NO. 47676-2-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SHANNON E. MEYER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR CLARK COURT
The Honorable Suzan L. Clark, Judge
Cause No. 14-1-01859-2

BRIEF OF APPELLANT

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04. Whether the trial court acted without authority in imposing community custody conditions requiring Meyer to have a chemical dependency evaluation and to attend an evaluation for abuse of drugs. [Assignment of Error No. 12].

C. STATEMENT OF THE CASE

01. Procedural Facts

Shannon E. Meyer was charged by second amended information filed in Clark County Superior Court April 2, 2015, with rape of a child in the first degree or, in the alternative, child molestation in the first degree, count I, and rape in the second degree or, in the alternative, child molestation in the first degree, count II, contrary to RCWs 9A.44.073, 9A.44.083 and 9A.44.050(1)(a), respectively. [CP 5-6].

Meyer's pretrial statement to the police was ruled admissible at trial, which commenced April 7, the Honorable Suzan L. Clark presiding. [RP 332]. Meyer was found guilty of attempted rape of a child in the first degree and attempted rape in the second degree following a bench trial,

and the court entered the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Between April 7th, 2015 and April 8th, 2015, the Court conducted a trial without a jury, with the State represented by Deputy Prosecutor Attorney Patrick Robinson and the Defendant represented by Stephen J. Rucker.

2. At trial, Defendant was charged by information with the following:

   Count 1) Rape of Child 1 pursuant to RCW 9A.44.073, or in the alternative Child Molestation 1 pursuant to 9A.44.083, occurring between January 1, 2007 and July 23, 2013, in Clark County, WA.

   Count 2) Rape 2 pursuant to 9A.44.050(1)(a), or in the alternative Child Molestation 1 pursuant to 9A.44.083, occurring between January 1, 2007 and July 23, 2013, in Clark County, WA.

3. At trial, the named victim K.J.C. – DOB 10/25/05 (formerly K.J.R.), Sandy Lynn Carpenter, VPD Detective Julie Carpenter, Counselor Whitney Hall, Officer Russell, King County Detective Marylis (sic) Priebe-Olson, and Tara Harrington, testified to the following:

   a. Defendant, DOB 10/29/1975, is the Uncle of K.J.C., and in the summer of 2011 Defendant was staying with his sister Teresa Meyer in Vancouver, WA.

   b. K.J.C. has never been married and Teresa Meyer is the mother of K.J.C.

c. During the summer of 2011, K.J.C. was around 5 years old and Defendant was 35 years old. While with K.J.C. in the apartment in Vancouver, WA, Defendant pulled his pants down, grabbed K.J.C. and according to K.J.C. "shoved her face into his privates." K.J.C. struggled and tried to pull away from Defendant's grip and also pushed against the Defendant's stomach to get away from him. While still holding K.J.C., the Defendant again pulled her back and shoved her face into his penis.

d. After the incident, Defendant left Vancouver, WA, and went back to the King County area.

e. Then, in 2012, after K.J.C. was living with the Carpenter family and attending therapy, K.J.C. disclosed to her counselor Whitney Hall that Defendant had shoved her face into his privates. Shortly after K.J.C. told her adoptive mother, Sandy Carpenter, about the incident.

CONCLUSIONS OF LAW

1. Defendant made a substantial step toward having sexual intercourse with K.J.C. pursuant to RCW 9a.28.020 (sic) and 9A.44.073, when he smashed his penis into K.J.C.'s face and attempted to shove his penis onto K.J.C.'s mouth.

2. Defendant was more than 24 months older than K.J.C. during the relevant and charged time period. K.J.C. was never married or in a domestic partnership with Defendant.

3. Defendant made a substantial step toward sexual intercourse by forcible compulsion with K.J.C. when he smashed his penis into K.J.C.'s face and

attempted to shove his penis into K.J.C.'s mouth, and when she struggled to push him away he again forced her face back onto his penis and again attempted to force his penis into her mouth.

4. The acts occurred between January 1, 2007 and July 23, 2013, in Clark County, WA.

[CP 9-12].

Meyer was sentenced within his standard range and timely notice of this appeal followed.[1] [CP 13-37].

