Supreme Court No. 98915-0
(COA No. 79529-5-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER LEWIS LOCKEN,

Petitioner.

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

PETITION FOR REVIEW

NANCY P. COLLINS
SARA S. TABOADA
Attorneys for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court

Washington Court of Appeals

United States Supreme Court

Federal Decisions

United States Constitution

Washington Constitution

Court Rules

A. IDENTITY OF PETITIONER AND DECISION BELOW

Pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b), petitioner Christopher Locken asks this Court to accept review of the Court of Appeals decision terminating review dated June 8, 2020, for which reconsideration was denied on July 20, 2020. Copies are attached as Appendix A and B.

B. ISSUES PRESENTED FOR REVIEW

1. The constitutional right to present a defense guarantees an accused person the right to contest the prosecution's ability to meet its burden of proving all essential elements, including the mental state necessary to commit the charged crime. Mr. Locken tried to enter a person's home because he thought his "wives" were being held there; he said his wives were "aliens," one had "a green belly button" and the other was a dragon. The court prohibited him from arguing his behavior showed he did not have the intent to commit the charged crimes, based on a pretrial ruling that the defense was not presenting diminished capacity evidence. Did the court's restriction on the defendant's closing argument, barring him from drawing conclusions from facts in evidence, conflict with

case law protecting Mr. Locken's constitutional rights to present a complete defense, have meaningful assistance of counsel, and receive due process of law?

2. Evidence of "diminished capacity" is not a complete defense, but rather is one way jurors may decide the State has not proved the defendant formed the intent necessary to commit a charged crime. Here, the court ruled that by not offering expert evidence on diminished capacity, the defense was not allowed to argue he was not acting with the mental state needed to commit the charged crimes. Should this Court grant review where the trial court erroneously insisted expert evidence is necessary for a defendant to argue the accused's behavior indicates he lacked the mental state necessary to commit the crimes charged, when this issue is one of substantial public importance yet case law does not sufficiently clarify the right to pursue this type of defense?

C. STATEMENT OF THE CASE

Christopher Locken knocked on a stranger's door and said he was looking for his wife, Lemour, whom he described as an 11-year-old alien with a green belly button. 1/8/19RP 160, 166;

CP 4. He said he was also looking for his second wife, whom he described as a wounded dragon with lashings on her back. *Id*. He said the dragon was in laying in the nearby meadow and he needed to make sure she was okay. 1/8/19RP 192.

Megan Wiener responded by telling Mr. Locken to look elsewhere, and he left. 1/8/19RP 161. She called her husband to tell him about this "weird" encounter. *Id*. at 162.

Soon after, her five-year-old son Jayden opened the door to someone banging on it. 1/8/19RP 163. Mr. Locken was again outside. He looked at Jayden and said, "that's her." *Id*. Ms. Wiener told Jayden to lock himself in the bedroom and grabbed the door to step out, but Mr. Locken's foot was in the way of the door. *Id*. at 164. She closed the door and stepped onto the porch with Mr. Locken. She let Mr. Locken speak and, as he spoke, she repeated what he was saying to her husband over the phone. She believed that when "somebody is kind of crazy like that, it is safer to go along with it than try to tell them that, no, it's made up or something like that." *Id*. at 166.

Mr. Locken told Ms. Weiner he needed to look inside her home. She refused and said Mr. Locken pulled a "miniature

samurai sword" from his backside and lunged it "sideways down." 1/8/19RP 168. At the same time, Mr. Weiner returned home. He brought a friend, Steve Rowland, because he was a big person. *Id*. at 172, 215.

Mr. Weiner told Mr. Locken to "kick rocks" and get off his property. 1/8/19RP 205. Mr. Weiner said Mr. Locken responded by saying, "what bitch?" and charged at him. *Id*. Mr. Weiner grabbed a shovel and Mr. Locken held a long nail. *Id*. at 151, 177, 206. Mr. Locken accused Mr. Weiner of holding his wife captive with an alien baby. *Id*. at 207.

When Mr. Wiener said he would call the police, Mr. Locken expressed surprise and replied he should be the one calling the police because Mr. Wiener was holding his wife hostage. *Id*. at 208. Mr. Wiener responded that he was calling the cops because "you're crazy." *Id*.

