SUPREME COURT NO. 1041705
COURT OF APPEALS NO. 39445-0-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

V.

LEIF BUCK,

Petitioner.

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

The Honorable Patrick Monasmith

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Leif Buck asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the part-published opinion in State v. Buck, COA No. 54942-5-II, filed on April 10, 2025, attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Whether interfering with the reporting of domestic violence is an alternative means crime?

2. Whether Buck's conviction was obtained in violation of his right to a unanimous verdict where the court failed to instruct the jury it must be unanimous as to the means relied upon and there was insufficient evidence of two of the means for which the jury was instructed?

3. Where Division Three's opinion that interfering with the reporting of domestic violence is not an

alternative means crime conflicts with that of Division One in State v. Nonog, 145 Wn. App. 802, 187 P.3d 335 (2008), affirmed on other grounds, 169 Wn.2d 220, 237 P.3d 250 (2010), should this Court accept review? RAP 13.4(b)(2).

4. Where this case involves a significant question of law under the state and federal constitutions, should this Court accept review? RAP 13.4(b)(3).

D. STATEMENT OF THE CASE

Buck and his former girlfriend Amethyst Hargreaves have two young children in common. RP 222. At the time of the events leading to the interfering with the reporting of domestic violence charge, the two were dealing with custody issues. RP 235-36.

On June 30, 2021, Buck and Hargreaves argued at Hargreaves' house, because Buck wanted 50/50 custody. RP 235-36. Hargreaves left the room and pretended to fall asleep to end the encounter. RP 235. When she

awoke, Buck was gone but left a note asking to continue the conversation the next morning at his separate residence. RP 235, 240.

The next day, Hargreaves arrived at Buck's residence at around 9:00 a.m. RP 238. Hargreaves claimed she tried to calmly talk to Buck about child custody but as soon as she said they would have to go to court, Buck lunged at her and held her down on the couch. Hargreaves claimed Buck wrapped his legs around hers and held her arms down with his hands. She claimed he held his head down on hers to keep her head down. RP 241.

Hargreaves testified that although she was crying and asking to be let up, Buck held her down for a minute or two. RP 242. Buck reportedly pulled Hargreaves off the couch by her legs and dragged her through a glass of water that had spilled. RP 242.

Hargreaves claimed that when she said she was going to call the sheriff, Buck reached into her pocket and took her phone. RP 242. According to Hargreaves, Buck jumped up off of her, fidgeted with the phone and then put it in his pocket. RP 243. Hargreaves testified she would have called 911 if Buck hadn't taken her phone. RP 244-45.

According to Hargreaves, Buck suddenly grabbed her and jumped up and backwards. He landed on his back with Hargreaves on top of him. In the fall, Hargreaves hurt her hand and elbow. RP 246, 259-60. According to Hargreaves, Buck yelled, "ow, ow, get off me. You're hurting me. You're always so violent." RP 246. Reportedly, Buck jumped up and said, "ha, ha, now I have my evidence." RP 247.

Hargreaves told Buck she would just drive to the sheriff's office. Buck reportedly responded he would not be there when the sheriff arrived. RP 247. Hargreaves

left and drove to the sheriff's office and reported the incident to sheriff Ray Maycumber. RP 255.

Later, Hargreaves went to the emergency room. The doctor noted some bruising but testified Hargreaves did not need further care. RP 261, 284-85. Buck later left the phone on Hargreaves' porch with a note of apology. RP 268-69.

Buck was charged with fourth degree assault, and interfering with the reporting of domestic violence, the latter of which is at issue here. CP 1-3; Brief of Appellant (BOA) at 14-27. The jury was instructed:

> INSTRUCTION NO. 10
>
> To convict the defendant of the crime of interference with the reporting of a domestic violence offense, as changed in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1)That on or about July 1, 2021, the defendant committed the crime of Assault in the Fourth Degree against Amethyst Hargreaves as charged in Count 1;

(2)That on that date the defendant was an intimate partner of Amethyst Hargreaves;
(3)That the defendant prevented or attempted to prevent Amethyst Hargreaves from calling a 911 emergency communication system, or obtaining medical assistance, or making a report to any law enforcement officer; and
(4)That the prevention or attempted prevention occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

RP 63.

