SUPREME COURT NO. _____ Case #: 1039638

NO. 85788-6-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAXSON ADAMS,

Petitioner.

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

The Honorable Joe Campagna, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. PETITIONER AND COURT OF APPEALS DECISION

Petitioner Jaxon Adams seeks review of the Court of Appeals' February 10, 2025 unpublished opinion, which is appended to this brief.

B. ISSUE PRESENTED

Adams was charged with assault and unlawful imprisonment of his former girlfriend. At trial he appeared out of custody and unguarded, without incident. No law enforcement officer was ever stationed in the courtroom. But then, over repeated defense objection, a rotating series of uniformed law enforcement officers appeared *only* during the complainant's testimony, undermining the presumption of innocence, and marking Mr. Adams, who is Native American, as a dangerous "other." Special law enforcement presence may be necessary in some circumstances. Division Two's decision in State v. Gorman-Lykken, 9 Wn. App. 2d 687, 446 P.3d 694 (2019), sets forth the appropriate inquiry, drawn from decisions by this Court and the federal Supreme Court, to allow for such a

presence. But here, the trial court failed to make the necessary inquiry and to appropriately exercise discretion, improperly ceding its authority and discretion to others. In affirming the trial court, Division One explicitly rejected Gorman-Lykken, its own prior decision, and implicitly, this Court's decision in State v. Dye, 178 Wn.2d 541, 309 P.3d 1192 (2013).

Where special courtroom security procedures—here, the sudden presence of a rotating series of police officers clearly accompanying the complainant—potentially undermine the presumption of innocence, does Gorman-Lykken set forth the necessary trial court inquiry, and should this Court grant review to resolve the conflict between appellate divisions, within Division One, and with Dye?

C. STATEMENT OF THE CASE

This case involves three charges stemming from an intense romantic relationship between Mr. Adams and his former girlfriend Keiah Bob that ended badly. At a trial when no other security personnel ever appeared, and over strenuous defense

objection to the practice, a rotating series of law enforcement officers appeared when Ms. Bob appeared to testify and disappeared after she left, indicating that Adams posed a danger to her, a central question at trial.

Shortly before Bob testified, the trial prosecutor announced that Bob would have "security"—a uniformed sheriff's deputy—escorting her *to* court and *in* court. RP 1152.

The prosecutor acknowledged there had been no safety incidents in court, even though Adams was out of custody and unguarded. But at some point in the preceding two years, there had been no-contact order violations involving "intimidation."[1] RP 1152-53. Thus, the prosecutor was requesting an accompanying officer, a uniformed deputy sheriff, "for the victim's own security—and it's already hard enough to testify in

[1] The State elaborated on this allegation only much later, when Adams asked the court for an order allowing him to remain out of custody pending sentencing—which was granted. Reportedly, Adams and Bob, who are both Native American, had been at the same powwow. RP 1726-27.

a courtroom and face the person who you are, you know, accusing of committing crimes against you." RP 1153.

The court stated:

> I mean, I don't control anything outside of this courtroom so . . . you know[,] that's fine.
>
> I'm going to let [Bob] hold hands with whoever she wants to [when] coming [into the courtroom.[2]] Folks have friends and family, and they can do that.
>
> *I'm not going to order additional security absent some record of issues in the courtroom. There's always a risk that that creates a specter of prejudice in front of the jury*. I need to make some findings[.] You know, Mr. [Bob has] been here. There's security around. I'm not going to post extra security officers for that reason.
>
> If there had been a history of outburst in court or things like that, then I might. And we certainly have officers. There's buttons around that I can press. And, you know, we can have somebody here in a hurry. But that would be to control the courtroom. *I would be uncomfortable doing it just to. . . . assuage concerns of a witness. . . . .I'm just not so sure about that. It doesn't seem proper and so I'm not going to do that*.

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[2] The prosecutor had also indicated a victim advocate would accompany Bob when Bob arrived to testify. RP 1150-52.

RP 1153-54 (emphasis added).

Counsel for Adams strenuously objected to the proposal and worried the jury would perceive law enforcement escort as a "display of theatrics." RP 1154. Counsel asked that the sheriff's deputy not appear with Bob in front of the jury or "escorting poor Ms. Bob around." RP 1155. She objected that Adams "has a right to a fair trial, and [to the] presumption of innocence. And for the spectacle of a [sheriff's deputy] to be walking around with someone and coddling them in that way, that is a direct interference of due process, Your Honor[.] It's very triggering." RP 1156.

The court asked what the prosecutor's plan was. The prosecutor said it was up to the court whether to allow a deputy sheriff to enter with Bob and sit in the back of the courtroom during her testimony. RP 1157.

The court, now appearing to acquiesce to the State's request, said, "I think I have an adequate record. I would, of course, limit somebody with, like, shirt on that we're going to

interfere with the jury or something like that. I will not limit one officer from sitting in the pews *nor do I think I can*." RP 1158 (emphasis added). The court believed Bob was permitted to walk into the courtroom with the person of her choice; moreover, friends and family were free to attend. RP 1158.

Defense counsel again objected, stating

> *Your honor, may I please make a note for the record that there has not been a uniformed police officer in this courtroom the whole time until Ms. Bob comes in to testify.*
>
> This is highly prejudicial. It is unnecessary. My client has been here before everyone else every single day. He has sat quietly. He has listened. He has participated. There is no reason that [the court or the State] has to believe that this young man means to cause any [harm.]

RP 1159-60 (emphasis added).

The court responded that a law enforcement officer sitting in the back would not cause undue prejudice. RP 1160. Police officers were commonly present in court during trials. RP 1160.

Defense counsel again pointed out that no police officer had yet been present. RP 1160-61. Counsel asked that any police officer appearing in court be dressed in plain clothes. RP 1161.

The court declined to order the officer to appear in plain clothes. RP 1161.

