NO. 104,304-0

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON D. WAITS,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Jason Waits was convicted of first-degree child molestation and attempted first-degree child molestation. Before the Court of Appeals, he did not challenge the sufficiency of the evidence against him. The Court of Appeals thoroughly addressed and rejected his claims in an unpublished opinion. These issues are without merit and do not warrant this Court's review under RAP 13.4(b).

II. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by the Office of the Attorney General. The Office accepted transfer of this appellate case from the Asotin County Prosecuting Attorney's Office after the sudden passing of the original prosecutor, Benjamin Nichols.

III. ISSUES PRESENTED

1. Is dismissal with prejudice under CrR3.3's time-for-trial rule inappropriate here, where the allowable time for trial never elapsed because Waits's counsel received a continuance due to her unavailability and

Waits subsequently disqualified her, resetting the time limitations?

2. Did prosecutorial comments at Waits's trial constitute cumulative error warranting reversal, despite undisputedly not being reversible error individually?

3. Does a condition of Waits's community custody violate his constitutional right to parent?

4. Did the police interview and arrest of Waits comport with the Fourth Amendment?

IV. STATEMENT OF THE CASE

A. The Facts Underlying Waits's Conviction of Two Sex Crimes Against S. and Acquittal of a Third

The crimes occurred between May 26 and May 27, 2019. NRP 171.[1] At that time, Audrie Eckerle and her then-five-year-old daughter S. were living in Clarkston, Washington with Eckerle's boyfriend Jason Waits. NRP 171. Waits is not S.'s biological father, but S. thought of Waits as her father, and he treated her like a daughter. NRP 193, 263-65.

[1] This answer refers to the reconstructed narrative report of the proceedings from trial and sentencing as "NRP."

By May 2019, Eckerle and Waits's relationship had soured. According to Eckerle, Waits told her to move out "every single time he got drunk," but she did not take it seriously because he "would tell [her] that [she] was fine." *Id*. Waits also stated that he frequently told Eckerle to move out and agreed he was regularly "drinking heavily" by the end of May. NRP 267-68, 264-65, 270-71.

On the afternoon of May 26, Eckerle and S. were sitting on the patio of their home when Waits arrived after being at a party the previous night. NRP 172, 185-86. Waits went inside and S. followed him. NRP 172, 193. When Eckerle entered the home, she heard the bathtub being filled with water. NRP 172. According to Eckerle, she passed by the bathroom on her way to the bedroom and, through a crack in the door, saw Waits attempt to sexually assault S. NRP 172-73. She testified that she confronted Waits, and he denied any wrongdoing. *Id*. NRP 173-74. Eckerle testified that she did not "know if [she] should believe what [she] saw." *Id*. She was "in love with" Waits

and, from what she had seen, he had always treated S. like his own child. *Id*. Waits was acquitted of this charge. CP 68.

Eckerle then took S. to the living room and tried to process what she had just seen. NRP 174. She made dinner for S. and "pretended that – [she] didn't just see that." *Id*. She worried about what might happen to her and her daughter. *Id*. Eckerle and S. watched a couple of movies and then decided to go to bed. *Id*.

S. wanted to sleep with her mother, so they went into the "back" bedroom where Waits was already in bed asleep. NRP 175. Eckerle got into bed and S. crawled between her mother and Waits. *Id*. S. was "right up against" Eckerle and "cuddling [her] to sleep." *Id*. Eckerle could not sleep, and eventually she noticed that Waits had put both of his hands under the comforter and was touching his penis. *Id*. Eckerle "scooted" S. closer, then noticed that S. was "squirming and giggling." *Id*. She threw the covers off and looked: Waits had pulled S.'s panties down, pulled her nightgown up, and his hand was over

her vagina. *Id*. With his other hand, he was touching his erect penis. *Id*.