Mr. Locken left and called 911. 1/9/19RP 225. He told the 911 operator he was looking for a missing person named Leanne Knuton Locken, who was his wife. *Id*. at 225-26. He also said Mr. Wiener threatened him with a shovel and chased him into the woods. *Id*.; Ex. 36.

Sergeant Darren Crownover responded and arrested Mr. Locken. 1/9/19RP 232-33. Mr. Locken told the officer he was looking for his kidnapped wife, Leanne, who was a "22-year-old midget that was black and brown." CP 5.

Police never found any miniature samurai sword that Ms. Weiner claimed to have seen. 1/9/19RP 239. The prosecution charged Mr. Locken with two counts of assault in the second degree with deadly weapon enhancements and one count of attempted burglary in the first degree.

Before trial, Mr. Locken underwent several mental health evaluations, was found incompetent at times, and the court ordered involuntary medication. 9/11/17RP 4; 3/5/18RP 8; 3/26/18RP 6; 9/5/18RP 7; 10/22/18RP 2.

A psychologist assessed Mr. Locken at the defense's request and concluded "Mr. Locken was in a state of acute psychosis at the time [of] the alleged events and did not possess the requisite mental state to knowingly commit the crimes of which he is accused." CP 167-68.

Defense counsel initially noted he intended to pursue a diminished capacity defense, but before trial started, he told the

court that Mr. Locken was opposed to this defense and counsel would instead "proceed under a theory of general denial." 9/5/18RP 8; 1/8/19RP 8.

The prosecution moved in limine to prevent Mr. Locken from arguing "any mental defense" to the jury. CP 80. The court granted the motion. 1/8/19RP 9-10.

During Mr. Locken's closing argument, the court sustained the prosecutor's objection as he began to discuss whether he had "the intent to commit these crimes." 1/9/19RP 285. Later, the court explained its ruling, saying Mr. Locken could not argue the facts of the case showed he did not have the required intent to commit the charged crimes. 1/9/19 RP 292, 294-95.

D. ARGUMENT

This Court should grant review because the court confused a diminished capacity defense with the fundamental right to argue the State did not prove the required mental state.

1. A court may not bar the defense from making relevant arguments based on the evidence to the jury.

The court may not bar an accused person from presenting logical and reasonable inferences from the evidence in closing argument. *State v. Frost*, 160 Wn.2d 765, 772-73, 161 P.3d 361 (2007); U.S. Const. amend VI; Const. art. I, § 22. Defense counsel's closing argument is "a basic element of the adversary factfinding process in a criminal trial." *Herring v. New York*, 442 U.S. 853, 858, 95 S. Ct. 2550, 45 L. Ed. 2d 593 (1975). The Sixth Amendment right to counsel "necessarily includes [the defendant's] right to have his counsel make a proper argument on the evidence and the applicable law in his favor." *Id.* at 860.

Prohibiting defense counsel from making available arguments to the jury undermines the right to effective assistance of counsel. *Frost*, 160 Wn.2d at 772. In *Frost*, the court prohibited the defense from arguing both a duress defense

and that the prosecution had not proven accomplice liability. *Id*. at 770. This Court held this restriction violated the defendant's rights to present a defense and to the assistance of counsel, because alternative theories are permissible. *Id*. at 773.

An accused person has the right to be free from criminal conviction unless the prosecution has proven all elements of the charged offense beyond a reasonable doubt. *Id*. The court infringes on the rights to due process and effective assistance of counsel when it limits the defense from challenging the evidence necessary for a conviction, thus lessening the prosecution's burden of proof. *Id*.

The adversarial process protected by the Sixth and Fourteenth Amendments requires that "even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt." *United States v. Cronic*, 466 U.S. 648, 656-57 n.19, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). A deficient closing argument that does not "subject the prosecution's case to meaningful adversarial testing" results in a breakdown of the

adversarial process. *See United States v. Swanson*, 943 F.2d 1070, 1074 (9th Cir. 1070).

Despite this Court's explanation in *Frost* that courts may not restrict defense counsel from arguing factually available theories of defense, here the trial court ruled, and the Court of Appeals affirmed, that Mr. Locken was not permitted to argue to the jury about evidence of his mental state without presenting diminished capacity evidence.

