Supreme Court No. ___
(COA NO. 58621-5-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BILLY SCOTT SIGMON,

Petitioner.

FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Billy Scott Sigmon, petitioner here and below, asks this Court for review.

B. COURT OF APPEALS DECISION

Mr. Sigmon asks for review of the Court of Appeals' decision issued on April 15, 2025, for which reconsideration was denied on June 12, 2025, pursuant to RAP 13.3 and 13.4(b). App. A (slip opinion); App. B (order denying reconsideration).

C. ISSUE PRESENTED FOR REVIEW

1. Whenever it is within reasonable probabilities that the trial court's erroneous exclusion of evidence materially affected the jury's verdict, each affected count requires reversal. Here, the prosecution jointly tried Mr. Sigmon for two accusers' near-identical allegations, and the court authorized the jury to rely on *all* the evidence when deliberating on each count. The Court of Appeals agreed the trial court erroneously excluded statements that impacted one accuser's veracity. But it reversed only one

count, viewing these errors in a vacuum and failing to assess their impact on the jurors' assessment of the other accuser's near-identical allegations. The Court of Appeals constructed arbitrary new limitations on the established principles governing the analysis of prejudice resulting from evidentiary errors.

2. A court deprives the accused of their Sixth Amendment right to present a defense when it unduly prevents them from presenting evidence that casts doubt on their accusers' credibility. This Court has directed appellate courts to first address evidentiary errors before proceeding to the asserted violation of the constitutional right to present a defense. But the Court of Appeals must proceed to the full Sixth Amendment analysis when it does not reverse a count on nonconstitutional grounds. Here, the trial court deprived Mr. Sigmon of the right to present a complete defense to the four charges he faced, violating Sixth Amendment rights. The Court of Appeals failed

to even address this constitutional violation, misapplying this Court's Sixth Amendment precedents.

D. STATEMENT OF THE CASE

a. After the trial court excludes evidence that cast doubt on his accusers' near-identical allegations, a jury convicts Mr. Sigmon of four counts of child molestation.

Billy Scott Sigmon was a bus driver for the Franklin-Pierce School District. 7/17/23 RP 145. Encouraged by a sister who was involved in foster care, Mr. Sigmon became a licensed foster parent himself. 7/24/23 RP 56-57, 61. Mr. Sigmon fostered countless children over the years, adopting one son, J.S., but thereafter declining to adopt any other foster children. 7/24/23 RP 56.

The joint trial in this case involved near-identical allegations of abuse brought against Mr. Sigmon by two of his former foster children, J.C. and D.J. 7/17/23 RP 104-22; 7/18/23 RP 195-213.

J.C. and D.J. made their allegations several years after their respective foster stays with the Sigmons. *Id*. No physical

evidence supported either J.C.'s allegation (count 1) or D.J.'s allegations (counts 2-4). J.C.'s social worker testified that J.C. never reported any abuse by Mr. Sigmon until years later, nor did anyone indicate D.J. made any earlier reports. 7/18/23 RP 184. The prosecutor acknowledged each count hinged on whether J.C. and D.J.'s testimony was credible. 7/24/23 RP 122-23.

Mr. Sigmon's defense as to both accusers at the joint trial was that J.C. and D.J. resented having to leave Mr. Sigmon's home rather than being adopted by him, and that Mr. Sigmon's disabilities would have made it impossible for him to perform the acts of abuse they alleged. 7/24/23 RP 37-38, 65-70. J.C. and D.J. alleged similar acts of abuse. Both alleged that Mr. Sigmon called the respective foster child into his bedroom, invited him into bed, and engaged in inappropriate sexual touching. 7/17/23 RP 104-22; 7/18/23 RP 195-213.

Mr. Sigmon sought to introduce testimony from his adopted son, J.S., and his biological daughter, Melissa Ruzich,

to show that J.C. and D.J.'s allegations were retaliatory fabrications.

J.S. would have testified that J.C. was prematurely removed from Mr. Sigmon's foster care because of his hostility towards J.S., and that, during J.C.'s foster stay, J.C. spoke about wanting Mr. Sigmon to "unadopt" J.S. and adopt J.C. instead. 7/17/23 RP 159-60; 7/24/23 RP 17-20. Ms. Ruzich would have testified that, at the end of J.C.'s foster stay, J.C. threatened her that he would "get back at" Mr. Sigmon and his family. 7/24/23 RP 61, 67-75.

J.S. would have also testified that the accusations in this case arose a few weeks after J.S. ran into J.C. at a YMCA, where J.S.'s remark that things were going well at home triggered J.C. to angrily report he had been forced to bounce between foster homes for years since the Sigmons had him removed from their home. 7/24/23 RP 17-20. J.C.'s own testimony acknowledged Mr. Sigmon was his first foster parent and that J.C. bounced between 17 foster homes after having to

leave. 7/17/23 RP 102. D.J. likewise went through 30 foster placements. 7/18/23 RP 193. J.C. and D.J. made their accusations after J.C.'s YMCA encounter with J.S. 7/24/23 RP 17-20.

Regarding D.J., Ms. Ruzich testified that D.J. bonded with the Sigmon family during his lengthy foster stay, referring to J.S., Ms. Ruzich, and Mr. Sigmon as his "brother," "sister," and "Dad." 7/24/23 RP 78-81. D.J. had spoken to Ms. Ruzich about wanting Mr. Sigmon to adopt him. *Id*. J.S. and Ms. Ruzich testified that, after D.J. was moved to a new foster home, he would repeatedly return uninvited to the Sigmon family's home. 7/24/23 RP 35-39, 78-81. J.S. explained how D.J. "would show up randomly at all times of the night" and that this occurred at least six times. 7/24/23 RP 36-39. Even after Mr. Sigmon's family moved homes, D.J. would continue to text J.S. requesting the new address. *Id*.

When D.J. came to the home, he would beg Mr. Sigmon not to inform the social worker or have D.J. picked up. *Id*. Mr.

Sigmon would "[sit D.J.] down in the living room, explain[], we got to do the right thing. You're growing up. You have to be responsible," and call the social worker. 7/24/23 RP 81. These persistent behaviors contributed to Mr. Sigmon's decision not to pursue adoption of D.J. 7/24/23 RP 39.

D.J.'s own social worker likewise confirmed D.J. repeatedly returned to the Sigmon home long after his foster placement there ended. 7/20/23 RP 284-86. D.J. had later indicated to his social worker that he wished to be placed with Mr. Sigmon again. *Id*. However, the social worker testified that Mr. Sigmon was supportive of the social worker's efforts to help D.J. thrive in subsequent foster homes without absconding, and for D.J. to eventually reunify with his biological family. 7/20/23 RP 288.

