S.C. NO. 99308-4

NO. 79985-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TODD A. WEBSTER ,

Petitioner.

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

The Honorable Patrick Oishi

PETITION FOR REVIEW

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A IDENTITY OF PETITIONER

Mr. Todd Webster was the appellant in COA No. 799851-I.

B. COURT OF APPEALS DECISION

Mr. Webster seeks review of the decision issued Nov 9, 2020, in which the Court of Appeals wrongly violated Mr. Webster's right to present a defense, a right guaranteed to Mr. Webster by the Sixth Amendment to the United State's Constitution. Appendix A (decision).

C. ISSUES PRESENTED ON REVIEW

1. Did the Court of Appeals erroneously conclude that the proffered testimony of two Greenlake Plaza residents – members of a closely-knit group of long-term residents including elderly residents who stayed at the facility for virtually all of their meal and social activities and were highly aware of the reputation of other residents – had been aware for three years or more that the alleged victim's reputation for violence was bad?

2. Should this Supreme Court grant review to determine the legal issue of whether a reputation for "violence" can indeed be established and be admitted under ER 405 as to an alleged victim where the foundation for this reputation evidence came from members of a highly closely-knit community and the community's fear of Mr. Willis as violent, as shown by multiple episodes including instances of Mr. Willis throwing chairs over the fence of

the facility, breaking them, and yelling while he did so, causing at least one witness to believe that Willis was not taking his schizoaffective medication?

3. Was there any basis under ER 405 for the trial court to dismiss and deem irrational these elderly residents' knowledge of the reputation of this frightening member of their community for violence, simply because he had not yet actually battered or killed anyone?

4. Did the evidentiary rulings violate Mr. Webster's Fourteenth Amendment right to a fair trial under U.S. Const. amend. XIV?

5. Did the evidentiary rulings violate Mr. Webster's Sixth Amendment right to present a defense under U.S. Const. amend. VI?

D. STATEMENT OF THE CASE

On March 28, 2018, Seattle Police were called to the Greenlake Plaza, a Seattle Housing Authority (SHA) apartment building on NE 70th Street, to investigate a stabbing of resident Aron Willis. CP 2; RP 800, 853. Mr. Willis was found in his apartment bleeding from wounds around his head and neck area. CP 2. Todd Webster was outside waiting with Becky Hernandez, a long-time resident. Webster told police that he had gotten into an argument with Willis after Willis turned off the light in the basement laundry room where Webster and Hernandez were washing clothes. CP 2; RP 803, 853.

Webster said that Willis grabbed him by the throat and began to choke him, and Webster was able to pull out a pocket knife and use it in self-

defense. No charges were instituted because "Hernandez, who had also been in the laundry room, gave officers a statement backing up Webster's statement." CP 3. On April 6, Detective Mudd was able to retrieve surveillance video footage from two cameras in the SHA building basement. It depicted the basement elevator area, and the nearby laundry room, and showed Mr. Willis turning off the light and Webster and Hernandez in the laundry room when the light went out. CP 2-3. According to the detective, the video footage from the laundry room showed a fight between the two men, and showed Mr. Webster stabbing Mr. Willis after a punch thrown by Mr. Willis did not land, causing him to spin around with his back toward Webster. CP 2-3. The police were unaware at that juncture that Mr. Webster had cell phone audio and video footage of a portion of the incident wherein Mr. Willis can be heard telling Webster that he will 'kick his ass' in an area between the elevators and the laundry room which is out of view of the security cameras. Exhibit 8; RP 755-56. Mr. Webster was charged with second degree assault, and a deadly weapon enhancement. CP 1. The jury was instructed on self-defense, but Mr. Webster was convicted. CP 44. He was sentenced to a standard range term of 8 months. CP 55.

The complainant, Aron Willis, suffered from schizoaffective disorder, for which he was supposed to take Seroquel, Paxil, and Latuda. RP 760. He had lived at the SHA facility for 21 years. RP 715. Mr. Willis had

previously encountered Mr. Webster in the SHA facility while both of them were doing laundry, and in his testimony, he initially claimed that they had only spoken once. RP 719-20.

On March 28, Mr. Willis went outside to take out the trash and/or to look at the moon. RP 722. He returned to the building by going into the basement. Before taking the elevator up, he said that he went and turned off the lights to the nearby laundry room. RP 722. Mr. Willis admitted that he turned the lights off even though he had heard voices - and recognized Mr. Webster's voice in particular. RP 723. Mr. Willis also admitted that when he heard Mr. Webster, he "instantly got angry" because he remembered that Webster had said something disparaging about his girlfriend Ruth in 2017. RP 720, 723-24. Mr. Willis decided that he wanted an apology from Webster, so he went into the laundry room. RP 724. Mr. Willis hated Mr. Webster. RP 721. From that point, he said, everything happened fast. RP 724. Mr. Willis and Mr. Webster argued, and when Webster told Willis to go and take his medications, "that infuriated me." RP 727-28. Mr. Willis denied hitting Mr. Webster, but said he pushed him. RP 730. According to Mr. Willis, Mr. Webster stabbed him and "was trying to kill" him. RP 725.

Mr. Willis made other statements about the fight that led to the knife wounds. He admitted that when he entered the laundry room, he mocked Mr. Webster, used profanity, and told Mr. Webster he would beat him up. RP

728-29. Willis testified that what Mr. Webster had said about his girlfriend "all came back to me. It all came back to me." RP 729. Mr. Webster told Mr. Willis to get out of the laundry room, but Willis laughed. RP 730.

