Supreme Court No. __
COA No. 58117-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

METOTISI R. FILIPO,

Petitioner.

PETITION FOR REVIEW

Sara S. Taboada
Attorney for Petitioner

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Metotisi R. Filipo asks this Court to accept review of a Court of Appeals opinion affirming his convictions of first degree burglary and misdemeanor violation of a court order. The Court of Appeals issued its opinion on September 17, 2024. Mr. Filipo asked the court to reconsider its opinion, but the Court of Appeals denied this request on October 30, 2024. Mr. Filipo has attached the opinion and the order denying the motion to reconsider to this petition.

B. ISSUES PRESENTED FOR REVIEW

1. The State bears the heavy burden of proving every element of an offense beyond a reasonable doubt. The State alleged Mr. Filipo committed burglary in the first degree. This charge required the State to prove Mr. Filipo used a deadly weapon during the alleged burglary. Here, to sustain its burden in proving the "deadly weapon" element of burglary, the State used evidence of Mr. Filipo's suicide attempt inside the home.

This Court neither reads statutes contrary to legislative intent nor reads statutes in a way that leads to absurd and unjust results. Up until 1975, a Washington statute criminalized suicide attempts. In 1975, the legislature repealed this statute, which reflected its intent to no longer criminalize individuals in such a state of crisis that they attempt to kill themselves.

The "deadly weapon" definition for burglary appears, at first blush, to encompass suicide attempts. However, reading it in this way would contravene the legislature's intent to not criminalize individuals in crisis, and it would lead to absurd and unjust results. This Court should accept review to (1) resolve the tension that exists between the definition of "deadly weapon" and its perceived ability to encompass suicide attempts; and (2) hold that the State did not meet its burden here because the evidence only demonstrated Mr. Filipo used the "deadly weapon" at issue in a suicide attempt. RAP 13.4(b)(1)-(4).

2. Courts cannot admit irrelevant and unduly prejudicial evidence. Evidence that (1) showed the officers commanded the protected party's children to flee their mother's home through a window; and (2) showed the children fled through the window was not relevant to prove the elements of Mr. Filipo's charged offenses. It was also unduly prejudicial because it likely caused the jury to blame Mr. Filipo for causing the protected party's children to endura traumatic incident. The Court of Appeals' conclusion to the contrary is untenable and warrants this Court's review. RAP 13.4(b)(1)-(4).

C. STATEMENT OF THE CASE

Police officers arrived at Connie Key's home due to a verbal dispute. RP 246. At some point, the police learned a no-contact order forbade Mr. Filipo from contacting Ms. Key. RP 30-31. When the police arrived, Ms. Key was outside the home; she claimed Metotisi Filipo "put his hands on [her.]" Ex. 14A (:48-:50). When the police went inside, Mr. Filipo pressed a knife against his neck. Ex. 14A (1:04). Multiple police officers

pointed their weapons at Mr. Filipo. Ex. 14A (1:07-3:00). As the police pointed their weapons, Mr. Filipo repeatedly asked the officers to kill him. Ex. 14A (1:07-3:00).

During this incident, the police commanded Ms. Key to get her four children to evacuate the home through a window. Ex. 14A (1:35). Bodycam footage shows two young children flee through the window. Ex. 14A (2:03-2:10). A moment later, two teenagers emerge from the window. Ex. 14A (2:24-2:36).

The State charged Mr. Filipo with (1) felony violation of a court order; (2) burglary in the first degree; and (3) assault in the fourth degree. CP 24-26. Each of these charges alleged the crimes constituted an act of domestic violence, as Mr. Filipo and Ms. Key have a child in common. CP 24-26; Ex. 9A. Ms. Key chose not to testify at Mr. Filipo's trial.

Mr Filipo asked the court to exclude the portion of the bodycam footage that showed the children fleeing from the home, arguing this footage was irrelevant and unduly prejudicial. RP 46. The court rejected this request. RP 52.

Mr. Filipo requested the court dismiss the burglary charge at the close of the State's case. As charged, the State had to prove Mr. Filipo either committed a burglary in the first degree by (a) assaulting Ms. Key; or (b) using a "deadly weapon." CP 25-26. He pointed out the State presented no evidence that Mr. Filipo assaulted Ms. Key inside the home. RP 309. He also pointed out that no evidence existed that he used the knife against anyone but himself, so the State did not prove the "deadly weapon" prong of burglary in the first degree. RP 309. Accordingly, he asked the court to dismiss the charge.

The State agreed it did not present any evidence that Mr. Filipo assaulted Ms. Key inside her house. RP 309-12. However, the State argued the "deadly weapon" element was met by Mr. Filipo's actions in pressing the knife against his own neck. RP 313-15. The court dismissed the alternative mean of assault for the burglary in the first degree charge, but the charge remained because it believed sufficient evidence supported the other means alleged (deadly weapon). RP 317-18.

The jury acquitted Mr. Filipo of assault in the fourth degree and felony violation of a no-contact order. RP 383-84. However, the jury found Mr. Filipo guilty of burglary in the first degree and misdemeanor violation of a no-contact order. RP 383-84.

