

FILED
SUPREME COURT
STATE OF WASHINGTON
7/1/2025 11:35 AM
BY SARAH R. PENDLETON
CLERK

NO. 104296-5

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EBRIMA JOBE,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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A. ISSUES PRESENTED¹

1. Do any “notes” support Jobe’s claim that the Court of Appeals should have reviewed communications between a UW victim’s advocate and K.A. *in camera*?²

2. Jobe sought disclosure of sealed records pertaining to a prior sexual assault allegation made by K.A. against another UW student. Both the trial court and the Court of Appeals reviewed the materials *in camera* and concluded they were not discoverable. Jobe claims, *inter alia*, that the Court of Appeals’ analysis was insufficient because it did not explain *why* the information sought was immaterial. Should this court

¹ The State rests on its briefing and the reasoning in the Court of Appeals’ opinion to answer the other bases on which Jobe seeks this Court’s review.

² There were two records-related issues on appeal, one involving victim advocate records related to this specific case (that were *not* reviewed *in camera*) and another involving a sexual misconduct investigation with an unrelated perpetrator but the same victim (that *were* reviewed *in camera*). Jobe’s petition condensed these distinct events into one issue statement. Pet. for Rev. at 1.

decline review when this argument was not made below and is unsupported by any authority?

2. Should this court decline to review Jobe's allegation of prosecutorial misconduct when his petition relies on a different legal basis than that raised below?

B. STATEMENT OF THE CASE

The State generally relies on the facts previously discussed in the Brief of Respondent and the Court of Appeals' partially published opinion affirming Jobe's conviction, *State v. Jobe*, No. 84329-0-I, 569 P.3d 331 (2025). Additional facts are noted where necessary.

C. ARGUMENT

“A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of

the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b).

1. THE ADVOCATE’S NOTES ARE NOT IN THE RECORD AND JOBE’S SPECULATIVE REMARK ABOUT THEIR CONTENT SHOULD NOT BE CONSIDERED.

Jobe sought to compel production of a victim advocate’s records based in part on the advocate’s statement to a detective that K.A. “was having some difficulty in determining how far in the prosecution she wanted to participate in.” CP 108. The trial court ultimately declined to order production or conduct an *in camera* review after finding that Jobe had not shown that the records were likely to be exculpatory. CP 196. The Court of Appeals affirmed, holding that “Jobe has not demonstrated a likelihood that [the advocate] possesses any case-specific notes implicating consent or details of the incident that are material to Jobe’s defense.” *Jobe*, No. 84329-0 at 14-15.

Jobe makes the following claim in his petition for review to this Court:

Contrary to the Court's opinion, the alleged victim's indecision is germane to the possibility she may have discussed consent with the advocate and is not speculative. **The advocate's notes bear that out.**

Pet. for Rev. at 4 (emphasis added). Jobe does not cite to the record regarding what the notes "bear [] out."

The advocate's notes are not in the trial record. *See* CP 196 ("Order On Motion For Reconsideration") ("the extent of their communication and the content of their communication is unknown...the Defendant has speculation or suspicion as to what the records could contain").³ Undersigned counsel has never seen them. It is unknown if defense counsel has somehow been able to obtain the records. In any event, courts will not

³ There are hundreds of pages of sealed documents in the superior court record, but they appear to be related to the sexual assault allegation against another UW student that *was* reviewed *in camera* by both the trial court and the Court of Appeals.

consider matters outside the trial record on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

2. JOBE HAS FAILED TO SHOW THAT THE COURT OF APPEALS' *IN CAMERA* CONSIDERATION OF OTHER SEALED RECORDS CONFLICTS WITH THIS COURT'S PRECEDENT.

Jobe also moved to compel disclosure of records regarding an unrelated allegation of sexual assault previously made by K.A. against another student. CP 202-03. The allegation was “apparently adjudicated in a UW administrative proceeding which resulted in no disciplinary action.”⁴ CP 203. The trial court reviewed records related to the university’s investigation *in camera*, but determined there was “no discoverable or material information contained in the documents.” CP 208. The records were then filed under seal. CP 208; CrR 4.7(h)(6).

⁴ Jobe described the allegation as “unsubstantiated.” Brief of App. at 49. But while the available information suggests no action was taken against the accused student, the reason for this result is not clear from the record.

On direct appeal, Jobe asked the court to conduct another independent *in camera* review to determine whether these documents should have been provided in discovery. Br. of Appellant at 49. The State agreed that Jobe was entitled to such review. Br. of Respondent at 52-53. The Court of Appeals “review[ed] the sealed records pertaining to the UW’s investigation” and “conclude[d] there is no information that is discoverable or material.” *Jobe*, No. 84329-0-I at 16. The opinion did not further explain the basis for this conclusion.

Jobe seeks review in part because the Court of Appeals allegedly “rubber-stamped” the trial court’s decision “without any analysis why the information was not discoverable or material.” Pet. for Rev. at 6. It is unclear what led Jobe to conclude that “rubber-stamping” occurred other than the bare fact that the Court of Appeals came to the same conclusion as the trial judge.

Jobe did not ask the Court of Appeals to undertake any specific analysis, nor did he claim that any particular findings

were required. Br. of Appellant at 49. He simply asked the court to conduct an “independent review of the...records to determine whether they contain information that should have been, but was not, disclosed to the defense.” Br. of Appellant at 50-51. The Court of Appeals did so.⁵ It is thus debatable whether Jobe’s complaint is properly before the court, having been raised, at least in part, for the first time in his petition for review. *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 861 n.20, 383 P.3d 492 (2016).