Becky Hernandez, who is autistic, had lived in the SHA residence for about 24 years, and she was friendly with Mr. Webster, who had lived there for about three years. RP 511, 517. She and Mr. Webster were doing their laundry when resident Aron Willis turned off the lights, and was flickering them on and off. Mr. Webster told Mr. Willis not to play with the lights, and "[t]hen Todd went after him a little bit," and the men got into a heated argument. RP 517-19, 524, 526. Then, Hernandez testified, Mr. Willis came into the laundry room, "and that's when their confrontation began." RP 519. After some fist-fighting, "Aron pushed him [Mr. Webster] on the wall, then he pushed Aron back, then Aron pushed him again." RP 519-20. Ms. Hernandez described how Aron pointed at the video camera, how more punches were thrown, and how "Aron pushed Todd." RP 521. According to Hernandez, Todd began or tried to begin filming Aron with his cell phone, but "Aron broke it, and a knife came out, then Mr. Webster stabbed Aron." RP 521-22. Hernandez revealed that after the incident, she had been spoken to by the complainant Mr. Willis, and by the SHA building manager, Jeff. Both men told Ms. Hernandez that she was wrong in stating that Mr. Willis forced Mr. Webster to act in self-defense that night. RP 592-93. The

manager of the building came to Ms. Hernandez's unit and said that the surveillance video did not show this - but Ms. Hernandez told the jury:

> That's what he said to me, and I said yes, it is true, I saw it with my own eyes, you weren't even there that night that I saw it, that I witnessed.

RP 593. Hernandez confirmed that during the fistfight, Mr. Willis tried to strangle Mr. Webster. "Aron pushed him [Mr. Webster on [the] edge" of a U-shaped hallway at the laundry room area, and "grabbed Todd's neck besides his sweater and pushed him." RP 526-27. Willis pushed Webster "backwards and he almost fell to the floor," and he kept "[p]pushing, grabbing, and then choking Todd, you know, strangling him." RP 527-28. Hernandez saw Willis do this "eight times . . trying to prevent Todd from standing up for himself to try to push Aron back." RP 529. Hernandez's testimony was inconsistent at times, however, she stated that Mr. Willis took the knife from Mr. Webster, and that Mr. Webster got cut when he took it back. RP 521-22. Hernandez repeated that Mr. Webster had to grab his knife back from Mr. Willis, but she did not see the moment when Willis took the knife from Mr. Webster. RP 549-50. She confirmed that Mr. Webster cut his hand, at some point, when the knife was being taken. RP 591. Ms. Hernandez did not see everything and "it happened so fast, you know, like faster than I could see things." RP 594-95.

After Mr. Webster chased Willis out of the laundry room, he came back and told Ms. Hernandez to call 911. RP 534. Hernandez dialed, and then handed the phone to Mr. Webster. RP 534. Mr. Webster left the knife on a washing machine and he and Hernandez went outside to wait for the police. RP 590. They stayed outside "to explain the whole thing to the cops." RP 534. Mr. Webster had a deep cut on his hand. RP 549.

E. ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION BY EXCLUDING EVIDENCE OF THE ACCUSER'S REPUTATION FOR VIOLENCE AS ATTESTED TO BY THE EXTREMELY CLOSE-KNIT COMMUNITY OF THE GREENLAKE HOUSING FACILITY, WHICH WAS ADMISSIBLE UNDER ER 405(a).

(a). Review is warranted; this Supreme Court should take Todd Webster's case, and reverse his conviction.

Where a defendant claims self-defense, evidence of the complaining witness's reputation for violence is admissible to establish that the victim was the first aggressor, and lawful self-defense renders the defendant's acts not an illegal assault. State v. Hutchinson, 135 Wn.2d 863, 886, 959 P.2d 1061 (1998). The error below was an abuse of discretion, was contrary to decisions of this Court and the Court of Appeals, and violated Mr. Webster's right to a fair trial under the Fourteenth Amendment and his right to defend under the Sixth Amendment. U.S. Const. amends. XIV, VI. This Court should take Todd Webster's case. RAP 13.(4)(b)(1), (2) (3).

(b). Evidence that the complaining witness had a reputation for violence is admissible in a self-defense case.

Reputation evidence is admissible where it is relevant under ER 401 and meets the requirements of ER 405(a). In a self-defense case, evidence of the victim's violent disposition, as shown by his reputation in the community, is relevant to the question of whether the victim acted in conformity with his character by provoking the incident as the first aggressor. State v. Becktel, No. 77149-3-I, 2019 WL 2092694, at *3 (Wash. Ct. App. May 13, 2019), review denied, 194 Wn.2d 1008, 451 P.3d 343 (2019) (clarifying that "in the self-defense context, reputation testimony is the only permissible method" of showing that the victim was the aggressor, because evidence of specific instances of conduct is inadmissible) (unpublished, cited as persuasive authority only pursuant to GR 14.1). The Rule provides:

> **(a) Reputation.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to **reputation**. On cross examination, inquiry is allowable into relevant specific instances of conduct.

(Emphasis added.) ER 405(a). On this evidentiary question, a trial court abuses its discretion when it acts in a manner that is manifestly unreasonable or rules based on untenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d at 26. In this case, the trial court abused its discretion when it prevented the defense from calling two witnesses who would have testified that Mr. Webster had a reputation among the residents at the

Greenlake Plaza SHA facility, that it was a reputation for violence, and that his reputation for violence was bad.

(c). The defense proffered two witnesses who testified in an offer of proof that Mr. Willis' reputation for violence amongst the 130-person Greenlake SHA facility was bad.

Where a defendant claims self-defense, evidence of the complaining witness's reputation for violence is admissible to establish that the victim was the first aggressor, and lawful self-defense renders the defendant's acts not an illegal assault. Becktel, supra; State v. Hutchinson, 135 Wn.2d at 870-71, 886. The complainant's known reputation for violence in his community is admissible, to assist the jury in evaluating whether the accuser provoked the altercation, even if the defendant was unaware of his reputation for violence. State v. Callahan, 87 Wn. App. 925, 934, 943 P.2d 676 (1997); State v. Alexander, 52 Wn. App 897, 900-01, 765 P.2d 321 (1988); State v. Stepp, 18 Wn. App. 304, 311, 569 P.2d 1169 (1977); State v. Cloud, 7 Wn. App. 211, 218, 498 P.2d 907, 912 (1972); State v. Adamo, 120 Wash. 268, 207 P. 7 (1922); State v. Newbern, 95 Wn. App. 277, 975 P.2d 1041 (1999). Such proof may be made by testimony as to the person's reputation under ER 405(a). Contrary to the Court of Appeals decision, the present case does not compare unfavorably to Hutchinson, supra. There, the defendant who had shot Island County Sheriff's Deputy Heffernan, claimed self-defense. Hutchinson, at 875. The argument was specious as a whole, because

abundant evidence showed that the defendant was arrested, driven to the Coupeville sheriff's office where the two arresting deputies locked their firearms in a lockbox per office procedure, then led the defendant to the breathalyzer room. Hutchinson, at 867. There, the defendant pulled a handgun from his waistband that the deputies had not detected when arresting Hutchinson, and shot both deputies in the head at close range. Hutchinson, at 867-68. The trial court allowed Hutchinson to introduce reputation evidence, but excluded evidence of character, and evidence of specific acts by Deputy Heffernan, the latter two categories of evidence being clearly prohibited by ER 404(a), and ER 404(a) and (b). Hutchinson, at 886.