Counsel pointed out that the police officer would leave when Bob was done testifying, which would lead the jury—which was "not stupid"—to infer that Adams posed a specific danger to Bob. RP 1161.

The court repeated that an officer sitting in the back would not be unduly prejudicial—the jury was just as likely to think that Ms. Bob was in custody. But the court acknowledged it would have been "helpful" if the prosecutor notified the court about the officer's presence sooner. RP 1162.

After Bob provided some preliminary testimony outside the jury's presence, defense counsel highlighted the matter again, noting that a victim advocate also came in with Bob and escorted her to and from the witness stand. RP 1170. Counsel was

concerned that Adams was being "othered" by the presence of Bob's law enforcement escorts, whose presence also suggested Adams posed a danger to Bob specifically. RP 1169-70. Defense counsel, who was Black, was only too familiar with the subtle effects of such symbols and mechanisms. RP 1170. Counsel added, regarding the uniformed sheriff's deputy,

> [i]f the Court is continuing to allow to have an officer in uniform sitting in the back of the courtroom, especially without giving defense the opportunity to show the Court how othering happens in very subtle ways that are perceived by our unconscious mind [then] the defense would ask the court to make sure that to the extent possible this type of othering is out of the view of the jury and, in that sense, for instance, before Ms. Bob can leave the stand, before the advocate can get out of her seat to coddle her out the door, that the jury be let out of the room first.

RP 1170. Counsel reminded the court that appellate courts had recently recognized several longstanding practices warranted fresh scrutiny to protect the judicial system from racism and "other forms of othering, each one having an effect on the perceiver and the listener." RP 1171.

The court acknowledged that recent case law had placed limits on restraint of defendants in court. RP 1171 (appearing to reference State v. Lundstrom, 6 Wn. App. 2d 388, 429 P.3d 1116, 1120 (2018)). The court also indicated that whoever escorted Bob into the courtroom should not come past the spectator benches. RP 1171-72.

The prosecutor responded by arguing victims had rights under former RCW 7.69.030(10) (2022), including the presence of an advocate at judicial proceedings. RP 1173.

The court noted that although it was allowing an advocate to be present, the court had the power to place limits on, based on constitutional concerns, where the advocate could manifest in the courtroom. RP 1173. But, the court noted, the advocate was dressed as a civilian, and therefore jurors would be unaware of her governmental role. RP 1174.

On the other hand, the court observed, "the officer was in uniform, *which is unfortunate*. In the future, if [the State] could have a plainclothes officer, I think we could have avoided some

of this argument. I still think it's within the scope of my authority and the case law to allow . . . one officer to sit in the back. [W]ould have been a little better to have him in plainclothes, though." RP 1174 (emphasis added).

Defense counsel pointed out that the proceedings had been in session since June 26—it was then Thursday, July 13—and yet the first uniformed officer to appear was clearly escorting Bob. RP 1176. Counsel noted the constitutional rights of an accused eclipsed statutes and offered to brief the issue for the court. She highlighted that as a 60-year-old Black woman, she could offer the court fresh perspective on why the presence of the officer undermined the presumption of innocence. RP 1177. The court acknowledged, "I do recognize it would have been helpful to know this earlier just so we could think about it in a more deliberate way." RP 1178.

Bob thereafter testified before the jury. RP 1182-1207. As noon recess began, the court requested—consistent with a request by defense counsel—that the bailiff prevent jurors from

leaving the jury room until Bob and her entourage (including the sheriff's deputy) left the courtroom. RP 1207, 1211.

Defense counsel noted another uniformed police officer had come into court during Bob's testimony; counsel believed this created additional prejudice. RP 1209.

The court noted that in addition to other spectators, a uniformed officer had been sitting in the back row of the defense side of the courtroom. RP 1209. The law enforcement officer had been looking at his phone and "[t]here wasn't any show of force." RP 1209. At one point another officer entered and spoke to the seated officer. RP 1210.

Nonetheless, the court was skeptical the mere *presence* of an officer could be considered improper; it was only aware of decisional law addressing police officers posted near accused persons or witnesses. RP 1211. But, to avoid additional concerns, the court asked the prosecutor to instruct the law enforcement officers to communicate by text rather than gathering in the courtroom. RP 1211.

When proceedings resumed after lunch, the court observed that a *different* uniformed officer was present at the rear of the courtroom. RP 1213. Bob's testimony lasted until the end of the day, a Thursday, with plans to continue the following Monday. RP 1286.

The following Monday, July 17, defense counsel stated she had filed a motion to dismiss based in part on the presence of the law enforcement officers. RP 1295; see CP 27-33 (written motion).

The court observed that, since the start of Bob's testimony, one uniformed, armed police officer *at a time* had been sitting in the back of the courtroom. RP 1296. The officers had remained in the back, except when the first officer walked in, in front of the jury, with Bob. RP 1297. The first day of Bob's testimony, two different officers appeared in sequence. RP 1296-97.

Defense counsel noted that more than one officer at a time were present for personnel changes. RP 1297-98. Further, the

officers were clearly associated with Bob—there would be no officer present after Bob was done testifying. RP 1299.

The court acknowledged the officers appeared to be physically associated with Bob. RP 1300. However, they did not appear "oriented" to Adams. RP 1300. The court mused that jurors might therefore infer that Bob was in custody—ignoring that Bob had just testified that she worked as a probation officer. RP 1183, 1300. In any event, the court was unaware of judicial decisions prohibiting witnesses from having an "escort" sit at the back of court. RP 1302-03.

Defense counsel emphasized that Black and brown people—like Adams and counsel herself—did not receive the benefit of the doubt that police were present in a given setting for benign or neutral reasons. Rather, jurors would assume the officer was present because Adams posed a danger. RP 1302, 1308. Meanwhile, the State had not demonstrated that Bob required security. RP 1308-09.

