Supreme Court No. ____
(COA No. 85134-9-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JERMAINE FREEMAN,

Petitioner.

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

PETITION FOR REVIEW

ELEANOR KNOWLES
Attorney for the Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
wapofficemail@washapp.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

Other Federal Cases

Washington Supreme Court Cases

Washington Court of Appeals Cases

Constitutional Provisions

State Rules

A. IDENTITY OF PETITIONER

Mr. Freeman, the petitioner, asks this Court to accept review of the Court of Appeals decision affirming his convictions and sentence. RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Freeman appealed his convictions and sentence. The Court of Appeals affirmed. *State v. Freeman*, ___ Wn. App. ___ (Unpublished Op. May 25, 2025). App. at 1-16. Mr. Freeman filed a motion for reconsideration, which was denied on June 18, 2025. App. at 17.

C. ISSUES PRESENTED FOR REVIEW

1. Criminal defendants have a constitutional right to present a defense. This includes the right to present relevant evidence and to attack the credibility of the State's witnesses. Here, the court violated Mr. Freeman's constitutional right to present a defense when it precluded him from introducing evidence of his accuser's history of false accusations. The Court of Appeals decision affirming the exclusion of this evidence

conflicts with its published decision in *State v. York*[1], and this Court's decision in *State v. Orn*[2]. Should this Court grant review to correct this significant constitutional error?

2. Criminal defendants have a constitutional right to a fair trial by an impartial jury. Consistent with these rights, witnesses are generally not allowed to testify to their opinions on the defendant's guilt. Here, the court violated Mr. Freeman's constitutional rights when it allowed two witnesses to testify to their reactions to the alleged victim's allegations, which amounted to opinions on Mr. Freeman's guilt. The Court of Appeals decision affirming the admission of this testimony conflicts with its published decision in *State v. Johnson*[3]. Should this Court grant review to correct this significant constitutional error?

---

[1] 28 Wn. App. 33, 621 P.2d 784 (1980).
[2] 197 Wn.2d 343, 482 P.3d 913 (2021).
[3] 152 Wn. App. 924, 219 P.3d 958 (2009).

D. STATEMENT OF THE CASE

Jermaine Freeman was in a relationship with Natasha Wright for over a decade. RP 853-54. The couple would spend time together "as a family," with Ms. Wright's children. RP 854. In 2020, Ms. Wright's twelve-year-old daughter, Z.M., told a friend that Mr. Freeman had touched her butt during a hug. RP 735-36, 934, 937. According to Z.M., Mr. Freeman was leaving to go to the store and gave her a hug. RP 937. During the hug, half of Mr. Freeman's left hand went onto her butt cheek, underneath her clothes. RP 937-39. After Mr. Freeman left, Z.M. told a friend what had happened, and that friend's mother notified Child Protective Services (CPS). RP 721.

Following this report, the State filed charges against Mr. Freeman. For Z.M.'s hug allegation, the State charged charged Mr. Freeman with one count of child molestation in the second degree. The State also charged Mr. Freeman with rape of a child in the first degree, or, in the alternative, child molestation

in the first degree, for an allegation that Z.M. had made two years prior. CP 45-46.

In 2018, Z.M. alleged that Mr. Freeman came into her room in the middle of the night and licked her butt. RP 919-20. According to Z.M., she was half awake but pretending to be asleep when Mr. Freeman came into her room, pulled down her pants and licked between her butt cheeks, while her brother was also asleep in the room just an arms-length away. RP 919-22, 965. Z.M. told a friend's mother about this incident, who reported it to CPS. RP 1073. This allegation was "screened out" by CPS, and charges were not filed until Z.M. made the 2020 hug allegation. RP 796-97

The evidence at trial showed that, around the time of these allegations, Z.M. was unhappy because her mother was spending a great deal of time with Mr. Freeman. RP 1062. It also showed that, with regard to the 2018 incident, Z.M. told significantly differing accounts of what happened. According to Z.M., this alleged incident occurred while both she and her

older brother were sleeping side by side in their beds in their shared bedroom. RP 924. In a pretrial interview, Z.M. stated that she woke up and screamed at Mr. Freeman, and then ran into the living room and slept on the sofa. RP 965-66. During that interview, Z.M. also stated that her other brother was spending the night at the apartment that night, and she slept on the sofa next to him once she left her bedroom. RP 967-68.