According to the decision, the court also excluded evidence that the deputy "was" intimidating or rude. Hutchinson, at 886-87. It is unclear if this evidence was excluded because no adequate community was established – the defendant only having been able to proffer local opinions about the sheriff's office – or if it was not pertinent to violence, or because it was opinion evidence or evidence of character or past acts, which may not be admitted. See Hutchinson, at 886-87. The discussion of the case in State v. Duarte Vela, 200 Wn. App. 306, 324-25, 402 P.3d 281 (2017), review denied, 190 Wn.2d 1005 (2018), appears to make clear that the disputed issue was the difference between evidence of prior acts or character (inadmissible) and evidence of reputation (admissible).

Regardless, the present case does not involve a defendant seeking to introduce evidence that the victim was merely rude or intimidating. The defense-proffered reputation evidence was supported by foundational evidence that the witnesses knew of Mr. Willis' reputation in the community. Ms. Christina Sargent had lived at Greenlake Plaza SHA facility for three years. RP 821-22. She testified, "From 2017, August to January, there was aggression issues that were coming up that people were getting like afraid." RP 822. Webster had a bad reputation for violence:

> Q: Okay.· And did he develop, to your knowledge -- in speaking with other people, did he develop a reputation among the tenants?
> A: Yes.
> Q: And was that a reputation for violence?
> A: Yes.
> Q: And was his reputation good or was it bad?
> A: Bad.

RP 822. Further, Christine Hadfield would also testify that, "especially in regards to in [sic] March of 2018," Ms. Hadfield was aware of Mr. Willis' reputation for violence, and it was bad. RP 834.

Despite the foundational evidence above, the trial court excluded both Sargent and Hadfield, appearing to agree with the prosecutor's argument that a reputation for violence, to be admissible, must be demonstrated by actual acts of physical violence toward a person. The prosecutor argued that the proffered defense witnesses had attested to Mr. Willis' reputation for verbal violence and his demeanor, but had not shown that Willis had engaged in

"acts of violence with other people." RP 843. This was factually and legally incorrect. Yet the court ruled the defense had not established Willis had a reputation for "violence as in physical violence versus a person" and that the witnesses' testimony had "nothing to do with physical violence" but instead involved mere rudeness and inappropriate language or discomfiting facial gestures. RP 843. This ruling was an abuse of discretion.

(d). Both witnesses knew of Mr. Willis' reputation for violence in a relevant "community."

A witness offering reputation testimony must lay a foundation establishing that the subject's reputation is based on perceptions in the relevant community. State v. Callahan, 87 Wn. App. at 934. The reputation must exist within a neutral and generalized community. Callahan, at 934; see also 5A Karl B. Tegland, Washington Practice: Evidence § 405.2, at 4 & n. 8 (5th ed.2007). Some factors that will establish a relevant community include "the frequency of contact between members of the community, the amount of time a person is known in the community, the role a person plays in the community, and the number of people in the community." State v. Land, 121 Wn.2d 494, 500, 851 P.2d 678 (1993).

Thus, in Land, reputation evidence was properly admitted when its proponent established that the "wood shook" manufacturing community was close-knit, the defendant had acted as a salesman in the community for several years, he had numerous personal contacts with various members of

the community, and through these contacts, had developed a well-known bad reputation. Land, 121 Wn.2d at 496. In contrast, in Callahan, the individual's reputation within the criminal justice system was neither neutral nor sufficiently generalized to be a community. Callahan, at 935. But his workplace was deemed a neutral community, where the individual "worked the night shift, sometimes seven days a week, at a plant that employed over 1,100 people." Callahan, at 936.

Under these rules, the Greenlake SHA facility was a definite community for purposes of highly reliable reputation evidence. See RP 841-42, 845. Washington has always considered the community in which one resides as the generally relevant community for purposes of reputation. Callahan, at 936 (citing State v. Swenson, 62 Wn.2d 259, 283, 382 P.2d 614 (1963); see Land, 121 Wn.2d at 500-01 (holding that communities other than the one in which a person resides, such as the community in which one works, can be a relevant community for purposes of reputation evidence). Mr. Willis's reputation was in the community that would most accurately hold him as having a reputation for violence under ER 405. The proffered defense witnesses were very aware of Mr. Willis' reputation in that large, but close community that interacted frequently and substantially within the facility. Ms. Sargent had lived in the facility with Willis for three years, in a community environment in which she would

exchange greetings with Mr. Willis, along with making dinners in which she offered him food. RP 823. Ms. Sargent also explained that the SHA facility, which had approximately 130 residents, included many areas open to all the residents, such as the lobby, a community room, and a downstairs or back door lobby area. Ms. Sargent spoke with other residents daily, and had conversations about Mr. Willis. RP 821-22.

Similarly, Hadfield testified that she had lived at the Greenlake SHA facility for 20 years. RP 832-33. She spent a lot of time in the large community room, and during the tenants' socializing, they had talked about Mr. Willis. RP 834. The Greenlake SHA facility was a "community" for purposes of reputation evidence under ER 405(a).

(e). Both witnesses knew of Mr. Willis' reputation for violence, which caused people to be afraid, and a rule that actual assaultive conduct or killing is the only basis for reputation evidence is inconsistent with the purpose of aggressor evidence.