Eckerle began to scream and demanded to know what Waits was doing. NRP 176. She pulled S. away. *Id*. Eckerle took S. to S.'s bedroom and closed the door. NRP 176. Eckerle then re-entered her own bedroom and began to yell again. *Id*. Waits told her that "he thought that that was [Eckerle] he was touching, and he was so sorry and he didn't mean to." *Id*. Eckerle was 28 years old; S. was 5 years old. NRP 176, 204. Waits was convicted of this charge. CP 68.

Waits repeatedly apologized, then returned to sleep. NRP 177. Eckerle tried to sleep but could not. *Id*. She was scared and feared that she was delusional. *Id*. Around 6 a.m., Waits tried unsuccessfully to have sex with Eckerle. NRP 178, 205. Then Waits used the restroom and walked into S.'s bedroom. NRP 179, 205. Concerned, Eckerle flew from her bed. NRP 179. When she entered, Waits had his erect penis in his hand and was masturbating over a sleeping S. *Id*. He tried to get into bed with

her. *Id*. Screaming, Eckerle shoved him away from S. and again demanded to know what he was doing. *Id*. Waits did not explain and "took off," leaving the bedroom and then the home entirely. NRP 179-80. Waits was convicted of this charge. CP 68.

B. Waits Gave Police an Inconsistent Account of the Events and then Testified Inconsistently at Trial

Eckerle hesitated and did not call the police immediately. NRP 180. Fearing for her safety, she decided to lure Waits back to the home so that he could be arrested. *Id*. That afternoon, she told Waits that she needed him to watch S. so she could go to the hospital for psychiatric help. NRP 180-81. When Waits returned to the home in the early evening, he "smelled like – meth and alcohol. It was sweating out of his pores." NRP 209. Eckerle took S. over to her neighbor's house for safekeeping. NRP 181. Eckerle called 9-1-1 around 9 p.m. NRP *Id*. Police arrived and interviewed Eckerle and then Waits. NRP 182-83. A child forensic interview for S. was scheduled for the next day. NRP 158-59.

Waits agreed to step out of his home and was interviewed just outside his doorstep. Ex. P1, 32:40. Officer Malakowsky read him his *Miranda* rights and Waits agreed to answer his questions. Ex. P1, 32:40-35:45. Waits initially told police that he lived alone at the home. NRP 131. When Malakowsky asked if a girlfriend lived there with him, Waits responded that she "reside[d] around here." NRP 132. Malakowsky informed Waits that he had some questions "about some incidents that involved [Eckerle's] daughter. NRP 133.

Waits agreed that S. had taken a bath the day before. NRP 133. When Malakowsky asked what had happened in the bathroom, Waits responded: "Not a thing. Not a thing." *Id*. Waits spontaneously explained that Eckerle's feelings were hurt because he had asked her to move back Boise three or four nights ago. NRP 135-37. Waits then added that Eckerle is a diabetic and, when her blood sugar gets low, she does not even know which day it is or what time it is. NRP 138-39; Ex. P1, 41:00.

When questioned, Waits told police that S. does not sleep in his bed and did not sleep with him the night before. NRP 134-35; Ex. P1, 37:30. Malakowsky indicated that he had some information that Waits may have been "confused" about "who was who" in the bed last night. NRP 139; Ex. P1, 42:30. Waits mumbled an unclear denial, then started to explain: "she – she – she was in – we – between me and her, – like we were in bed, asleep, the two of us." NRP 140, Ex. P1. 42:30. Malakowsky asked if S. was the "she" who was "in between me and her," but Waits denied it. NRP 140. He claimed S. was not even in the same bed, but in her own bed. *Id*.

Malakowsky then suggested that S. had said she was in bed with them, and Waits reversed course. NRP 141. He stated that she must have been in his bed at some point but he was asleep so he did not know. NRP 141-43. Malakowsky asked if, while Waits was sleeping, Eckerle got up and threw the blankets off the bed. NRP 143. Waits denied it, until Malakowsky asked if there was an argument. NRP 143-44. Then Waits agreed that

Eckerle did yell at him to "[k]eep [his] hands to [him]self." NRP 144.