Despite, this evidence, D.J. insisted that, after he was moved to his next foster home, he wished never to return to the Sigmon home, and he never attempted to do so. 7/18/23 RP 208.

J.S. and Ms. Ruzich also testified that Mr. Sigmon's severe back problems largely restricted him to a living room recliner because he could not get up and down on his own, he did not use the bed where J.C. and D.J. both described their allegations as taking place, and he physically could not have performed the acts described. 7/24/23 RP 31-32, 58-65.

At the prosecution's request, and over Mr. Sigmon's objections, the trial court excluded all the testimony relating to J.C.'s resentment towards the family and motive to lie. Variously citing evidentiary rules on relevance, hearsay, ER 403, and ER 404(b), the trial court excluded the testimony regarding J.S.'s YMCA encounter with a resentful J.C., J.C.'s expressed wish for Mr. Sigmon to "unadopt" J.S. and adopt J.C. instead, any evidence relating to J.C.'s hostility towards J.S. in the Sigmon home, and J.C.'s threat to "get back at" Mr. Sigmon and his family. 7/17/23 RP 159-60; 7/24/23 RP 17-20, 61, 67-75.

The jury convicted Mr. Sigmon of all four counts. CP 65-71. Despite Mr. Sigmon's lack of criminal history, the court sentenced him to over a decade-and-a-half in prison, which he will likely not survive. CP 80-97.

b. The Court of Appeals reverses count 1 for the evidentiary errors but finds those errors harmless to counts 2-4 without performing a Sixth Amendment analysis.

On appeal, Mr. Sigmon argued the trial court violated his due process right to a meaningful opportunity to present a defense by excluding J.C.'s statements that established a vindictive motive to fabricate these allegations. Br. of Appellant 8-18.

Mr. Sigmon argued these errors prejudiced him as to each of the four counts in the joint trial. Br. of Appellant 16-18. He argued that, because D.J.'s allegations were markedly similar to J.C.'s, and because D.J. had the same cause for resentment as J.C. and thus a similar motive to lie, the errors

likely affected the jurors' determination of whether D.J.'s allegations were credible. *Id*.

The Court of Appeals held that the trial court abused its discretion by excluding J.C.'s statements about wanting Mr. Sigmon to "unadopt" J.S. in J.C.'s favor, and his threat to Ms. Ruzich upon his removal from the Sigmon home that he would "get back at" Mr. Sigmon and his family. Slip op. at 8-12. The Court of Appeals disposed of the errors on nonconstitutional evidentiary grounds without reaching the violation of Mr. Sigmon's constitutional right to present a defense. Slip op. at 13 n. 4.

However, while the Court of Appeals reversed the J.C. count, it found that the prejudice from the trial court's numerous errors did not extend to D.J.'s counts. Slip op. at 12-14. The Court of Appeals reasoned that Mr. Sigmon "does not assign error to any trial court rulings regarding D.J.," "nothing in the record indicates that D.J. had a motive to lie similar to

J.C.'s motive," and "the evidence regarding the crimes against J.C. and those against D.J. was distinct." Slip op. at 14.

Mr. Sigmon made a motion to reconsider the decision affirming counts 2-4, again arguing that the erroneous exclusion of J.C.'s impeaching statements also likely affected the jurors' assessment of whether D.J.'s inconsistent and highly contradicted testimony was credible.

The Court of Appeals had the State file an answer, but ultimately denied Mr. Sigmon's motion to reconsider.

E. WHY REVIEW SHOULD BE GRANTED

1. The prejudice from the evidentiary errors extended to all four counts, which the Court of Appeals failed to recognize because it placed unprecedented and arbitrary restrictions on its prejudice analysis.

Review is warranted because this petition involves constitutional issues of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

The Court of Appeals effectively holds that, where a trial court erroneously excludes statements by one accuser in a multi-accuser joint trial, the prejudicial effect to the accused is

only cognizable in counts pertaining to the particular accuser whose statements were excluded.

No precedent supports this arbitrary restriction, which relieves courts of their duty to use common sense in ascertaining the full extent of the prejudice flowing from evidentiary errors.

a. The evidentiary errors recognized by the Court of Appeals require reversal of all four counts, not just count 1.

Because it is "within reasonable probabilities" the erroneous exclusion of J.C.'s impeaching statements materially affected the jury's deliberations on the three counts involving D.J., reversal of counts 2-4 is required. *State v. Barry*, 183 Wn.2d 297, 303, 352 P.3d 161 (2015) (citations omitted).

The Court of Appeals recognized that the trial court's erroneous exclusion of J.C.'s impeaching statements was an abuse of discretion that could have led a rational juror to "believe Sigmon's theory that J.C. lied," and reversed count 1. Slip op. at 1-2, 13.

However, it affirmed counts 2-4 because it found that Mr. Sigmon "does not assign error to any trial court rulings regarding D.J.," "nothing in the record indicates that D.J. had a motive to lie similar to J.C.'s motive," and "the evidence regarding the crimes against J.C. and those against D.J. was distinct." Slip op. at 14.

The Court of Appeals refused to acknowledge the impact of the erroneously withheld evidence for invalid and arbitrary reasons. The fact that Mr. Sigmon assigned error to the court's ruling excluding statements by J.C. does not mean the errors did not affect the trial as a whole, including D.J.'s counts. The harmless error analysis applies to all counts before the jury, and asks only whether, "within reasonable probabilities, the outcome [as to a given count] would have been materially affected had the error[s] not occurred." *Barry*, 183 Wn.2d at 303.

No precedent supports the notion that erroneously admitted or excluded statements cannot impact the jury's

deliberations on other counts. For example, erroneously admitted testimony about a defendant's prior bad act is frequently prejudicial as to a count, even though such testimony is *necessarily* about allegations other than those contained in the charged count itself. ER 404(b); *see, e.g.*, *State v. Gogo*, 29 Wn. App. 2d 107, 114-20, 540 P.3d 150, 156 (2023) (testimony that defendant "had been fooling around with *those kids*" deprived defendant of fair trial in severed proceeding on molestation of one child).

Here, the truthfulness of J.C.'s allegations was highly relevant to a logical juror's assessment of the truthfulness of D.J.'s allegations.

The trial court never instructed the jurors not to consider evidence pertaining to the alleged abuse of J.C., J.C.'s testimony, or their assessment of J.C.'s credibility, in assessing D.J.'s credibility or the veracity of D.J.'s allegations of abuse. CP 44-64 (court's instructions to the jury).