The court repeated that it had read several appellate decisions and that the decisions were most concerned with law enforcement appearing to guard the accused. RP 1310-12.[3] In contrast, *these* officers appeared to be "guarding" Ms. Bob. RP 1313-14. The court acknowledged the measure did not cause "zero" prejudice, and reiterated the court would have preferred a plainclothes officer, but the court would not dismiss the charges. RP 1314-15. The court stated it would instruct jurors curatively, if the defense wished—although that might draw even more attention. Or it might consider having an officer stay for the rest of the trial. RP 1315.[4]

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[3] E.g. People v. Hernandez, 97 Cal. Rptr. 3d 214, 223 (Cal. Ct. App. 2009), review granted and opinion superseded, 216 P.3d 522, 99 Cal. Rptr. 3d 869 (Cal. 2009), reversed on other grounds, 51 Cal. 4th 733, 247 P.3d 167, 121 Cal. Rptr. 3d 103 (2011). The California Supreme Court's Hernandez decision is discussed in Gorman-Lykken.

[4] It appears this offer was tentative; the court never repeated the offer, and no one mentioned it again.

The prosecutor reiterated that, as an alleged victim, Bob also had rights. RP 1322-23.

Bob's testimony resumed, with an officer again present. RP 1329.

The following day, Tuesday, July 18, defense counsel made a record that after Bob's testimony was complete, the law enforcement officers ceased to appear, and no officer was present for the remainder of proceedings that day. RP 1581. Counsel acknowledged the court had offered to instruct the jury curatively, but she had decided against that measure. It would call more attention to the rotating officers' presence. RP 1582. However, the defense maintained its objection. RP 1582.

The jury ultimately convicted Adams as charged. CP 71-75.

Adams appealed to Division One of the Court of Appeals, arguing first that the series of uniformed law enforcement officers accompanying Bob created *inherent* prejudice undermining the presumption of innocence and Adams's right to

a fair trial. Second, he argued, the trial court abused its discretion by deferring to others and by failing to inquire into and determine the necessity for such a measure, similarly resulting in constitutional error. Adams pursues only this second argument in this petition.

The Court of Appeals denied both claims. As to the second claim, it ruled Gorman-Lykken requirement that the trial court provide case-specific reasoning for special security presence did not apply—because the police officer did not stand near Adams. The Court expressly disavowed language in a prior unpublished decision from that Court, State v. Kennon, noted at 18 Wn. App. 2d 1062, 2021 WL 3619870 (unpublished). In that decision, Division One had explicitly rejected the State's argument that case-specific inquiry was not required when an extra security officer was not stationed near the accused. Id. at *6 n. 3. See Appendix at 14 & 14 n.3.

Adams now asks that this Court grant review under RAP 13.4(b)(1) and (2).

D. REASONS REVIEW SHOULD BE GRANTED

Review is appropriate under RAP 13.4(b)(1) and (2) based on a conflict among the divisions and, implicitly, with this Court, as to the inquiry necessary to support a special courtroom procedure that potentially undermines the accused's presumption of innocence.

The trial court, rather than making the required inquiry into the need for nonroutine security measures, ceded its authority to others and even questioned whether it had the power to exclude the rotating series police officers accompanying Ms. Bob. The Court of Appeals, rather than following Division Two's decision in Gorman-Lykken, 9 Wn. App. 2d 687—which relied on authority from his Court—or its own prior decision, Kennon, 2021 WL 3619870, has now decided no such inquiry or findings are necessary to support special security measures. This Court should grant review to resolve this inconsistency.

"The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment." Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976). "The presumption of innocence . . . 'is a basic component of a fair trial

under our system of criminal justice.'" State v. Finch, 137 Wn.2d 792, 844, 975 P.2d 967 (1999) (quoting Estelle, 425 U.S. at 503). Several state and federal constitutional provisions, in addition to the Fourteenth Amendment, make this clear. See State v. Butler, 198 Wn. App. 484, 493, 394 P.3d 424 (2017) (citing U.S. CONST. amends. VI and XIV).

"[T]he accused is . . . entitled to the physical indicia of innocence." Finch, 137 Wn.2d at 844. "While so-called laboratory conditions can never be realized, it is, nevertheless, the burden of the courts to strive for them and to try all cases in an atmosphere of complete impartiality, not only without any reservation whatever but devoid of appearance of any such reservation." State v. Hartzog, 96 Wn.2d 383, 404, 635 P.2d 694 (1981) (quoting State v. Swenson, 62 Wn.2d 259, 281, 382 P.2d 614 (1963), overruled on other grounds by State v. Land, 121 Wn.2d 494, 851 P.2d 678, 680 (1993)).

"'[T]o preserve a defendant's presumption of innocence before a jury, the defendant is 'entitled to the physical indicia of

innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man.'" State v. Jaime, 168 Wn.2d 857, 861-62, 233 P.3d 554 (2010) (quoting Finch, 137 Wn.2d at 844).

"Measures which single out a defendant as a particularly dangerous or guilty person threaten [their] constitutional right to a fair trial." Finch, 137 Wn.2d at 845. "Such measures threaten a defendant's right to a fair trial because they erode [the] presumption of innocence; these types of courtroom practices are inherently prejudicial." Jaime, 168 Wn.2d at 862.

Relatedly, "[s]tudies have shown that even the simplest racial cues can trigger implicit biases and affect the way jurors evaluate evidence." State v. Bagby, 200 Wn.2d 777, 795, 522 P.3d 982 (2023).

Generally, trial management decisions are reviewed for abuse of discretion. Jaime, 168 Wn.2d at 865. A trial court abuses its discretion where its decision is based on untenable grounds, untenable reasons, or is manifestly unreasonable. Dye,

178 Wn.2d at 553. A trial court's trial management decision is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard, or the facts do not meet the requirements of the correct standard; and it is manifestly unreasonable if it is outside the range of acceptable choices, considering the facts and the applicable legal standard. Id. at 548.

