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NO. 104385-6

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**SUPREME COURT OF THE  
STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

BILLY SCOTT SIGMON,

Petitioner.

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Pierce County Superior Court No. 19-1-03632-1  
Court of Appeals No. 58621-5

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**ANSWER TO PETITION FOR REVIEW**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	RESTATEMENT OF THE ISSUES .....	3
	A.    Should this Court deny review where the Court of Appeals correctly applied well-established law to Sigmon's claim of evidentiary error? .....	3
	B.    Should this Court deny review where the Court of Appeals adhered to this Court's well-established precedent when it declined to analyze Sigmon's undeveloped constitutional argument? .....	3
III.	STATEMENT OF THE CASE.....	3
IV.	REASONS WHY REVIEW SHOULD BE DENIED.....	9
	A.    The Court of Appeals Correctly Applied Well-Established Law in Analyzing Prejudice From The Trial Court's Evidentiary Ruling.....	9
	B.    The Court of Appeals Adhered to This Court's Well-Established Precedent When It Declined to Address Sigmon's Undeveloped Constitutional Argument Related to the Convictions Involving DJ. ....	19
V.	CONCLUSION.....	22

## TABLE OF AUTHORITIES

### State Cases

<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992).....	12, 19
<i>Hizey v. Carpenter</i> , 119 Wn.2d 251, 830 P.2d 646 (1992).....	16
<i>Hoflin v. City of Ocean Shores</i> , 121 Wn.2d 113, 847 P.2d 428 (1993).....	17
<i>In re Marriage of Croley</i> , 91 Wn.2d 288, 588 P.2d 738 (1978).....	12, 22
<i>In re Rosier</i> , 105 Wn.2d 606, 717 P.2d 1353 (1986).....	20
<i>Morse v. Antonellis</i> , 149 Wn.2d 572, 70 P.3d 125 (2003).....	18
<i>Rudder v. Rudder</i> , 46 Wn.2d 428, 282 P.2d 261 (1955).....	13
<i>State v. Arndt</i> , 194 Wn.2d 784, 453 P.3d 696 (2019).....	9
<i>State v. Dennison</i> , 115 Wn.2d 609, 801 P.2d 193 (1990).....	20
<i>State v. Halstien</i> , 122 Wn.2d 109, 857 P.2d 270 (1993).....	22
<i>State v. Jennings</i> , 199 Wn.2d 53, 502 P.3d 1255 (2022).....	9, 10

<i>State v. Johnson</i> , 119 Wn.2d 167, 829 P.2d 1082 (1992).....	20
<i>State v. Orn</i> , 197 Wn.2d 343, 482 P.3d 913 (2021).....	19
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	16, 18
<i>State v. Zakel</i> , 119 Wn.2d 563, 834 P.2d 1046 (1992).....	20

## **Federal and Other Jurisdictions**

<i>United States v. Phillips</i> , 433 F.2d 1364 (8th Cir. 1970) .....	20
---	----

## **Constitutional Provisions**

U.S. Const. amend. VI.....	9
----------------------------	---

## **Rules and Regulations**

ER 401 .....	10
ER 403 .....	10
ER 404 .....	6
ER 609 .....	6
ER 803(a)(3).....	10
RAP 2.5(a).....	17
RAP 10.3(a)(4) .....	13, 19

RAP 10.3(a)(6) .....	12, 19
RAP 12.4(c) .....	17
RAP 13.4(b)(1) .....	2, 21, 22
RAP 13.4(b)(4) .....	2, 19, 22
 <b>Other Authorities</b>	
WPIC 4.26 .....	17

## **I. INTRODUCTION**

Billy Scott Sigmon molested two of his former foster children, JC and DJ, who lived with him years apart and did not know each other. At trial, Sigmon sought to introduce two extrajudicial statements he claimed victim JC made in defense of JC's allegation: JC threatened to get back at Sigmon, and JC wished Sigmon would "unadopt" his adopted son and adopt JC instead. Holding that the trial court erred in excluding the statements because they were relevant to the jury's determination of JC's credibility, the Court reversed Sigmon's conviction involving JC. The Court affirmed three convictions involving DJ, reasoning that: (1) Sigmon did not argue the trial court made an evidentiary error pertaining to his defense against those charges, (2) Sigmon did not assign error to any ruling pertaining to DJ, (3) the record did not support that DJ had a similar motive to lie as JC, (4) DJ did not make statements similar to JC's, (5) JC's statements were unrelated to the charges involving DJ, and (6) the evidence supporting the charges involving DJ was

distinct. There is no basis for review under RAP 13.4(b)(4) because the Court of Appeals correctly applied well-established law to Sigmon's claim and came to the reasoned conclusion that the evidentiary error only required reversal of the conviction involving JC.