On appeal, Buck argued his right to a unanimous jury verdict was violated because interfering with the reporting of domestic violence is an alternative means crime and because the state presented evidence of only one of the means – that Buck prevented Hargreaves from calling a 911 communication system. And the court gave

no unanimity instruction. BOA at 17-18. Based on the prosecutor's closing argument as well as the testimony in the case, there was a real possibility the jury relied on discrete means to convict. BOA at 24-25. As a result, Buck's right to a unanimous jury verdict was violated.

The state agreed that if the offense is an alternative means crime, Buck's right to a unanimous jury verdict was violated because there was no evidence Hargreaves tried to obtain medical assistance. Appendix at 4. However, the state argued the offense is not an alternative means crime. Id.

Division Three agreed with the state, recognizing its decision conflicts with Division One's in Nonog, but reasoning Division One did not have the benefit of this Court's opinion in State v. Sandholm, 184 Wn.2d 726, 364 P.3d 87 (2015). Appendix at 1, 5-6.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

THIS COURT SHOULD ACCEPT REVIEW BECAUSE DIVISION THREE'S DECISION CONFLICTS WITH DIVISION ONE'S IN NONOG AND BECAUSE BUCK'S CASE INVOLVES A SIGNFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS.

The published part of the decision in Buck's case holds that the crime of interfering is not an alternative means crime and conflicts with Division One's opinion in Nonog. Because there is a direct split of authority between Division One and Division Three, this Court should accept review to resolve the conflict. RAP 13.4(b)(2).

And contrary to Division Three's decision, this Court's decision in Sandholm does not affect the legitimacy of Division One's decision in Nonog. Because Buck's right to a unanimous jury verdict was violated, this case involves a significant question of law under the state

and federal constitution that should be resolved by this Court. RAP 13.4(b)(3).

Article I, section 21 of the Washington State Constitution and the Sixth Amendment to the United States Constitution provides defendants the right to a unanimous jury verdict. The right to a unanimous jury verdict includes the right to unanimity as to which means the state charged the defendant and which act constituted the crime charged. State v. Bobenhouse, 166 Wash.2d 881, 893, 214 P.3d 907 (2009). An "alternative means" crime is a single offense that may be committed in more than one way. State v. Kitchen, 110 Wash.2d 403, 410, 756 P.2d 105 (1988).

"Where a single offense may be committed in more than one way, there must be jury unanimity as to guilt for the single crime charged. Unanimity is not required, however, as to the means by which the crime was committed so long as substantial evidence supports each

alternative means." State v. Nonog, 145 Wash. App. 802, 811-12, 187 P.3d 335 (2008), aff'd, 169 Wash.2d 220, 237 P.3d 250 (2010). "Evidence is sufficient if, viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Owens, 180 Wash.2d 90, 99, 323 P.3d 1030 (2014).

Division One has determined the crime of interfering with the reporting of domestic violence is an alternative means crime. Nonog, 145 Wash. App. at 811-12, 187 P.3d 335. RCW 9A.36.150(1)(b) provides, "A person commits the crime of interfering with the reporting of domestic violence if the person" "[p]revents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official." In other words, the statute sets forth three alternative means of

committing the crime of interfering: (1) preventing someone from calling a 911 communication system, (2) preventing someone from obtaining medical assistance, and (3) preventing someone from making a report to any law enforcement officer.

In the instant case, the court instructed the jury on all three means. CP 63. However, the state presented evidence only on one of the means – that Buck prevented Hargreaves from calling a 911 communication system. Hargreaves testified that she told Buck she wanted to call the sheriff, meaning 911, and Buck took her phone and wouldn't give it back.

Yet, the state presented no evidence of the other two means. Hargreaves never asserted she wanted medical assistance. Nor did Buck prevent her from leaving. In fact, Hargreaves left and drove to the sheriff's office where she reported the incident. She also later sought medical care. The state agreed there was no

evidence Hargreaves tried to obtain medical care and Buck prevented her. Appendix at 4.

The court's failure to inform the jury this was an alternative means offense for which unanimity was required was constitutional error. State v. Woodlyn, 188 Wn.2d 157, 162, 392 P.3d 1062, 1065 (2017) (When one alternative mans of committing a crime has evidentiary support and another does not, courts may not assume the jury relied unanimously on the supported means).