Ms. Sargent and Ms. Hadfield were more than competently able to testify that Mr. Willis had a reputation for violence, and that it was bad. RP 822, 834. The State argued, and the court held, that the reputations for violence known to Ms. Sargent and Ms. Hadfield were not supported by specific instances of physical violence toward a person. RP 843. This was error. Of course, specific instances of conduct are precisely what is not admissible under ER 405(a). Becktel, supra. Both defense witnesses testified that they were aware of Mr. Willis' *reputation* for violence, and that

it was bad. The foundational requirements of the rule were met. The two reputation witnesses testified precisely to just that -- Mr. Willis' reputation for having a violent disposition. Evidence of such a disposition is admitted to show that the complainant may have been the aggressor. Callahan, at 934 (citing Cloud, 7 Wn. App. at 217-18). Mr. Webster's witnesses based their reputation testimony on Mr. Willis' reputation for physical and verbal acts, that frightened the population of the Greenlake SHA facility. This sort of reputation evidence is admissible to support the inference that the victim was the aggressor in the altercation with Mr. Webster.

Although the witnesses described conduct by Willis that did not rise to the level of actual assaults on a SHA residents, they testified in detail about a range of behavior that created, in Willis' community, a reputation for violence. The absence of a showing that Mr. Willis had not yet physically attacked someone at the SHA facility does not defeat evidence of his reputation for having a violent disposition. Thus Ms. Sargent testified that Willis' reputation for violence was based on him being "volatile because of his facial expressions [and] body language, but also because of an incident where Mr. Willis was throwing chairs over the fence" of the SHA facility. RP 826. Sargent testified that "there was several incidents that [sic] he [Willis] was aggressive." RP 827. These included multiple chair throwing incidents, one of which Sargent watched, and all of which affirmed

Willis' reputation in the community for being violent. RP 829. When the trial court inquired of the witness, Ms. Sargent made clear that Willis had a reputation for violence that was widely held, and explained why that was so:

> THE COURT: Okay. So I'm trying to back up. As far as his reputation that you're talking about, how many people told you about concerns for violence?
> THE WITNESS: One, two, three, four -- five or six.
> THE COURT: So five or six people actually told you what?
> THE WITNESS: That he was throwing chairs; that his demeanor was gruff with him or they were afraid. One person was afraid and they thought he might have been off his meds because he was throwing the chairs and yelling.
> THE COURT: And again, this is all before the incident with Mr. Webster.
> THE WITNESS: Yeah. Yeah. Two times -- three times before. Two people told me they were there watching the chairs being thrown. Someone asked me about the chairs being thrown and I said well, Aron did this, and then they brought up the information when they had interactions with Aron.

RP 830-31. For her part, Ms. Hadfield testified that Willis was emotionally and verbally violent, and described that the throwing of "our property, chairs, over the fence" also involved "breaking them." RP 836-38. Hadfield stated that prior to the incident between Mr. Webster and Mr. Willis, she and the other tenants had talked about Mr. Willis' "general reputation for violent actions," and that reputation was bad. RP 839-41 (also describing Willis' "angry demeanor.").

An individual's reputation of this nature, including a reputation for throwing chairs over the fence of his residence and breaking them while yelling and while possibly not taking his important psychiatric medication, is

a reputation for violence. This was more than adequate as a foundational matter undergirding the two witnesses' proffered reputation testimony. Certainly, the reputation evidence in this case was not based merely on community beliefs that Mr. Willis was simply rude or intimidating. It is not necessary that a person actually physically assault another person to be an "aggressor," therefore, Mr. Willis need not have had a reputation for actual criminal assaults on individuals in order to have a reputation for violence that tends to show he started the fight in the laundry room. See also, e.g., State v. Wingate, 155 Wn.2d 817, 823, 122 P.3d 908 (2005) (discussing what sort of acts will be deemed "first aggression").

(f).Reversal is required.

Evidentiary error is grounds for reversal if the error is prejudicial, such that the error, within reasonable probabilities, changed the outcome. State v. Asaeli, 150 Wn. App. 543, 579, 208 P.3d 1136 (2009). Further, the Fourteenth Amendment provides, in relevant part, that "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. And the Sixth Amendment protects the right to present defense. State v. Jones, 168 Wn. 2d 713, 720, 230 P.3d 576 (2010) (citing Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973)); U.S. Const. amend. VI.

First, the context of the present case involves an accuser who admitted to entering the laundry room full of anger at the defendant. A portion of the encounter between the accuser and the defendant is not visible on any security camera footage, and the accuser's threat of violence - and his announcement that he could 'kick Mr. Webster's ass' because of that absence of camera coverage - weighed strongly against proof of an absence of self-defense. On top of this, the eyewitness testified that Willis did attempt to strangle Mr. Webster. And the defendant's neck showed physical evidence of injury. Finally, Mr. Webster's primary witness, Becky Hernandez, offered inconsistent testimony, but her statements close in time to the incident – here, that very night – was that Todd Webster was defending himself.

In this context of an extraordinarily close case, it was outcome-determinative that the jury did not learn of Mr. Willis' reputation for violence. The jury needed to hear from witnesses Sargent and Hadfield that Mr. Willis' reputation, in the tight-knit community of the SHA Greenlake facility made up of 130 individuals who spent a great deal of time together in communal facilities, was for violence. This would have materially affected the verdict, by showing that Mr. Willis was not only angry at Mr. Webster that night, but was in fact violently aggressive toward him.

Overall, the State certainly could not have disproved self-defense in the absence of the error. State v. Walker, 40 Wn. App. 658, 662, 700 P.2d

1168 (1985). But crucially, Mr. Webster could be convicted, even if he reasonably believed he was about to be injured, if the State proved that the force he used to repel Mr. Willis was "more than is necessary." RCW 9A.16.020(3). Without evidence of Mr. Willis' violent reputation, the jury understandable issued a guilty verdict, rather than doing what it would have done absent the errors - find that Mr. Webster did defend himself against a violent attacker, that he did so in reasonable and actual belief that he was in danger of being injured, and that he used only necessary force.