Instead, the trial court gave the jury only the narrow procedural instruction that "[y]our *verdict* on one count should not *control* your verdict on any other count," taking no steps to limit the logical impulse of the jury to decide each count in reliance on all the *evidence* before it at trial. CP 49 (emphasis added). Indeed, the court instructed the jury that "[e]ach party is entitled to the benefit of *all* of the evidence," and that the jury "*must* consider *all* of the evidence" that appears relevant to any given proposition. CP 45 (emphasis added).

The jury's assessment of J.C.'s credibility likely affected its deliberations as to the abuse alleged by D.J. It would have been a reasonable, indeed inescapable, application of common sense for a juror who thought J.C.'s account credible to conclude that this made it far likelier that D.J.'s markedly similar story was also true.

Where the jurors were instead improperly shielded from statements that may have led a rational juror to "believe Sigmon's theory that J.C. lied," as the Court of Appeals held,

there is therefore a reasonable probability this materially affected the jury's conclusion that D.J.'s mirror-image allegations were also true. Slip op. at 13.

Both accusers in this joint trial had received foster care in Mr. Sigmon's home. 7/17/23 RP 101-03; 7/18/23 RP 193. Both regretted or resented having to leave Mr. Sigmon's home after their foster care periods ended, with J.C. making threats, and D.J. repeatedly returning to the Sigmon home before insisting at trial that he had never done so. 7/24/23 RP 37-38, 65-70. The prosecution tried Mr. Sigmon for both accusers' allegations in a single trial, and Mr. Sigmon pursued a unified defense theory as to both accusers – that both accusers brought these false allegations because they both resented being made to leave Mr. Sigmon's home rather than being adopted, and that Mr. Sigmon physically could not have committed the near-identical acts of abuse they both alleged. 7/24/23 RP 37-38, 65-70.

J.C. and D.J.'s testimony was the only evidence against Mr. Sigmon. At trial, the prosecution conceded that, with

respect to both the J.C. count and the D.J. counts, the case came down to the jurors' assessments of the accusers' credibility. 7/24/23 RP 122-23.

On its own, the evidence supporting D.J.'s allegations of abuse, consisting only of his own testimony, was highly suspect. D.J.'s testimony was internally inconsistent, *see* 7/18/23 RP 208-13, and severely undercut by other evidence.

Most notably, D.J. testified that, after his period of foster care with Mr. Sigmon ended, he wished never to return to Mr. Sigmon's house, and never attempted to do so. 7/18/23 RP 208.

On the contrary, multiple witnesses testified that D.J., like J.C., had expressed his desire to be adopted by Mr. Sigmon, and that he had repeatedly returned to the home after his foster stay. 7/24/23 RP 37-38, 80-81. D.J.'s own social worker testified that he repeatedly returned to Mr. Sigmon's house after the foster care period, contrary to D.J.'s insistence had not. 7/20/23 RP 284-86. Mr. Sigmon had to call D.J.'s social worker each time to have D.J. picked up. 7/24/23 RP 36-

39, 81. D.J.'s social worker testified D.J. specifically spoke to her about his wish to be returned to Mr. Sigmon's care. 7/20/23 RP 284-86.

The Court of Appeals's view that "nothing in the record indicates that D.J. had a motive to lie similar to J.C.'s motive" unduly proscribes the jury's broad and exclusive discretion to draw reasonable inferences. Slip op. at 14; *see* CP 51; *State v. Bencivenga*, 137 Wn.2d 703, 707, 974 P.2d 832 (1999). The jury certainly could have believed the testimony that D.J. repeatedly returned to the home after the foster care period and that he expressed a wish to be adopted. The jury could have concluded that D.J.'s false denial of this history demonstrated his resentment towards the Sigmons for not adopting him into the family and his motive to make these false accusations against Mr. Sigmon.

There is a reasonable probability the jury's assessment that J.C. had testified truthfully when he made similar allegations materially affected the jury's ultimate conclusion

that D.J. was also telling the truth. D.J.'s inconsistent testimony contradicted that of other witnesses, including his own social worker. There was no evidence whatsoever besides D.J.'s own testimony, and J.C.'s mirror-image claim of abuse, to support D.J.'s claims that Mr. Sigmon abused him. It is likely the jury's belief in J.C.'s credibility led any jurors who were on the fence about D.J.'s testimony or would have harbored reasonable doubts about it to instead conclude that D.J.'s testimony was, on the whole, true despite its serious inconsistencies.

It makes no difference to a prejudice analysis that it would have arguably been legally *improper* for the jury to rely on the testimony regarding J.C., or its belief in the credibility of J.C.'s testimony, in assessing the veracity of D.J.'s claims. Had the trial court instructed the jury to ignore all evidence and testimony relating to J.C. when deliberating as to the three D.J. counts, the respective counts between the two accusers might indeed have been adequately insulated to support the holding that "evidentiary error regarding J.C. does not affect [Mr.

Sigmon's] convictions involving D.J." Slip op. at 2. *But the trial court gave no such instruction.* The trial court's instructions left the jury free to rely on their assessments of J.C.'s credibility and allegation of similar abuse in the jury's deliberations on Counts 2-4 regarding D.J.

Contrary to the State's arguments, Mr. Sigmon need not assert or demonstrate that the trial court erred by failing to sever the counts or by failing to include instructions compartmentalizing the evidence. *See* Answer to Motion for Reconsideration 2-10. The Court of Appeals has already recognized that the trial court erred by excluding evidence that suggested that J.C. may have fabricated his allegation against Mr. Sigmon. The question of *prejudice* is no more, and no less, than whether it is "within reasonable probabilities" that these recognized errors materially affected the jury's deliberations on counts 2-4. *Barry*, 183 Wn.2d at 303. No additional finding of *error* is necessary.

Thus, the State's arguments in the Court of Appeals that Mr. Sigmon "waived" issues about severance or jury instructions miss the point. A party may waive an *error* by failing to object. *See* RAP 2.5. Here, Mr. Sigmon timely objected to the erroneous exclusion of J.C.'s statements, appealed those rulings, and the Court of Appeals recognized that the trial court did indeed err. A party that preserved an error cannot separately "waive" *prejudice* resulting from that recognized error.