Division Three disagreed, based on this Court's opinion in Sandholm:

> The Sandholm court clarified that the alternative mean analysis must focus on the criminal conduct. In this case, the criminal conduct described by the statute is a defendant preventing or attempting to prevent a victim or a witness from reporting domestic violence. There are no nuances in the criminal conduct, not even minor, that differ based on how a person seeks to report the conduct. For this reason, interfering with the reporting of domestic violence is not an alternative means crime.

Appendix at 5-6.

But there is a significant difference between preventing someone (possibly a witness not a victim) from reporting domestic violence, *a crime*, and preventing someone (presumably the victim) from seeking medical assistance for injuries. One does not have to report a crime to seek medical assistance. And arguably, there is more danger or malice involved in preventing someone from obtaining medical assistance. Seeking medical assistance is different from seeking to pursue charges. For this reason, Division Three's decision does not respect the distinction between the conduct criminalized in the interfering statute.

F. CONCLUSION

For the reasons stated above, this Court should accept review. RAP 13.4(b)(2), (3).

This document contains 1,974 words in 14-point font, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 12TH day of May, 2025.

Respectfully submitted,

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APPENDIX

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CASE # 394450
State of Washington v. Leif Buck
FERRY COUNTY SUPERIOR COURT No. 2110002510

Counsel:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
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c: **E-mail** Hon. Patrick Monosmith
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 39445-0-III
	)	
Respondent,	)	
	)	
v.	)	OPINION PUBLISHED
	)	IN PART
LEIF BUCK,	)	
	)	
Appellant.	)	

LAWRENCE-BERREY, C.J. — Leif Buck appeals after a jury convicted him of interfering with the reporting of domestic violence, fourth degree assault, and failure to register as a sex offender. He argues the trial court violated his right to a unanimous jury verdict on the interfering charge by permitting the jury to consider three different means for committing the offense. We disagree and conclude that the offense is not an alternative means crime. In doing so, we depart from *State v. Nonog*, 145 Wn. App. 802, 187 P.3d 335 (2008), *aff'd on other grounds*, 169 Wn.2d 220, 237 P.3d 250 (2010), which did not have the benefit of later decisions such as *State v. Sandholm*, 184 Wn.2d 726, 364 P.3d 87 (2015).

FACTS

Background

For several years, Leif Buck lived with A.H., the mother of his two children. Possibly because of mental illness, Buck began acting aggressively toward her and saying strange things, so the couple stopped living together.

One day, Buck insisted that A.H. sign a document giving him shared custody of their children. The next day, while visiting Buck, A.H. told him custody would need to be decided in court. In response, Buck lunged toward her and, while holding her down, threatened to kill her for taking their children from him. Buck proceeded to drag A.H. across the floor. A.H. told him to stop and threatened to call 911. Buck then reached into her pocket, took her phone, and put it in his pocket. Buck refused to return the phone. After some time, A.H. said she would drive to the sheriff's office instead. Buck let her leave.

The State charged Buck with fourth degree assault, interfering with the reporting of domestic violence, and failure to register as a sex offender.

Jury Instruction and Argument

After the parties presented their cases, the trial court instructed the jury on the law, including the interference charge. In relevant part, the instruction stated:

INSTRUCTION NO. 10

> To convict the defendant of the crime of interference with the reporting of a domestic violence offense, as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> . . . .
>
> (3) *That the defendant prevented or attempted to prevent* [*A.H.*] *from calling a 911 emergency communication system, or obtaining medical assistance, or making a report to any law enforcement officer.*

Clerk's Papers (CP) at 63 (emphasis added).

The State argued that Buck committed the offense both by preventing A.H. from calling 911 and by preventing her from going to the sheriff's office. The jury entered guilty verdicts on all charges.

Buck appeals.

ANALYSIS

JURY UNANIMITY AND INTERFERING WITH THE REPORTING OF DOMESTIC VIOLENCE

Buck argues the trial court violated his right to a unanimous jury verdict by instructing the jury on three means of committing interfering with the reporting of domestic violence when there was evidence of only one means. The State responds that the crime is not an alternative means crime. We agree with the State.