D. ARGUMENT

1. This Court should accept review to resolve the unique tension that exists between the statute that repealed the criminalization of suicide attempts and the "deadly weapon" definition at issue in this case that elevated Mr. Filipo's burglary charge based on his suicide attempt.

a. The State bears the heavy burden of proving each element of a crime with proof beyond a reasonable doubt.

The constitution requires the State to prove each element of a charged offense with proof beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *In the Matter of Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). When a defendant challenges the sufficiency of the evidence, "all reasonable inferences from the evidence must be

drawn in favor of the State and interpreted most strongly against the defendant." *State v. Rose*, 175 Wn.2d 10, 14, 282 P.3d 1087 (2012) (citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). However, if no rational trier of fact could have found all of the essential elements of the crime beyond a reasonable doubt, this Court must dismiss the conviction with prejudice. *Burks v. United States*, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978).

b. The State did not meet its burden in proving the "deadly weapon" element of burglary in the first degree because the State only presented evidence that Mr. Filipo used the knife at issue to threaten harm to himself, not others.

As charged, to prove Mr. Filipo was guilty of burglary in the first degree, the State had to prove Mr. Filipo was "armed with a deadly weapon." CP 25-26, 38. If the deadly weapon at issue is not an "explosive or loaded or unloaded firearm," the State must prove that the alleged "deadly weapon" was "used, attempted to be used, or threatened to be used" in a manner that was "readily capable of causing death or substantial bodily

harm." RCW 9A.04.110(6). Here, the State only presented evidence that Mr. Filipo pressed a knife against his own neck as he begged for the police to kill him.

A careful reading of the statute and a conscientious application of the tools of construction demonstrate a person is not "armed with a deadly weapon" pursuant to the burglary statute if they are using, attempting to use, or threatening to use a weapon against themselves in an effort to kill themselves. In the absence of any evidence that Mr. Filipo threatened to use the knife against anyone but himself, this Court should reverse.

To determine the meaning of a statute, this Court turns to several principles. This Court first examines the plain meaning of the statute. *State v. Schwartz*, 194 Wn.2d 432, 439, 450 P.3d 141 (2019). To determine the statute's plain meaning, this Court examines the text of the statute, the context of the statute, related statutory provisions, and the whole statutory scheme. *Id*. If the meaning of the statute is plain on its face, this Court must give effect to the plain meaning. *Schwartz*, 194 Wn.2d at 439.

However, if the plain construction of the statute would lead to absurd results, "further inquiry may be appropriate." *In the Matter of the Detention of M.L.H.*, 16 Wn. App. 2d 431, 437, 480 P.3d 518 (2021). This is because this Court presumes the legislature did not intend to produce absurd results. *Id*. Relatedly, this Court interprets statutes in a manner that avoids unjust and unreasonable consequences. *In re the Pers. Restraint of Schley*, 191 Wn.2d 287, 287-89, 421 P.3d 951 (2018).

State v. Sandoval illustrates the Court of Appeals' application of the tool of construction that rejects absurd results. In *Sandoval*, the State charged the defendant with possession of stolen property in the second degree after the police arrested her and found a stolen but deactivated credit card on her person. 8 Wn. App. 2d 267, 270-71, 438 P.3d 165 (2019). As charged, the State had to prove the stolen deactivated credit card was an "access device" pursuant to RCW 9A.56.010(1). *Id.* at 270. The legislature defined the term "access device" as "any card…that **can be used**…to

obtain…anything [] of value." RCW 9A.56.010(1); *Sandoval*, 8 Wn. App. 2d at 273 (emphasis added).

Because the term "can be used" is phrased in the present tense, the defendant argued that under the plain language of the statute, the State had to prove the following: that at the time the defendant possessed the stolen credit card, the defendant had the ability to use the credit card to obtain something of value. *Id*. at 271-73. Since the evidence at trial demonstrated that at the time of the defendant's arrest, the card at issue was deactivated, she argued insufficient evidence existed to uphold her conviction. *Id*. at 271-73.

The Court of Appeals did not apply the plain meaning of the statute, concluding this would lead to an absurd result. *Id*. at 274. The court opined, "[i]t begs reason to assume the legislature intended that a defendant could not be charged with possessing a stolen credit card or other access device solely because the victim discovered the theft and cancelled the account on the stolen card before the defendant was

apprehended." *Id*. at 274. (quoting *State v. Schloredt*, 97 Wn. App. 789, 794, 987 P.2d 647 (1999)). The court further concluded this interpretation would lead to absurd results because it "would contravene the legislature's intent to broadly construe the term 'access device.'" *Id.*

Similarly, here, while a plain reading of the relevant statutes may appear to allow the State to prove an item is a deadly weapon for threatening to use the weapon against themselves, this Court should reject this interpretation because it leads to absurd results.

The legislature has recognized two different categories of "deadly weapon[s]" under the statute, but at issue here is the second category. *See In the Matter of the Personal Restraint of Martinez,* 171 Wn.2d 354, 365, 256 P.3d 227 (2011). The second category of "deadly weapon" "shall include any other weapon, device, instrument, article or substance, including a 'vehicle' as defined in this section, which, under the circumstances in which it is used, attempted to be used, or

threatened to be used, is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). This Court has stated that an object's status as a deadly weapon under this category "rests on the manner in which it is used, attempted to be used, or threatened to be used." *Martinez*, 171 Wn.2d at 366.