But the United States Constitution and the Washington State Constitution guaranteed Mr. Webster's right to a fair trial and his right to present a defense. U.S. Const. amend. VI, XIV; State v. Arndt, 194 Wn.2d 784, 453 P.3d 696 (2019); State v. Clark, 187 Wn.2d 641, 389 P.3d 462 (2017). An evidentiary ruling that violates the defendant's constitutional rights is presumed prejudicial. (Emphasis added.) State v. Franklin, 180 Wn.2d 371, 377 n.2, 325 P.3d 159 (2014). A claim of a denial of the right to present a defense is a matter that the Court of Appeals reviews de novo. State v. Jones, 168 Wn.2d at 719. Here, Mr. Webster's right to present a defense was violated where the trial court excluded admissible evidence of reputation. See Becktel, supra, discussing reputation evidence and State v. Hutchinson, supra). This evidence was extremely pertinent and of great weight for purposes of the pivotal question whether Mr. Webster was

defending himself against a violent aggressor, as the defense had to argue in closing without the benefit of the two crucial reputation witnesses. RP 952, 954. The State must disprove self-defense and prove an unlawful assault beyond a reasonable doubt. State v. Acosta, 101 Wn.2d 612, 615, 621, 623, 683 P.2d 1069 (1984), U.S. Const. amend. XIV. Excluding pivotal evidence of the victim's violent reputation necessary to show that he was the aggressor gravely impinged his right to defend against the State's allegation that he had committed an illegal assault. See State v. Stark, 158 Wn. App. 952, 960, 244 P.3d 433 (2010); State v. Wasson, 54 Wn. App. 156, 772 P.2d 1039, review denied, 113 Wn.2d 1014 (1989) (giving of instruction as to defendant being "first" aggressor violated his right to gain acquittal based on self-defense).

F. CONCLUSION

Based on the foregoing, this Court should accept review and reverse Todd Webster's judgment and sentence.

Respectfully submitted this 9th day of December, 2020.

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. TODD ANDERS WEBSTER, Appellant.	)	No. 79985-1-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, J. — Todd A. Webster seeks reversal of his conviction for assault in the second degree. He argues that the State failed to comply with its disclosure obligations under CrR 4.7 and the Fourteenth Amendment before trial and that the court erred during trial by limiting his impeachment of an eyewitness, excluding reputation testimony, and refusing to instruct the jury on the lesser included offense of fourth degree assault. Webster also raises multiple issues in a pro se statement of additional grounds for review. Finding no error, we affirm.

FACTS

In 2018, Todd Webster, Becky Hernandez, and Aron Willis were tenants at Greenlake Plaza Apartments, a Seattle Housing Authority apartment building. On March 28, 2018, Webster and Hernandez were in the building's laundry room when Willis turned off the light. An argument and fist fight between Webster and Willis ensued. Webster recorded part of the argument on his cell phone, which was

knocked to the ground and broken during the altercation. Eventually, Webster pulled out a pocketknife and began stabbing Willis. Much of the incident was recorded on the building's security cameras.

Webster and Willis both called 911. When the police arrived, Webster was outside smoking a cigarette and bleeding from a cut on his hand. Seattle Fire Department paramedics bandaged his hand, and he was later taken to the hospital. Responding police officers observed a fresh blood trail through the building's laundry room, parking lot, lobby, elevator, and stairwell. They found a folding knife with a two-inch blade that was open and covered in blood on top of a washing machine in the laundry room. Seattle Police Officer Vrndavana Holden spoke with Hernandez and took her statement about the incident.

Responding officers discovered Willis curled up in a pool of blood on the floor just inside the door of his apartment. Willis was awake and alert. Paramedics noted stab wounds to Willis' left cheek, left bicep, the back of his right shoulder, and the front of his left shoulder. They observed an abnormal respiratory rate and lung sounds and decided to intubate Willis out of concern that air or blood in his thoracic cavity was affecting his ability to breathe. Willis was transported to Harborview Medical Center and remained in the intensive care unit until his discharge on April 2, 2018.

About two weeks after the incident, Webster was charged with assault in the second degree and arrested. When he was taken into custody, Webster was in possession of three cell phones. Defense counsel inquired about the phones and was initially told that there were no cell phones in evidence. On July 5, 2018,

the State informed defense counsel that it had located the cell phones, which had been logged under a different case number. The State suggested that Webster consent to a limited search of the phones to retrieve the footage to avoid the more time-consuming process of obtaining a warrant to search the phones. No reply appears in the record.

A week later, defense counsel emailed the State with "a video from the phone in Mr. Webster's pocket" appearing to show parts of the incident and containing a recording of Willis' voice saying, "There's no cameras here . . . I can fucking kick your ass." The State asked how defense counsel had obtained the video. Defense counsel did not respond via email, but a prosecutor submitted a declaration stating that defense counsel had said that the video was on a phone that Webster's brother had retrieved from Webster's apartment. On July 17, 2018, the State emailed defense counsel regarding the surveillance video and cell phone video and making a plea offer. The defense does not appear to have renewed its request to review the contents of the phones in evidence.

On May 6, 2019, Webster filed a motion to dismiss under CrR 8.3, arguing, among other things, that the State had committed misconduct when it failed to preserve and turn over the cell phones. In the motion's certification of facts, defense counsel declared that defense witness Christina Sargent had indicated in the State's interview on May 2, 2019 that she had seen a video on Webster's phone in which a person was "coming at Todd saying 'I'm going to kill you.'" Webster acknowledged the recording obtained from his brother but argued that he was "not able to recreate the time date and time stamp that it was recorded" without the

phone. He also argued that he had not been able to examine the phones to see if any other footage from the night of the incident existed and that he "may be unable to provide a foundational witness to introduce" the cell phone video. The court denied the motion, finding that Webster had not shown that there was arbitrary action or government misconduct or shown prejudice affecting his right to a fair trial.

The State called Hernandez to testify at trial. Hernandez is autistic. She lives independently at Greenlake Plaza, and a counselor assists her with things like paying bills and budgeting. Hernandez testified that, on the night of the incident, she went to the basement of the building to do her laundry. Webster was in the laundry room, and Hernandez chatted with him a bit. While they were in the laundry room, Willis came in and turned off the lights. Webster "got on [Willis'] case about turning off the lights," and the two began arguing. They then began pushing each other and throwing punches. Hernandez described Willis "[p]ushing, grabbing and then choking [Webster], you know, strangling him." Webster pulled out his cell phone and began recording the altercation. The phone fell to the ground and broke. Hernandez initially testified that Willis had smashed the cell phone on the ground and stomped on it. However, when the State showed Hernandez the surveillance video in court, she admitted that she had not actually seen Willis stomp on the cell phone but had heard the phone crack when it hit the ground. After the phone broke, Webster pulled out a pocketknife and began stabbing Willis. Hernandez testified that, when Webster was stabbing Willis, he said, "Don't you ever break my cell phone again."