Criminal defendants have the right to a unanimous jury verdict. WASH. CONST. art. I, § 21. While defendants do not have the categorical right to express unanimity for alternative means convictions, express unanimity is required when one means lacks evidentiary support. *State v. Woodlyn*, 188 Wn.2d 157, 164, 392 P.3d 1062 (2017). If the court instructs the jury on one or more alternative means that are not supported by sufficient evidence, the jury must provide a particularized expression of unanimity as to the supported means. *Id.* When "it is 'impossible to *rule out the possibility* the jury relied on a charge unsupported by sufficient evidence,'" the court must reverse the general verdict. *Id.* (quoting *State v. Wright*, 165 Wn.2d 783, 803 n.12, 203 P.3d 1027 (2009)).

The parties agree that if the offense is an alternative means crime, Buck's right to a unanimous jury verdict was violated because there was no evidence A.H. tried to obtain medical assistance. For this reason, we must determine whether interfering with the reporting of domestic violence is an alternative means crime.

Alternative means crimes are "ones that provide that the proscribed criminal conduct may be proved in a variety of ways." *State v. Smith*, 159 Wn.2d 778, 784, 154 P.3d 873 (2007). Because the legislature has not outlined what constitutes an alternative means crime, courts determine the prerequisites. *State v. Lindsey*, 177 Wn. App. 233, 240, 311 P.3d 61 (2013). There is no bright-line rule for deciding this issue. *Id.*

A statute that lists the methods of committing a crime in the disjunctive, on its own, is not sufficient to support its characterization as an alternative means crime. *Id.* at 240-41. However, "a statute divided into subparts is more likely to be found to designate alternative means." *Id.* at 241.

The key inquiry is whether the statute describes "distinct acts that amount to the same crime." *State v. Peterson*, 168 Wn.2d 763, 770, 230 P.3d 588 (2010) (emphasis omitted). "The more varied the criminal conduct, the more likely the statute describes alternative means." *Sandholm*, 184 Wn.2d at 734. If the nuances between the criminal conduct are minor, the more likely the alternatives are "merely facets of the same criminal conduct." *Id.* With these standards in mind, we now examine the statute.

RCW 9A.36.150 makes it unlawful to interfere with the reporting of domestic violence. The relevant portion of RCW 9A.36.150 provides:

> (1) A person commits the crime of interfering with the reporting of domestic violence if the person:
>
> . . . .
>
> (b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

The *Sandholm* court clarified that the alternative means analysis must focus on the criminal conduct. In this case, the criminal conduct described by the statute is a defendant preventing or attempting to prevent a victim or a witness from reporting

domestic violence. There are *no* nuances in the criminal conduct, not even minor, that differ based on how a person seeks to report the conduct. For this reason, interfering with the reporting of domestic violence is not an alternative means crime.

Our decision today conflicts with *Nonog*, 145 Wn. App. 802. There, Division One of our court observed, "Interference [with the reporting of domestic violence] is culpable only when a victim or witness is trying to report the crime to a particular entity." *Id.* at 813. The *Nonog* court concluded, "because the statute does not criminalize all acts that might appear to constitute interfering," the offense must be considered an alternative means crime. *Id.* *Nonog*'s alternative means analysis focused on what entity a victim or witness tried to report domestic violence to. But reporting domestic violence is not the conduct made criminal by the statute. With the benefit of *Sandholm*—which requires an alternative means analysis to focus on the criminal conduct—we depart from *Nonog*.

We conclude that because interfering with the reporting of domestic violence is not an alternative means crime, the trial court did not deny Buck his right to a unanimous jury verdict.

Affirm.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

SENTENCING ISSUES

Buck raises well-settled issues related to his sentence. We now discuss the sentence the trial court imposed.

In addition to incarceration, the trial court imposed 12 months of community custody. As conditions of community custody, the court required Buck to complete mental health and chemical dependency evaluations, and follow the treatment plans. The court did not make a finding that substance abuse contributed to the offense. The court also did not make a finding that Buck was suffering from a mental health condition.