Furthermore, this Court's precedent clearly establishes that to warrant judicial consideration, a party must provide reasoned argument in support of a contention. Sigmon never provided the Court of Appeals reasoned argument that his right to defend against DJ's allegations was violated by the trial court's evidentiary ruling. The Court of Appeals adhered to this Court's precedent when it disposed of Sigmon's conclusory assertion that reversal of the convictions involving DJ was necessary based on the evidentiary error without reaching a constitutional analysis. Review is not warranted under RAP 13.4(b)(1).

This Court should deny review.

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## **II. RESTATEMENT OF THE ISSUES**

- A. Should this Court deny review where the Court of Appeals correctly applied well-established law to Sigmon's claim of evidentiary error?
- B. Should this Court deny review where the Court of Appeals adhered to this Court's well-established precedent when it declined to analyze Sigmon's undeveloped constitutional argument?

## **III. STATEMENT OF THE CASE**

In a unanimous unpublished opinion, the Court of Appeals reversed Billy Scott Sigmon's conviction for molesting victim JC due to the trial court's evidentiary error in excluding potential impeachment evidence pertaining to JC. Holding that the error did not affect three convictions involving DJ, the Court affirmed those convictions. *State v. Sigmon*, No. 58621-5-II (Wash. Ct. App. April 15, 2025) (unpublished).

Sigmon was a school bus driver and a licensed foster parent who housed exclusively boys. 7/17/23 RP 129, 145, 153-54. JC and DJ, the two victims in this case, were both Sigmon's former foster children. 7/17/23 RP 102; 7/18/23 RP 194; CP 36-38. They lived with Sigmon at different times: JC lived with

Sigmon for one month starting in January 2014 and DJ lived with Sigmon for several months starting in March 2016. 7/17/23 RP 101-02; 7/18/23 RP 197, 204. Neither child knew the other. 7/17/23 RP 117; 7/18/23 RP 194.

JC was approximately 12 years old when he lived with Sigmon. 7/17/23 RP 101-03. Sigmon's adopted son, JS,<sup>1</sup> and another foster child lived in the home at the time. 7/17/23 RP 103. Two or three weeks after living with Sigmon, Sigmon called JC and JS into his room and asked them to rub lotion on his legs. 7/17/23 RP 110. He then instructed JS to exit the bedroom, told JC to get into bed, and fondled JC's genitals. 7/17/23 RP 110-12. JC reported the incident to his social worker a few days later and was moved to a different foster home about a week after that. 7/17/23 RP 115-16.

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<sup>1</sup> JS was an adult at trial, but the Court of Appeals used his initials throughout its opinion. *See* 7/24/23 RP 22; Slip op. *generally*. The State has done the same herein.

More than two years later, 11-year-old DJ moved in with Sigmon. 7/18/23 RP 178-80, 194-97. DJ recalled three separate instances where Sigmon touched him sexually. The first time, Sigmon called DJ into his bedroom and touched DJ's "ball sack." 7/18/23 RP 195-99. The second time, Sigmon called DJ into his bedroom and Sigmon "started touching up on [DJ] ... but this time he made [DJ] touch up on him" showing DJ what to do and making DJ touch his private part. 7/18/23 RP 199-200. This caused Sigmon to achieve an erection. *Id.* The third time, nobody else was home and Sigmon "did it again" by "touching [DJ]" in his "private parts" and Sigmon making DJ touch him. 7/18/23 RP 204-06. This incident ended when DJ urinated. 7/18/23 RP 206. After the third incident, Sigmon gave DJ five dollars and told him to go get candy. 7/18/23 RP 207. DJ threatened to tell and Sigmon responded that he should "go and tell; they're not going to believe you." *Id.*