Before cross-examination, defense counsel indicated that she intended to impeach Hernandez's in-court testimony with a prior inconsistent statement that she had made to Holden on the night of the incident. Defense counsel made an offer of proof that, on the night of the incident, Hernandez had indicated that Willis pushed Webster after choking him and that Webster took out the knife to defend himself. The court agreed "that statement appears to be a prior inconsistent statement that's ripe for impeachment." The court also stated that it would allow impeachment on the following statement made by Hernandez on the night of the incident: "So all that blood, he splattered all over him after he got mad at that guy and said don't because he was choking [Webster], so [Webster] had to defend himself. He had to defend himself because he thought he was going to hit me also, that other guy." The court did not allow impeachment using parts of Hernandez's statement in which she "seem[ed] to be speculating and kind of getting into people's minds." Defense counsel also sought to impeach Hernandez's testimony that Webster made a statement about breaking his phone while he was stabbing Willis, which the court permitted.

On cross-examination, Hernandez initially denied that she thought Willis might hit her during the altercation but then admitted that she had made a statement to that effect to the police on the night of the incident. She agreed with defense counsel's question that "maybe now you're not afraid, but at that moment you were afraid?" Hernandez also agreed that she had told the police that Webster acted in self-defense and that, before Webster took out his knife, Willis pushed Webster and Webster took out his phone and tried to get Willis to leave them alone.

However, Hernandez maintained that Webster was angry because Willis broke his phone:

> [DEFENSE:] . . . Becky, you told the police officer that Todd got out the knife to scare Aron away; isn't that right?
> [HERNANDEZ:] No, to express that he was angry at Aron for breaking his cell phone, because he got angry about someone breaking his cell phone like Aron who broke the cell phone. He got angry about that.
> [DEFENSE:] I understand that's what you said today. I'm asking what you told the police officer?
> [HERNANDEZ:] That's what I told the police officer, yeah.
> [DEFENSE:] That is what you told the police officer?
> [HERNANDEZ:] Yes. At that time.
> [DEFENSE:] The first night?
> [HERNANDEZ:] Mm-hm.
> [DEFENSE:] Okay.

Defense counsel did not attempt to show Hernandez the statement that she had made to Holden but elicited that Willis and the building manager at Greenlake Plaza had spoken with Hernandez about the incident between the time she gave her statement to the police and the trial.

During cross-examination of Holden, defense counsel began asking questions about Hernandez's statements on the night of the incident. The State objected, stating that it did not think this was "proper impeachment and it's bordering on eliciting hearsay as well." Outside the presence of the jury, defense counsel explained that the line of questioning was intended to impeach Hernandez's trial testimony that she told Holden the night of the incident that Webster had used his knife because he was angry that his phone was broken:

> What I would like to be clear to the jury is until testimony on direct, there was no evidence that she said to Officer Holden that Mr. Webster used the knife because he was angry his phone was broken which is what she said on direct, and she did not say that to Officer Holden the night that this occurred.

The court pointed out that Hernandez had admitted making prior inconsistent statements during cross-examination and indicated that it did not view the challenged piece of Hernandez's testimony as inconsistent with her prior statement. Defense counsel was not permitted to elicit testimony that Hernandez had not made the prior statement to Holden.

Webster sought to have two witnesses, Christina Sargent and Christine Hadfield, testify that Willis had a reputation for violence in the Greenlake Plaza community. The State objected on foundational grounds. The court held a hearing outside the presence of the jury to determine whether an appropriate foundation for the reputation testimony could be established. Sargent testified that she lived at Greenlake Plaza in March of 2018 and had been living there for about three years at the time. The building had at least 130 residents and contained a number of community spaces. Sargent spoke with other tenants in the community room every day. She testified that she had spoken with other tenants about Willis a couple of times when she first moved in. Sargent stated that he had a bad reputation for violence.

On cross-examination, Sargent admitted that her interactions with Willis at Greenlake Plaza were limited. She acknowledged telling the prosecutor that, before the stabbing, she thought Willis was a "nice guy." She admitted that she had never seen or heard of Willis acting violent toward anyone in the building apart from the incident with Webster. She noted that she had heard about Willis throwing chairs over the fence and yelling, but no one had ever told her before this incident that Willis was violent toward people.

Sargent stated that she developed the opinion that Willis was violent after the altercation with Webster. She described instances in which Willis would not move out of the way to let her pass, made a nasty remark and would not get into an elevator with her, and posted something on the community room wall. She admitted that all of these instances had taken place after Willis' altercation with Webster and that she believed he was acting this way toward her because he heard that she was supporting Webster. On redirect examination, Sargent stated that Willis' reputation among the tenants developed before the incident with Webster.

The court then inquired whether Willis had a reputation for violence within the community at Greenlake Plaza before the date of the incident. Sargent responded, "Not with people, but we were becoming concerned." She clarified that five or six people had told her "[t]hat he was throwing chairs; that his demeanor was gruff with him or they were afraid. One person was afraid and they thought he might have been off his meds because he was throwing the chairs and yelling."

Hadfield testified that she had lived at Greenlake Plaza for almost twenty years. She stated that she spent a lot of time in the community room socializing with other tenants. She testified that she had spoken with other tenants about Willis and that he had a bad reputation for violence in March of 2018.

On cross-examination, Hadfield admitted describing his reputation for violence to the prosecutor by saying that Willis had a habit of looking straight ahead with a funny expression on his face and sometimes would not respond to her greetings. She also indicated that she had never seen or heard of Willis being

physically violent toward another person. She stated that the description of Willis as violent was "based on emotional violence," meaning "[t]he way he spoke to people," and throwing chairs over the fence. Hadfield also described Willis' "verbal violence," recounting an incident three weeks before in which she said hello to Willis and he "said some cuss words at [her]." She stated that she had heard from a few people that Willis speaks to people in an unkind way.

The court asked Hadfield for specific examples of issues and concerns that people in the community were talking about before the altercation between Willis and Webster. Hadfield stated that "people were speaking of Aron Willis in an emotionally violent way, not physically violent, but emotionally and verbally violent." She also stated that he had a very angry demeanor.