2. The court stopped the defense from arguing the facts showed Mr. Locken did not act with the mental state needed to commit the charged crimes.

In closing argument, defense counsel first argued there was insufficient evidence that Mr. Locken had a deadly weapon, then began to speak about the "intent element" that the prosecution "discussed with you . . . in some detail during his Closing." 1/9/19RP 285. The attorney asked the jury to consider what witnesses said about Mr. Locken's statements. *Id*. Defense counsel starting saying, "How could he have the intent to commit any of these crimes when he truly believes that he - -." *Id*. The prosecutor interrupted and objected to this argument, contending counsel was violating the court's pretrial order. *Id*.

The court immediately sustained the objection without comment. *Id*.

Defense counsel asked for a sidebar, and the court confirmed it was sustaining the prosecution's objection following this unreported sidebar. 1/9/19RP 286. Defense counsel immediately concluded his closing argument by tepidly asking the jury to "take into account" testimony about "what Mr. Locken had said . . . when you're deliberating today." *Id*.

Once the jury had left the courtroom for deliberations, defense counsel complained the court's ruling precluded him from contesting whether the prosecution had proven each element of the crime beyond a reasonable doubt as is constitutionally required. 1/9/19RP 285. He explained he was relying on the prosecution's evidence to cast doubt on the State's case, but the court had not permitted these arguments. *Id*.

The prosecution asserted that by pointing to nonsensical things the defendant said and indicating this showed he did not have the intent to commit the crimes, the defense was essentially arguing diminished capacity. *Id*. at 286. The court agreed, explaining any argument asking jurors whether Mr.

Locken's behavior showed he could not form the intent to commit the crime was the same as arguing diminished capacity and the court had barred any argument about diminished capacity. 1/9/19RP 294.

A closing argument is defense counsel's "last clear chance to persuade the trier of act that there may be reasonable doubt of the defendant's guilt." *Herring*, 422 U.S. at 862.

Mr. Locken had the unequivocal right to argue the facts introduced into evidence did not show he acted with the intent necessary to commit the charged. *See In re Winship*, 397 U.S. 358, 363, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (holding proof beyond a reasonable doubt is "bedrock axiomatic and elementary principle whose enforcement lies at the foundation of our criminal law" (internal citation omitted).

But the court stopped him from making this argument about what the evidence showed and how it could be construed. 1/9/19RP 285-86. The court deemed the absence of a diminished capacity defense as precluding a fact-based argument encouraging jurors to conclude there was insufficient evidence Mr. Locken intended to threaten harm or intended to commit a

crime inside the Wiener's home when he wanted to look inside for his missing "wives." The Court of Appeals affirmed, parsing the court's post-trial explanation of his ruling as not actually precluding Mr. Locken from presenting a defense even though during the trial, the court summarily barred Mr. Locken from contending his conduct showed he was not intending to commit the charged crimes. *See* Motion for Reconsideration (discussing factual inaccuracies in Court of Appeals opinon).

Because Mr. Locken's intent to commit the charged crimes was critical to the case, and after the court stopped him from arguing this point, counsel was unable to continue his closing argument, this error cannot be proven harmless beyond a reasonable doubt. *Frost*, 160 Wn.2d at 782. Regardless of whether a defendant affirmative presents expert evidence of a mental disorder, an accused person retains the right to meaningfully contest whether the State's evidence showed they had the mental state required to commit the crimes charged.

3. The court improperly conflated diminished capacity with the right to challenge the State's evidence proving the intent to commit the crime.

Under current case law, diminished capacity evidence is not treated as a complete defense. *State v. Marchi*, 158 Wn. App. 823, 836, 243 P.3d 556 (2010). It is an available method of contesting the State's proof by offering an expert diagnosis of a mental disorder and expert opinion connecting this mental disorder to a defendant's inability to form the particular mental state required. *State v. Clark*, 187 Wn. 2d 641, 651, 389 P.3d 462 (2017). It is distinct from "observation testimony" that may "rebut" mens rea evidence. *Id*.