Prior to the defense's case presentation, the State brought supplemental motions in limine seeking to limit testimony

offered by the defense. CP 39-40. One of the motions sought to exclude evidence that JC fought with JS in Sigmon's home. 7/24/23 RP 14-16; CP 30. The other motion sought to exclude statements JC allegedly made to JS about trying to get Sigmon to "unadopt" JS. 7/24/23 RP 18. Sigmon argued the evidence was relevant to JC's motive to make allegations against Sigmon. 7/24/23 RP 17, 19. The trial court excluded the fighting based on ER 404 and ER 609, and the "unadopt" statement based on relevance and hearsay. 7/24/23 RP 20; CP 39.

Sigmon's adult daughter Melissa Ruzich testified that she was often in the house when JC and DJ lived with Sigmon to assist with caring for Sigmon and her foster brothers. 7/24/23 RP 58-65. She explained that Sigmon had back surgery during the time JC was in the home and wore a back brace, limiting his physical movement. 7/24/23 RP 58-65. While JC was in the home, Ruzich claimed Sigmon slept in a recliner in the living room, rather than his bedroom, where the inappropriate touching occurred. 7/24/23 RP 60-65.

Ruzich was not permitted to testify about a statement JC allegedly made when he was packing to leave, threatening to get back at Sigmon. 7/24/23 RP 67-68. Sigmon argued exclusion of the statement, along with the court's other pretrial rulings, was detrimental to his defense of JC's allegations because he otherwise could not explain his theory that JC had a motivation to make allegations against Sigmon. 7/24/23 RP 70-71. The trial court excluded the statement. 7/24/23 RP 74-75.

Ruzich also stayed at Sigmon's house while DJ lived in the home. 7/24/23 RP 75, 77. She and DJ had a good relationship; DJ also got along with others in the house, referring to each as his own family member. 7/24/23 RP 78. After DJ left the Sigmon home, Ruzich testified he repeatedly returned after running away from his other placements, contradicting DJ's denial of returning to the house after moving out. 7/24/23 RP 79-80; 7/18/23 RP 208-09. Sigmon discussed with his family potentially adopting DJ in 2019, but that talk ended when Ruzich "heard about the beginnings of this ...". 7/24/23 RP 80-81.

Sigmon's adopted son, JS, also testified about Sigmon's surgery during the time JC stayed at the home. 7/24/23 RP 30-31. JS recalled that he used to "bump heads" with JC but explained that DJ was like his "little brother." 7/24/23 RP 30, 36. JS recalled DJ often returned to the Sigmon house after being placed elsewhere because "he didn't want to go. He wanted to stay with us." 7/24/23 RP 37-39. JS, like Ruzich, stated that Sigmon discussed adopting DJ until "all this stuff started going on." 7/24/23 RP 39.

During closing arguments, Sigmon argued he could not have committed the act JC alleged due to his back surgery and that he was incapable of moving the way JC claimed. 7/25/23 RP 138-39. Sigmon also argued that DJ was not a credible witness because, contradicting other witnesses, he denied returning to the home after being placed elsewhere and that DJ's desire for Sigmon to adopt him was inconsistent with DJ's report of being molested. 7/25/23 RP 139-41, 143-44, 145-46, 149. Sigmon was convicted of all counts and the jury answered "yes" to the

aggravated circumstance that he used a position of trust to facilitate the crimes. CP 65-72.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

##### **A. The Court of Appeals Correctly Applied Well-Established Law in Analyzing Prejudice From The Trial Court's Evidentiary Ruling.**

Reviewing courts analyze a claim that a trial court's evidentiary ruling violated a defendant's Sixth Amendment right to present a defense under a two-part test. *State v. Jennings*, 199 Wn.2d 53, 58-63, 502 P.3d 1255 (2022). A reviewing court first determines whether the trial court's evidentiary ruling was an abuse of discretion, and if so, whether that evidentiary ruling was harmless error. *Id.* at 59. If the evidentiary error was not harmless, the matter is then decided on that ground. *See id.* Determining whether a trial court abused its discretion is a highly-fact specific analysis, as recognized by this Court in *State v. Arndt*, 194 Wn.2d 784, 799-800, 453 P.3d 696 (2019). If the ruling was either harmless error or not an abuse of discretion, the court then determines whether the ruling violated the

constitutional right to present a defense as a matter of law. *Jennings*, 199 Wn.2d at 59-67.