Once an error is found, the prejudice analysis simply tasks the appellate court with making a practical determination, as to any challenged count, whether it is "within reasonable probabilities" the error materially affected the jury's deliberations on that count. *Barry*, 183 Wn.2d at 303. The appellate court should measure the error's potential impact on the jury's deliberations for a given count against the strength of the other evidence supporting guilt as to that count. *Id*. (citation omitted). Here, the only other evidence supporting the D.J.

counts, 2-4, consisted only of D.J.'s own testimony. The testimony of multiple other witnesses, including that of D.J.'s own social worker, contradicted D.J.'s testimony on key points that bore directly on D.J.'s credibility.

In sum, the trial court's instructions permitted the jury to consider J.C.'s credibility and the testimony supporting his allegations when deliberating on the counts of alleged abuse involving D.J. A juror using common sense would find the veracity of D.J.'s allegations more, or less, likely, depending on whether the juror believed J.C.'s near-identical testimony was credible or fabricated. Because the jury found J.C.'s allegation to be true, but only after being tainted by the improper exclusion of evidence that could have instead led a rational juror to "believe Sigmon's theory that J.C. lied," slip op. at 13, it is well within reasonable probabilities the errors materially affected the jury's deliberations regarding the D.J. counts, which were otherwise rife with reasonable doubts.

b. This Court should accept review.

The decision of the Court of Appeals places arbitrary, rigid limits on a reviewing court's prejudice analysis. Where the trial court erroneously excludes testimony, the reviewing court's duty to ascertain prejudice consists of no more, and no less, than determining whether it is "within reasonable probabilities" the erroneous exclusion materially affected the jury's deliberations on a given count. *Barry*, 183 Wn.2d at 303. This practical and commonsense analysis is not limited by an arbitrary, formalistic restriction that the erroneously excluded testimony must refer to the allegations in a given count, or involve statements by the particular complaining witness in that count, to materially affect the jury's verdict.

This Court should accept review, reject this arbitrary limitation on a reviewing court's common sense analysis of prejudice, and reverse counts 2-4 for inclusion in the new trial already ordered for count 1. RAP 13.4(b)(4).

2. The Court of Appeals failed to address Mr. Sigmon's Sixth Amendment challenge after finding the trial court's abuses of discretion were not reversible as to counts 2-4.

This Court should also grant review because the decision of the Court of Appeals conflicts with this Court's precedent on the proper analysis for violations of the Sixth Amendment right to present a complete defense. RAP 13.4(b)(1); *State v. Arndt*, 194 Wn.2d 784, 453 P.3d 696, 703 (2019); *State v. Jennings*, 199 Wn.2d 53, 502 P.3d 1255 (2022); U.S. Const. amend. VI, XIV. Court of Appeals failed to proceed to the constitutional analysis, as required, after declining to reverse counts 2-4 on nonconstitutional grounds. Slip op. at 13 n. 4.

a. The Court of Appeals misunderstood this Court's precedents by failing to proceed to a Sixth Amendment analysis.

Where the accused appeals a violation of his Sixth Amendment right to present a defense, the appellate court first determines whether the trial court's evidentiary rulings were an abuse of discretion. *Jennings*, 199 Wn.2d at 58 (citing *Arndt*, 194 Wn.2d at 798-812). If so, and the errors were not harmless,

the appellate court reverses the prejudiced counts on that nonconstitutional basis. *Id*. If the appellate court instead finds no evidentiary abuse of discretion, it analyzes de novo whether the accused was denied his Sixth Amendment right to present a defense. *Id*. (citing *Arndt*, 194 Wn.2d at 813).

This Court in *Jennings* approvingly cited a Court of Appeals concurrence that observed that there are, in fact, "three possible scenarios." *Id*. at 59 (citing *State v. Jennings*, 14 Wn. App. 2d 779, 800-01, 474 P.3d 599 (2020) (Melnick, J., concurring)). The appellate court may find that there *was* an abuse of discretion, but that it does not require reversal of one or more of the challenged counts under the nonconstitutional harmless error standard. *Id*. In that case, the Court of Appeals concurrence reasoned, the appellate court must proceed to the constitutional analysis to determine whether reversal is required based on a violation of the Sixth Amendment right to present a defense. *Id*. The appellate court cannot simply neglect to analyze a constitutional challenge before it, solely because it

believes one or more challenged counts would not be reversible for the *nonconstitutional* evidentiary error.

The facts of *Jennings* did not present that third scenario, but Mr. Sigmon's case does. The Court of Appeals found the trial court abused its discretion by erroneously excluding probative, admissible evidence. Slip op. 9-12. It properly reversed count 1. However, it declined to reverse counts 2-4, holding that these errors were harmless as to the D.J. counts under the nonconstitutional standard. Slip op. 12-14. Instead of proceeding to the constitutional analysis, it simply affirmed those counts. Slip op. 13 n. 4.

As Mr. Sigmon argued above, it is within reasonable probabilities the exclusion of J.C.'s statements materially affected the jury's deliberations on the D.J. counts, so the evidentiary errors require reversal of counts 2-4. However, even had the Court of Appeals's assessment been correct, it was required to then proceed to the constitutional analysis to determine whether the trial court's erroneous rulings deprived

Mr. Sigmon of his Sixth Amendment right to present a complete defense. *Jennings*, 199 Wn.2d at 58-59. If so, and the error was not harmless *beyond a reasonable doubt* as to counts 2-4, the Court of Appeals should have reversed those counts as well. *Id*.

b. The trial court's rulings violated Mr. Sigmon's Sixth Amendment right to present a defense, and the error was not harmless beyond a reasonable doubt as to counts 2-4.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee the accused a meaningful opportunity to present a complete defense. U.S. Const. amends. VI, XIV; *Jennings*, 199 Wn.2d at 63; *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

Defendants have the right to present evidence that might influence the jury's determination of guilt. *Pennsylvania v.*

Ritchie, 480 U.S. 39, 56, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987). Absent a compelling justification, excluding such evidence violates the right to present a defense because it "deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.'" *Crane*, 476 U.S. at 690-91 (citation omitted).

Violations of the Sixth Amendment right to present a defense are reviewed de novo. *Arndt*, 194 Wn.2d at 797-98.

The prosecution sought to convict Mr. Sigmon of J.C. and D.J.'s claims of abuse in a single trial. Relying solely on J.C. and D.J.'s own testimony, the prosecution sought to prove Mr. Sigmon committed markedly similar acts of abuse against both accusers. Mr. Sigmon pursued a unified defense theory as to the allegations, namely, that both J.C. and D.J. brought these false allegations out of a shared motive of jealousy and resentment towards Mr. Sigmon for not adopting them, and that Mr. Sigmon's disabilities would have made it impossible for

him to commit the acts J.C. and D.J. both alleged. 7/20/23 RP 284-86; 7/24/23 RP 31-32, 36-39, 58-65, 65-70, 80-81.