Here, the evidence only demonstrated that Mr. Filipo (1) placed himself in danger of killing himself by pressing a knife against his own neck; and (2) threatened to use the knife to kill himself. Ex. 14A (1:54-3:00); Ex. 16 (1:21-3:15). The evidence therefore demonstrated that Mr. Filipo used the knife to try and commit suicide.

But it would be absurd and contrary to legislative intent to conclude the act of attempting suicide fits within the definition of "deadly weapon" at issue here. Before 1975, attempting suicide in Washington was a crime. The statute read:

> Every person who, with intent to take his own life, shall commit upon himself any act dangerous to human life, or which, if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, shall be punished

> by imprisonment in the state penitentiary for not more than two years or by a fine not more than one thousand dollars.

Former RCW 9.80.020.

However, in 1975, the legislature repealed this statute, which reflects its intent to no longer criminalize individuals undergoing a crisis that leads them to attempt to kill themselves. Laws of 1975, 1st. Ex. Sess., chs. 199, 260.

Consequently, reading the applicable portion of the deadly weapon statute to include a person's use or threatened use of a weapon against themselves leads to absurd results that are contrary to the legislature's intent. Of course, the State can punish a person for unlawfully entering a home. *See, e.g.* RCW 9A.52.025. However, the State cannot and should not increase the seriousness of the crime because, at the time they enter a home, the accused is undergoing a crisis that leads to a suicide attempt. Such a construction of the deadly weapon statute is contrary to the legislature's intent to no longer criminalize individuals who are in such despair that they wish to kill

themselves. Such a construction necessarily leads to absurd results.

The Court of Appeals' opinion affirming Mr. Filipo's conviction for burglary in the first degree was flawed for many reasons. First, when the court rejected Mr. Filipo's argument, it noted RCW 9A.04.110(6) "does not differentiate between using a deadly weapon on oneself and on another. The statute requires only that the weapon be "readily capable of causing death of substantial bodily harm." Op. at 7.

This reasoning misses the point and does not square with the Court of Appeals' own opinion in *Sandoval*, 8 Wn. App. 2d 267. As Mr. Filipo argued in his briefing, the Court of Appeals has declined to adopt the plain meaning of a statute when it has concluded the plain meaning would lead to absurd results. *Sandoval*, 8 Wn. App. 2d at 273-74 (agreeing with Division One's opinion in *State v. Schloredt*, 97 Wn. App. 789, 987 P.2d 647 (1999) that construing the challenged statute according to

its plain meaning would lead to absurd results); Op. Br. at 11-13.

The biggest flaw in the court's opinion is that it does not even acknowledge Mr. Filipo's central argument as to why the plain language of RCW 9A.04.110(6) would lead to absurd results and contravene legislative intent: because it would undermine the statute that repealed the criminalization of suicide attempts.

RAP 12.1 directs courts to decide a case based on the "issues set forth by the parties in their briefs." Yet nowhere in the opinion does the court resolve the unique tension that exists between the legislature's determination that a suicide attempt is not a crime and RCW 9A.04.110(6)'s ability to criminalize suicide attempts.

Third, in the alternative, the Court of Appeals stretched the conceivable inferences from the evidence to conclude that sufficient evidence existed for a juror to alternatively conclude the knife Mr. Filipo wielded upon himself was "readily capable

of causing harm to others." Op. at 7; *see State v. Rose*, 175 Wn.2d 10, 18, 282 P.3d 1087 (2012). Specifically, the Court of Appeals opined, "there were four children in the house at the time [Mr.] Filipo was armed and based on the conduct reported by Keys, as well as the fact that the four children fled out the window, the jury could infer that the weapon was readily capable of causing harm to others." Op. at. 7.

Several problems exist with this reasoning. First, it is important to clarify some facts. No evidence exists that Mr. Filipo did anything with the knife other than place it on his own neck. No evidence exists that Mr. Filipo wielded the knife towards the children or towards Ms. Key. Furthermore, the children fled from the home via a window not because they were in fear, but because the police instructed the children to leave the house via a window. Ex.14A (1:33-38).

Second, the jury acquitted Mr. Filipo of "the conduct reported by Keys," as the jury found him not guilty of assault in

the fourth degree and felony violation of a no-contact order. RP 383-84.

Critically, the Court of Appeals' own precedent undermined its conclusion that evidence of a person's willingness to use a knife against himself in a suicide attempt is evidence of his willingness to use it against anyone in his vicinity. *State v. Skenenandore* is instructive. In *Skenandore*, the defendant made a homemade spear in prison. 99 Wn. App. 494, 496, 994 P.2d 291 (2000). The tip of the spear had a golf pencil. *Id*. Through a cuff port, which is a "six-by-eighteen inch locking portal" in a cell door, the defendant used the spear to strike a prison guard on the chest. *Id*. at 496-97 n.1. The guard sustained minor superficial injuries that faded within two hours. *Id*. at 497. The State charged the defendant with assault in the second degree with a deadly weapon. *Id.*

During closing argument, the State claimed the spear "could cause substantial bodily injury" if it went in the guard's eye. *Id*. at 497-98. When the jury returned a guilty verdict on

the assault in the second degree charge, the defendant "filed a motion to arrest judgment, arguing the evidence was insufficient to prove the spear was a deadly weapon." *Id*. at 498. The trial court denied the motion, as it believed the evidence demonstrated the spear could have struck the guard in the eye, "which would have caused substantial loss, loss or impairment to the eye." *Id*.