02. RCW 9A.44 Hearing

Now 9-year-old K.J.C. (DOB 10/25/05) testified that when she "was about five or six [RP 14]," Meyer, her uncle, pulled her into the kitchen from where she was playing in the living room and proceeded to pull down his pants "and stuck my face in his front private." [RP 13-14]. "[H]e took his hand and stuck it on my head and like shoved it right in his front private." [RP 14]. She had initially disclosed this to Whitney Hall, her counselor, approximately a year earlier, two and a half years after the alleged incident. [RP 16, 21].

Sandy Carpenter and her husband Robert adopted K.J.C. and her younger sister on November 21, 2014, after serving as foster parents for the children since August 20, 2012. [RP 25]. K.J.C. began counseling with

[1] Count II, attempted rape in the second degree, was dismissed and vacated for sentencing purposes. [RP 442; CP 16].

Whitney Hall the following October. [RP 25]. After one particular session with Hall, K.J.C. told Carpenter:

> that when she was younger, her Uncle Shannon, I think he unzipped his pants. And [K.J.C.] called it a foot sticking out of his stomach. She saw that. And he pushed her head down in his crotch.

[RP 29]. Carpenter remembered K.J.C. "talking about him pushing her head down." [RP 35]. She thought K.J.C. "might have been around four or five" when this occurred. [RP 29].

Whitney Hall, a child and family therapist specializing in child mental health, began seeing K.J.C. on a weekly basis "around October 2012." [RP 39]. During one session, K.J.C. "had what appeared to be a spontaneous memory where she started talking about her uncle and recalled a memory to me." [RP 40]. "[S]he said that he, as I recall, put her face in his nut sack, and it was gross." [RP 41]. Hall recalled that K.J.C. "said she was four" when it happened. [RP 42-43]. K.J.C. also said that she went and told her (biological) mom, and that she kicked him out." [RP 42]. That was the only time she mentioned the alleged incident to Hall [RP 40, 48], who gave gave Sandy Carpenter, K.J.C.'s then foster mother, a heads-up "of what she had told me." [RP 42].

On August 26, 2013, Emily Watson conducted a forensic interview with K.J.C, which was marked as State's Pretrial Exhibit 1. [RP 59].

During the interview, then seven-year-old K.J.C. said that when she was four her uncle did bad things to her. [RP 66-67]. "He told me not to tell anybody what happened." [RP 69]. "I was playing with him, and he put his pants down and put it in my face, and then I had to go somewhere else to wash my face." [RP 66]. "He pulled them down, and then he shoved my face in them." [RP 70]. "It happened one time, and it never happened again." [RP 67]. Right after it happened, K.J.C. told her biological mom, who "went in the kitchen and was trying to tell him what happened, and then he said I'm going out the back door to go home." [RP 76].

The following exchange, which is quoted here at modest length, occurred when K.J.C. was asked how she knew she was four at the time of the alleged incident:

> MINOR CHILD: Well, it' just that I have - - well, my mom told me before I left to my (inaudible).
>
> MS. WATSON: Your mom told you before you left. What did she tell you?
>
> MINOR CHILD: She said that everything - - she said everything.
>
> MS. WATSON: Can you tell me what everything was that she said.
>
> MINOR CHILD: She said what happened. It's on there.
>
> MS. WATSON: She told you - - I'm a little bit confused. Can you clarify for me the words that your mom used.

MINOR CHILD: She said - - she said - - she said before you leave, I want to tell you something, and then she said it.

MS. WATSON: When was that?

MINOR CHILD: When I was six, because before I came here, I was still six. But then I had my birthday here, and now I turned seven.

MS. WATSON: Oh, okay.

MINOR CHILD: So I was still six.

MS. WATSON: So what was it that your mom told you?

MINOR CHILD: She said - - she said before you leave, I want to tell you something. And then she said that Uncle Shandon (sic) was playing in the kitchen, and then I - - I was playing in the living room under the couch.

MS. WATSON; Uh-huh.

MINOR CHILD: And then he found me, and he took me, and then he put his private in my face.

MS. WATSON: Oh, okay. So did she tell you that, or do you - - she did - - this happened, and you remember it happening?