By comparison, Z.M. testified at trial that she remained in her bed while it was happening, and went back to sleep afterwards. RP 922-23, 927. She also testified that her other brother was not in the apartment that night. RP 967.

Z.M.'s credibility was essential to Mr. Freeman's defense at trial. In addition to pointing out her inconsistent accounts of the 2018 allegation, Mr. Freeman moved to introduce evidence of prior false allegations made by Z.M. against family members. RP 93-95, 808-09.

Mr. Freeman attempted to introduce evidence that, prior to the allegations against Mr. Freeman, Child Protective

Services (CPS) received a referral that Z.M.'s older brother was molesting her RP 93-95. Mr. Freeman also attempted to introduce evidence that Z.M. had a history of making false claims of physical abuse against her mother when her mother denied her privileges or when Z.M. was in trouble. RP 808-09.

The trial court precluded Mr. Freeman from cross-examining Z.M. about the molestation allegation against her brother, finding "it's irrelevant to this case." RP 95. The trial court also precluded Mr. Freeman from introducing evidence of Z.M.'s false allegations against her mother, finding "that's just improper impeachment evidence and I'm not going to allow it." RP 808.

During trial, the judge, over Mr. Freeman's objections, allowed two witnesses to testify about their reactions to Z.M.'s allegations. One witness was allowed to testify to how Z.M.'s allegations made her feel, and the other was allowed to testify to whether, in her opinion, Z.M. would be safe returning home after the allegation was made. RP 736, 1094. These witnesses

gave their opinions on the veracity of Z.M.'s allegations and ultimately on Mr. Freeman's guilt.

The jury found Mr. Freeman guilty of child molestation in the first degree and child molestation in the second degree, and he was sentenced to life without parole under the Persistent Offender Accountability Act. CP 70-71, 272-73.

Mr. Freeman appealed, asserting violation of his constitutional right to present a defense by the exclusion of the evidence of Z.M.'s prior false allegations, and violation of his constitutional right to trial by jury for the improperly admitted opinion testimony. The Court of Appeals affirmed his convictions. He asks this Court to grant review.

E. ARGUMENT

This case began with an allegation that Mr. Freeman touched Z.M.'s buttocks during a hug, and ended with him being sentenced to die in prison. Because of the trial court's erroneous rulings, the jury did not hear about Z.M.'s history of making false allegations, but did get to consider two witnesses'

improper opinions on Mr. Freeman's guilt. This Court should grant review to correct these significant constitutional errors.

1. Mr. Freeman was deprived of his constitutional right to present a defense.

Mr. Freeman went to trial on charges that were based entirely on the word of his accuser, fourteen-year-old Z.M. RP 889. There were no eyewitnesses to Z.M.'s allegations. Her story was inconsistent. She had a motive to lie. Yet the court prevented Mr. Freeman from introducing evidence that she had made prior false allegations against both her brother and her mother, erroneously reasoning that such evidence was not relevant and constituted improper impeachment. This ruling violated Mr. Freeman's right to present a defense, and this Court should grant review to correct this significant constitutional error and because the Court of Appeals decision conflicts with published decisions. RAP 13.4(b)(2), (3).

a. Criminal defendants have a constitutional right to present a defense, including the presentation of relevant evidence.

The Sixth and Fourteenth Amendments to the United States Constitution and article 1, sections 3 and 22 of the Washington Constitution guarantee the accused a meaningful opportunity to present a complete defense. U.S. Const. amends. VI, XIV; Const. art. 1, §§3, 22. *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986). This right is necessary to ensure "fairness and reliability in the ascertainment of guilt and innocence." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

The right to present a defense includes the right to present evidence that is at "least minimally relevant" unless such evidence is "so prejudicial as to disrupt the fairness" of the trial and the defendant's need to present the evidence is outweighed by the State's interest in exclusion. *State v. Orn*, 197 Wn.2d 343, 353, 482 P.3d 913 (2021). The threshold for relevance is "very low." *State v. Broussard*, 25 Wn. App. 2d 781, 787, 525 P.3d 615 (2023) (citing *State v. Darden*, 145

Wn.2d 612, 621, 41 P.3d 1189 (2002)). 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.

Excluding relevant evidence absent a compelling justification violates the constitutional 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 (quoting *United States v. Cronic*, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1884)).

b. Mr. Freeman attempted to introduce relevant evidence of his accuser's history of false accusations.