Recently, this Court has reviewed governmental action in a manner that does not seek to discern the subjective intent of the government, but rather to assume the role of a person who understands the history of race and ethnic discrimination and who knows that implicit, institutional, and unconscious bias, in addition to purposeful discrimination, affects verdicts. E.g., Bagby, 200 Wn.2d at 797.

In Holbrook v. Flynn, the Supreme Court considered whether the conspicuous or noticeable "deployment of security personnel" in a courtroom is the sort of inherently prejudicial

practice that, as in the case of shackling, "should be permitted only where justified by an essential state interest specific to each trial." Holbrook v. Flynn, 475 U.S. 560, 568-69, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986). The court held that the routine use of security personnel in a courtroom is not an inherently prejudicial practice, per se. Id. at 569.

The primary feature distinguishing the use of identifiable security officers from inherently prejudicial courtroom practices "is the wider range of inferences that a juror might reasonably draw from the officers' presence." Id. Armed guards "are doubtless taken for granted so long as their numbers or weaponry do not suggest particular official concern or alarm." Id. Thus, there is no "presumption that any use of identifiable security guards in the courtroom is inherently prejudicial." Id.

On the other hand, "it is possible that the sight of a security force within the courtroom might under certain conditions 'create the impression in the minds of the jury that the defendant is dangerous or untrustworthy.'" Id. (quoting Kennedy v.

Cardwell, 487 F.2d 101, 108 (6th Cir. 1973)). Thus, a case-by-case approach was appropriate in that case "[i]n view of the variety of ways in which such guards can be deployed." Holbrook, 475 U.S. at 569.

Division Two's decision in Gorman-Lykken, 9 Wn. App. 2d 687, addressed this scenario. Gorman-Lykken involved a corrections officer stationed next to the witness stand while the defendant testified. Id. at 693. The Court of Appeals concluded the procedure was not *inherently* prejudicial because the officer had been present throughout trial, there was only one officer, the officer did not do anything to draw attention to herself, and the officer moved to and from the witness box with the defendant outside the view of the jury. Id. at 694-95.

But that was not the end of the inquiry. The Court of Appeals next addressed whether the trial court nevertheless abused its discretion in allowing this courtroom security measure. It adopted the following standard: "[T]he trial court must (1) state case-specific reasons for the need for [a specific]

security measure, (2) determine that the need for the security measure outweighs the potential prejudice to the testifying defendant." Id. at 697.

This approach was drawn in part from this Court's analysis in Dye, 178 Wn.2d at 553, which addressed a different courtroom management issue affecting the constitutional rights of the accused, there a complainant's use of a support animal while testifying. Gorman-Lykken, 9 Wn. App. 2d at 698. This approach was also "consistent with Holbrook, where the [Supreme] Court stated that a case-by-case approach was appropriate for issues regarding the deployment of guards." Gorman-Lykken, 9 Wn. App. 2d at 698 (citing Holbrook, 475 U.S. at 569).

Division Two ultimately held that the trial court abused its discretion by simply deferring its decision-making authority and discretion to the corrections officer. Gorman-Lykken, 9 Wn. App. 2d at 698. And it therefore reversed. Id. at 699.

The trial court in Adams's likewise deferred to the preferences of the prosecutor, the complainant, and law enforcement themselves, announcing that it did not think that it could control whether a uniformed police officer sat in the courtroom: "I will not limit one officer from sitting in the pews nor do I think I can." RP 1158.

The lengthy summary of facts set forth above demonstrates that, although many words were exchanged, the court never truly believed it could exclude the officer, or modify the officer's presence, despite defense counsel's repeated objections. Nor, of course, did the court ever find the special measure was necessary. It did not even implicitly make such a determination.

Meanwhile, a trial court's failure to recognize that it has discretion to grant a motion is itself an abuse of discretion. State v. Gaines, 16 Wn. App. 2d 52, 57, 479 P.3d 735 (2021); see also Gorman-Lykken, 9 Wn. App. 2d at 696, 698 (equating court's deferral to others regarding in-court measure to a failure to

exercise discretion); Finch, 137 Wn.2d at 853 (a trial court's deference to law enforcement decisionmaking regarding restraint procedures is error).

Relatedly, although a trial court must preserve the openness of proceedings, the court has the inherent ability to *manage* the otherwise open court room. See State v. Lormor, 172 Wn.2d 85, 93-94, 257 P.3d 624 (2011) ("the power to preserve and enforce order in the courtroom and to provide for the orderly conduct of its proceedings . . . must include the power to remove distracting spectators"); see also RCW 2.28.010.

This Court's decision in Dye, relied on by the Gorman-Lykken court, contrastingly demonstrates appropriate inquiry and exercise of discretion in an analogous situation—one that combines some of the features of Gorman-Lykken with some of the features of this case. The issue in Dye was whether the trial court erred in permitting a "comfort" dog to accompany the complainant while testifying. Dye, 178 Wn.2d at 543. This Court held the State must prove the necessity of such a special

courtroom procedure. Id. at 553. "[W]here special courtroom procedures implicate constitutional rights, it is not the defendant's burden to prove that [they have] been prejudiced, but the prosecution's burden to prove that a special dispensation for a vulnerable witness is necessary." Id.