Here, the court treated evidence of diminished capacity as the sole available argument pertaining to Mr. Locken's plainly nonsensical behavior. It ruled that by arguing Mr. Locken's behavior, in looking for his lost alien wives, showed he could not have intended to commit a crime inside Ms. Weiner's house, this was an argument of diminished capacity that was not available to the defense to make. 1/9/19RP 285-86, 293.

By conflating a theory of diminished capacity with the right to present the defense involving insufficient evidence of

the requisite mental state, the court relied on the wrong legal test to limit the defense's ability to contest the case to the jury. The evidence showed Mr. Locken wanted to enter the Weiner's home not to commit a crime, but to find his wives. Ms. Wiener thought he was making no sense, and Mr. Wiener told him he was calling the cops because Mr. Locken was crazy. 1/8/19RP 166, 208.

The jury did not need to find Mr. Locken had a mental disorder to find that his intent was not to commit the charged crimes. The defense was entitled to argue that the jurors should look at Mr. Locken's behavior and the nonsensical things that were motivating him, and find the State had not met its burden of proof. By prohibiting this argument and rigidly ruling that absent a "mental defense" such as insanity or diminished capacity, the defense cannot encourage jurors to consider evidence of a person's apparent mental state, the court misapplied the law and denied Mr. Locken his right to hold the prosecution to its burden of proving all essential elements.

This Court should take review to clarify an accused person's right to challenge the prosecution's proof of an accused

person's mental state without evidence of an expert driven mental disorder meeting the threshold of diminished capacity. Due to the likelihood this issue will arise in other cases and the lack of clarifying case law, substantial public interest favors review. RAP 13.4(b).

E. CONCLUSION

Based on the foregoing, Petitioner Christopher Locken respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 17th day of August 2020.

Respectfully submitted,

NANCY P. COLLINS (28806)
SARA S. TABOADA (WSBA 51225)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER LEWIS LOCKEN, Appellant.	No. 79529-5-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — Locken appeals from convictions for two counts of second degree assault and one count of attempted first degree burglary. He contends that the trial court erroneously limited the scope of his counsel's closing argument. We affirm.

FACTS

The State charged Christopher Locken with attempted burglary in the first degree and two counts of assault in the second degree, each with a deadly weapon enhancement. The charges were based on an incident in which Locken allegedly attempted to enter a private residence in search of his wives and, subsequently, threatened the homeowners with "a miniature Samurai sword" and "spike" while outside of their home. Locken described one of his wives as an "alien" and his other wife as "an 11-year-old alien little girl with a green belly button." He also mentioned that a wounded dragon was in "the area somewhere."

Pretrial, Locken indicated that he was "ready to proceed to trial on the theory of general denial" and that he had "[n]o defenses of [i]nsanity" nor expert testimony. In response, the State moved in limine to prevent Locken from arguing diminished capacity or not guilty by reasons of insanity to the jury. Locken did not "have any objection to that" and the court granted the motion.[1]

During closing argument, Locken's counsel discussed the evidence presented at trial and began to discuss intent, in pertinent part, as follows:

> Ladies and gentlemen, part of most criminal crimes, there is an intent element. . . .
>
> You heard a lot of outrageous testimony yesterday. Alien wives. Dragon wives. Dragon laying in a field with slashes on its back. An alien girl with a green belly button who was wounded. All of these figures Mr. Locken is claiming to be his wives.
>
> . . . .
>
> Think about what he – what you heard through testimony about what Mr. Locken said.
>
> How could he have the intent to commit any of these crimes when he truly believes that he --

At that point, the State objected, asserting that Locken's argument violated the motion in limine. The court sustained the objection and Locken requested a sidebar on the issue. After the sidebar, the court adhered to its ruling.

Locken then resumed his closing argument and made the following brief remarks:

[1] Locken's counsel, however, explained that while Locken had previously filed a notice of intent to present a mental defense, Locken indicated to counsel "quite distinctly both personally and in writing that he wished to proceed under a theory of general denial."

> Okay. Ladies and gentlemen, I'm just asking you to take into account the statements that Mr. Locken – the testimony that you heard about what Mr. Locken had said and take that into account when you're deliberating today.