The trial court violated Mr. Sigmon's Sixth Amendment right to present a complete defense. It erroneously excluded highly probative evidence showing J.C. had a motive to fabricate these allegations and had threatened to "get back at" Mr. Sigmon and his family. 7/24/23 RP 17-20, 61, 67-75. This excluded testimony included Mr. Sigmon's adopted son's description of a recent, hostile encounter with J.C., which precipitated J.C. and D.J.'s allegations of abuse. *Id*.

Mr. Sigmon's trial attorney argued that the impeachment evidence had extremely high probative value and was "part and parcel for the defense theory of the case" regarding motive to lie, and that "to say that we can't explain that anger and why these allegations came up would handcuff us. Because otherwise, there's no explanation for the allegations." 7/24/23 RP 19, 71

This was true of the D.J. counts, not just the J.C. count.

Because of the striking similarity of J.C. and D.J.'s allegations, and the fact that D.J.'s much-contradicted testimony suggested D.J. was lying about his repeated returns to the Sigmon home after the period he alleged the abuse occurred, evidence J.C. was lying would have been highly probative evidence that D.J.'s mirror-image allegations were also untrue.

Additionally, the most persuasive evidence D.J. was telling the *truth* about the abuse, despite appearing to lie about closely related matters on the stand, was that J.C. claimed to have experienced virtually identical abuse. With his prior statements excluded, J.C.'s testimony was less plagued by credibility problems than D.J.'s, since D.J. was contradicted even by his own social worker about his repeated returns to the Sigmon home. With the impeaching evidence regarding J.C. erroneously excluded, J.C.'s testimony helped bolster D.J.'s testimony, which was otherwise marred by contradictions. Had the trial court allowed Mr. Sigmon to present his highly

probative impeaching testimony regarding J.C., D.J.'s unreliable testimony would have lost its most vital buttress.

The trial court's rulings deprived Mr. Sigmon of his Sixth Amendment right to present a defense and the constitutional error was not harmless beyond a reasonable doubt as to any counts.

c. This Court should accept review.

Because the Court of Appeals's incomplete decision conflicts with this Court's precedent on the proper analysis for violations of the Sixth Amendment right to present a complete defense, this Court should accept review. RAP 13.4(b)(1).

F. CONCLUSION

For the reasons explained above, this Court should accept review. RAP 13.4(b)(1), (4).

Per RAP 18.17(c)(10), the undersigned certifies this petition for review contains 4,984 words.

DATED this 14th day of July, 2025.

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APPENDIX A

Court of Appeals Decision

Filed
Washington State
Court of Appeals
Division Two

April 15, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BILLY SCOTT SIGMON, Appellant.	No.58621-5-II UNPUBLISHED OPINION

MAXA, J. – Billy Scott Sigmon appeals his convictions and sentence for second degree child molestation involving JC and three counts of first degree child molestation involving DJ. Sigmon served as a foster parent for many children. The two alleged victims in this case, JC and DJ, were foster children placed in Sigmon's home who later alleged that Sigmon had molested them.

The trial court sustained the State's objection to evidence that JC said he wished that Sigmon would unadopt his adopted son and adopt him instead and that JC said when he was leaving Sigmon's home that he would get back at Sigmon. Sigmon argues that the trial court erred in excluding these statements because they were admissible to show that JC had a motive to lie about the molestation. He also argues that the convictions involving DJ should be reversed because of the error involving JC. In addition, Sigmon challenges certain community custody

conditions and the imposition of the crime victim penalty assessment (VPA) and community custody supervision fees.

We hold that (1) the trial court abused its discretion in excluding JC's statements and the error was not harmless; (2) the evidentiary error regarding JC does not affect his convictions involving DJ; (3) as the State concedes, the community custody condition requiring urinalysis and breath analysis testing and prohibiting use of alcohol must be stricken; (4) as the State concedes, the community custody condition allowing for Department of Corrections (DOC) searches must be modified to require reasonable cause for a search; and (5) as the State concedes, the VPA and imposition of community custody supervision fees must be stricken.

Accordingly, we reverse Sigmon's conviction for second degree child molestation and remand for further proceedings; we affirm Sigmon's remaining convictions; and we remand for the trial court to strike the community custody conditions prohibiting alcohol or marijuana use and regarding urinalysis/breath analysis, to modify the community custody condition allowing DOC searches to include a reasonable cause requirement, and to strike the VPA and community custody supervision fees.

FACTS

In 2014, Sigmon was a licensed foster care provider. The State placed JC in Sigmon's foster home from January 10 to February 14. Four years later in 2018, JC reported to a youth shelter worker that Sigmon inappropriately touched his genitals.

In March 2016, DJ was placed in Sigmon's foster home. DJ later reported that Sigmon had inappropriately touched his genitals.

The State charged Sigmon with one count of second degree child molestation against JC and three counts of first degree child molestation against DJ.[1] For each count, the State alleged as an aggravating factor that Sigmon used a position of trust or confidence to commit the offense.

JC's Testimony

JC testified that Sigmon asked JC and Sigmon's adopted son JS to come into his bedroom and rub lotion on his legs. Sigmon then told JS to leave and told JC to get into the bed with him. JC testified that Sigmon then touched his genitals. A few weeks later JC was removed from Sigmon's foster house.

On cross-examination, Sigmon's attorney asked the following:

> Q. Did you get along with [Sigmon's] son, [JS]?
> [STATE]: Objection; relevance.
> THE COURT: I'm sustaining the objection.

Report of Proceedings (RP) (July 17, 2023) at 118.

Sigmon also attempted to ask JC about why he left Sigmon's foster home. Sigmon asked,

> Q: Is it also your understanding that you were leaving the house because you and [JS] weren't getting along?
> [STATE]: Objection
> THE COURT: What's the basis for the objection?
> [STATE]: How is that relevant?
> [Sidebar discussion]
> THE COURT: Okay. For the record, the State's objection was sustained.

RP (July 17, 2023) at 122.

[1] The State initially charged Sigmon for child molestation of an additional child, ST. The information was amended to remove those allegations and the charge regarding ST did not go to trial.

The trial court later clarified on the record that Sigmon wanted to question JC about the reasons for wanting to transfer from the foster care home. Sigmon said that his contention was that JC left the house because of the contentious relationship between JC and JS. The State argued that it was irrelevant evidence and excluded by ER 404(b) as prior bad acts. The court sustained the objection.