The Court of Appeals disagreed and reversed, finding the evidence was insufficient to hold the spear was a "deadly weapon." *Id*. at 501. The Court of Appeals held no such evidence existed largely because "the record did not reflect that [the prison guard's] face was near the cuff port such that the spear could have struck his eye[.]" *Id*. at 500. Instead, the evidence demonstrated that the spear landed on the guard's torso, which was "well below his head." *Id*.

This Court cited approvingly to *Skenandore* in *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 367, 256 P.3d 277 (2011).

Skenandore stands for the following rule: in order for a non-per se weapon to constitute a "deadly weapon" under RCW 9A.04.110(6), the record must demonstrate that the defendant manifested a willingness to use the weapon to cause substantial bodily harm upon a specific person. The facts here are even more benign than in *Skenandore*. Here, no evidence exists that Mr. Filipo used the knife to even superficially harm any person as the defendant did in *Skenandore*. While there may have been some evidence that Mr. Filipo might have assaulted Ms. Key with his hands before he attempted suicide, this, in and of itself, does not show he manifested an intent to use the knife to harm Ms. Key or any other person. The evidence instead demonstrates he only manifested an intent to use the knife against himself.

This Court should accept review. RAP 13.4(b)(1)-(4).

2. This Court should accept review because the Court of Appeals affirmed Mr. Filipo's conviction despite the trial court admitting irrelevant and highly inflammatory evidence.

Courts have no discretion to admit irrelevant evidence. ER 402; *see In the Matter of the Detention of Post*, 170 Wn.2d 302, 311, 241 P.3d 1234 (2010); *see also State v. Gonzalez-Gonzalez*, 193 Wn. App. 683, 689, 370 P.3d 989 (2016) ("the rules do not give trial courts discretion to admit inadmissible evidence"). Furthermore, courts cannot admit evidence that is unduly prejudicial. ER 403. Evidence is unduly prejudicial if it is "likely to stimulate an emotional response rather than a rational decision." *Salas*, 168 Wn.2d at 671 (*referencing State v. Powell*, 126 Wn.2d 244, 264, 898 P.2d 615 (1995)). The State bears the burden of proving the probative value of the evidence outweighs its prejudicial effect. *See State v. Calegar*, 133 Wn.2d 718, 722, 947 P.2d 235 (1997).

Mr. Filipo asked the court to exclude the portion of the police's bodycam footage that shows the children coming out of the window, arguing it was unduly prejudicial. RP 46. The State did not state its relevance, and it did not claim this evidence was not unduly prejudicial. Nevertheless, the court allowed the State to play the portion of the video that shows the children fleeing the home via a window.

The video shows the police commanding Ms. Key to get her children out of the house through the window. Ex. 14A (1:35). At their commands, Ms. Key and another person pull two kids, who appear to be between the ages of four to eight, from the window. Ex. 14A (2:03-2:10). A moment later, two teenagers emerge from the window. Ex. 14A (2:24-2:36).

The court erred when it admitted this evidence for several reasons. First, this evidence was not relevant to prove any element of the charged crimes. The State never argued it was relevant to any matter at issue at trial. Perhaps this is because it was irrelevant. Without asserting its relevance, the State could

not meet its burden of showing the probative value outweighed its prejudicial effect.

Second, this evidence was unduly prejudicial. Evidence is unduly prejudicial if it is "likely to stimulate an emotional response rather than a rational decision." *Salas*, 168 Wn.2d at 671 (*referencing State v. Powell*, 126 Wn.2d 244, 264, 898 P.2d 615 (1995)). The evidence showed the police and a mother forcing her four children out of their home in the middle of the night through a window. This was certainly likely to stimulate an emotional response. The evidence bore the likelihood of maligning Mr. Filipo by assigning him blame for having caused the children to endure such a traumatic incident. The court erred when it neglected to evaluate the unduly prejudicial effect of this irrelevant evidence.

To this argument, the Court of Appeals opined the evidence was relevant to show that Ms. Key "was in reasonable fear that [Mr.] Filipo would cause bodily injury to her children." Op. at 14. But the only reason the children fled

through the window was because the police commanded them to. Ms. Key assisted her children in leaving the home through the window at the police officer's direction.

This Court should accept review. RAP 13.4(b)(1)-(4).

E. CONCLUSION

For the reasons stated in this petition, Mr. Filipo asks this Court to accept review.

This petitioner uses Times New Roman Font, contains 3,841 words, and complies with RAP 18.17.

DATED this 2nd day of December, 2024.

Respectfully submitted,

/s Sara S. Taboada
Sara S. Taboada – WSBA #51225
Washington Appellate Project
Attorney for Appellant

Appendix A

Filed
Washington State
Court of Appeals
Division Two

September 17, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. METOTISI ROPATI FILIPO, JR., Appellant.	No. 58117-5-II UNPUBLISHED OPINION

MAXA, J. – Metotisi Filipo, Jr. appeals his convictions of first degree burglary and misdemeanor violation of a court order and his sentence. The convictions were based on an incident where Filipo entered Connie Key's house in violation of a no-contact order. When the police arrived, Filipo held a knife to his throat and repeatedly asked the police to shoot him. Body camera footage showed Filipo's actions as well as four children leaving the house through a window.