Jobe claims the Court of Appeals’ analysis, or lack thereof, conflicts with this Court’s decision in *State v. Casal*, 103 Wn.2d 812, 699 P.2d 1234 (1985). RAP 13.4(b)(1). *Casal* involved a very different situation concerning the identity of a confidential informant whose statements were used to support a

⁵ Jobe also filed a motion to reconsider asking the Court of Appeals to rule on the arguments made in his Statement of Additional Grounds. Mot. for Reconsideration at 1. He did not ask the court to further expound upon its basis for finding the UW records immaterial.

search warrant. 103 Wn.2d at 813. The bulk of the *Casal* opinion was concerned with trial-court procedures, after which it simply stated:

A defendant is entitled to appellate review of the in camera hearing. The appellate court will review the sealed transcript of the hearing to determine whether the trial judge abused his discretion in determining that probable cause was present or absent.

Id. at 822-23. It is unclear how the Court of Appeals deviated from *Casal*, which did not promulgate any requirement for specific findings on direct appeal.

Jobe also claims the Court of Appeals' decision conflicts with *State v. Gregory*, 158 Wn.2d 759, 795, 147 P.3d 1201 (2006) (overruled on unrelated grounds by *State v. W.R., Jr.*, 181 Wn.2d 757, 759, 336 P.3d 1134 (2014)). Pet for Rev. at 6. This is so, Jobe asserts, because the Court of Appeals "should have evaluated whether it was harmless error not to disclose the evidence." Pet. for Rev. at 6.

Gregory is inapplicable here. First, the trial court in *Gregory* declined to conduct an *in camera* review of the

dependency files at issue. 158 Wn.2d at 794. This is a different situation from Jobe's case, where an *in camera* review was conducted and the court simply found the material non-discoverable. Second, a harmless error analysis is only necessary if the appellate court finds the files should have been disclosed in the first place. *Id.* at 795. It is unclear why a court would conduct a harmless error analysis after reviewing the relevant documents and finding "no information that is discoverable or material." *Jobe*, No. 84329-0-I at 16.

Jobe has not shown any conflict with established precedent. Review is not warranted under RAP 13.4(b)(1) or (b)(2).

3. THIS COURT SHOULD DENY REVIEW OF THE PROSECUTORIAL MISCONDUCT ISSUE BECAUSE THE BASIS RELIED ON IN JOBE’S PETITION WAS NOT RAISED BELOW.⁶

The following exchange occurred during the prosecutor’s

initial closing argument:

[Prosecutor]: [Nurse Bearbow] wrote down that during her examination she noticed bruising forming on the top and the bottom lip; bruising on the shoulder; bruising on the arm; and she also noted injuries to the genitals. There was an abrasion or a layer of skin removed from the vulva and there were two scratches or abrasions near the perineum.

Those injuries testified to by Nurse Bearbow and documented on the traumagram is physical evidence that proves Mr. Jobe used force. He didn’t just touch her, but he was using force. Consensual sexual contact does not result in bruising on the lips, bruising on the shoulder, bruising on the arm. Consensual sexual contact does not result in injuries to the vagina and the perineum.

[Defense Counsel]: Objection.

⁶ In addition to the prosecutor’s argument about K.A.’s injuries, Jobe’s issue statement suggests that his petition also encompasses “another statement referring to DNA evidence.” Pet. for Rev. at 2. However, Jobe’s petition contains no further discussion of this statement. “Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Holland v. City of Tacoma*, 90 Wn. App. 533, 537-38, 954 P.2d 290 (1998).

The Court: Ground?

[Defense Counsel]: That wasn't in evidence; it's not a reasonable inference; it's also not accurate.

The Court: For the jury to determine.

[Prosecutor]: Consensual sexual contact does not result in injuries to the vagina or injuries to the perineum. That evidence is proof of a struggle. Proof that Mr. Jobe used force to make contact with her genitals. It's also proof that...[K.A.'s] testimony was credible and that Mr. Jobe's was not.

RP 1378-79 (7/13/2022).

Jobe argued on direct appeal that the above-referenced statements were misconduct because “the prosecutor’s argument...was not based on evidence adduced at trial.” Br. of Appellant at 28. Despite arguing at trial and on direct appeal that the challenged remarks were outside the admitted evidence, Jobe’s petition for review claims that “[t]he prosecutor, in essence, improperly vouched for the credibility of the alleged victim.” Pet. for Rev. at 7. He thus asserts that the Court of Appeals’ reasoning in this case conflicts with *State v. Coleman*,

155 Wn. App. 951, 956, 231 P.3d 212 (2010), which contains a discussion of “prosecutorial vouching” in the context of admitting a “testify truthfully” provision of a plea agreement.

“Vouching” is entirely distinct from citing facts not found in evidence,⁷ and an appellate court will not entertain an objection on appeal that differs from the one made at trial. *State v. Powell*, 166 Wn.2d 73, 82-83, 206 P.3d 321 (2009). This Court should reject Jobe’s attempt to seek review based on an objection different from the one raised below.

⁷ In any event, the prosecutor’s argument did not constitute improper vouching because it was based on reasonable inferences from the trial evidence. *State v. Allen*, 161 Wn. App. 727, 746, 255 P.3d 784 (2011).

D. CONCLUSION

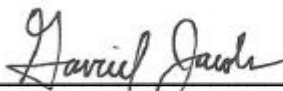
For all the foregoing reasons, this Court should deny
Jobe's petition for review.

**I certify this document contains 1,995 words, excluding
those portions exempt under RAP 18.17.**

DATED this 1st day of July, 2025.

Respectfully submitted,

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July 01, 2025 - 11:35 AM

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