Waits explained: "I reached over to this, reached over, and this is where I thought – I thought this was mom." NRP 146; Ex. P1, 47:00. He explained that, when Eckerle started yelling about his hands, he said: "Whoa, whoa, whoa … no, no, no… Excuse me, … I apologize, I'm sorry…." NRP 146. He explained that it "wasn't malicious or intentional." *Id*. He said, "I feel horrible. I cried to her." NRP 147. He told her, "I'm so sorry… I did not mean that. I thought you were right next to me." *Id*.

The officers attempted to clarify these remarks, and Waits agreed that he thought he was making a "pass" on Eckerle and then found out that S. was between them. NRP 149-50; Ex. P1, 50:00. He said "it's a sad deal." NRP 150. In response to further questioning, he denied touching S.'s "crotch." *Id*. He did not clarify what he had done to warrant a tearful apology. *Id*.

Waits maintained his innocence at the end of the interview and repeated that Eckerle was trying to ruin his life because he

had asked her to move out. NRP 155-56, 157-58. Based on the interviews, the police arrested Waits. NRP 183, 158. At trial, Waits testified during his own case-in-chief. NRP 261. He gave testimony that was inconsistent with his on-scene police interview. *See generally* NRP 273-281, 309-313.

C. Waits's First Counsel Received a Continuance For Unavailability and Waits Asked for New Counsel Before Time for Trial Elapsed

Waits was arraigned, in custody, on June 3, 2019. SRP 12-15[2]; CP 177. Under CrR 3.3, this triggered a 60-day speedy trial expiration date. CrR 3.3(b)(1), (c)(1). The following history has been edited for brevity and some hearings are omitted.

July 1, 2019 Scheduling Hearing

The Court set trial for July 25-26, 2019, and determined that the speedy trial expiration date was August 2, 2019. SRP 19-20, 25. Ms. Richards, Waits's first counsel, stated that

[2] "SRP" refers to the Supplemental Verbatim Record of the Proceedings Vol. 1 filed on March 31, 2021.

she may be asking to move the trial date once she spoke with her client because there was still work to do. SRP 19-20.

July 15, 2019 Pretrial Hearing

The prosecutor stated that the July 25 trial date had been committed to another trial on which Richards was counsel. SRP 27. Richards moved to "strike the July 25th [trial setting] and reset," and the State did not object. SRP 27. The court made a finding that Richard's assignment to the other case created a scheduling conflict and that the other case had priority, then granted the motion to strike and reschedule. SRP 28.

The court started to reset the trial date, but Waits interrupted to assert his trial right:

> THE COURT: … I'll strike the July 25th trial date, and reschedule. You have dates in mind, or how soon–
>
> DEFENDANT: I have not waived my speedy, your Honor.

SRP 28.

The court explained to Waits that its granting of the continuance did not depend on his waiver, and again tried to set a trial date:

> THE COURT: Well, based on the fact that Ms. Richards has already a case set on the same date that this is set[,] there's good cause for a continuance. I would like, however, to get the matter resolved – soon as possible, particularly since Mr. Waits is in custody – set it as soon as possible from the court's standpoint and defense counsel's standpoint after July 25th. And–

SRP 28.

Richards interjected to explain her schedule and rule out August all together. SRP 28. The court then asked whether there would "be any advantages to maybe – setting this hearing over." SRP 28. It proposed striking the trial date that day and setting a scheduling hearing for August 5 to allow the parties to determine what would be necessary going forward. SRP 28. It added: "We can – make sure we need to set it for trial. Is that a … viable proposal?" SRP 28-29.

The two parties confirmed, and the prosecutor added additional scheduling details:

> MS. RICHARDS: That's fine, your Honor…Yeah.
>
> MR. NICHOLS: I know Ms. Richards has a – major trial in Columbia County in August and I will not be available the 19th of August through September 2nd. So that's just a period that we're both going to – be away from–.
>
> MS. RICHARDS: August 5th is fine.

SRP 29.

