fails to show that an instruction could not have cured any prejudice. Had William objected, the trial court could have properly explained the law of self-defense, and done so by referring the prosecutor and the jury to the instructions they had just been given. In addition to not objecting, William's failure to move for a curative instruction or a mistrial for an allegedly improper remark, "strongly suggests the argument did not appear [irreparably prejudicial] in the context of the trial." State v. Negrete, 72 Wn. App. 62, 67, 863 P.2d 137 (1993).

Additionally, the prosecutor's misstatements were not inflammatory and were limited to one short section of her closing argument. The jury was provided with instructions defining self-defense and accurately explaining when a person is entitled to use it. We presume that juries follow instructions. State v. Graham, 59 Wn. App. 418, 428, 798 P.2d 314 (1990). In the context of the instructions, the prosecutor's misstatements read as attempts to argue considerations that were appropriately before the jury. Self-defense requires proportionality of the force to the situation, and the State was entitled to argue that Brittany did not direct a threat toward William or a corresponding action. The prosecutor's misconduct was neither flagrant nor ill intentioned. The prosecutor's misstatements were "not the type of comments [our Supreme Court] has held to be inflammatory," State v. Brett, 126 Wn.2d 136, 180, 892 P.2d 29 (1995), so there is no possibility that the prosecutor's statements engendered an "inflammatory effect," State v. Perry, 24

Wn.2d 764, 770, 167 P.2d 173 (1946). Cf. State v. Belgarde, 110 Wn.2d 504, 506-07, 755 P.2d 174 (1988) (prosecutor attempted to use prejudice and stereotypes as a basis for finding defendant guilty); State v. Reed, 102 Wn.2d 140,143-44, 684 P.2d 699 (1984) (prosecutor repeatedly called the defendant a liar, stated the defense had no case, and implied the defense witnesses should not be believed because they were from out of town and drove fancy cars). While we do not condone the prosecutor's misstatements of the law of self-defense, that the statements here read as both mistaken and an attempt to argue appropriate contentions is critical to our conclusion that this misconduct does not justify a new trial.

B

William argues he was denied a fair trial when the prosecutor introduced highly prejudicial evidence of William's activity with the "cartel." We disagree.

1

In a pretrial motion in limine, the State moved to admit ER 404(b) evidence of William's prior threats to kill Brittany, threats via text message leading up to the incident at hand, and William's prior drug abuse. William moved to exclude all ER 404(b) evidence, exclude or redact Brittany's 911 calls, and exclude the text messages leading up to the incident.

During discussion of the motions in limine, the trial court reserved ruling on the text messages within the 24 hours leading up to the altercation, but ruled that

text messages made on the night at issue would be admitted. With respect to the drug abuse, the State argued,

> [William], himself, talks about being wanted in the cartel and owing money to people in the cartel for drugs. In the text message exchange that is disclosed in discovery in this case . . . .
> . . . .
> . . . and that's one of the things that they argue about in this text message exchange, is the fact that he believes people want to kill him, part of the cartel, and that he doesn't have money.

However, the trial court found that prior drug use had not been proven by a preponderance of the evidence, and excluded it under ER 404(b). The trial court ruled the 911 calls fell under the excited utterance exception to the hearsay rule. However, given the trial court's prior ruling about drug use, it ruled "those comments should be excised from the tape recording." William provided the trial court with line by line proposed redactions to the 911 call, specifically arguing "all the stuff about the cartel, killed by people, all of that would be ER 403, and we would move to exclude it." The specific proposed redaction at issue on appeal is shown by the following strikethrough text:

> Like, I have every message from the last 24 hours from him threatening to jump off a bridge, threatening to kill himself, ~~telling me that he's going to get shot by the cartel~~, telling me that he's going to get killed by people, that he made a mistake, to telling me, like, he is going to end my life.

The trial court accepted the redaction.

At trial, Brittany testified that William made threats "[t]elling [her] that the cartel's after him." William did not object. The State admitted and published to the jury six exhibits of text messages leading up to the incident. When asked what threats William made to Brittany while the two were arguing in the car, Brittany

testified, "[I]t's really hard to remember exactly what he said, but the same things as the text messages, and saying, like 'I have the cartel after me.' " Again, William did not object. Brittany further stated she "felt fear, especially with the messages leading up to that, saying with his involvement of [the] cartel following him, and that he's going to be dismembered." William then objected based on ER 404(b), arguing "all of this" was excluded, and was overruled.

Outside the presence of the jury, William argued he thought "the Court ruled all drugs were excluded, the stuff about the cartel was excluded, and it was [his] understanding the State wasn't going to be offering anything about the cartel." The trial court clarified it "did not rule that the threats leading up to this event was—unsure where it occurred in time, but that there were threats that had led up to this event that were open—that were fair game." The trial court further stated, "The mention of the cartel, that was taken out [of] the transcript of the 911 call. That was a 403 objection—the basis for that was a 403 objection. It was not a 404(b)." In response to inquiry from the court, the State affirmed that mention of cartel was in text messages leading up to the event. Based on that affirmation, the trial court stated it was adhering to its ruling, that the statements were relevant to what William was saying at the time and was relevant to the witness's frame of mind and whether her fear was reasonable, and "it's consistent with what I had ruled before, even though we took [mention of the cartel] out of the 911 call." The trial court allowed reference to the cartel because "all of that is informing her state of mind and for the reasons I've said now, and for the basis for [Brittany's] fear."