We conclude that (1) the State presented sufficient evidence to convict Filipo of first degree burglary; (2) the trial court did not violate Filipo's constitutional right to present a defense by excluding an order terminating a different no-contact order in an unrelated case; (3) the trial court properly admitted the body camera footage of Filipo holding a knife to his throat and four children leaving the house through a window because the court found that the probative value outweighed any potential prejudice; and (4) as the State concedes, the crime victim penalty assessment (VPA) must be stricken from the judgment and sentence. Accordingly, we affirm Filipo's convictions, but we remand for the trial court to strike the VPA from his judgment and sentence.

FACTS

Background

In July 2020, the trial court issued a no-contact order that prohibited Filipo from contacting Key, the mother of his child, for five years. The order stated that Filipo was not to "knowingly enter, remain, or come within 1000 ft . . . of [Key's] residence, school, workplace" and not to:

> i) cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk or keep under surveillance the protected person, or ii) engage in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, or iii) use, attempt to use or threaten to use physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Ex. 9A, at 1.

In December 2022, Tacoma police officers responded to a domestic incident involving Filipo at Key's house. Upon dispatch, officers confirmed that there was a valid and active no-contact order prohibiting Filipo from contacting Key. When the officers arrived, they saw Filipo inside the house holding a knife to his throat and telling the officers to shoot him.

Eventually, Filipo exited the house and officers arrested him. The State charged Filipo with first degree burglary, felony violation of a court order, and fourth degree assault.

Termination of a Different No-Contact Order

Filipo requested that the trial court admit a September 1, 2022 order terminating a pretrial no-contact order between him and Key that was entered in May 2022 in an unrelated case. On the defendant's signature line was written "Counsel to notify," instead of Filipo's signature. Ex. 100, at 1. Filipo argued that this order was relevant to show whether he had knowledge of an active no-contact order on the day of the incident. The State objected on the basis of relevance.

The trial court denied admission, ruling that the 2022 termination order without Filipo's signature was not relevant to the issues in the case because there was no proof that Filipo was aware of the order. And any potential relevance "would be outweighed by the likelihood of confusing the jury about a document that's not related to this case." Rep. of Proc. (RP) at 95. But the court stated that its ruling "could change later in the trial." RP at 96.

Admission of Body Camera Footage

Elijah Allman, an officer for the Tacoma Police Department, responded to the incident at Key's house and was wearing a body camera. The trial court conducted a CrR 3.5 hearing to address the admissibility of statements Filipo made on Allman's body camera footage. During the hearing, the State played footage from the body camera. The State argued that Filipo's statements were not the product of custodial interrogation and requested to play a redacted version of the body camera footage at trial.

In responding to the State's argument, Filipo stated,

> [W]ith regard to the body camera, in addition, I would argue that that portion of the body camera and Mr. Filipo's statements are not relevant to the allegations in this case. They are unduly prejudicial, and a jury may find that his statements about asking the police to shoot him, it goes to his character and could be negatively used against him to make a jury believe he's more likely to have committed this offense, which is not related to this offense. . . . And then, I would also argue that the video about the children coming out the window is unduly prejudicial as well.

RP at 45-46.

The trial court ruled that the footage was "relevant for the purposes of state of mind" and that the probative value of the footage outweighed any prejudice. RP at 52.

Trial

Allman testified that when he arrived at Key's house on the night of the incident, Key stated that she had been assaulted and that Filipo was inside with a knife. As soon as he located

Filipo, Allman saw that Filipo was holding a knife against his own throat. According to Allman, Filipo told the police to shoot him. Allman stated that Filipo appeared frantic and fearful. But Filipo never pointed the knife at anyone other than himself. Allman testified that Key appeared to become increasingly more frightened throughout the incident.

Some of Allman's body camera footage was admitted as an exhibit and played at trial. The footage showed several officers approaching the house. The front door was open and Key was standing outside. Key told the officers, "He put his hands on me" while pointing inside. Ex. 14A. She told the officers that Filipo was inside and that he had a knife. As officers entered the front door, Filipo was holding a knife to his throat. The officers raised their guns. Key repeated several times that she had four kids inside. Filipo stood inside the house, holding a knife to his throat and repeatedly yelling for the officers to pull the trigger. He stated multiple times that the officers should kill him. While officers spoke to Filipo, Key and another man went to a window to the right of the front door and helped four children leave the house through the window.

Truitt Hartle, another responding Tacoma police officer, testified that he was responding to a court order violation. Upon arrival, Key stated that Filipo was inside with a knife and that he had hit her. When Hartle went inside, he saw Filipo holding a "large meat cleaver-style knife" to his neck. RP at 262. Filipo advanced toward the officers. Hartle stated that Filipo appeared to be highly agitated and was repeatedly yelling for the officers to shoot him.

Renate Klingenberg, another responding Tacoma police officer, testified that Key appeared to be shaken up and was having trouble breathing. Key was disheveled and had messy hair and slight swelling on her face.

The jury found Filipo guilty of first degree burglary (domestic violence) and misdemeanor violation of a court order (domestic violence). The jury found Filipo not guilty of felony violation of a court order and fourth degree assault.