August 5, 2019 Scheduling Hearing

The parties requested a CrR 3.5 hearing and a "child hearsay hearing." SRP 35. The court agreed to set those hearings and then inquired about resetting the trial date. SRP 35. The prosecutor reiterated the need for the first two hearings and stated that the results of those hearings may impact a "potential resolution in this case." SRP 35. Richards stated: "I would agree." SRP 35. The court expressed concern about speedy trial, and Richards said, "I will talk to my client about waiving speedy." SRP 36.

The court and parties proceeded to schedule a CrR 3.5 hearing, noting that Richards was unavailable until September 3 due to a trial in August. SRP 36-37.

September 9, 2019 Scheduling Hearing

The court began by saying that a trial date needed to be set. SRP 93. The prosecutor proposed a trial date in early December, and the Court proposed dates of December 12 and 13. SRP 94.

Without stating what the trial expiration date was or supplying her own dates, Richards stated that she would have to talk to her client because "[t]hat's way outside speedy trial." SRP 94. She urged the court to set the date with the caveat that she would need her client's agreement. SRP 95. The court proposed setting another hearing in two weeks to set a trial date while reserving those settings in December. SRP 97-98.

September 23, 2019 Scheduling Hearing

The court began by stating a need to schedule a trial date and asking about the trial expiration date. SRP 99.

Waits interjected with a "statement for the court." SRP 100. He laid out a list of grievances against Richards and requested a new attorney. SRP 100-01. Without finding fault, the court determined that there was a breakdown of the attorney-client relationship, disqualified Richards, and appointed Victor Bottomly. SRP 101-02. At the prosecutor's request, the court confirmed that the disqualification of Richards triggered a new commencement date under CrR 3.3. SRP 102. The court set another hearing for October 7, 2019. SRP 103.

November 4, 2019 Scheduling Hearing

Bottomly indicated that Waits wanted the matter set for trial. SRP 109. The court calculated a new expiration date 60 days from Waits's excusal of his counsel and set trial for the last day in that period. SRP 117-18. On appeal, Waits does not allege a CrR 3.3 violation beyond this point. Petition at 6.

D. Following Waits's Trial, the Court of Appeals Affirmed His Convictions

Waits's two-day trial was held in August 2020. The jury convicted him of first-degree child molestation and attempted

first-degree child molestation. CP 68. The trial court imposed a minimum prison term of 89 months and a maximum term of life, as well as lifetime community custody. CP 137.

The Court of Appeals affirmed all substantive issues but accepted the State's concession that several sentencing conditions were error.

V. ARGUMENT

Waits has not met his burden to show that review is warranted under RAP 13.4(b). He argues that four issues implicate constitutional concerns, contradict caselaw of this Court and the Court of Appeals, and are substantial issues of public interest. Petition at 12, 24, 26, 28. But the Court of Appeals addressed each of his claims, discounted his constitutional arguments, and distinguished his cited authorities. Therefore, this Court's review is unwarranted.

A. CrR 3.3's Time for Trial Rule Did Not Require Dismissal with Prejudice

The Court of Appeals correctly determined that the "Time for Trial" rule under CrR 3.3 did not warrant dismissal

because the time for trial never elapsed, and "dismissal is allowed *only* when a charge is not brought to trial within the time limitations of the rule." Opinion at 7. In fact, the plain language of the rule forbids Waits's requested remedy of dismissal, and this result does not conflict with any opinion of this Court or the Court of Appeals. Moreover, there was no risk that Waits's trial would exceed CrR 3.3's guardrails; despite the lack of a trial date, there was always an *expiration* date at the end of the allowable period for trial. Because that date never passed without a trial, CrR3.3(h) precludes dismissal. This Court should deny review.