The court ruled that the witnesses could not establish the proper foundation for a reputation of "violence as in physical violence versus a person." The incidents described by Sargent and Hadfield had "nothing to do with physical violence; it has to do with the fact that perhaps Mr. Willis is rude."

Webster proposed a jury instruction on the lesser included offense of assault in the fourth degree, which the court declined to give. The jury found Webster guilty of second-degree assault with a deadly weapon enhancement. He received a 15-month standard range sentence. Webster appealed.

ANALYSIS

I. Disclosure

Webster argues that the State fail to comply with its obligations under CrR 4.7 and the Fourteenth Amendment by failing to turn over video footage from

Webster's cell phone. We review alleged due process violations de novo. State v. Mullen, 171 Wn.2d 881, 893, 259 P.3d 158 (2011).

The State is obligated to turn over evidence in its possession that is both favorable to the defendant and material to guilt or punishment. CrR 4.7(a)(3); In re Pers. Restraint of Rice, 118 Wn.2d 876, 887, 828 P.2d 1086 (1992). Suppression of such evidence violates due process "irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). "Evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Rice, 118 Wn.2d at 887 (quoting U.S. v. Bagley, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)). The question when determining whether a reasonable probability of a different result exists "is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles v. Whitley, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

To show a violation of Brady v. Maryland, a defendant must establish that (1) the evidence at issue is favorable to the defendant either because it is exculpatory or because it is impeaching, (2) the evidence was willfully or inadvertently suppressed by the State, and (3) prejudice has ensued. Mullen, 171 Wn.2d at 895.

Here, Webster cannot show a Brady violation because he has not demonstrated prejudice. The record shows that the cell phone video obtained by

the defense from Webster's brother captured the incident beginning before Willis entered the laundry room and ending when Webster's phone was knocked to the ground. The video was admitted as an exhibit during Willis' testimony and shown to the jury. That phone and its video had not been in the State's possession. There was no indication that Webster was filming on multiple phones. Because Webster has not shown that he was prejudiced by the State's failure to turn over Webster's other cell phones that were in evidence, he has not proven that the State violated its obligations under Brady.

II. Impeachment

Webster contends that the trial court erred in preventing him from impeaching Hernandez through Holden's testimony. We review a trial court's determinations regarding the admissibility of evidence and the scope of cross-examination for an abuse of discretion. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997); State v. Dixon, 159 Wn.2d 65, 75, 147 P.3d 991 (2006). A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. Stenson, 132 Wn.2d at 701.

Any party may challenge the credibility of a witness. ER 607. Impeachment evidence is relevant and potentially admissible if it tends to cast doubt on the credibility of the person being impeached and if the person's credibility is a fact of consequence to the action. State v. Allen S., 98 Wn. App. 452, 459–60, 989 P.2d 1222 (1999). "In general, a witness's prior statement is admissible for

impeachment purposes if it is inconsistent with the witness's trial testimony." State v. Newbern, 95 Wn. App. 277, 292, 975 P.2d 1041 (1999).

ER 613 provides that extrinsic evidence of a prior inconsistent statement is not admissible unless the witness is first given an opportunity to explain or deny the inconsistency. ER 613(b). "Proper impeachment by prior inconsistent statement utilizes a procedure in which the cross examiner first asks the witness whether he made the prior statement." State v. Babich, 68 Wn. App. 438, 443, 842 P.2d 1053. If the witness admits making the prior inconsistent statement, extrinsic evidence of the statement is inadmissible. Dixon, 159 Wn.2d at 76. However, if the witness denies the prior statement, extrinsic evidence of the statement is generally admissible. Babich, 68 Wn. App. at 443.

During cross-examination, Hernandez admitted that a number of her statements on direct examination were inconsistent with her prior statements to police. She confirmed that Willis had pushed and choked Webster before Webster took out the knife. She also admitted that she had initially told the police that Webster stabbed Willis in self-defense. Hernandez maintained, however, that she told Holden that Webster pulled the knife because he was angry over his broken cell phone. In response to this testimony, defense counsel did not confront Hernandez with her recorded statement to Holden to establish she had not in fact made such a statement to police. Because Webster did not give Hernandez the opportunity to explain or deny any prior inconsistency, the trial court did not abuse its discretion in denying Webster's request to introduce extrinsic evidence of the prior statement.

III. Exclusion of Witnesses

Webster next contends that the trial court erred in excluding testimony from two witnesses who would have testified to Willis' reputation for violence in the Greenlake Plaza community. We review a trial court's decision regarding the sufficiency of the foundation for proffered reputation testimony for an abuse of discretion. State v. Callahan, 87 Wn. App. 925, 935, 943 P.2d 676 (1997).

Evidence of a person's character is generally not admissible to show that they acted in conformity with their character on a particular occasion. ER 404(a). An exception to this general rule exists for "[e]vidence of a pertinent trait of character of the victim of the crime." ER 404(a)(2). Evidence of a character trait "must be in the form of reputation evidence, not evidence of specific acts." State v. Hutchinson, 135 Wn.2d 863, 886, 959 P.2d 1061 (1998), abrogated on other grounds by State v. Jackson, 195 Wn.2d 841, 467 P.3d 97 (2020). Reputation evidence must be based on "the witness's personal knowledge of the victim's reputation in a relevant community during a relevant time period." Callahan, 87 Wn. App. at 934.

In State v. Hutchinson, the Washington Supreme Court noted that the trial court properly excluded "several witnesses who would have testified only that [the victim] was intimidating, or rude" because this testimony would not have been sufficient to show the victim's reputation for violence. 135 Wn.2d at 886. The same is true in this case. Sargent and Hadfield both admitted that they had not heard of any instances in which Willis was physically violent toward another person. Their testimony indicated that Willis' reputation was largely based on his

general rudeness and angry demeanor. Although both cited the chair-throwing incident as a basis for Willis' reputation, the trial court did not abuse its discretion in determining that this did not indicate that Willis had a reputation for physical violence toward others.

IV. Jury Instructions

Webster next contends that the trial court erred in refusing to give his requested jury instruction on the lesser included offense of fourth degree assault.