DJ's Testimony

DJ testified that he lived with Sigmon when he was in fifth grade. He stated that Sigmon touched his genitals when he was 11 years old. DJ testified that Sigmon molested him three times in Sigmon's bedroom. DJ stated that Sigmon threatened him not to tell anyone because no one would believe him.

Midtrial Motion in Limine

The State filed supplemental motions in limine before Sigmon's presentation of evidence. The State moved to exclude any testimony that JC was trying to get Sigmon to "unadopt" JS, his adopted son. Clerk's Papers (CP) at 39. The State argued that the information was irrelevant and hearsay. Sigmon stated that the evidence would show that JC had said, "I want you to adopt me. I want you to un-adopt [JS]. I want to be the son."[2] RP (July 24, 2023) at 19. Sigmon argued that the information was relevant because it spoke to JC's motive and fell under the then existing state of mind hearsay exception.

Sigmon then argued,

> They're entirely relevant because years later, [JS] runs into JC at the YMCA and they have a brief conversation.
>
> [JS] says: . . . Things are good at home. How's it going with you?
>
> It's not going well at all. I'm bouncing from foster home to foster home.

[2] The implication was that JS would testify that JC made this statement.

> [JS] says [JC's] demeanor goes from kind of pleasant to really angry.
>
> And weeks later there's a disclosure about Mr. Sigmon. And . . . it connects to his anger at not being adopted and [JS] being the one adopted. . . . . And to say that we can't explain that anger and why these allegations came up would handcuff us. Because otherwise, there's no explanation for the allegations.

RP (July 24, 2023) at 19. The trial court granted the State's motion and excluded JC's statements that he wanted Sigmon to unadopt JS and adopt him instead. The court's order stated that the basis for the motion and the ruling was relevance and hearsay.

The State also moved to exclude any evidence of JC fighting with JS in Sigmon's home, which Sigmon opposed because the evidence showed a potential motive to lie. Sigmon argued,

> A lot of this goes to motive, the motive of [JC] to tell this story, to why he came up with it. And as counsel is aware, one of the things that there was a number of conversations about – and I think it's also one of the motions here – about [JC] wanting to be the adopted son instead of [JS]. And the anger when that didn't happen, the anger that that created, it is the defense contention, plays into why the allegations came out.

RP (July 24, 2023) at 17. The trial court granted the State's motion.

Defense Testimony

Sigmon called two witnesses: JS and Sigmon's adult daughter Melissa Ruzich.

JS stated that he was adopted by Sigmon when he was eight or nine years old. He testified that Sigmon had undergone numerous back surgeries and could not bend down and that his legs dry out, which was why children assisted Sigmon in putting lotion on his legs. He also stated that nobody went into Sigmon's room because Sigmon was never in there. Instead, Sigmon was always in the living room because of his back. JS testified that he had conflict with JC. He further testified that DJ would continue to show up to Sigmon's house months after he left Sigmon's foster home.

Ruzich testified that she frequently was at Sigmon's house. She testified that while JC was in the house, Sigmon slept in a recliner due to back surgery. She also testified that Sigmon did not sleep in his bedroom or stay in that room for any reason. Ruzich stated that Sigmon had to sit in that chair because he would not be able to go from a standing position to a sitting position.

Sigmon then attempted to ask Ruzich about JC's interactions with other people in Sigmon's home:

> Q. Did [JC] get along with the rest of the household?
> [STATE]: Objection, Your Honor. Relevance.
> THE COURT: Sustained.

RP (July 24, 2023) at 61. Sigmon then attempted to ask about the circumstances surrounding JC leaving Sigmon's home.

> Q. When [JC] was leaving, did you help him pack?
> [STATE]: Objection. Relevance.
> THE COURT: Sustained.
> . . .
> Q. Did [JC] say anything to you right before he left?
> [STATE]: Objection, Your Honor. Hearsay.
> [DEFENSE]: This is state – this is his state of mind at the time he's leaving.
> THE COURT: I'm going to sustain the objection. I don't get that from the question.
> Q. When [JC] was leaving, did he say something to you – just yes or no?
> [Court instructs witness to allow counsel to finish the question.]
> [STATE]: Your Honor, can we [sic] have a sidebar, please?

RP (July 24, 2023) at 67-68.

The State then argued that Sigmon was attempting to get in a statement from JC "along the lines of: I will get back at you for this." RP (July 24, 2023) at 68. Sigmon agreed that he was attempting to elicit this evidence. The State argued,

> It also, as identified earlier on the sidebar, would cause confusion because it identifies an act or something. I'm going to get you for that. Leaves the jury to question what that is, which frankly, does not – is – I don't know what she's going

> to say, but I'm presuming that it's going to be something that this Court has already ruled inadmissible, specifically the fighting, the un-adopting, any of the other things that we dealt with in motions in limine.

RP (July 24, 2023) at 70. Sigmon argued,

> The state of mind is of the declarant and it's the declarant's statement about his future – about his intent which is in his mind at that moment. He said that he would get back at them. I don't know if he said "them" or "him" when he was talking to [Ruzich], whether he was talking about getting back at Mr. Sigmon or the whole family. I think it would largely depend on what she testified to explicitly.
>
> The Court . . . has eliminated all of the hostility that – 90 percent of the hostility that was going on in that house with respect to [JC] and the rest of the household. . . . .
>
> But what it is left with is that the motive for him, [JC] to tell this story, to make these accusations is directly related to the hostility in that house. He didn't like them and he made these [sic] accusation.
>
> And while the Court believes that [the] hostility is irrelevant, what we're down to is the last statement where he says: I'm going to get back at you. And it is *part and parcel for the defense theory of the case that [JC] had a motive to tell this story*. And he expressed his intent even on the way out the door. . . . But his disdain for the people in that house is not clear to this jury absent us letting them know that at least on one occasion he basically told them that he would get back at them.

RP (July 24, 2023) at 70-71(emphasis added).

The trial court then acknowledged that JC's statements to Ruzich that go to JC's state of mind "could be relevant and probative." RP (July 24, 2023) at 74. The court then stated,

> However, when looking at Evidence Rule 403, the balancing test for whether relevant evidence should be excluded or not because the probative value is substantially outweighed by danger of unfair prejudice, confusion of the issues, misleading the jury, etcetera, and given the fact the Court has already ruled on the exclusion of the evidence about fighting, evidence about discord in the home, evidence about [JC]'s feelings about Mr. Sigmon and the other people in the home, just that statement alone, I believe, would be confusing to the jury without any explanation, and so I'm going to exclude it.

RP (July 24, 2023) at 74-75.