The court imposed these conditions in order to discover whether substances or mental health were a factor in the incident:

> But the idea of community custody, which is a form of probation, really appeals to me because that's the place where you can get that help at no expense to you. That's the place where the community can be protected because you're not only under supervision, but they're making sure you're doing those things that can improve your life.
>
> *If drugs are a part of it, we'll figure out that they won't be.* They'll be tested and everything else to be sure. *If there's mental health issues,*

> *they'll be sure that you're in personal counseling addressing any needs you have in mental health.* If it's [an] anger management problem or domestic violence problem, we'll be sure that you're in treatment so that those don't happen again. That's really why we're here—so it doesn't happen again.

Rep. of Proc. at 426-27 (emphasis added).

In addition, the court issued a no-contact order (NCO) prohibiting Buck from directly or indirectly contacting A.H. for five years and imposed a $500 victim penalty assessment (VPA) along with $171 in restitution.

Sentencing conditions are reviewed for abuse of discretion. *State v. Munoz-Rivera*, 190 Wn. App. 870, 890, 361 P.3d 182 (2015). A trial court abuses its discretion when the decision is manifestly unreasonable or is based on untenable grounds or reasons. *State v. Dye*, 178 Wn.2d 541, 548, 309 P.3d 1192 (2013).

Buck's challenge to the NCO

Buck argues, and the State concedes, that the NCO unreasonably interferes with Buck's fundamental right to parent.

Conditions that interfere with the fundamental right to parent "must be sensitively imposed" and "reasonably necessary to accomplish the essential needs of the State." *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). These rules apply to no-contact orders along with their scope and duration. *State v. Peters*, 10 Wn. App. 2d 574, 584, 455 P.3d 141 (2019). A crime-related prohibition interfering with a fundamental right

must be narrowly drawn with no reasonable alternative to achieve the State's interest. *State v. McGuire*, 12 Wn. App. 2d 88, 95, 456 P.3d 1193 (2020).

In *McGuire*, the court considered a no-contact order that prohibited the defendant's contact with his former girlfriend. *Id.* The order did not provide any exceptions for maintaining contact with their child. *Id.* The court held that the scope of the no-contact order violated McGuire's right to parent because the prohibition on direct and indirect contact through the court or counsel was not narrowly drawn. *See id.* at 95-96.

Here, the NCO prohibits Buck from directly or indirectly contacting A.H. Indirect contact is necessary to arrange visitations, whether supervised or not. We remand for the trial court to fashion an NCO that is narrowly drawn so as not to unreasonably interfere with Buck's fundamental right to parent. Because discretion will be involved, a limited resentencing is required.

Buck's challenge to the ordered mental health/chemical dependency evaluations and treatments

Buck challenges the requirement of his sentence that he undergo mental health and chemical dependency evaluations, and comply with recommended treatments. He argues the trial court failed to enter appropriate findings that would permit it to order such evaluations and treatments. The State responds that the trial court intended and had the

authority to impose these conditions in relation to Buck's misdemeanor sentences. We agree with the State.

Courts have broad discretion to impose sentencing conditions in connection with misdemeanors, which are not subject to the same requirements as RCW 9.94B.080. *State v. Deskins*, 180 Wn.2d 68, 78, 322 P.3d 780 (2014). "Misdemeanor sentencing courts have the discretion to issue suspended sentences or to impose sentences and conditions with 'carrot-and-stick incentive[s]' to promote rehabilitation, a goal of nonfelony sentencing." *Harris v. Charles*, 171 Wn.2d 455, 465, 256 P.3d 328 (2011) (alteration in original) (quoting *Wahleithner v. Thompson*, 134 Wn. App. 931, 941, 143 P.3d 321 (2006)).

We remand for the trial court to revise these conditions so their imposition clearly relates only to Buck's misdemeanor convictions.

Buck's other sentencing challenges

Buck additionally challenges the trial court's imposition of the VPA and interest on the ordered restitution. The State does not oppose these challenges. We therefore order the VPA to be struck and permit the trial court to consider whether to waive interest on restitution.

Affirm the convictions and remand for resentencing related to NCO, to correct the community custody conditions, to strike the VPA, and to consider whether to waive restitution interest.

Lawrence-Berrey, C.J.

WE CONCUR:

Staab, J.

Cooney, J.

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

May 12, 2025 - 4:04 PM

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