The Court of Appeals correctly applied the law set forth above. After carefully examining the trial testimony, the Court held that the trial court's evidentiary ruling was both an abuse of discretion and not harmless as to the conviction involving JC. Slip op. at 9-13. The Court of Appeals examined JC's excluded statements and found that JC's statements were relevant under ER 401, met the hearsay exceptions under ER 803(a)(3), and regarding to the statement of intended revenge, that the statement was not more prejudicial than probative under ER 403. Slip op. 11-12. Thus, it held that the trial court abused its discretion in excluding the statements. *Id.* The Court then applied a thorough harmless error analysis, ultimately determining that under the facts of this case, the excluded evidence was not harmless as to Sigmon's conviction involving JC. Slip op. at 13.

The Court of Appeals correctly analyzed the scope of the error and determined that scope did not extend to Sigmon's

convictions involving DJ. The Court's determination was reasoned based on the evidence and the scope of the arguments Sigmon raised in his appeal.

It is initially noteworthy that the scope of the Court of Appeals' analysis of the evidentiary error was also consistent with the purpose for which Sigmon sought to use the evidence at trial. Each time the parties litigated the exclusion of JC's statements, Sigmon was clear that the statements were central to his defense against JC's allegation. *See* 7/24/23 RP 17-20 (litigating JC's "unadopt" statement, Sigmon argued the statement went to JC's motive to "tell this story, why he came up with it."); 7/24/23 RP 69-75 (litigating JC's revenge statement, Sigmon argued that JC's hostility to the members of the Sigmon home was "part and parcel for the defense theory of the case that [JC] had motive to tell this story.") The Court of Appeals recognized Sigmon only sought to use the evidence he now challenges in his defense of the allegation involving JC and proceeded through its analysis accordingly. *See* Slip op. at 7

(Court adding emphasis to the quoted defense argument that the evidence went to the defense theory of *JC's motive*).

The Court of Appeals astutely noted that although Sigmon “briefly” argued that the court should also reverse the convictions involving DJ if it found error, “Sigmon [did] not actually argue that the trial court made an evidentiary error with respect to his defense against the charges in which DJ was the victim.” *Id.* at 13-14 (emphasis added). The Court of Appeals is not required to address arguments that an appellant does not meaningfully develop. RAP 10.3(a)(6). Judicial consideration was not warranted here, where Sigmon failed to present any reasoned argument as to how his ability to defend against DJ’s allegations was affected by the evidentiary error pertaining to JC. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (assertions given passing treatment, or that are unsupported by argument, will not be considered); *In re Marriage of Croley*, 91 Wn.2d 288, 294, 588 P.2d 738 (1978) (reviewing court will not attempt to construct an argument on an

appellant's behalf when they failed to do so themselves). In addition to noting Sigmon's appeal lacked reasoned argument regarding the convictions involving DJ, the Court of Appeals correctly observed that Sigmon also did not assign error to any trial court rulings regarding DJ. *See* Br. of Appellant, 1-2. This alone could have precluded review of Sigmon's conclusory argument under RAP 10.3(a)(4) if the court so chose. *See Rudder v. Rudder*, 46 Wn.2d 428, 787-88, 282 P.2d 261 (1955) (contention unsupported by assignment of error will not be considered).

Nevertheless, the Court of Appeals went on to explain why the error did not extend to DJ on the merits. The Court properly noted that "nothing in the record indicated that DJ had a motive to lie similar to JC's motive," "DJ made no statements similar to the ones JC made," and "JC's statements were unrelated to the charges involving DJ." Slip op. at 14. The Court was correct. While both victims at one point expressed a desire for Sigmon to adopt them and had not been which resulted in their continued

engagement in the foster care system,<sup>2</sup> there is no evidence that DJ was motivated by this fact to fabricate allegations against Sigmon, unlike JC, based on JC's statements. The Court of Appeals was otherwise correct that DJ did not make similar statements to JC's and that JC's statements had nothing to do with DJ.