MINOR CHILD: She told me that.

MS. WATSON: Oh, okay. So do you remember this happening?
MINOR CHILD: No. She told me, so now I remember.

MS. WATSON: She told you, so now you remember. Okay. Did you remember before she told you?

(No audible response)

MS. WATSON: No. How come?

MINOR CHILD: Because I was four, and then I turned five I didn't remember. So when I turned six, I still didn't remember.

MS. WATSON: Oh, okay. Okay. So do you remember what your uncle looked like?

MINOR CHILD: No.

[RP 82-84].

When asked what she saw with her own eyes, K.J.C. said she remembered seeing his private but that she forgot what it looked like. [RP 85]. She also alleged she tasted germs that came from his privates, saying it tasted like when boys go to the bathroom and don't wipe. [RP 86]. When asked how she knew this if she didn't see it, K.J.C. responded: "Because my mom tells me, because my mom - - we had a baby brother, and when my baby brother goes to the bathroom, he never wipes." [RP 86]. She claimed it tasted like "[p]ee." [RP 87]. "He shoved my face in, and then his private went into my mouth." [RP 87].

Reviewing the factors set forth in State v. Ryan, 107 Wn.2d 165, 691 P.2d 197 (1984), the court ruled that the one statement to Sandy Carpenter and the statements to Hall and Watson would be admissible under RCW 9A.44.120. [RP 105-08].

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03. Bench Trial

At trial, K.J.C. again alleged that Meyer had abused her a long time ago by shoving his private into her face, saying it was on her cheeks and chin. [RP 153-54, 161]. "I tried getting away, but he shoved - - he shoved my face in his private." [RP 157]. It happened at her old house in the kitchen. [RP 179]. She was "in between five and six" at the time. [RP 180]. She did not remember what his private looked like and didn't smell or taste anything. [RP 156, 158]. When she told Teresa Meyer, her biological mother, what had happened, she was told to go clean her face. [RP 165-66, 183].

Sandra Carpenter reiterated her pretrial testimony [RP 183-87], saying that sometime around the middle of 2013, K.J.C., following a counseling session with Whitney Hall, told her that Meyer had abused her by pushing her "head down into his lap or crotch." [RP 188]. "I think she might have said lap. She did talk about a foot coming out of his stomach, which is, you know - -" [RP 188]. "I don't remember the exact words." [RP 189].

Before K.J.C. was interviewed by Emily Watson, Carpenter told her the following:

> I tried to explain a little bit about why she had to talk to someone, like, you know, when a grownup does something inappropriate with a child, it's against the law, and then the

> police or the - - sometimes we would say big people to her, so she - - you know, especially - - she was a little younger. She didn't really get a lot of that concept of who - - you know, who was in charge of that sort of thing. And that they needed to talk to her about it.

[RP 191].

Whitney Hall retold her pretrial testimony that K.J.C. had on one occasion in July 2013 told her Meyer had put her face in his nut sack. [RP 219, 221, 230, 232]. K.J.C. said she was four when it happened. [RP 232]. "[S]he told her mom, and her mom kicked him out." [RP 233].

K.J.C.'s forensic interview with Emily Watson, previously described herein at pages 8-11, was played to the court without objection and is set forth in the verbatim report of proceedings at RP 273-306.

When interviewed by the police on March 6, 2014, Meyer denied K.J.C.'s allegation, saying he had only met her a few times – "like for a day here, a day there." [RP 342]. He never baby-sat her nor took her anywhere and claimed he would never do something like that. [RP 339, 344-45]. He denied ever playing hide and seek or any other games with K.J.C. [RP 347-48]. "I've never - - I've never really played games with the kids, I mean, nothing." [RP 349]. It was his understanding that CPS had told his sister "if I'm there, that they're to take the kids…." [RP 348]. "[S]o she told me I had to leave." [RP 348]. "So I left." [RP 348].

Teresa Meyer, K.J.C.'s biological mother and Meyer's older sister, testified that her brother had stayed at her apartment for about three weeks in June 2011, and that K.J.C., who would visit her on weekends, was there two of the three weekends. [RP 352-53, 375]. K.J.C. never told her that Meyer had abused her [RP 354, 359], and she first learned of the allegation from an investigator in 2014, a point at which K.J.C. was living with her adoptive parents. [RP 354-55].