Sometime prior to the allegations against Mr. Freeman, CPS received a report that Z.M.'s brother was sexually abusing her. RP 93-95. CPS investigated but nothing came of it. RP 94. Z.M. ultimately denied the allegation. RP 95. At trial, Mr.

Freeman attempted to introduce this evidence to show Z.M.'s history of dishonesty. RP 93-94. Both the trial court and the Court of Appeals concluded that Z.M.'s prior false sexual abuse allegation against her brother was not relevant to Mr. Freeman's defense. RP 95.

Mr. Freeman also attempted to introduce evidence of Z.M.'s history of making false allegations about her mother. RP 808. Specifically, that Z.M. had in the past lied about her mother when her mother had denied Z.M. privileges or when Z.M. was in trouble. RP 808. In these situations, Z.M. would lie about her mother physically abusing her. RP 808. The court excluded this evidence as improper impeachment. RP 808.

c. Both the trial court and Court of Appeals erroneously concluded Z.M.'s prior allegation aginst her brother was not relevant.

The Court of Appeals affirmed the trial court's ruling excluding Z.M.'s prior false allegation against her brother, relying on *Lee* and *Harris* to conclude the trial court was correct in finding the evidence irrelevant. App. at 7 (citing *State*

v. Lee, 188 Wn.2d 473, 396 P.3d 316 (2017); *State v. Harris*, 97 Wn. App. 865, 872, 989 P.2d 553 (1999)). But neither *Lee* nor *Harris* support this conclusion.

In *Lee,* the trial court *did* allow the defendant to cross examine the child victim about whether she had made a prior false accusation. 188 Wn.2d at 486. On appeal, the Court of Appeals found the trial court erred by not allowing the defendant to ask her about the nature of the past accusation, specifically whether the false accusation was about rape. *Id.* This Court then granted review and held the error did not violate the confrontation clause, because the excluded information "had minimal probative value." *Id.* This Court held that allowing the defense to cross-examine the victim about her prior false accusation provided an "adequate opportunity for confrontation." *Id.* at 478.

In *Harris,* the Court of Appeals held that evidence of the victim's prior false accusation was potentially relevant, but nevertheless inadmissible under ER 608 because the victim

denied making the accusation in the first place, and thus it could only be proved through extrinsic evidence. *Harris*, 97 Wn. App. at 872-73.

Neither *Harris* nor *Lee* support the court's exclusion of the evidence in this case. While defense counsel did indicate Z.M. denied the allegation about her brother, the court completely prevented the defense from questioning her about it at trial, so it is unknown whether she would have denied it at that time. The defense was not seeking to introduce extrinsic evidence of the allegation, only to inquire about it on cross-examination of Z.M. This minimially intrusive request should have been granted consistent with Mr. Freeman's right to present a defense.

d. Both the trial court and Court of Appeals erroneously determined other rules of evidence precluded admission of the evidence.

The trial court improperly utilized the rules of evidence to preclude Z.M.'s prior false accusations. The prior allegations were admissible under ER 608, as specific instances of

dishonesty. However, even if not explicitly admissible under ER 608, the evidence should have been admitted consistent with Mr. Freeman's constitutional right right to present a defense.

As to Z.M.'s prior false allegations of physical abuse against her mother, the trial court found this evidence to be "improper impeachment," stating, "you just can't get into reputation that way." RP 808-09. But Mr. Freeman was not trying to present reputation evidence. He was attempting to introduce specific instances of dishonesty.

ER 608(b) allows evidence of specific instances of the conduct of a witness to be introduced via cross-examination, for the purpose of attacking that witness's credibility, if probative of untruthfulness. Such testimony can come from the witness themself, or through another witness that has testified to the character of the witness at issue. ER 608(b). ER 608 allows for exactly what Mr. Freeman proposed: cross-examining Z.M. regarding her prior accusation against her brother, and cross-

examining Z.M.'s mother regarding the prior accusations of physical abuse.