Filipo appeals his convictions and sentence.

ANALYSIS

A. SUFFICIENCY OF EVIDENCE

Filipo argues that the State presented insufficient evidence to convict him of first degree burglary because (1) holding a knife to his throat did not satisfy the statutory definition of "deadly weapon" and (2) there was no evidence that he intended to commit a crime once inside Key's house. We disagree.

1. Standard of Review

The test for determining the sufficiency of evidence is whether any rational trier of fact could find the elements of the charged crime beyond a reasonable doubt after viewing the evidence in a light most favorable to the State. *State v. Gouley*, 19 Wn. App. 2d 185, 194, 494 P.3d 458 (2021). We resolve all reasonable inferences in favor of the State and interpret inferences most strongly against the defendant. *Id.* And circumstantial and direct evidence are equally reliable. *State v. Cardenas-Flores*, 189 Wn.2d 243, 266, 401 P.3d 19 (2017).

We review de novo questions of statutory interpretation. *State v. Sandoval*, 8 Wn. App. 2d 267, 272, 438 P.3d 165 (2019). We interpret statutes to determine and implement the legislature's intent. *Id.* "If the statute's plain language and ordinary meaning is clear, we look only to the statute's language to determine intent." *Id.* " '[W]e presume the legislature does not intend absurd results and, where possible, interpret ambiguous language to avoid such

absurdity.' " *Id.* at 273 (alteration in original) (quoting *State v. Ervin*, 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010)).

2. Deadly Weapon

Filipo argues that the State failed to prove that he was armed with a deadly weapon as required by RCW 9A.52.020(1). We disagree.

RCW 9A.52.020(1) states,

> A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

The trial court ruled on Filipo's motion that RCW 9A.52.020(1)(b) did not apply in this case, which meant that the State had to prove that Filipo was armed with a deadly weapon.

A deadly weapon "include[s] any other weapon, device, instrument, article, or substance, . . . which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). "[T]here must be some manifestation of willingness to use the [weapon] before it can be found to be a deadly weapon under RCW 9A.04.110(6)." *State v. Gotcher*, 52 Wn. App. 350, 354, 759 P.2d 1216 (1988).

Here, when the police first arrived, Key warned them that Filipo had a knife. Filipo held a knife to his throat and told the police to shoot him. Therefore, Filipo showed a willingness to use the knife and threatened to use the knife in a way that was "readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6); *see Gotcher*, 52 Wn. App. at 354.

Filipo claims that because he held the knife to his own throat, he only threatened to harm himself and not others. Therefore, it would be an absurd result to conclude that he was armed

with a deadly weapon. However, RCW 9A.04.110(6) does not differentiate between using a deadly weapon on oneself and on another. The statute requires only that the weapon be "readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). Although Filipo ultimately used the knife only on himself, the knife certainly was capable of causing substantial bodily harm and he showed a willingness to use it. Moreover, there were four children in the house at the time Filipo was armed and based on the conduct reported by Keys, as well as the fact that the four children fled out the window, the jury could infer that the weapon was readily capable of causing harm to others. This is not an absurd result.

We conclude that the State presented sufficient evidence to prove that Filipo was armed with a deadly weapon.

3. Intent to Commit a Crime

Filipo argues that the State failed to prove that he entered or remained in Key's house with the intent to commit a crime. We disagree.

As noted above, for first degree burglary RCW 9A.52.020(1) requires the State to prove that the defendant entered or remained unlawfully in a building "with intent to commit a crime against a person or property therein." RCW 9A.52.040 states,

> In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

However, the State must still meet its evidentiary burden to prove a defendant's intent to commit a crime. *State v. Stinton*, 121 Wn. App. 569, 573, 89 P.3d 717 (2004).

In *Stinton*, the trial court issued a protection order prohibiting Stinton from McNeill's residence and from harassing contact with McNeill. 121 Wn. App. at 571. Stinton went to

McNeill's residence and began taking personal property. *Id.* When McNeill asked Stinton to leave, he pushed the door to prevent McNeill from shutting it and kicked the door in. *Id.*

The court held that the State presented evidence that Stinton unlawfully entered McNeill's residence and intended to violate the order's provision restraining him from making harassing contact with McNeill. *Id.* at 575. The court noted that a person can violate one or multiple protection order provisions. *Id.* And the evidence showing that Stinton harassed McNeill was "separate and distinct" from the evidence showing his unlawful entry. *Id.*

Here, Filipo concedes that the evidence demonstrated unlawful entry into Key's house, but he claims that he did not commit a separate violation of the no-contact order within the house. However, the no-contact order prohibited Filipo from entering Key's house *and* ordered him not to:

> i) cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk or keep under surveillance the protected person, or ii) engage in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, or iii) use, attempt to use or threaten to use physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Ex. 9A, at 1.

There was a reasonable inference that when Filipo entered the house and produced a large knife, he placed Key in reasonable fear of bodily injury. And once the police arrived, Key stated to the officers multiple times that she had four kids in the house. Then she helped the kids leave the house through a window. This showed that Key was in reasonable fear of bodily injury to her children. In addition, the body camera footage showed Key stating that Filipo had put his hands on her. Therefore, the evidence showing that Filipo violated the no-contact order was separate and distinct from the evidence showing his unlawful entry.