Nonetheless, the trial court in Dye did not abuse its discretion in permitting the procedure. The trial court's factual findings addressing need for the procedure were supported by the record: Lare, the complainant, was developmentally disabled and had significant emotional trauma, while the dog, Ellie, was unobtrusive. Id. at 554. The trial court was aware of Lare's "significant anxiety regarding his upcoming testimony" and his fear of the accused. Id. The trial court expressly relied on Lare's "significant emotional trauma" and "developmental disability" when it allowed Ellie to accompany Lare on the witness stand. Id. It "clearly understood that Ellie was needed in order to facilitate Lare's testimony, in light of his mental state." Id. This Court observed "[t]he trial court did everything but explicitly

state on the record that Lare would not testify but for Ellie's presence, and the failure to do so does not constitute error." Id. at 554-55. Rather, the trial court's "implicit" finding of necessity was sufficient. Id. at 554. "Because the trial court held a hearing on the permissibility of Ellie's presence, *and because the record showed why Ellie's presence was needed to facilitate Lare's testimony*," the trial court did not abuse its discretion. Id. at 555 (emphasis added). In Dye, therefore, the record demonstrated the dog's presence was *necessary* for the complainant to testify; the complainant would not have testified but for the dog's presence. Id. at 554-55.

Adams's case contains no such justification. The prosecutor alluded to no-contact order violations occurring at some unknown time in the two years between the incident and the trial but did not elaborate until after trial. RP 1152-53; see 1726-27 (post-trial discussion). Adams remained out of custody during those two years, and no one disputed that Adams's behavior in court had been exemplary. E.g., RP 1159-60. The

court did not appear to understand it had the power to exercise its discretion over the appearance of the series of uniformed law enforcement officers. But in any event, unlike in Dye, the record in Adams's case does not show that a police escort was necessary to secure Bob's testimony. And again, as in Gorman-Lykken, the court inappropriately abdicated its discretion, and it otherwise erred in permitting the measure without appropriate inquiry.

Here, the Court of Appeals decided the Gorman-Lykken / Dye inquiry does not apply under the circumstances because the series of armed law enforcement officers, appearing only during Bob's testimony, did not loom near Adams or the witness stand. But in another case Division One explicitly applied Gorman-Lykken, even where an extra security officer was not stationed near the accused or the witness stand, explicitly rejecting the State's argument that the inquiry was unnecessary. See Kennon, 2021 WL 3619870, at *5-*6 & *6 n.2. And, indeed, that is the correct analysis, because Gorman-Lykken draws its legal test

from higher courts—from this Court in Dye, 178 Wn.2d 541, and from the federal Supreme Court in Holbrook, 475 U.S. 560. As such, the Court of Appeals' rejection case-specific inquiry in Mr. Adams's case makes no sense. Such an inquiry is necessary to protect the presumption of innocence.

In summary, the trial court did not make the necessary inquiry or findings to support the special, non-routine security presence during Bob's testimony. Division One, despite previously recognizing the correct test, refused to follow it here, placing the decision at odds with its own prior decision, Division Two, and with this Court's Dye decision. This Court should grant review to resolve this conflict.

E. CONCLUSION

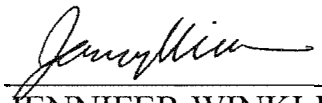
The Court of Appeals' decision conflicts with another division's decision, its own prior decision, and with a decision of this Court. Mr. Adams respectfully requests that this Court grant review under RAP 13.4(b)(1) and (2).

I certify this document is prepared in 14-point font and contains 4,943 words excluding RAP 18.17 exceptions.

DATED this 12th day of March, 2025.

Respectfully submitted,

NIELSEN KOCH & GRANNIS



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APPENDIX

FILED
2/10/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAXON ADAMS, Appellant.	No. 85788-6-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — Jaxon Adams challenges his conviction for assault in the second degree based on strangulation, unlawful imprisonment, and assault in the fourth degree of his former girlfriend, K.B. On appeal, he claims the presence of a uniformed officer in the courtroom during only K.B.'s testimony denied his right to a fair trial. We disagree and affirm his convictions.

FACTS

Jaxon Adams and K.B. began dating in February 2021. Shortly thereafter, K.B. went to visit Adams at his home in Federal Way. Although not initially planning to stay for an extended period of time, K.B. remained at the apartment until the end of April. Over the few months that K.B. lived with Adams, the relationship grew strained. Adams expressed jealousy of other men and had K.B. delete male contacts from her phone and social media. He also insisted they remain near one another and that he and K.B. shower together. He often looked over K.B.'s shoulder as she texted and threatened to break K.B.'s phone on

multiple occasions. At one point, Adams disabled a program on K.B.'s phone that allowed her family to see her location.

On April 26, 2021, Adams and K.B. argued because K.B. wanted to return to her home in Lummi Nation. K.B. later testified that she attempted to leave in her car, but as she was sitting with the key in the ignition, Adams reached through the window and broke the key fob. He then came around to the passenger seat, put his forearm around K.B.'s neck, and choked her. K.B. testified that Adams then released her, took her phone and keys, and said she was not permitted to leave. According to K.B., Adams prevented her from leaving in the days that followed in a variety of ways, including physically blocking doorways, keeping her phone or keys away from her, and threatening to harm himself if K.B. left.

K.B. recounted how on April 30, 2021, during another argument, Adams grabbed both of her arms and threw her against a wall, causing her to hit her head. While Adams was showering, K.B. saw an opportunity to leave. She gathered her phone and some belongings, got into her car, and drove away. During this time, she also texted and called her stepmother and father, explaining to them what happened and seeking their help. The next day, K.B. provided statements to Aaron Hillaire, Patrol Sergeant of the Lummi Nation Police Department, and Federal Way police officer Jon Dietrich.

On May 5, 2021, Adams was charged with assault in the second degree based on strangulation, unlawful imprisonment, later amended to add a charge of assault in the fourth degree, each with a domestic violence aggravator. Trial took

place in July 2023. During the trial, shortly before K.B. was to testify, the State requested "additional security to be present in the courtroom" for K.B.'s safety. When the trial court asked if there was a record of prior incidents that would warrant this action, the State replied there were no prior incidents in court, but that there were "prior incidents of violations of the no-contact order . . . within the last couple of years since this incident."[1] The State stated that none of the interactions had been violent, "but some of them have been intimidating in nature." In addition to raising security concerns, the State noted that "it's already hard enough to testify in a courtroom" and see the person who you are "accusing of committing crimes against you."