The Court of Appeals disagreed with this interpretation of ER 608(b), stating "here, no witness testified about Z.M.'s reputation for truthfulness." App. at 9, n 4. But the rule does not require traditional reputation testimony prior to an inquiry into specific instances of conduct probative of dishonesty. All it requires is that the witness has testified about the other person's character for truthfulness. And Z.M.'s mother's testimony did call into question Z.M.'s truthfulness. Specifically, her mother testified that she would have noticed if Mr. Freeman snuck off into Z.M.'s bedroom. RP 869. She further testified that, when Z.M. described the hug allegation to her, she did not say anything about Mr. Freeman grabbing her butt, and instead made it seem like incidental contact. RP 874. She also testified that the hug allegation was the only incident Z.M. ever told her about, contradicting Z.M.'s testimony that she told her mother about the 2018 allegation the following day. RP 875, 927. This

testimony was sufficient under ER 608 for Mr. Freeman to cross-examine Z.M.'s mother about Z.M.'s false allegations about her.

Even if this Court concludes this evidence was not admissible under ER 608, the rules of evidence may not supersede the "weighty interest of the accused" in having a meaningful opportunity to present a defense. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006). In *Holmes*, the Supreme Court held the right to present a defense trumped a state law prohibiting evidence implicating a third party where the prosecution had strong forensic evidence against the defendant. *Id.* at 324. Similarly, this Court has held the right to present a defense supersedes the rape shield statute when such evidence casts doubt on the prosecution's case. *State v. Jones*, 168 Wn.2d 713, 721, 230 P.3d 576 (2010). Evidence relevant to a theory of defense may only be precluded where it would undermine the fairness of the

trial. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

Here, the court improperly utilized the rules of evidence to preclude extremely relevant evidence central to Mr. Freeman's defense. Because Z.M.'s prior accusations were relevant and not unduly prejudicial, their preclusion violated Mr. Freeman's constitutional right to present a defense. This Court should grant review. RAP 13.4(b)(3).

e. The Court of Appeals' decision is in conflict with this Court's decision in Orn and its own published decision in York.

The Court of Appeals concluded that the exclusion of this evidence did not violate Mr. Freeman's right to present a defense because Mr. Freeman was able to attack Z.M.'s credibility without the excluded evidence. App. at 9-10. This conclusion conflicts with published precedent and ignores the relative strength of the excluded evidence compared to the information Mr. Freeman was able to elicit at trial.

This Court has made clear that, consistent with the right to present a defense, defendants must be given latitude to explore issues such as motive, bias, or credibility. *Orn*, 197 Wn.2d at 354. In *Orn*, the trial court precluded the defendant from inquiring about the specific nature of an informant witness's work with the police, instead allowing only a general question. *Id.* at 354. This Court held that even though the defense was able to attack the witness's credibility in other ways, the exclusion of this particular evidence violated his right to present a defense. *Id.* at 357.

The *Orn* decision is consistent with federal case law holding the admission of evidence impeaching a central witness is essential to the right to present a defense, even where other impeachment evidence was available at trial. *Benn v. Lambert*, 283 F.3d 1040, 1055 (9th Cir. 2002) ("In cases in which the witness is central to the prosecution's case, the defendant's conviction indicates that in all likelihood the impeachment

evidence introduced at trial was insufficient to persuade a jury that the witness lacked credibility").

The Court of Appeals' reasoning that, because Mr. Freeman was able to attack Z.M.'s credibility in other ways, exclusion of this evidence did not violate his right to present a defense, is in direct conflict with *Orn*. RAP 13.4(b)(1).

The Court of Appeals' decision rejecting Mr. Freeman's right to present a defense claim is also in conflict with its published decision in *State v. York*, 28 Wn. App 33, 621 P.2d 784 (1980). In *York*, the court reversed a conviction under ER608(b) and the Confrontation Clause, where the trial court precluded the defense from introducing evidence to attack the credibility of the undercover officer who was the only witness to the alleged drug sale. *York*, at 35. Finding the officer's credibility to be "the very essence of the defense," the Court of Appeals reversed the trial court's ruling precluding the evidence. *York*, 28 Wn. App. at 36.

The *York* court relied on decisions from this Court providing that "a criminal defendant is given extra latitude in cross-examination to show motive or credibility, especially when the particular prosecution witness is essential to the state's case," and "[a]ny fact which goes to the trustworthiness of the witness may be elicited if it is germane to the issue." *Id.* at 36 (citing *State v. Peterson*, 2 Wn. App. 464, 469 P.2d 980 (1970); *State v. Robideau*, 70 Wn.2d 994, 998, 425 P.2d 880 (1967)).