We conclude that the State presented sufficient evidence to prove that Filipo entered or remained in Key's house with the intent to commit a crime.

B. RIGHT TO PRESENT A DEFENSE

Filipo argues that the trial court violated his constitutional right to present a defense when it prohibited him from presenting evidence of the September 2022 termination of a no-contact order in an unrelated case. We disagree.

1. Legal Principles

Both the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a defendant's right to present a defense. *State v. Jennings*, 199 Wn.2d 53, 63 502 P.3d 1255 (2022). The Supreme Court has developed a two-step process when addressing evidentiary rulings and the right to present a defense. *Id.* at 58. First, we analyze the trial court's evidentiary rulings for abuse of discretion. *Id.* "Trial courts determine whether evidence is relevant and admissible." *Id.* at 59. An abuse of discretion occurs if no reasonable person would take the trial court's position. *Id.*

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. But although relevant, evidence still may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." ER 403. And trial courts are permitted to " 'exclude evidence that is repetitive . . . , only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues.' " *Jennings*, 199 Wn.2d at 63 (alteration in original) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 326-27, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006)).

Second, after analyzing the evidentiary rulings for an abuse of discretion, we consider de novo whether the exclusion of evidence violated the defendant's constitutional right to present a defense. *Jennings*, 199 Wn.2d at 58. We balance the State's interest in excluding the evidence against the defendant's need for the evidence. *State v. Arndt*, 194 Wn.2d 784, 812, 453 P.3d 696 (2019). "In some instances regarding evidence of high probative value, 'it appears no state interest can be compelling enough to preclude its introduction.' " *Id.* (quoting *State v. Hudlow*, 99 Wn.2d 1, 16, 659 P.2d 514 (1983).

2. Relevance

Filipo sought to admit a September 2022 order – entered two months before the incident at issue – that terminated a pretrial no-contact order with Key in an unrelated case. Instead of Filipo's signature on the order, the order stated, "Counsel to notify." Ex. 100, at 1. The State objected and the trial court sustained the objection based on relevance.

The jury was required to find that Filipo knowingly violated the 2020 no-contact order in order to convict him of violation of a court order. And for first degree burglary, the State argued that the crime Filipo intended to commit when he entered Key's house was to violate the 2020 no-contact order. Therefore, Filipo argues that the 2022 termination order had the tendency to make his knowledge of whether the 2020 no-contact order was still active less probable.

However, even if Filipo had signed the 2022 termination order, that order was not relevant. The 2022 order terminated a no-contact order that was entered in an unrelated case. And that no-contact order had been entered only three months earlier, after the 2020 no-contact order had been in effect for almost two years. Finally, the 2022 no-contact order was a pretrial no-contact order which necessarily had a limited term, unlike the five year no-contact order entered in 2020. Given these facts, it is implausible that Filipo believed that the 2022 order

terminating the pretrial no-contact order also terminated the 2020 five year no-contact order. Without additional evidence showing Filipo's state of mind regarding the 2022 termination order, that order alone does not make Filipo's knowledge of the 2020 no-contact order more or less probable.

In addition, Filipo did not sign the 2022 termination order, and there was no evidence that he was aware of the termination order. In the absence of any other evidence, the 2022 termination order, standing alone, would invite speculation as to Filipo's knowledge of the order. Filipo argues that we should assume that Filipo's attorney notified him of the 2022 termination order. But if we make that assumption, we also may assume that his attorney properly explained to which case the order applied and that the 2020 no-contact order was still active. *See* RPC 1.4(a)(3) ("A lawyer shall . . . keep the client reasonably informed about the status of the matter.").

We conclude that the trial court did not abuse its discretion in excluding the 2022 termination order based on relevance.

3. Constitutional Right

A defendant's right to present a defense is not absolute. *State v. Arndt*, 194 Wn.2d 784, 812, 453 P.3d 696 (2019). The Supreme Court repeatedly has emphasized that a defendant has no right to present irrelevant evidence. *E.g.*, *State v. Orn*, 197 Wn.2d 343, 352, 482 P.3d 913 (2021). "Defendants have a right to present only relevant evidence, with no constitutional right to present *irrelevant* evidence." *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). Therefore, a defendant's evidence must at least have minimal relevance to implicate the right to present a defense. *Id.*

As discussed above, we conclude that the 2022 termination order was not relevant. Without any additional evidence, there is no indication that Filipo actually believed that the termination of a short, pretrial no-contact order in a different case terminated the five year 2020 no-contact order. And it is speculative whether Filipo even was aware of the 2022 termination order. Because the evidence was not relevant, we conclude that the trial court's exclusion of the 2022 termination order did not violate Filipo's constitutional right to present a defense.

C. ADMISSION OF BODY CAMERA FOOTAGE

Filipo argues that the trial court erred in admitting body camera footage from the night of the incident because the evidence was irrelevant and prejudicial. We disagree.

1. Failure to Preserve Argument

Filipo argues that the trial court did not apply the required analysis before admitting the body camera footage to show consciousness of guilt. The State argues that Filipo cannot make this argument on appeal because he did not make the argument in the trial court. We agree.