When a defendant is held in custody, CrR 3.3 requires that they be brought to trial within either (1) 60 days of their "commencement date" or (2) within a 30-day grace period that follows any period of "excluded" time. CrR 3.3(b)(1). Initially, the commencement date is the date of arraignment, but it can be reset under a few conditions, including the disqualification of counsel. CrR 3.3(c)(1)-(2). The rule also provides that certain

periods of time are "excluded," such as when the trial court finds that a continuance "is required in the administration of justice." CrR 3.3(e), (f)(2). If a charge is not brought to trial within the allowable period, it "shall be dismissed with prejudice." CrR 3.3(h). No case, however, "shall be dismissed for time-to-trial reasons except as *expressly required* by this rule[.]" *Id.* (emphasis added).

Waits alleges a violation of CrR 3.3 within the first 60 days of his commencement date. He was arraigned on June 3, 2019. SRP 12-15; CP 177. Under CrR 3.3, the allowable time for trial would have originally expired on August 2. CrR 3.3(b)(1)(i). Trial was set for July 25. SRP 19-20, 25. On July 15, however, Waits's first attorney asked that the trial be struck and reset because she was unavailable due to another criminal trial. SRP 27; CrR 3.3(f)(2). The trial court found "good cause" for a continuance, SRP 28, and Waits does not dispute that unavailability of defense counsel is a valid basis for a continuance. *See, e.g.*, *State v. Campbell*, 103 Wn.2d 1, 14-15,

691 P.2d 929 (1984) (defense counsel's request for continuance properly granted, over defendant's objection, to safeguard right to effective assistance of counsel).

The duration of a valid continuance is an "excluded period" under CrR 3.3(e). Although Waits's attorney equivocated about setting a new trial date due to her busy schedule, the record is clear that the attorneys were unavailable through September 2. SRP 29. Thus, the period from July 15 to September 3 was an excluded period under CrR 3.3(e) and the allowable time for trial expired after the 30-day grace period following that date. CrR 3.3(b)(1)(ii), (b)(5). The expiration date therefore moved from August 2 to October 3. *Id.*

Prior to the expiration date, on September 23, Waits disqualified his first attorney. SRP 100-02. This triggered a new commencement date and 60-day time for trial period, CrR 3.3(b)(1)(i), (c)(2)(vii). The expiration date became November 22, *id.*, and Waits's new counsel received another continuance on November 18 due to his own health issues.

SRP 121-22. Waits does not allege a CrR 3.3 violation beyond this date. Petition at 6.

Because the allowable time for trial never expired, dismissal was not required under CrR 3.3(h). *See* Opinion at 9. Waits nonetheless contends that the lack of a trial date for this time period, contrary to CrR 3.3(d)(2) and (f)(2), requires dismissal. Petition at 12. His argument is contrary to the plain language of CrR 3.3(h): "No case shall be dismissed for time-to-trial reasons except as expressly required by this rule." This language was added to CrR 3.3 because "a dismissal with prejudice is a harsh result that allows for crimes to go unpunished." *State v. Walker*, 199 Wn.2d 796, 805 n.8, 513 P.3d 111. The only violation of CrR 3.3 that "expressly require[s]" dismissal is when trial is not set within the allowable period. CrR 3.3(h). Opinion at 6.

Waits faults the Court of Appeals for failing to follow a series of cases that require "strict compliance" with CrR 3.3.

Petition at 13-15. In context, however, these cases do not require dismissal for failure to follow every term of the rule.

Instead, in each cited case, dismissal was required because the time for trial expired before a trial was held. In some cases, this happened when the trial court failed to set a date for trial within the period before it elapsed. *State v. White*, 94. Wn.2d. 498, 500, 617 P.2d 998 (1980); *State v. Helms*, 72 Wn. App. 273, 277, 864 P.2d 23 (1993). In other cases, the trial court erroneously granted a continuance on an invalid basis and the period elapsed without that continuance. *State v. Denton*, 23 Wn. App. 2d 437, 459-60, 516 P.3d 422 (2022); *State v. Kenyon*, 167 Wn.2d 130, 136-37, 216 P.3d 1024 (2009); *State v. Kokot*, 42 Wn. App. 733, 737, 713 P.2d 1121 (1986). In short, "strict compliance" means dismissal is required where the time for trial period elapses without holding a trial, consistent

with CrR 3.3(h).[3] Therefore, these cases do not conflict with the decision of the Court of Appeals.