By precluding Mr. Freeman from cross-examining Z.M. and her mother about her prior false allegations, the court deprived Mr. Freeman of his constitutional right to present a defense. The Court of Appeals' decision conflicts with its own decisions and those of this Court. This Court should grant review. RAP 13.4(b)(1), (2).

2. Mr. Freeman was deprived of his constitutional right to a trial by jury when the court allowed improper opinion testimony.

a. At trial, two witnesses were allowed to testify to their reactions to Z.M.'s allegations.

At trial, the court allowed two witnesses to testify to their reactions to Z.M.'s allegations. First, M.C., Z.M.'s friend with whom she was playing video games when the alleged hug incident occurred, was asked about how she felt when Z.M. told her that Mr. Freeman had touched her butt during the hug. She testified as follows:

> STATE: How did you feel when she said that?
>
> DEFENSE: Objection, your honor.
>
> THE COURT: I'll allow it. How did you feel?
>
> M.C.: I was worried for her and her safety and I was disgusted and appalled. And I was really just worried about her.
>
> RP 736.

Next, Ms. Ives, the mother of Z.M.'s friend, who made a CPS referral after Z.M. disclosed the 2018 incident to her, was asked on direct examination by the prosecutor if she felt Z.M.

would be safe going home. Defense counsel objected, but the court allowed the question, and Ms. Ives testified as follows:

> STATE: Did you feel safe—did you feel she would be safe going home to mom?
>
> MS. IVES: It's not mom but just the home environment, not safe, no.
>
> THE COURT: And this isn't admitted for the truth, ladies and gentleman, but for this witness's point of view, if you follow me. Her feelings, not for the truth of her feelings.

RP 1094.

Both witnesses' testimony constituted improper opinion evidence that should have been excluded from the trial. As detailed below, this testimony violated Mr. Freeman's right to a fair trial by jury and the Court of Appeals decision affirming his convictions conflicts with its own published precedent. RAP 13.4(b)(2), (3).

b. Admission of this improper opinion testimony violated Mr. Freeman's right to a fair trial by jury.

In accordance with the constitutional right to trial by jury, "[g]enerally, no witness may offer testimony in the form

of an opinion regarding the guilt or veracity of the defendant; such testimony is unfairly prejudicial to the defendant 'because it invades the exclusive province of the jury.'" *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) (citing *City of Seattle v. Heatley*, 70 Wn. App. 573, 577, 854 P.2d 658 (1993)); *See also* U.S. Const. amend. VI; Const. art. I, §§ 21, 22.

Factors courts consider in determining whether testimony constitutes an impermissible opinion include "(1) the type of witness involved, (2) the specific nature of the testimony, (3) the nature of the charges, (4) the type of defense, and (5) the other evidence before the trier of fact." *Demery*, 144 Wn.2d at 759 (citing *Heatley*, 70 Wn. App. at 579).

Here, an analysis of the above factors shows the testimony from M.C. and Ms. Ives was improper opinion testimony. Both witnesses were people to whom Z.M. had disclosed the allegations. The nature of the testimony was commentary on the veracity and their belief of Z.M.'s allegations, that served no proper purpose other than to

prejudice Mr. Freeman. Both the State's case and Mr. Freeman's defense hinged on Z.M.'s credibility, because there were no witnesses to the alleged incidents. The admission of this improper opinion testimony violated Mr. Freeman's constitutional right to trial by jury.

The Court of Appeals' decision upholding the admission of this evidence directly conflicts with its decision in *State v. Johnson*, 152 Wn. App. 924, 219 P.3d 958 (2009), in which the Court held "The jury should not have heard collateral testimony that [a witness] believed [the victim's] allegations." *Id.* at 934.

In *Johnson*, a child molestation case, the trial court admitted testimony about the defendant's wife's reaction to the victim's allegations. *Id.* at 928-29. Because this testimony "really tells us only what [the wife] believed… about [the victim's] accusations," the Court found the admission of this testimony violated the defendant's right to a fair trial and impartial jury. *Id.* at 933-34.

Despite Mr. Freeman's reliance on *Johnson* in his briefing, the Court of Appeals does not mention the case in its decision. Instead, the Court of Appeals found any error in the admission of this testimony was harmless, reasoning that, here, because the trial court gave instructions limiting the jury's consideration of M.C. and Ms. Ives' testimony, and because juries are presumed to follow the court's instructions, Mr. Freeman failed to show a violation of his right to a fair trial. App. at 12. But a limiting instruction was also given in *Johnson*, instructing the jury that the wife's reaction was only admitted to assist them in determining credibility, and the Court of Appeals concluded the instruction did not cure the error, because the wife's opinion was "entirely collateral." *Id.* at 933.