After the jury retired to begin deliberations, the court and parties put the sidebar on the record. Locken's counsel stated,

> Your Honor, it wasn't clear to me on what basis the Court sustained [the State's] objection.
>
> Intent is an element of the crime charged. We have a constitutional right to question whether or not the State has proven each of them [sic] element[s] of the crime beyond a reasonable doubt.
>
> . . . .
>
> That's all we'd intended to point out, which was if he had an intent, it wasn't to kidnap a 5-year-old boy or to otherwise harm somebody else. It was his intent to basically rescue one of his wives. We don't know which one.

The State clarified that its objection was based on the belief that Locken was arguing diminished capacity in violation of the court's pretrial order. The court then explained, "The argument up here which I heard . . . was that [the defense] w[as] violating the diminished capacity as to whether or not he could form intent. . . . And I ruled upon that argument. That's the basis." Locken's counsel then said,

> Okay. So that Your Honor's ruling was more limited than what it appeared to us to be at the bench. I now understand it.
>
> So the Court is saying, as I understand it, we could have in fact have continued arguing lack of intent based upon the facts.

(Emphasis added.)

The court again "emphasize[d]" that its ruling "was on the argument of diminished capacity" and "violating that ruling that was – he could not form his intent because of his mental capabilities."

The jury found Locken guilty as charged. He appeals.

DISCUSSION

Locken's sole argument is that the trial court violated his right to counsel and right to due process by restricting counsel's closing argument.

Where a trial court unduly limits the scope of defense counsel's closing argument, it may infringe upon a defendant's Sixth Amendment right to counsel. State v. Frost, 160 Wn.2d 765, 772, 161 P.3d 361 (2007). "We review the trial court's decision to limit closing argument for abuse of discretion." State v. Wooten, 178 Wn.2d 890, 897, 312 P.3d 41 (2013). "A court abuses its discretion 'only if no reasonable person would take the view adopted by the trial court.'" Id. at 897 (quoting State v. Huelett, 92 Wn.2d 967, 969, 603 P.2d 1258 (1979)). While counsel has considerable latitude in closing argument, such argument "must be restricted to the facts in evidence and the applicable law, lest the jury be confused or misled." State v. Perez-Cervantes, 141 Wn.2d 468, 474, 6 P.3d 1160 (2000).

Here, Locken claims that the trial court "grievously erred when it prohibited" his counsel from "arguing during summation that the State failed to meet its burden in proving intent." But, the record shows no such prohibition.

Locken declined to assert the defense of diminished capacity. Diminished capacity was not an issue before the jury, and argument on that topic had considerable potential for misleading the jurors. Thus, to the extent that his

counsel in closing was asking the jury to infer from the nature of his statements that he was incapable of forming the necessary intent, the court properly sustained the State's objection. And, afterward, counsel acknowledged that the court's ruling did not prevent it from arguing "lack of intent based upon the facts."

The trial court did not abuse its discretion in sustaining the State's objection during defense counsel's closing argument. Accordingly, the court did not violate Locken's right to counsel or right to due process. We affirm.

Appelwick, J.

WE CONCUR:

Chun, J.

Mann, C.J.

APPENDIX B

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

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER LEWIS LOCKEN,

Appellant.

No. 79529-5-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Christopher Locken, filed a motion for reconsideration. A majority of the panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied. Now, therefore, it is

ORDERED that the motion for reconsideration is denied.

Appelwick, 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. 79529-5-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:

☒ respondent Gregory Banks
[gregb@islandcountywa.gov]
Island County Prosecutor's Office
[ICPAO_webmaster@co.island.wa.us]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: August 17, 2020
Washington Appellate Project

WASHINGTON APPELLATE PROJECT

August 17, 2020 - 4:29 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	79529-5
Appellate Court Case Title:	State of Washington, Respondent v. Christopher Locken, Appellant
Superior Court Case Number:	17-1-00172-5

The following documents have been uploaded:

- 795295_Petition_for_Review_20200817162947D1456079_8451.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.081720-04.pdf

A copy of the uploaded files will be sent to:

- ICPAO_Webmaster@islandcountywa.gov
- greg@washapp.org
- gregb@islandcountywa.gov
- sara@washapp.org
- wapofficemai@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Nancy P Collins - Email: nancy@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200817162947D1456079