Thirty-nine-year-old Shannon Meyer testified that K.J.C., his niece, was at his sister's apartment for two weekends during the three weeks he had stayed there in 2011. [RP 377]. "[T]here was two weekends total." [RP 383]. Consistent with his statement to the police March 6, 2014, he denied K.J.C.'s allegation and emphasized that he had little interaction with her and had no idea why she was making the allegation. [RP 381-82].

D. ARGUMENT

01. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT MEYER'S CONVICTIONS FOR ATTEMPTED RAPE OF A CHILD IN THE FIRST AND ATTEMPTED RAPE IN THE SECOND DEGREE.[2]

Due Process requires the State to prove beyond a

[2] As the sufficiency argument is the same for each count, the counts are addressed collectively herein for the purpose of avoiding needless duplication.

reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where "plainly indicated as a matter of logical probability." State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

The crime of attempted rape requires proof of intent to have sexual intercourse, the criminal result of the offense. See State v. Chhom 128 Wn.2d 739, 911 P.2d 1014 (1996), disapproved on other grounds, State v. Johnson, 173 Wn.2d 895, 270 P.3d 591 (2012). The convoluted narrative in this case encompasses all manner of digressions and fails to provide reliable evidence to satisfy this element. At the time of trial, K.J.C. was

nine years old. [RP 14]. Although the charging period for the offenses encompassed six-plus years, from January 2007 through July 2013, K.J.C.'s proximity to Meyer occurred on only two weekends in June 2011, when she was approximately five and a half. [RP 352-53, 375; CP 5-6]. The alleged incident occurred one time, within minutes, and was not precipitated by allegations of grooming or that K.J.C. was lured into the activity. [RP 280]. She first disclosed the accusation to Whitney Hall in July 2013, approximately two years after its alleged occurrence.

Subsequent to her disclosure to Hall, K.J.C. met with Emily Watson. During this forensic interview, K.J.C. denied remembering what had happened—and, presumably, her previous declarations to Hall—until her mom (then foster parent Carpenter) told her that Meyer had put his private in her face while the two were in the kitchen. [RP 297]. "She told me that." [RP 297]. When asked if she remembered what had happened before Carpenter told her, K.J.C. indicated she did not: "Because I was four, and then I turned five I didn't remember. So when I turned six, I still didn't remember." [RP 287].

There was also no corroboration for K.J.C.'s claim that when she told Teresa Meyer, her biological mother, what had happened, she was told to go wash her face. [RP 165-66, 183]. Teresa Meyer flatly denied this, saying she didn't learn about the allegation until sometime in 2014.

[354-55]. Nor does the record support the prosecutor's closing argument that K.J.C's allegation included details a child wouldn't know. Teresa Meyer testified about the "Saturday night incident," where K.J.C had told her that her younger sister "has her hand down her pants and then put it in her mouth." [RP 370]. Ms. Meyer then questioned the children: "Well, when I asked, they said daddy did it to Rosella (phonetic), and Rosella licked daddy's pee pee...." [RP 392].

Though an appellate court gives deference to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of evidence, State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, reviewed denied, 119 Wn.2d 1011 (1992), the evidence presented in this case, based on the record before this court, cannot be found to be sufficient to support the argument that Meyer either intended or committed the offenses for which he was convicted.

02. MEYER WAS PREJUDICED BY HIS COUNSEL'S APPARENT AGREEMENT AND/OR FAILURE TO OBJECT TO THE ADMISSIBILITY OF INADMISSIBLE OPINION TESTIMONY AS TO HIS VERACITY AND BY FAILING TO CROSS EXAM KJ.C. AS TO HER LACK OF RECALL OR TO ARGUE THIS DEFICIENCY TO THE COURT.