The Court of Appeals decision in this case violated Mr. Freeman's constitutional right to a fair trial by jury, and directly conflicts with *Johnson*. This Court should grant review. RAP 13.4(b)(2), (3).

F. CONCLUSION

Mr. Freeman has been sentenced to die in prison following a trial that deprived him of his constitutional rights to a fair trial and to present a defense. He respectfully asks this Court to grant review pursuant to RAP 13.4 (b).

This brief is in 14-point Times New Roman, contains 4,136 words, and complies with RAP 18.17.

Respectfully submitted this 18th day of July, 2025.

ELEANOR KNOWLES (WSBA 61862)
Washington Appellate Project (91052)
Attorneys for the Petitioner

APPENDIX

Table of Contents

FILED
5/27/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON, Respondent, v. JERMAINE RODREGUS FREEMAN, Appellant.	No. 85134-9-I UNPUBLISHED OPINION

BOWMAN, A.C.J. — A jury convicted Jermaine Rodregus Freeman of first degree and second degree child molestation. The trial court found Freeman is a persistent offender and sentenced him to life without the possibility of parole (LWOP). Freeman argues that the court erred by excluding evidence of specific instances of the child's dishonesty, that the State improperly elicited inadmissible opinion testimony, and that cumulative error requires reversal. He also argues that his sentence under the Persistent Offender Accountability Act of the Sentencing Reform Act of 1981 (POAA), chapter 9.94A RCW, is unconstitutional and that we should remand for the trial court to strike the victim penalty assessment (VPA) from his judgment and sentence. We affirm Freeman's convictions and sentence but remand for the trial court to strike the VPA.

FACTS

Z.M. was born in June 2008. When she was around four years old, her mother, Natasha Wright, began dating Freeman. Later, Freeman intermittently

lived with Natasha,[1] Z.M., and Z.M.'s older brother, J.M. J.M. is about six years older than Z.M.

One night in February 2018 when Z.M. was nine years old, Freeman entered the children's[2] bedroom while they were sleeping and sexually assaulted Z.M. The next morning, Z.M. reported the incident to her mom, Natasha. She also told her friends, M.C. and L.D., and L.D.'s mother, Jeninne Ives. Ives immediately reported the incident to Child Protective Services (CPS). And Natasha "kick[ed] [Freeman] out of the house . . . [f]or a little bit." But CPS "screened out" the referral because there was "not enough information." And Freeman "eventually c[a]me back" to Z.M.'s home.

In June 2020, when Z.M. was 12 years old, Freeman knocked on Z.M.'s bedroom door while she was video calling and playing an online game with M.C. M.C. heard the knock, but Z.M. hung up when she told Freeman he could come in. Freeman then told Z.M. that he was leaving and asked for a hug. When they hugged, Freeman put his hand underneath Z.M.'s pants and underwear and slightly squeezed her buttocks. Just after Freeman left, Z.M. called M.C. back and told her what happened. M.C. then told her mother, Peggy Combs. Z.M. also told Natasha but felt she did not take it "seriously." That night, Z.M. stayed at M.C.'s house.

[1] We use the first names of the Wright family members when necessary for clarity and mean no disrespect by doing so.

[2] Z.M. and J.M. shared a bedroom at the time. They each had a twin bed, and their beds were side-by-side. J.M. testified that he is a "heavy sleeper" and that "yelling is the [only] sort of thing that would wake [him] up."

The next morning, Z.M. and Combs discussed that Freeman inappropriately touched Z.M. Combs then reported the incident to CPS. On Tuesday, June 23, CPS social worker Georgette Carter visited Z.M. at her house and began investigating. Natasha then sent Z.M. to stay with L.D.'s family. Z.M. told L.D. and Ives about Freeman's recent inappropriate conduct. On Friday, June 26, Ives also reported to CPS Z.M.'s disclosure about Freeman.

CPS then placed Z.M. with her oldest brother, Christian Wright, for a couple of weeks during its investigation until it was "safe" for Z.M. to return home to Natasha. CPS closed the case as "unfounded"[3] and referred the case to the Seattle Police Department. The State charged Freeman with first degree rape of a child, first degree child molestation as an alternative to first degree rape of a child, and second degree child molestation.