In response, the court stated it would let K.B. "hold hands with who[m]ever she wants to coming in," but it was "not going to order additional security absent some record of issues in the courtroom. There's always a risk that that creates a specter of prejudice in front of the jury." The court further elaborated that it needed "to make some findings" on the issue, noting "there's security around" as well as other security measures, and it would not "post extra officers for that reason," i.e., "to assuage concerns of a witness," whereas it might do so had there been a history of outbursts in court or similar concerns. Adams opposed the request, emphasizing the prejudice that would result from suddenly having an officer present in the courtroom and allowing the jurors to see K.B. escorted by

[1] The State did not elaborate on these allegations until after the trial had concluded, when Adams requested, and the court granted, an order allowing him to remain out of custody pending sentencing. In giving details about the incidents, the State mentioned two encounters at powwows Adams and K.B. attended.

police, arguing that "the spectacle of a cop, police officer, sheriff's deputy to be walking around with someone" was "a direct interference of due process."

The trial court asked whether the officers would walk K.B. into the courtroom itself or just to the doors, and the State responded, "That will depend on the Court's ruling, obviously, on whether or not the Court's going to allow a Sheriff's Officer to—to sit in the back of the courtroom." The court then ruled it would "not limit one officer from sitting in the pews, nor do I think I can," and, further, it would not limit K.B. from walking in the courtroom doors with whomever she wanted. Adams made a note for the record that there had not been a uniformed police officer in the courtroom the entire time up until when K.B. would testify. Adams argued there was no reason "to believe that [Adams] means to cause any harm." The court stated it was not making "any . . . finding about that." The court further clarified it would not be unduly prejudicial to have one officer sitting in the back of the courtroom, as "it's common for trials when folks are in custody," which "[t]he jury doesn't know," and it was also "common to have an officer—maybe even three—sitting quietly and just securing the situation."

The court also declined to order the officer to be in plainclothes, reasoning that a uniform alone was not "akin to wearing a shirt with someone's name on it or photos that would elicit sympathy," to which Adams responded, "Except the officer's going to leave . . . as soon as [K.B.'s] done. . . . The jury's not stupid." The court suggested the jury might conclude K.B. was in custody instead or "could think all sorts of things," but that there was nothing unduly prejudicial about a single officer in the back of the courtroom. However, the court did agree

to hold jurors back when K.B. entered or left the courtroom, so as to limit the amount of time the jury saw her with support personnel.

After K.B. provided some preliminary testimony outside the jury's presence, Adams raised the issue again and noted the victim advocate escorted K.B. to and from the witness stand. Adams argued this group of people assisting K.B. contributed to the "othering" of Adams, impacting his trial. In response, the court indicated that whoever assisted K.B. should not go past the spectator benches. The State then formally called K.B. as its next witness.

At lunch recess, consistent with Adams's request, the jury exited before K.B. and her support personnel left—including the sheriff's deputy—and the jurors were instructed to remain in the jury room for a few minutes afterward to prevent them from seeing K.B. outside of the courtroom as well. Before going off the record, Adams noted that another uniformed officer entered the courtroom during the proceedings and reemphasized the alleged resulting prejudice.

The trial court then added to the record that initially, "[t]here was one uniformed officer sitting in the back row of the courtroom on the defense side," and while it observed the sitting officer, "it looked like he was playing on his phone." The court stated that overall, "[t]here wasn't any show of force." In describing the second officer who entered into the courtroom, the trial court mentioned he chatted briefly with the seated officer but left almost immediately: "[H]e was in the courtroom for a moment. The officer did not come forward through the well, did not stand next to the witness, did not stand next to the defendant, did not otherwise make any motions to indicate that there was a

danger or a risk." To limit concerns of prejudice from the presence of additional officers, the trial court requested the officers communicate via text instead of gathering in the courtroom. Upon returning from the lunch break, the court noted there was a single uniformed officer in the back of the courtroom who was different from the officer before but in the same seat.

When trial resumed the following week, Adams filed a motion to dismiss based on the presence of the officers. The court again recounted events for the record. It specified that since the beginning of K.B.'s testimony, one uniformed, presumed armed, officer sat in the back of the courtroom. The court noted that the officers primarily stayed in the back of the courtroom, except for when K.B. first came in, which happened in front of the jury.

Adams then reemphasized the officers were clearly associated with K.B., and they left once K.B.'s testimony concluded. The trial court acknowledged there was a cognizable connection between K.B. and the officers, but it again suggested a reasonable jury may instead assume K.B. was in custody, since they seemed physically oriented toward her. During this exchange, Adams highlighted that the State had not demonstrated that K.B. required security.

The court responded that it read through Adams's briefing and several out-of-state decisions, which were primarily concerned with the appearance that officers are guarding the accused. Although the court recognized the presence of the officers was not entirely neutral, it did not believe the possible resulting prejudice was severe enough to warrant dismissal. The court did, however, offer

to instruct the jury with a curative instruction or to keep an officer present for the remainder of the trial regardless of who was testifying.

When invited to contribute to the record, the prosecutor reiterated that as the alleged victim, K.B. had rights as well. The court responded that the victim's rights must be balanced with the constitutional considerations of the defendant.

K.B.'s testimony resumed, with an officer present. The next day, when K.B.'s testimony finished, Adams noted on the record that "after [K.B.] finished testifying yesterday, the police officer that had been stationed in the courtroom with [K.B.], left." Adams later noted that the court had offered a mitigating instruction, which Adams declined, explaining,

> The defense feels hamstrung in that if Defense argues an instruction or seeks an instruction, she will call more attention to it, versus not seeking an instruction appearing to waive an opportunity. Defense maintains the objection and strategically seeks not to offer an instruction so as to seek mitigation or amelioration in that regard.