Under RAP 2.5(a), "[t]he appellate court may refuse to review any claim of error which was not raised in the trial court." Specifically, "[w]e will not reverse the trial court's decision to admit evidence where the trial court rejected the specific ground upon which the defendant objected to the evidence and then, on appeal, the defendant argues for reversal based on an evidentiary rule not raised at trial." *State v. Powell*, 166 Wn.2d 73, 82, 206 P.3d 321 (2009).

Here, Filipo objected to Allman's body camera footage because it was "not relevant to the allegations in this case" and was "unduly prejudicial." RP at 45-46. But he did not argue that the evidence was being improperly admitted to show consciousness of guilt or that the trial court was required to apply a specific analysis before admitting the evidence on that basis. Therefore, we conclude that Filipo cannot make this argument on appeal.

2. Footage Showing Filipo Holding a Knife to His Throat

Allman's body camera footage showed Filipo holding a knife to his throat and telling the police to shoot him. Filipo claims this footage was irrelevant and unduly prejudicial. We disagree.

As noted above, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. But although relevant, evidence may still be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." ER 403. We review the trial court's evidentiary rulings for abuse of discretion. *Jennings*, 199 Wn.2d at 58. The trial court has considerable discretion to consider what evidence is relevant and to balance its possible prejudicial impact against its probative value. *State v. Barry*, 184 Wn. App. 790, 801, 339 P.3d 200 (2014).

Here, the footage showing Filipo holding a knife was directly relevant to the issue of whether Filipo was armed with a deadly weapon for purposes of the first degree burglary charge. The footage showed that Filipo was using the knife in a manner that was "readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). Therefore, the footage made the fact that he was armed with a deadly weapon more probable. In addition, the body camera footage was the best evidence of what actually happened during the incident.

Filipo argues that the body camera footage was unduly prejudicial because the jury could have interpreted his erratic and dangerous behavior as making him more likely to commit the charged crimes. Certainly, the footage was somewhat prejudicial. But given the clear relevance

of the body camera footage, we conclude that the trial court did not abuse its discretion in determining that the probative value of the footage outweighed any prejudicial effect. Therefore, we conclude that the trial court did not err in admitting the body camera footage showing Filipo holding a knife to his throat.

3. Footage Showing Children Leaving Through the Window

Although Allman's body camera focused on Filipo holding a knife to his throat, the footage also showed Key's children leaving the house through a window. Filipo claims this portion of the footage was irrelevant and unduly prejudicial. We disagree.

The body camera footage showing the children leaving the house through the window was directly relevant to the issue of whether Filipo intended to commit a crime when entering Key's house. The State argued that the crime Filipo intended to commit was to violate the 2020 no-contact order. The order prohibited Filipo from engaging in "conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child." RP at 228. The footage showing Key helping the children leave through the window was relevant because it showed that Key was in reasonable fear that Filipo would cause bodily injury to her children.

Filipo argues that the footage was unduly prejudicial because it likely stimulated an emotional response from the jury rather than a rational decision. He also claims that the footage assigned him blame for causing the children to endure a traumatic incident. Again, this portion of the footage was somewhat prejudicial. But given the clear relevance of this portion of the body camera footage, we conclude that the trial court did not abuse its discretion in determining that the probative value of the footage outweighed any prejudicial effect. Therefore, we conclude that the trial court did not err in admitting the body camera footage showing the children leaving the house through a window.

D. CRIME VICTIM PENALTY ASSESSMENT

Filipo argues, and the State concedes, that the $500 VPA should be stricken from his judgment and sentence. We agree.

Effective July 1, 2023, RCW 7.68.035(4) prohibits courts from imposing the VPA on indigent defendants as defined in RCW 10.01.160(3). *See State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023). For purposes of RCW 10.01.160(3), a defendant is indigent if they meet the criteria in RCW 10.101.010(3). Although this amendment took effect after Filipo's sentencing, it applies to cases pending on appeal. *Ellis*, 27 Wn. App. 2d at 16.

The trial court determined that Filipo was indigent under RCW 10.101.010(3). Therefore, we remand for the trial court to strike the $500 VPA from the judgment and sentence.

CONCLUSION

We affirm Filipo's convictions, but we remand for the trial court to strike the VPA from his judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

CRUSER, C.J.

GLASGOW, J.

Appendix B

Filed
Washington State
Court of Appeals
Division Two

October 30, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

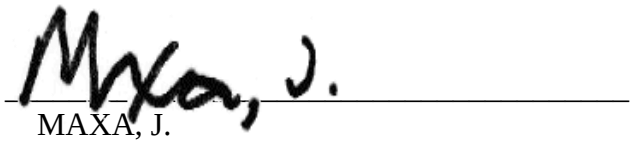
STATE OF WASHINGTON Respondent, v. METOTISI ROPATI FILIPO, JR., Appellant.	No. 58117-5-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant moves for reconsideration of the court's September 17, 2024 opinion. After consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Cruser, Glasgow

FOR THE COURT:



MAXA, J.

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. 58117-5-II**, 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 / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Madeline Hill, DPA
[madeline.hill@piercecountywa.gov]
[PCpatcecf@co.pierce.wa.us]
Pierce County Prosecutor's Office

☒ petitioner

☐ Attorney for other party

NINA ARRANZA RILEY, Paralegal
Washington Appellate Project

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