Before trial, the State moved to exclude testimony about Z.M.'s alleged reputation for untruthfulness. It also moved for an offer of proof about specific instances of Z.M.'s dishonesty that Freeman intended to introduce. Freeman asked to cross-examine Z.M. about "a prior false claim of sexual abuse against her brother," J.M. But Freeman admitted that Z.M. never told CPS she had been molested by her brother. Instead, someone else reported it to CPS, and Z.M. "ultimately denied" the allegations.

The trial court ruled the evidence was inadmissible because "there's no real foundation" that Z.M. made the comments, and they could not be sourced to

[3] Social worker Carter explained that "unfounded doesn't mean that [CPS] didn't believe the allegations."

her. The court also added it was hearsay and "irrelevant . . . that someone else said that she said something about her brother."

The case proceeded to trial in February 2023. Several witnesses testified, including Z.M., Natasha, J.M., Christian, M.C., Combs, L.D., Ives, CPS social worker Carter, and a Seattle police detective. After Carter's testimony, but before Z.M. or any of her family members testified, Freeman asked the trial court if he could "inquire of Natasha about prior instances of [Z.M.] telling lies about her family members." Freeman said Natasha would testify that Z.M. lied about her when she "denied [Z.M.] privileges," specifically "about physical abuse that [Z.M.] says Natasha has perpetrated against her that is not true." The court denied the motion, explaining it was "improper impeachment evidence" and "you just can't get into reputation that way."

M.C. testified about the night in June 2020 when she and Z.M. were on a video call and playing online games. When the prosecutor asked M.C. how she felt after Z.M. told her Freeman put his hand down Z.M.'s pants and squeezed her buttocks, M.C. testified that she was "worried for her and her safety and I was disgusted and appalled." During Ives' testimony, the prosecutor asked whether she felt Z.M. "would be safe going home to mom." Ives testified, "It's not mom but just the environment, not safe, no."

The jury acquitted Freeman of first degree rape of a child but convicted him of the alternative crime, first degree child molestation, and of second degree child molestation. At sentencing, the court found Freeman to be a persistent offender under the POAA. It determined that Freeman's 2001 conviction for

second degree rape of a child was his first "strike offense," and the current first degree child molestation of Z.M. conviction was his second strike offense. The court then imposed a mandatory LWOP sentence for the first degree child molestation conviction and a concurrent 116-month sentence for the second degree molestation conviction. The court found Freeman "is indigent," waived all nonmandatory legal financial obligations, and imposed only restitution and a $500 VPA.

Freeman appeals.

ANALYSIS

Freeman argues (1) the trial court violated his constitutional right to present a defense, (2) the State elicited inadmissible opinion testimony, (3) cumulative error requires reversal, (4) the POAA's two-strike provision for felony sex offenses is unconstitutional, and (5) we should remand for the court to strike the VPA. We address each argument in turn.

1. Right to Present a Defense

Freeman argues the trial court violated his constitutional right to present a defense by excluding testimony about Z.M.'s false allegations against J.M. and Natasha. We disagree.

Both the federal and state constitutions guarantee a criminal defendant the right to present a defense. *State v. Jennings*, 199 Wn.2d 53, 63, 502 P.3d 1255 (2022). But the right is not absolute; a court may exclude irrelevant or otherwise inadmissible evidence to accommodate other legitimate interests in the

criminal trial process. *State v. Caril*, 23 Wn. App. 2d 416, 426, 515 P.3d 1036 (2022).

When a defendant asserts that an evidentiary ruling violated his right to present a defense, we engage in a two-part analysis. *State v. Arndt*, 194 Wn.2d 784, 797-98, 453 P.3d 696 (2019). First, we review the court's evidentiary ruling for an abuse of discretion. *Id.* A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *Id.* at 799. Then, if we conclude the trial court's evidentiary ruling was not an abuse of discretion, we review de novo whether the ruling deprived the defendant of his constitutional right to present a defense. *Id.* at 797-98; *Jennings*, 199 Wn.2d at 59.

A. Z.M.'s Alleged False Allegations against J.M.

Freeman argues the trial court erred by refusing to allow him to cross-examine Z.M. about whether she falsely accused J.M. of molesting her. He asserts the testimony was admissible under ER 608(b) as a specific instance of Z.M.'s untruthfulness. We disagree.