The jury subsequently convicted Adams as charged. The court sentenced him to a low-end standard range sentence of 13 months on assault in the second degree, with the other sentences to run concurrently. Adams timely appeals.

DISCUSSION

Adams contends that the presence of uniformed police officers solely during K.B.'s testimony created inherent prejudice, "othered" him as a Native American, and indicated he was dangerous. He argues the culmination of these circumstances undermined his right to a fair trial. Alternatively, he argues even if not inherently prejudicial, allowing K.B.'s police escort to be present absent a showing of necessity was an abuse of discretion. We agree with the State that

the court did not abuse its discretion by permitting an officer to sit in the back of the courtroom during K.B.'s testimony.

"The trial court has broad discretion to make trial management decisions, including 'provisions for the order and security of the courtroom.' " State v. Gorman-Lykken, 9 Wn. App. 2d 687, 691, 446 P.3d 694 (2019) (quoting State v. Dye, 178 Wn.2d 541, 547-48, 309 P.3d 1192 (2013)). Therefore, we review a trial court's decisions regarding security measures for an abuse of discretion. Id. This standard applies even if the challenged procedure is allegedly prejudicial. Id.

"A defendant has the fundamental right to a fair trial." State v. Butler, 198 Wn. App. 484, 493, 394 P.3d 424; U.S. CONST. amends. VI and XIV; WASH. CONST. art. I, § 22. Although not articulated in the Constitution, the presumption of innocence is a " 'basic component' " of this right. State v. Finch, 137 Wn.2d 792, 844, 975 P.2d 967 (1999) (quoting Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976)).

"[T]o preserve a defendant's presumption of innocence before a jury, the defendant is 'entitled to the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent [person].' " State v. Jaime, 168 Wn.2d 857, 861-62, 233 P.3d 554 (2010) (quoting Finch, 137 Wn.2d at 844). "Measures which single out a defendant as a particularly dangerous or guilty person threaten his or her constitutional right to a fair trial." Id. at 862 (quoting Finch, 137 Wn.2d at 845). "Such measures threaten a defendant's right to a fair trial because they erode [the] presumption of innocence; these types of courtroom

practices are inherently prejudicial." Id. at 862. For example, courts have recognized courtroom security measures such as shackling, handcuffing, gagging, or holding a trial in jail are inherently prejudicial. See Gorman-Lykken, 9 Wn. App. 2d at 692 (citing Finch, 137 Wn.2d at 844 (shackling, handcuffing, or other physical restraints; gagging the defendant) and Jaime, 168 Wn.2d at 864 (holding a trial in a jail)).

Because of these concerns, courts must closely scrutinize such practices to ensure they further essential state interests. Jaime, 168 Wn.2d at 865. "When courtroom arrangements inherently prejudice the fact-finding process, it violates due process unless the arrangements are required by an essential state interest." Butler, 198 Wn. App. at 493 (citing Holbrook v. Flynn, 475 U.S. 560, 568-72, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986)).

The U.S. Supreme Court has held that "conspicuous, or at least noticeable, deployment of security personnel in a courtroom during trial" is not inherently prejudicial. Holbrook, 475 U.S. at 562, 568; see also Gorman-Lykken, 9 Wn. App. 2d at 693 ("The routine use of security personnel in a courtroom during trial [] is not an inherently prejudicial practice."). In Holbrook, the Supreme Court considered whether the presence of four uniformed security officers seated behind the defendants in the front row of the spectators' section throughout trial was inherently prejudicial. 475 U.S. at 562. In determining it was not inherently prejudicial, the Court reasoned,

> The chief feature that distinguishes the use of identifiable security officers from courtroom practices we might find inherently prejudicial is the wider range of inferences that a juror might reasonably draw from the officers' presence. While shackling and

> prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards. If they are placed at some distance from the accused, security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status. Our society has become inured to the presence of armed guards in most public places; they are doubtless taken for granted so long as their numbers or weaponry do not suggest particular official concern or alarm.

Id. at 569.

However, the Court also recognized there could be a possible set of facts in which a security force within the courtroom might " 'create the impression in the minds of the jury that the defendant is dangerous or untrustworthy.' " Id. (quoting Kennedy v. Cardwell, 487 F.2d 101, 108 (6th Cir. 1973), cert. denied, 416 U.S. 959, 94 S. Ct. 1976, 40 L. Ed. 2d 310 (1974)). Thus, the Court acknowledged that " 'reason, principle, and common human experience' counsel against a presumption that any use of identifiable security guards in the courtroom is inherently prejudicial" and "a case-by-case approach is more appropriate." Holbrook, 475 U.S. at 569 (citation omitted) (quoting Estelle, 425 U.S. at 504).

A. Inherent Prejudice

Adams argues that it is inherently prejudicial for an officer to be present solely during a complainant's (alleged victim's) testimony. When a courtroom arrangement is challenged as inherently prejudicial, the question does not

revolve around "whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether 'an unacceptable risk is presented of impermissible factors coming into play.' " Holbrook, 475 U.S. at 570 (quoting Estelle, 425 U.S. at 505). Courts "evaluate the likely effects of a particular procedure based on 'reason, principle, and common human experience.' " Butler, 198 Wn. App. at 493 (quoting Estelle, 425 U.S. at 504).