In closing, William argued, "[Brittany] also talked about a lot of other things that [are] embellished. She talked about the cartel. That he was messaging her about the cartel. Where is that corroboration? Where is that message?"

2

To prevail on a claim of prosecutorial misconduct, a defendant has the burden of "showing the prosecutor's conduct was both improper and prejudicial in the context of the entire trial." Walker, 182 Wn.2d at 477. To show prejudice, the defendant must show a substantial likelihood that the misconduct affected the jury verdict. Glasmann, 175 Wn.2d at 704.

The trial court, relying on the State's assertions that cartel activity was mentioned in the text messages leading up to the altercation, ruled that testimony of the cartel was admissible because it was relevant to Brittany's frame of mind and whether her fear was reasonable. The trial court was within its discretion to admit this testimony because it was relevant to Brittany's perception of William's threats. See State v. Horn, 3 Wn. App. 2d 302, 310, 415 P.3d 1225 (2018) (a trial court's evidentiary ruling is reviewed for an abuse of discretion). The text messages were admitted and published to the jury; it would not have been improper to allow Brittany to testify about specific text messages. And in her testimony, Brittany indicated the cartel reference was made as part of William's threat in the charged incident. The State's conduct did not violate a pretrial ruling and was not misconduct.

However, our record does not include the text messages that were admitted in evidence, and we therefore cannot confirm the accuracy of the State's indication

to the trial court that they included a reference to the cartel. And during closing argument, William argued there were no messages discussing the cartel. William asked the jury "Where is that corroboration? Where is that message?" If the text messages did not mention the cartel as the State represented, then part of the basis for the trial court's application of its ruling would be undermined.

Even in that case, William would fail to show the requisite prejudice. Brittany mentioned the cartel twice without William raising an objection. It was not until the third mention of the cartel that William objected. Her testimony to which William did not object described the nature of the threats leading up to the incident as opposed to any prejudicial purpose. Additionally, there is no substantial likelihood that the jury believed William threatened Brittany with the cartel, yet chose to convict him of only misdemeanor and not felony harassment. Because William has not shown the necessary prejudice, his claim fails.

IV

William argues the trial court's and prosecutor's errors are prejudicial in the aggregate. We disagree.

Under the cumulative error doctrine, we may reverse a defendant's conviction when the combined effect of errors during trial effectively denied the defendant their right to a fair trial, even if each error standing alone would be harmless. See State v. Weber, 159 Wn.2d 252, 279, 149 P.3d 646 (2006). The doctrine does not apply where the errors are few and have little or no effect on the trial's outcome. Id. Because any error had no effect on the outcome of the trial, we reject William's claim.

V

William argues his conviction violates the First Amendment because the State did not present sufficient evidence that William consciously disregarded a substantial and unjustifiable risk that his conduct would cause harm to another, as required in Counterman v. Colorado, 600 U.S. 66, 78, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023). We disagree.

In Counterman, the U.S. Supreme Court addressed the demands of the First Amendment in a criminal prosecution over a true threat. The court held that a state must prove that the defendant "had some understanding of his statements' threatening character." 600 U.S. at 73. This is determined by "a recklessness standard." Id. at 80. Explaining its selection of the lowest criminal mens rea it considered, the court defined this "[i]n the threats context" as meaning "that a speaker is aware 'that others could regard his statements as' threatening violence and 'delivers them anyway.' " Id. at 79 (quoting Elonis v. United States, 575 U.S. 723, 746, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015) (Alito, J., concurring in part and dissenting in part)).

At oral argument, William confirmed that he is not challenging the jury instructions under Counterman, but is challenging only the sufficiency of the evidence. Wash. Ct. of Appeals oral argument, State v. Rains, No. 83871-7-I (September 27, 2023), at 21 min., 19 sec. to 21 min., 37 sec., https://tvw.org /video/division-1-court-of-appeals-2023091219/?eventID=2023091219. Under the Fourteenth Amendment, the evidence is sufficient if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). The State's evidence was sufficient to satisfy Counterman. The evidence viewed in the light most favorable to the prosecution shows that in the middle of the night William entered the property of Brittany's residence against instructions not to do so, bodily dragged her into his vehicle, placed his hands around her neck, and warned he would see her in the grave. This is sufficient for a rational trier of fact to find he was aware others could regard his statements as threatening violence and delivered them anyway.

VI

William argues the victim penalty assessment and DNA fee are no longer authorized in his case because of statutory amendments. The State concedes remand is appropriate to strike both fees. We accept the State's concession, and remand accordingly.

We affirm William's conviction and remand for the trial court to strike the victim penalty assessment and DNA fee.

Birk, J.

WE CONCUR:

Mann, J.

Dwyer, J.

APPENDIX B

November 15, 2023, order denying motion for reconsideration

FILED
11/15/2023
Court of Appeals
Division I
State of Washington

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

THE STATE OF WASHINGTON,

Respondent,

v.

WILLIAM RILEY RAINS, II,

Appellant.

No. 83871-7-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, William Rains, II, filed a motion for reconsideration. The court has considered the motion pursuant to RAP 12.4 and a majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Birk, J.

Judge

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 83871-7-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: December 14, 2023

WASHINGTON APPELLATE PROJECT

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