Waits argues that caselaw establishes that "noncompliance with CrR 3.3(f)(2) results in an invalid excluded period." Petition at 15 (citing *Denton*, *Kenyon*, and *State v. Mack*, 89 Wn.2d 788, 794, 576 P.2d 44 (1978)). But, as Waits acknowledges, his cases all deal with a trial court granting a continuance for an invalid *reason*, not for the failure to set a specific date for trial. *Id*. He argues that these cases "apply by analogy," *id.*, but they are distinguishable.

CrR 3.3(f)(2) provides: "On the motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice[.]" Thus, a valid reason for a continuance is an express condition of CrR 3.3(f)(2)'s plain language; an improper reason

[3] CrR 3.3's text has changed dramatically over the years, but subsection (h)'s requirement of dismissal with prejudice for failure to hold a trial within the allowable period has always existed in some form. *See, e.g.*, *Walker*, 199 Wn.2d 796, 805 n.8.

invalidates the entire basis for granting the continuance. *Id.* Waits does not dispute that the trial court properly granted his own counsel's request for an extension due to her unavailability. Nor is there any doubt in the record about the period of requested delay. CrR 3.3(e)(3) provides that "[d]elay granted by the court pursuant to section (f)" is excluded. Because there is no dispute about the validity or length of that delay, the continuance resulted in a valid excluded period.

Finally, Waits argues that the Court of Appeals ignored this Court's language in *State v. Walker*, 199 Wn.2d 796, 804, 513 P.3d 111 (2022). He is mistaken. This Court wrote that "[i]t is important to note that our holding is limited to the factual circumstances of this case. Other situations may call for different analyses." *Id*. As an example, this Court added "if the court fails to set a trial date at all, and the time-for-trial period expires, a defendant may still obtain dismissal under the rules." *Id*. Here, although the trial court did not set a trial date, the allowable

period never expired. Therefore, dismissal is inappropriate. CrR 3.3(h). This Court should deny review.

B. The Alleged Prosecutorial Misconduct Does Not Pose a Significant Question of Constitutional Law Under RAP 13.4(b)(3)

The Court of Appeals addressed Waits's unpreserved claims of prosecutorial misconduct and found that they did not warrant reversal under the "flagrant and ill-intentioned standard." Opinion at 15-26. The court found that Waits failed to carry his burden to show that the prosecutor's remarks were both improper and prejudicial. Opinion at 14 (citing *State v. Stenson*, 132 Wn.2d 668, 718, 940 P.2d 1238 (1997)). Under this factually intensive standard, the comment is evaluated in the context of the entire trial, the arguments presented, the issues in the case, the evidence, and the court's instructions to the jury. *State v. Monday*, 171 Wn.2d 667, 675, 257 P.3d 551 (2011). Even if the comment is improper, Waits bears the burden to show that it caused "enduring and resulting prejudice" that could not

have been "neutralized by an admonishment to the jury." *Stenson*, 132 Wn.2d at 719.

Here, Waits concedes that none of alleged errors in isolation is reversible and argues only that they warrant a new trial when considered cumulatively. Petition at 24. He asks this Court to grant review under RAP 13.4(b)(3) as involving "a significant question of law under the Constitution of the State of Washington or of the United States." *Id.* But his claim renders an already context-driven analysis even more specific to these circumstances; he must show "the combined effect of the accumulation of errors" requires a new trial. *State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 668 (1984).

The Court of Appeals correctly held that several of the comments were neither improper nor prejudicial. Opinion at 21, 24, 25. Even where the prosecutor overstepped, the court held that the remarks fell short of the flagrant and ill-intentioned standard because they were missteps taken to address difficult aspects of the case, such as Eckerle's delayed reaction to Waits's

transgressions. *See* Opinion at 22, 25-26. The Court of Appeals reached the correct conclusion, and this fact-bound question about cumulative, unpreserved error does not pose a significant question of constitutional law warranting this Court's review under RAP 13.4(b)(3).