The Court further correctly noted that the evidence regarding the crimes involving DJ were distinct from that involving JC. Slip op. at 14. The victims did not know each other. 7/17/23 RP 117; 7/18/23 RP 194. JC provided no evidence supporting the charges involving DJ, and the events JC testified to occurred years before DJ met Sigmon. 7/18/23 RP 178-80 (JC placed with Sigmon from January 10, 2014, to February 14, 2014); 7/18/23 RP 197 (DJ placed with Sigmon on March 17, 2016).

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<sup>2</sup> 7/17/23 RP 102; 7/18/23 RP 194; 7/24/23 RP 19, 81.

Moreover, as observed by the Court of Appeals, JC testified to a different version of events than DJ. Slip op. at 14. JC testified to one instance of abuse where Sigmon asked him and another child to apply lotion to his legs, ordered the other child outside of the room, and then Sigmon touched JC's genitals outside of JC's clothing. 7/17/23 RP 110, 112-15. Contrarily, DJ testified to multiple instances of Sigmon touching him inappropriately; his abuse included Sigmon touching DJ's genitals without DJ's clothes on; and in at least the second and third instances, Sigmon required DJ to touch him. 7/18/23 RP 198-201, 204-06.

Under the facts of this case, the Court of Appeals correctly concluded that any evidentiary error pertaining to JC did not extend to DJ. Slip op. at 14. The evidence supporting DJ's abuse was his own testimony. The jury had a full opportunity to evaluate DJ's credibility at trial and the jury found him to be a credible witness as evidenced by their verdicts. The jury's determination of DJ's credibility cannot be disturbed on appeal.

*State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). This conclusion is further supported by the fact that the jury was instructed that it “must decide each count separately”<sup>3</sup> and the jury is presumed to follow the court’s instruction. *Hizey v. Carpenter*, 119 Wn.2d 251, 269-70, 830 P.2d 646 (1992).

Finally, the Court of Appeals properly denied Sigmon’s motion for reconsideration. First, Sigmon again did not articulate an argument regarding how his defense to the charges involving DJ was impacted by the trial court’s evidentiary rulings. Second, his arguments of prejudice rely on additional, unpreserved issues involving severance, joinder, and jury instructions, and on improper speculation as to how the jury weighed DJ’s credibility.

Sigmon did not assign error in his opening brief to issues involving joinder, severance, or jury instructions. *See* Br. of Appellant, 1-4. He raised no objection in the trial court on these grounds, save for a defense objection to the court refusing to give

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<sup>3</sup> CP 49.

WPIC 4.26 (jury unanimity instruction). 7/20/23 RP 322-28; CP 41-43. His only argument about these issues were in his motion to reconsider, where he offered no justification for review of the issues under RAP 2.5(a). *See* Motion, 4-10.

A motion to reconsider provides a party the opportunity to bring to the Court's attention "points of law or fact which the moving party contends the court has overlooked or misapprehended[.]" RAP 12.4(c). A motion to reconsider is not an opportunity to provide the court new arguments that a party could have made, but did not, in an opening brief. *See Hoflin v. City of Ocean Shores*, 121 Wn.2d 113, 130-31, 847 P.2d 428 (1993) (review of issue alluded to throughout trial proceedings but not sharply defined on appeal until motion to the Court of Appeals for reconsideration was precluded by RAP 2.5(a)). This limitation follows logically: a court cannot reconsider issues that were never raised in the first place. And a party does not escape the requirements of RAP 2.5(a) by waiting until a motion to reconsider to raise or meaningfully develop an issue. *See id.*

Finally, Sigmon’s motion to reconsider failed on the merits. Sigmon encouraged the Court of Appeals—as he encourages this Court in his Petition—to hold that the evidentiary error pertaining to JC extended to the jury’s consideration of DJ’s credibility based on his speculation of how the jury concluded DJ was a credible witness. *See* Motion, 3-10; Petition, 13-22. But “[j]uries decide credibility, not appellate courts”<sup>4</sup> and credibility determinations are not subject to review on appeal. *Thomas*, 150 Wn.2d at 874. The Court of Appeals correctly adhered to its original conclusion that the evidentiary error only required reversal of the conviction involving JC.