Every criminal defendant is guaranteed the right to the effective assistance of counsel under the Sixth Amendment of the

United States Constitution and Article I, Section 22 of the Washington State Constitution. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). A criminal defendant claiming ineffective assistance must prove (1) that the attorney's performance was deficient, i.e., that the representation fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that prejudice resulted from the deficient performance, i.e., that there is a reasonable probability that, but for the attorney's unprofessional errors, the results of the proceedings would have been different. State v. Early, 70 Wn. App. 452, 460, 853 P.2d 964 (1993), review denied, 123 Wn.2d 1004 (1994); State v. Graham, 78 Wn. App. 44, 56, 896 P.2d 704 (1995). Competency of counsel is determined based on the entire record below. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing State v. Gilmore, 76 Wn.2d 293, 456 P.2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on one prong. State v. Tarica, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

Additionally, while the invited error doctrine precludes review of error caused by the defendant, See State v. Henderson, 114 Wn.2d 867, 870, 792 P.2d 514 (1990), the same doctrine does not act as a bar to

review a claim of ineffective assistance of counsel. State v. Doogan, 82 Wn. App. 185, 917 P.2d 155 (1996) (citing State v. Gentry, 125 Wn.2d 570, 646, 888 P.2d 1105 (1995)); RAP 2.5(a)(3).

At the conclusion of the RCW 9A.44.120 hearing, Meyer's counsel asked the court to admit evidence that included K.J.C.'s recorded interview with Emily Watson. [RP 103]. When the video of the interview, State's Exhibit 1, was offered into evidence and played to the court at trial, defense counsel offered no objection. [RP 272-73].

02.1 Opinion Testimony as to Veracity and Guilt

While discussing Meyer during her interview with Watson, K.J.C. alleged that Meyer was lying when he told her biological mother that he didn't abuse her: "He was lying, and he said he didn't like me because he thinks I'm lying, but he is the one that's lying by saying he didn't do it." [RP 293]. "He lied to her, and then he went out the back door." [RP 289]. There was no objection to this evidence.

A witness may not testify to his or her opinion as to the guilt of a criminal defendant, whether by direct statement or inference, State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12 (1997), for such testimony violates the defendant's constitutional right to have the fact finder make an independent evaluation of the facts. State v. Wilber, 55 Wn. App. 294, 297, 777 P.2d 36 (1989).

K.J.C.'s opinion was clearly inadmissible, for no witness may offer opinion testimony regarding the veracity or lack thereof of a witness because it unfairly prejudices the defendant. See State v. King, 167 Wn.2d 324, 331, 219 P.3d 642 (2009). Washington cases have long held that weighing the credibility of a witness is the province of the fact finder and have not allowed witnesses to express their opinions on whether or not another witness is telling the truth. K.J.C.'s statement was nothing short of a direct attack on Meyer's veracity, giving seed to the inference that he was guilty. The inference that flows from her opinion is unmistakable: Meyer is dishonest, he was lying when he said he hadn't abused her, he is guilty.

02.2 Failure to Prepare and Present Defense

Trial counsel is obligated to investigate and to properly prepare for trial. See State v. Ray, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991). There was little evidence of that in this case. K.J.C.'s credibility was crucial to the State's case. As discussed above, when interviewed by Watson, she denied remembering what had happened until her then-foster mother told her what Meyer had allegedly done. [RP 287, 297]. During trial, however, defense counsel failed to question K.J.C. regarding this during what amounted to four pages of cross examination. [RP 169-172]. During what resulted in four pages of closing argument,

defense counsel again failed to address the issue [RP 410-13], arguing instead that K.J.C. "is a lovely child, but she is confused and has fragmented thinking." [RP 410]. This is unforgiveable, not only because of what K.J.C. indicated she was told, but because she said she had no memory of the events until they were described to her, which she attributed to her age: "I was four, and then I turned five and I didn't remember. So when I turned six, I still didn't remember." [RP 287].

02.3 Ineffective Assistance of Counsel

It is difficult to perceive a legitimate trial strategy in defense counsel's lack of effort in failing to object to the above inadmissible evidence and in failing to present any meaningful defense by way of effective cross examination and argument drawn therefrom. Had counsel objected to the impermissible opinion evidence, the trial court would have granted the objection under the law argued herein.