Ruzich then testified about DJ. She stated that DJ referred to Sigmon as his father and Ruzich as his sister. Ruzich testified about discussions regarding Sigmon potentially adopting

DJ. She testified that the family discussed adopting DJ and that they appeared to agree that they wanted DJ to be a part of the family. Ruzich also testified that after DJ left Sigmon's foster home, he showed up to Sigmon's house and begged to be allowed to stay there.

Verdict and Sentence

The jury found Sigmon guilty on all counts and also found that Sigmon used a position of trust to commit the crimes. The trial court sentenced Sigmon to 116 months for second degree child molestation regarding JC and 198 months to life for each of the counts of first degree child molestation regarding DJ.

The trial court found Sigmon indigent under RCW 10.101.010(3)(a)-(d). But the court imposed a $500 VPA. As part of his community custody conditions, the trial court ordered Sigmon to pay community custody supervision fees, to consent to home visits and inspections from DOC, to refrain from consuming alcohol or marijuana, and to submit to urinalysis and breath analysis upon request.

Sigmon appeals his convictions, certain community custody conditions, and imposition of the VPA.

ANALYSIS

A. EXCLUSION OF JC'S STATEMENTS

Sigmon argues that the trial court violated his constitutional right to present a defense by excluding evidence that JC wished Sigmon would "unadopt" JS and adopt him instead and Ruzich's testimony that JC told her that he would "get back" at Sigmon, both of which would show JC's potential motivation to lie about the molestation. Br. of Appellant at 8-19. We conclude that the trial court abused its discretion in excluding the evidence, so we need not address the constitutional issue.

1. Legal Principles

Both the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a defendant's right to present a defense. *State v. Jennings*, 199 Wn.2d 53, 63, 502 P.3d 1255 (2022). The Supreme Court has developed a two-step process when addressing evidentiary rulings and the right to present a defense. *Id.* at 58. First, we analyze the trial court's rulings for abuse of discretion. *Id.* "Trial courts determine whether evidence is relevant and admissible." *Id.* at 59. An abuse of discretion occurs if no reasonable person would take the trial court's position. *Id.*

If we determine that the trial court abused its discretion in excluding evidence, we analyze whether the error was harmless under the nonconstitutional harmless error standard. *See Jennings*, 199 Wn.2d at 59. Under this standard, we analyze whether there is a reasonable probability that the trial would have been materially affected if the error had not occurred. *State v. Broussard*, 25 Wn. App. 2d 781, 793, 525 P.3d 615 (2023).

Only if we conclude that the trial court did not abuse its discretion in excluding the evidence do we consider de novo whether the exclusion of evidence violated the defendant's constitutional right to present a defense. *Jennings*, 199 Wn.2d at 58.

2. Evidentiary Analysis – JC Statements

a. Legal Principles

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Although relevant, evidence still may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." ER 403. And trial courts are permitted to

" 'exclude evidence that is repetitive . . . , only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues.' " *Jennings*, 199 Wn.2d at 63 (alteration in original) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 326-27, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006)).

We review the exclusion of evidence based on relevance for an abuse of discretion. *Broussard*, 25 Wn. App. 2d at 787. "A decision that is either contrary to law or based on an incorrect application of an evidentiary rule is an abuse of discretion." *Id.* at 787-88.

Hearsay is an out of court statement offered for the truth of the matter asserted. ER 801(c). Hearsay evidence is not admissible unless a hearsay exception applies. ER 802. There is a hearsay exception for a statement of a declarant's "then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)" falls within an exception to the hearsay rule. ER 803(a)(3). The word "then" in the phrase "then existing" refers to the time the statement was made. *State v. Sanchez-Guillen*, 135 Wn. App. 636, 646, 145 P.3d 406 (2006). This hearsay exception includes statements describing the declarant's emotions or feelings. 5C Karl B. Tegland, WASHINGTON PRACTICE: EVIDENCE LAW AND PRACTICE § 803.10 (6th ed. 2016).

We review de novo whether a statement constitutes hearsay and whether a hearsay exception applies. *State v. Carte*, 27 Wn. App. 2d 861, 877-78, 534 P.3d 378 (2023), *review denied*, 2 Wn.3d 1017 (2024).

b. Statement that JC Wanted Sigmon to Unadopt JS and Adopt Him

The trial court excluded evidence that JC said that he wanted Sigmon to unadopt JS and adopt him instead because it was irrelevant and hearsay. We disagree.

Here, evidence that JC said he wished Sigmon would unadopt JS and adopt him instead – which was not elicited from JC – arguably is hearsay. Sigmon was offering the statement to prove the truth of the matter asserted – that JC actually wanted Sigmon to adopt him and was upset at Sigmon because he did not.

But JC's statement falls within ER 803(a)(3)'s exception for hearsay statements that show a then-existing state of mind. JC's statement that he wished Sigmon would unadopt JS and adopt him shows his mental feeling – what he wished – at the time he made the statement, and ER 803(a)(3) expressly references a statement of mental feeling. Therefore, JC's statement that he wished Sigmon would unadopt JS and adopt him instead fell under the hearsay exception in ER 803(a)(3).

And although the trial court excluded this evidence based on relevance, JC's statement was relevant. It would show a motive to lie about the molestation – that JC was upset at Sigmon because Sigmon did not adopt him.

We hold that the trial court erred in excluding evidence that JC stated that he wished Sigmon would unadopt JS and adopt him instead.

c. Statement that JC Would Get Back at Sigmon

The trial court excluded Ruzich's testimony that JC said that he would get back at Sigmon because it was more prejudicial that probative under ER 403. We disagree.

Initially, the State argues on appeal that this statement was inadmissible hearsay and that we can affirm on that basis. JC's statement to Ruzich arguably is hearsay. Sigmon was offering an out-of-court statement for the truth of the matter asserted – that JC was going to get back at Sigmon or his family. But the statement again falls under ER 803(a)(3)'s exception for then-existing mental state. The statement shows what JC's existing intent was at the time he made the

statement, and ER 803(a)(3) expressly references a statement of intent. Therefore, Ruzich's testimony that JC stated he would get back at Sigmon fell under the hearsay exception in ER 803(a)(3) and was admissible.

Regarding ER 403, JC's statement that he would get back at Sigmon is relevant. If believed by the jury, this statement shows that JC had a motive to lie about the molestation. And some motive to lie was highly probative of Sigmon's defense of general denial because JC's credibility was the key to the State's case. The statement would call JC's credibility into question and as the victim he was the only direct witness to the crime.