C. The "No Contact with Minors" Condition Does Not Violate Waits's Constitutional Right to Parent

During sentencing, the trial court found that Waits had a "fatherly" relationship with S. and "took advantage of that role." NRP 513. The court therefore imposed a community custody condition that Waits have no contact with minors without the permission of a community corrections officer. NRP 523-24. Although the condition restricts Waits from having contact with his own minor children without permission, the Court of Appeals found that it was narrowly tailored to protect the community while respecting his right to parent. Opinion at 31-32.

Waits contends that the condition is practically a "total bar on contact for his entire indeterminate prison term" because he will not have a community custody officer to give

him permission until he is released. Therefore, he argues, the trial court needs to justify the duration of this "total bar." Petition at 26. Although Waits's term of community custody will not begin until he is released from confinement, the condition applies while he is in prison. RCW 9.94A.070(2). Either way, he is in custody of the Department of Corrections for both his term of imprisonment and community custody. *See* RCW 9.94A.704.

But Waits's claim that the condition is a "total bar" is not established on this record. The plain language of the condition does not impose a total bar and instead bestows discretion on the Department. CP 146. And Waits's claim that the condition is *functionally* a total bar is unsupported; there is no evidence that Waits has requested permission to contact his children from the Department and has been refused because he lacks a community custody officer. Where an issue requires development of facts outside the record, "a personal restraint petition is the appropriate vehicle for bringing those matters before the court." *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995);

His challenge turns on how the condition is applied. Thus, it is "a question of appropriate enforcement and a question for another day." *See State v. Johnson*, 197 Wn.2d 740, 747, 487 P.3d 893 (2021). The Court of Appeals properly held that the condition was narrowly tailored as written and this Court's review is unwarranted.

D. Waits's Fourth Amendment Claim is Unsupported by the Record

Waits seeks review of one claim raised in his Statement of Additional Grounds. He argues that "law enforcement entered the curtilage of his home without a warrant and without exigent circumstances, but *with the intent to arrest him*." Petition at 27 (emphasis added). This claim of pre-existing intent is critical because it is undisputed that officers ordinarily have the authority to knock on a person's door and ask them questions without any suspicion whatsoever. *See, e.g.*, *Kentucky v. King*, 563 U.S. 452, 469, 131 S. Ct. 1849, 179 L. Ed 2d 864 (2011).

The Court of Appeals properly held that the evidence at trial does not support Waits's assertion. Police responded to

Eckerle's 9-1-1 call and, once on scene, separately interviewed both Eckerle and Waits. NRP 182-83. As the Court of Appeals noted, the police interviewed Waits for 30 minutes before they decided to arrest him. Opinion at 39. These facts are inconsistent with a pre-existing intent to arrest Waits.

The Court of Appeals distinguished these facts from *United States v. Lundin*, 817 F.3d 1151, 1160 (9th Cir. 2016), where the officers on scene responded to a dispatch request to *arrest* the occupant of a home at 4:00 a.m. without a warrant. Unlike the officers in *Lundin*, the officers here were dispatched to conduct an investigation. This Court should decline to review this issue, because, as with the other issues he raises, Waits has not shown any ground on which this issue warrants review under RAP 13.4(b).

VI. CONCLUSION

This Court should deny Waits's petition for review.

CERTIFICATE OF COMPLIANCE

This document contains 4,985 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of July, 2025.

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NO. 104,304-0

SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. JASON D. WAITS, Petitioner.	DECLARATION OF SERVICE

I, Michelle Barba, declare as follows:

On July 21, 2025, I sent via the Washington State Appellate Court's Secure Portal, a true and correct copy of Answer to Petition for Review and Declaration of Service, addressed as follows:

Mary Swift
Nielsen Koch & Grannis, PLLC
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of July, 2025, at Seattle, Washington.

Michelle Barba
MICHELLE BARBA

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE ' CRIMINAL JUSTICE DIVISION

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- Answer to Petition for Review - Declaration of Service

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