To establish prejudice a defendant must show a reasonable probability that but for counsel's deficient performance, the result would have been different. State v. Leavitt, 49 Wn. App. 348, 359, 743 P.2d 270 (1987), aff'd, 111 Wn.2d 66, 758 P.2d 982 (1988). A "reasonable probability" means a probability "sufficient to undermine confidence in the outcome." Leavitt, 49 Wn. App. at 359.

K.J.C.'s and Meyer's credibility were key to the State's case, and K.J.C.'s opinion as to Meyer's guilt ("…he is the one that's lying by saying he didn't do it.") provided the evidence to discredit Meyer, thus leaving him defenseless, given his counsel's failure to effectively cross exam or argue Meyer's case as set forth earlier. Of course, an accumulation of non-reversible errors may deny a defendant a fair trial. State v. Perrett, 86 Wn. App. 312, 322, 936 P.2d 426 (1997). The cumulative error doctrine applies where, as here, there have been several trial errors, individually not justifying reversal, that, when combined, deny a defendant a fair trial. State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000).

This was not a strong case, and even if any one of the issues regarding defense counsel's ineffective assistance standing alone does not warrant reversal of Meyer's convictions, the cumulative effect of these errors materially affected the outcome of his trial and his convictions should be reversed, even if each error examined on its own would otherwise be considered harmless. State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); State v. Badda, 63 Wn.2d 176, 183, 385 P.2d 859 (1963).

Counsel's performance was deficient, which was highly prejudicial to Meyer, with the result that he was deprived of his constitutional right to

effective assistance of counsel, and is entitled to reversal of his convictions and remand for retrial.

03. THE TRIAL COURT ACTED WITHOUT AUTHORITY IN ORDERING MEYER TO HAVE A CHEMICAL DEPENDENCY EVALUATION AND TO ATTEND AN EVALUATION FOR ABUSE OF DRUGS AND ALCOHOL.

At sentencing, as conditions of community custody, the court, in part, ordered that Meyer:

> Complete a chemical dependency treatment evaluation and provide with provider recommendations

[CP 33].

> [A]ttend an evaluation for abuse of [X] drugs, [X] alcohol … and shall attend and successfully complete all phases of any recommended treatment….

[CP 35].

"'In the context of sentencing, established case law holds that illegal or erroneous sentences may be challenged for the first time on appeal.'" State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (quoting State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)). This court reviews whether a trial court had statutory authority to impose community custody conditions de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

The conditions of community custody may include "crime-related prohibitions." Former RCW 9.94A.700(5)(e), recodified as RCW 9.94B.050(5)(e). A "crime-related prohibition" is defined as "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).

Whether a trial court had statutory authority to impose community custody conditions, is reviewed de novo. State v. Armendariz, 160 Wn.2d at 110. This court reviews the imposition of community custody conditions for abuse of discretion, reversing only if the decision is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A condition is manifestly unreasonable if it is beyond the court's authority to impose. State v. Jones, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003). When conditions imposed do not relate to the circumstances of the crime, such conditions are unlawful. Id.

The conditions requiring Meyer to complete a chemical dependency treatment evaluation and an evaluation for abuse of drugs and alcohol are not supported by the record. As no evidence was presented that drugs or alcohol played any part in the offenses for which Meyer was convicted, these conditions must be stricken. See RCW 9.94.607(1) (court may order evaluation etc. if it finds "the offender has a chemical

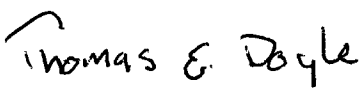
dependency that has contributed to his or her offense"), State v. Jones, 118 Wn. App. at 199 (if evidence shows that alcohol contributed to the offense, an alcohol evaluation and treatment may be ordered).

E. CONCLUSION

Based on the above, Meyer respectfully requests this court to reverse his convictions and remand for a new trial or to remand for resentencing.

DATED this 10th day of December 2015.

Respectfully submitted,



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CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

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DATED this 10th day of December 2015.

Thomas E. Doyle

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DOYLE LAW OFFICE

December 10, 2015 - 4:33 PM

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Case Name: State v. Meyer

Court of Appeals Case Number: 47676-2

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Statement of Additional Authorities

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Affidavit

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