Washington courts analyze whether a defendant is entitled to an instruction on a lesser included offense under the two-pronged test outlined in State v. Workman, 90 Wn.2d 443, 447–48, 584 P.2d 382 (1978). "First, each of the elements of the lesser offense must be a necessary element of the offense charged. Second, the evidence in the case must support an inference that the lesser crime was committed." Id. (citations omitted). These two conditions are referred to as the "legal prong" and "factual prong" of the test, respectively. State v. Berlin, 133 Wn.2d 541, 546, 947 P.2d 700 (1997).

We review the trial court's conclusion on the legal prong de novo and review a determination that the factual prong was not satisfied for an abuse of discretion. State v. Condon, 182 Wn.2d 307, 315–16, 343 P.3d 357 (2015). The parties agree that the legal prong of the Workman test was satisfied. The trial court refused to give the requested instruction because it ruled that the factual prong was not satisfied. We review this decision under the abuse of discretion standard.

Under the factual prong of the Workman test, "the evidence presented in the case [must] support an inference that only the lesser offense was committed,

to the exclusion of the greater, charged offense." Condon, 182 Wn.2d at 316. When assessing whether the evidence was sufficient to support the requested 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). However, "the evidence must affirmatively establish the defendant's theory of the case—it is not enough that the jury might disbelieve the evidence pointing to guilt." Id. at 456.

A party commits second degree assault when they "[i]ntentionally assault[] another and thereby recklessly inflict[] substantial bodily harm" or "[a]ssault[] another with a deadly weapon." RCW 9A.36.021(1)(a), (c). "A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another." RCW 9A.36.041(1). Therefore, to satisfy the factual prong of the Workman test, the evidence must show that Webster did not inflict substantial bodily harm on Willis and that the pocketknife was not a deadly weapon.

"Substantial bodily harm" is defined as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW 9A.04.110(4)(b). Webster argues that the stab wounds do not meet this definition because Willis' hospital records described the wounds as "superficial," meaning that the cuts did not go beyond the skin and muscle tissue and into the chest cavity.

"[T]he term 'substantial,' as used in RCW 9A.36.021(1)(a), signifies a degree of harm that is considerable and necessarily requires a showing greater than an injury merely having some existence." State v. McKague, 172 Wn.2d 802, 806, 262 P.3d 1225 (2011). Washington courts have upheld jury findings of substantial bodily injury based on less severe temporary disfigurement than Willis sustained here. See, e.g., id. (facial bruising and swelling lasting several days and lacerations to the victim's face, back of the head, and arm); State v. Hovig, 149 Wn. App. 1, 12–13, 202 P.3d 318 (2009) (bite-mark bruise lasting up to two weeks); State v. Ashcroft, 71 Wn. App. 444, 455, 859 P.2d 60 (1993) (bruise marks consistent with being hit by a shoe).

Regardless of whether the stab wounds caused a temporary but substantial loss or impairment of Willis' lung function, his injuries constituted a temporary but substantial disfigurement. Willis sustained stab wounds to his face and torso. The jury heard testimony that such facial wounds usually require sutures to lessen the scarring. The evidence did not support an inference that Webster did not inflict substantial bodily harm on Willis.

Likewise, Webster cannot show that the pocketknife was not a deadly weapon. The definition of a "deadly weapon" includes any weapon "which, under the circumstances in which it is used, . . . is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). When evaluating whether an object meets this definition, we look to "the circumstances in which the object is used, including '"the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted."' State v.

Holmes, 106 Wn. App. 775, 781–82, 24 P.3d 1118 (2001) (quoting State v. Shilling, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) (internal quotation marks omitted)).

"[A] pocketknife may be a deadly weapon, depending on the circumstances of its use." State v. Thompson, 88 Wn.2d 546, 549, 564 P.2d 323 (1977). This court found that possession of a switchblade knife alone was insufficient to render the knife a deadly weapon: "there must be some manifestation of willingness to use the knife before it can be found to be a deadly weapon." State v. Gotcher, 52 Wn. App. 350, 354, 759 P.2d 1216 (1988). In State v. Thompson, the Washington Supreme Court found that the jury could properly find that an open pocketknife with a blade between two and three inches long was a deadly weapon when held against the neck of the victim, who sustained a cut on her neck and bruises on her arm. 88 Wn.2d at 550.

Here, Webster clearly manifested willingness to use the knife and in fact used the knife as a weapon, inflicting multiple stab wounds to Willis' head and torso. He did not merely possess the knife, like the defendant in State v. Gotcher, and Willis' injuries were more severe than the victim's in Thompson. As used here, the pocketknife was readily capable of causing death or substantial bodily harm if the blade struck one of the vital organs or major blood vessels located in the head and upper torso. Even viewed in the light most favorable to Webster, the evidence does not support an inference that the pocketknife was not a deadly weapon. The trial court did not abuse its discretion in refusing to instruct the jury on the lesser included offense of fourth degree assault.

V. Cumulative Error

Finally, Webster argues that the individual errors outlined above require reversal and that the cumulative effect of the errors denied him a fair trial and violated his right to present a defense. Because we find no error, we do not address this argument.

VI. Statement of Additional Grounds for Review

In a pro se statement of additional grounds for review (SAG), Webster identifies twelve issues for our review, including the denials of his five motions to discharge counsel, exclusion of evidence, and allegations of threats and perjury. We are not able to consider issues in a SAG that do not adequately inform us "of the nature and occurrence of alleged errors." RAP 10.10(c). In addition, "issues that involve facts or evidence not in the record are properly raised through a personal restraint petition, not a statement of additional grounds." State v. Calvin, 176 Wn. App. 1, 26, 316 P.3d 496 (2013).

Webster's additional grounds numbered 1, 2, 7, and 10 include allegations that Hernandez was threatened and forced to testify. These arguments appear to rely on facts outside the record, so we decline to consider them. Additional grounds 3, 5, and 6 simply cite to rules of evidence and do not adequately inform us of alleged errors. Issues 4, 7, and 12 concern the exclusion of evidence, but it is not clear whether Webster is assigning error to the court's ruling or alleging that his counsel was ineffective. The remaining grounds allege improper exclusion of expert testimony, violation of attorney-client privilege, and violation of the rules of

professional conduct. We are unable to find support for these claims in the record and decline to consider them.

Affirmed.

WE CONCUR:

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. 79985-1-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, Legal Assistant Date: December 9, 2020
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