The Court of Appeals correctly applied the law to the developed arguments before it and arrived at the reasoned conclusion that only reversal of the conviction involving JC was required. The Court’s fact-specific analysis and sound conclusion based on the circumstances of Sigmon’s case do not

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<sup>4</sup> *Morse v. Antonellis*, 149 Wn.2d 572, 575, 70 P.3d 125 (2003).

give rise to a basis of review under RAP 13.4(b)(4). This Court should deny review.

**B. The Court of Appeals Adhered to This Court's Well-Established Precedent When It Declined to Address Sigmon's Undeveloped Constitutional Argument Related to the Convictions Involving DJ.**

It is well established that a reviewing court will proceed to a de novo review of whether a trial court's evidentiary ruling violated the right to present a defense if the court does not reverse a conviction based on an evidentiary ground. *State v. Orn*, 197 Wn.2d 343, 351-59, 482 P.3d 913 (2021). But it is equally well established that for any claim of error to be considered by a reviewing court, a party must assign error to the issue and provide argument in support of the claim. RAP 10.3(a)(4), (6).

Failure to provide reasoned argument to a claimed error permits a reviewing court to disregard the unsupported claim. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809. "Parties raising constitutional issues must present considered arguments to this court ... 'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion'."

*State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) (citing *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986), quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)); *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990). Reviewing courts “will not decide a constitutional issue unless it is absolutely necessary for the determination of the case.” *State v. Zakel*, 119 Wn.2d 563, 834 P.2d 1046 (1992) (string citations omitted).

Sigmon’s opening and reply briefing lacked analysis regarding the charges involving DJ. In arguing the absence of harmless error, Sigmon included one paragraph listing instances where DJ’s testimony was contradicted by other witnesses. Br. of Appellant, 16-18. He then included one conclusory sentence that claimed establishing JC’s motive to lie was “relevant” to DJ’s “motive to lie” because of the victims’ “similar claims” and “similar anger.” Br. of Appellant, 18. Sigmon’s reply brief focused on JC’s allegation and did not elaborate on how Sigmon’s defense to DJ’s allegations were impacted by the

evidentiary ruling, or why the evidentiary error extended to DJ. Reply Br. of Appellant, 1-9. Sigmon's motion to reconsider did not address the constitutional claim and again, did not explain how the evidentiary ruling impacted his defense of the charges involving DJ. Motion, 3-10.

The Court of Appeals properly declined to analyze whether Sigmon's right to present a defense to the charges involving DJ was violated where Sigmon did not present a reasoned argument to support the claim. The decision is not in conflict with this Court's precedent but rather adheres to this Court's well-established precedent and the Rules of Appellate Procedure that permit reviewing courts to disregard undeveloped arguments. Review is not warranted under RAP 13.4(b)(1).

Finally, Sigmon attempts to delegate error to the Court of Appeals for not reaching a constitutional analysis to the convictions involving DJ that he addresses for the first time in his petition for review. The Court of Appeals was not required to construct a constitutional argument on Sigmon's behalf. *In re*

*Marriage of Croley*, 91 Wn.2d at 294. This Court will not consider an issue not raised or briefed in the Court of Appeals. *State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993) (Supreme Court will not consider issue that was not raised or briefed in the Court of Appeals). This Court should decline to consider Sigmon's constitutional argument that was not raised below.

## **V. CONCLUSION**

There is no basis for review under RAP 13.4(b)(4) where the Court of Appeals applied well-established precedent and conducted a thorough and fact-specific analysis based on the issues raised by Sigmon. There is also no basis for review under RAP 13.4(b)(1) where the Court of Appeals followed this Court's well-established precedent and the Rules of Appellate Procedure by limiting its analysis to the developed arguments in Sigmon's appeal. This Court should deny review.

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Respectfully Submitted this 13th day of August, 2025

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The undersigned certifies that on this day she delivered by E-file to the attorney of record for the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

8/13/2025  
Date

s/ Kimberly Hale  
Signature

# PIERCE COUNTY PROSECUTING ATTORNEY

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## Transmittal Information

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