Washington courts have followed Holbrook and declined to hold that the routine presence of security officers is inherently prejudicial. For example, in Butler, a jail officer was present because the defendant was in custody, and an additional jail officer was present for a portion of the victim's testimony. 198 Wn. App. at 489. This court concluded the second officer's presence was not inherently prejudicial, as "[t]he second officer was not conspicuously close to Butler, did not obstruct [his] view of the witness, did not attract attention, and was not present for the remainder of the victim's testimony." Id. at 486. Further, the court "remedied any potential juror confusion or concern" by providing a limiting instruction conveying that security had not been deliberately heightened at any time during the trial, but additional security "may have appeared because of a routine change in personnel," and the jury should not draw any conclusions based on the presence of security staff. Id. at 489-90, 494.

Similarly, in Gorman-Lykken, the court held there was no inherent prejudice when a corrections officer was stationed next to the witness stand during the defendant's testimony. 9 Wn. App. 2d at 695. The court noted that the officer had been present throughout trial, there was only one officer, she did not

draw attention to herself, and the defendant and the officer moved to and from the witness box outside the jury's presence. Id.

Here, though the officers rotated, only a single officer was present at any time and only during K.B.'s testimony rather than throughout the trial, so unlike in the cases discussed above, there was not a continual security presence. Adams argues that "[t]he officers' presence sent a message to the jury that additional security was needed to protect [K.B.] from Adams," and that this implicit bias othered him, citing State v. Bagby, 200 Wn.2d 777, 794-95, 522 P.3d 982 (2023) ("Studies have shown that even the simplest racial cues can trigger implicit biases and affect the way jurors evaluate evidence and 'subtle manipulations' of a defendant's background—such cues can affect juror decision-making more so than even explicit references to race.") (quoting Praatika Prasad, Notes, Implicit Racial Biases in Prosecutorial Summations: Proposing an Integrated Response, 86 FORDHAM L. REV 3091, 3101 (2018)). But like the officers in Holbrook and Butler, the officers present during K.B.'s testimony were inconspicuously positioned in the back of the courtroom, in the row the furthest away from Adams, and did not attract attention. As in Gorman-Lykken, the jury was not present when the officer moved with K.B. to and from the witness stand, except for the first instance.

Like the courts in Holbrook, Butler, and Gorman-Lykken, we decline to apply "a presumption that any use of identifiable security guards in the courtroom is inherently prejudicial." Holbrook, 475 U.S. at 569. As the Holbrook Court noted, our society is "inured to the presence of armed guards in most public places," id.,

and the presence of a single officer for portions of the trial did not convey that Adams was particularly dangerous or culpable or that K.B. was in need of protection, but could just as easily be interpreted as a means to ensure order in the courtroom and protection from outside disruptions. Moreover, as to Adams's suggestion that he was "othered" as a Native American,[2] while implicit race bias may well be present, under these facts, the presence of an officer only during K.B.'s testimony did not create inherent prejudice based on Adams's racial or ethnic status. We conclude that the presence of a single officer solely during K.B.'s testimony was not inherently prejudicial and that a case-specific analysis is more appropriate.

B. Exercise of Discretion

Adams argues in the alternative that if the security officer's presence during K.B.'s testimony was not inherently prejudicial, then the trial court abused its discretion when it did not make case-specific findings related to the security measure. Again, we disagree.

"[T]he trial court must actually exercise discretion based on the facts of the case in considering whether to allow a courtroom security measure." Gorman-Lykken, 9 Wn. App. 2d at 696. However, "[f]or routine security measures such as the presence of officers in the courtroom, no specific inquiry on the record is required for the trial court's exercise of discretion." Id. "[J]urors may not infer anything negative about the presence of security officers '[i]f they are placed at some distance from the accused.' " Id. (quoting Holbrook, 475 U.S. at 569).

[2] We note that K.B. also is Native American.

Here, in all but one instance, the jury never saw an officer accompany K.B. to the witness stand, and the single officer who was present was seated "at some distance"—indeed, the furthest row possible—away from Adams. This case is factually distinguishable from Gorman-Lykken, in which the court "recognize[d] that the potential for prejudice is greater when a security officer is stationed next to a testifying defendant than when an officer or officers merely are present elsewhere in the courtroom." 9 Wn. App. 2d at 696. In this case, there was no officer stationed near the witness stand at any time. Thus, there was no need for the trial court to state case-specific reasons for the need for the security measure or to determine that the need for the security measure outweighs the potential prejudice to the testifying defendant, unlike in Gorman-Lykken. See 9 Wn. App. 2d at 697-98.[3]

The court must still exercise its discretion based on the facts of the case. Gorman-Lykken, 9 Wn. App. 2d at 695-96. The record is replete with evidence that the court did so here. As discussed above, the trial court heard robust argument from both parties before concluding that one officer sitting in the back would not be unduly prejudicial, especially when, as the court noted, it was common to have up to three officers sitting quietly in a courtroom. See Dye, 178 Wn.2d at 553 ("the trial court is in the best position to analyze the actual necessity of a special dispensation"). Moreover, the court considered and

[3] Adams relies on State v. Kennon, in which the security measure at issue was allowing additional officers to be generally present in the courtroom while the victim was testifying. No. 80813-3-I, slip op. at 5 (Wash. Ct. App. Aug. 16, 2021), https://www.courts.wa.gov/opinions/pdf/808133.pdf. The court concluded that "whatever the security measure, a court must provide a reason for its determination." Id. at 13 n.2. As Kennon is an unpublished decision, it has no precedential value and is not binding on any court. GR 14.1(c).

adopted steps to minimize any prejudice: It required the officer and K.B. to enter and exit outside the presence of the jury; it required the officer to sit in the back of the courtroom; and, rather than allowing multiple officers in the courtroom, it required officers to communicate with each other via text.

The trial court properly exercised its discretion by permitting a single officer to remain in the back of the courtroom while K.B. testified. Accordingly, we affirm Adams's convictions.

Chung, J.

WE CONCUR:

Bird, J.

Dwyer, J.

NIELSEN KOCH & GRANNIS P.L.L.C.

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