Regarding the ER 403 balancing, there was no risk of unfair prejudice. And the risk of confusion to the jury was minimal. The trial court was concerned that there was no evidence in the record that explained why JC wanted to get back at Sigmon.[3] The absence of a reason may go to the weight of the evidence, but it did not make JC's evidence confusing. All the jury needed to know was that JC threatened to get back at Sigmon for whatever reason, which would call into the question the credibility of the sole direct witness to the crime. And weighing the credibility of witnesses is an essential function of the jury. *See State v. Rodriquez*, 187 Wn. App. 922, 930, 352 P.3d 200 (2015).

Therefore, we hold that the trial court abused its discretion when it excluded Ruzich's testimony that JC said he would get back at Sigmon.

c. Harmless Error

The State argues that any error in excluding the evidence was harmless. We disagree.

[3] There was no evidence explaining why JC wanted to get back at Sigmon because the trial court excluded evidence regarding JC's conflict with JS and JC's reasons for leaving Sigmon's home. Arguably, the court erred in excluding that evidence. And the court excluded evidence that JC wanted Sigmon to adopt him, which as discussed above was error.

The question under the nonconstitutional harmless error standard is whether there is a reasonable probability that the trial would have been materially affected if the error had not occurred. *Broussard*, 25 Wn. App. 2d at 793. Here, the statements Sigmon sought to admit through were highly probative of JC's credibility in front of the jury. If believed, a reasonable inference was that JC potentially lied about the molestation because he was upset at Sigmon for not adopting him or to carry out his threat that he would get back at Sigmon. JC was the only witness to testify that Sigmon molested him. Therefore, whether Sigmon actually molested JC rested entirely on JC's credibility. If Sigmon had been allowed the opportunity to offer the statements showing that JC had threatened Sigmon, a reasonable juror could believe Sigmon's theory that JC lied. This would have materially affected the trial because JC's credibility determined Sigmon's guilt or innocence.

Accordingly, we hold that the trial court's abuse of discretion was not harmless error and Sigmon's conviction for second degree child molestation must be reversed.[4]

3. Convictions Involving DJ

Sigmon briefly argues that if we hold that the trial court erred in excluding JC's statements, we must reverse all of Sigmon's convictions, including those with respect to DJ. We disagree.

Sigmon argues that the trial court's exclusion of evidence of JC's motive to lie prevented him from arguing that DJ had a motive to lie. He reasons that DJ's credibility was placed into question given inconsistencies in testimony during the trial and that DJ harbored similar anger toward Sigmon.

[4] Because of this holding, we do not address Sigmon's constitutional claim regarding the right to present a defense.

But Sigmon does 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. He does not assign error to any trial court rulings regarding DJ. And nothing in the record indicates that DJ had a motive to lie similar to JC's motive. DJ made no statements similar to the ones that JC made. JC's statements were unrelated to the charges involving DJ.

In addition, the evidence regarding the crimes against JC and those against DJ was distinct. The crimes allegedly took place two years apart. And both DJ and JC testified to different versions of events.

We hold that the trial court's evidentiary error only results in a reversal of the conviction involving JC, not to those convictions involving DJ.

B. COMMUNITY CUSTODY CONDITIONS

1. Alcohol and Marijuana Conditions

Sigmon argues, and the State concedes, that special community custody condition 11 prohibiting Sigmon from consuming alcohol and marijuana and special community custody condition 12 requiring Sigmon to submit to urinalysis and/or breath analysis must be stricken from his judgment and sentence. We accept the State's concession and remand for the trial court to strike these conditions.

2. DOC Search Condition

Sigmon argues, and the State concedes, that community custody condition 8, which requires him to submit to DOC searches, must be modified because the condition does not require reasonable cause for searches. We agree.

RCW 9.94A.631(1) states that a CCO has authority to conduct warrantless searches of offenders under community custody supervision "[i]f there is reasonable cause to believe that an

offender has violated a condition or requirement of the sentence." Under this statute, it is constitutional for "a CCO to search an individual based only on a 'well-founded or reasonable suspicion of a probation violation.' " *State v. Cornwell*, 190 Wn.2d 296, 302, 412 P.3d 1265 (2018) (quoting *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009)).

Here, community custody condition 8 requires Sigmon to submit to all "DOC home visits" which includes "access for the purposes of visual inspection of all areas of residence." CP at 94. But the condition does not require reasonable suspicion.

Accordingly, we remand for the trial court to modify community custody condition 8 to include a reasonable cause requirement.

C. LEGAL FINANCIAL OBLIGATIONS

Sigmon argues, and the State concedes, that the $500 VPA and community custody supervision fees should be stricken from his judgment and sentence. We agree.

Effective July 1, 2023, RCW 7.68.035(4) prohibits courts from imposing the VPA on indigent defendants as defined in RCW 10.01.160(3). *See State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023). For purposes of RCW 10.01.160(3), a defendant is indigent if they meet the criteria in RCW 10.101.010(3). Although this amendment took effect after Sigmon's sentencing, it applies to cases pending on appeal. *Ellis*, 27 Wn. App. 2d at 16. The trial court determined that Sigmon was indigent under RCW 10.101.010(3)(a)-(d) and therefore the VPA cannot be imposed.

In 2022, the legislature eliminated trial courts' ability to impose community custody supervision fees. *See* LAWS OF 2022, ch. 29, § 7. RCW 9.94A.703, which dictates the conditions of community custody, no longer allows for the imposition of community custody supervision fees on convicted defendants.

Accordingly, we hold that the VPA and community custody supervision fees must be stricken from Sigmon's judgment and sentence.

CONCLUSION

We reverse Sigmon's conviction for second degree child molestation and remand for further proceedings; we affirm Sigmon's remaining convictions; and we remand for the trial court to strike the community custody conditions prohibiting alcohol or marijuana use and regarding urinalysis/breath analysis, to modify the community custody condition allowing DOC searches to include a reasonable cause requirement, and to strike the VPA and community custody supervision fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

VELJACIC, A.C.J.

GLASGOW, J.

APPENDIX B

Order Denying Reconsideration

Filed
Washington State
Court of Appeals
Division Two

June 12, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BILLY SCOTT SIGMON,

Appellant.

No. 58621-5-II

ORDER DENYING MOTION FOR RECONSIDERATION

Appellant moves for reconsideration of the court's April 15, 2025 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Veljacic, Glasgow

FOR THE COURT:

Maxa, J.

MAXA, J.

WASHINGTON APPELLATE PROJECT

July 14, 2025 - 4:25 PM

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Appellate Court Case Title:	State of Washington, Respondent v. Billy Scott Sigmon, Appellant
Superior Court Case Number:	19-1-03632-1

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