Under ER 608(b), specific instances of a witness' conduct, introduced to attack their credibility, may, "in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness." "In exercising its discretion, the trial court may consider whether the instance of misconduct is relevant to the witness's veracity on the stand and whether it is germane or relevant to the issues presented at trial." *State v. O'Connor*, 155 Wn.2d 335, 349, 119 P.3d 806 (2005).

Evidence is relevant if it tends to "make the existence of any fact of consequence more probable or less probable than it would be without the evidence." *State v. Darden*, 145 Wn.2d 612, 624, 41 P.3d 1189 (2002). "[E]vidence of a witness' prior false statement is not always relevant, particularly when that evidence is unrelated to the issues in the case." *State v. Lee*, 188 Wn.2d 473, 489, 396 P.3d 316 (2017); *see also State v. Harris*, 97 Wn. App. 865, 872, 989 P.2d 553 (1999) ("Generally, evidence that a rape victim has accused others is not relevant and, therefore, not admissible, unless the defendant can demonstrate that the accusation was false.").

Here, the trial court determined that it was "irrelevant to this case . . . that someone else said that [Z.M.] said something about her brother." It explained that the allegation could not be sourced to Z.M. because someone else made the CPS referral. And it pointed out that Z.M. in fact denied the allegation. In any event, Freeman's assertion that CPS "investigated" the allegation and found "nothing" is not evidence that the allegation was false. The court's ruling accurately assessed the nature of the of the evidence and does not amount to an abuse of discretion.

As to the second step of our inquiry, a defendant has no constitutional right to present irrelevant evidence. *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). So, the trial court's ruling did not deprive Freeman of his constitutional right to present a defense.

B. Z.M.'s Alleged False Allegations against Natasha

Freeman also argues the court erred by excluding testimony from Natasha that Z.M. falsely accused her of physical abuse. He contends the court "improperly excluded the evidence as improper impeachment." We disagree.

Under ER 608(a)(1), a witness may testify about the character of another witness, but the evidence must be in the form of reputation testimony relating to the witness' "truthfulness or untruthfulness." To offer reputation testimony, a party "must lay a foundation establishing that the subject's reputation is based on perceptions in the community." *State v. Callahan*, 87 Wn. App. 925, 935, 943 P.2d 676 (1997). And the "community" must be "both neutral and general." *State v. Land*, 121 Wn.2d 494, 500, 851 P.2d 678 (1993). A witness' personal opinion is insufficient to lay a foundation. *Id.*

After CPS social worker Carter testified, Freeman asked to "inquire of Natasha about prior instances of [Z.M.] telling lies about her family members." Defense counsel explained that

> Natasha . . . would testify that [Z.M.] has lied specifically about her when she has been denied privileges or trying to get her in trouble, specifically about physical abuse that she says Natasha has perpetrated against her that is not true.

The trial court ruled that the testimony would be improper impeachment evidence and excluded it. Because Natasha would testify about specific instances of alleged misconduct rather than Z.M.'s general reputation for untruthfulness in the community, the trial court did not err.

On appeal, Freeman argues he offered the testimony "as specific instances of lying about abuse" under ER 608(b). But ER 608(b) provides that

specific instances of a witness' conduct may be inquired into "on cross examination of the witness." The instances "may not be proved by extrinsic evidence." ER 608(b). Freeman did not ask to cross-examine Z.M. about the evidence. Instead, he offered the testimony as extrinsic evidence through Natasha. So, the trial court did not abuse its discretion by excluding the evidence.[4]

And excluding the evidence did not violate Freeman's right to present a defense. When analyzing whether the trial court violated the right to present a defense, we balance the State's interest in excluding the evidence against the defendant's need for the information sought to be admitted. *Jennings*, 199 Wn.2d at 65. When the defendant "has an opportunity to present his theory of the case, the exclusion of some aspects of the defendant's proffered evidence will not amount to a violation of [his] constitutional rights." *State v. Ritchie*, 24 Wn. App. 2d 618, 635, 520 P.3d 1105 (2022).

Here, Freeman's theory of the case was that Z.M. was not a credible witness. At trial, Freeman had an opportunity to present that theory and impeach Z.M.'s credibility. For example, Freeman introduced evidence that CPS originally "screened out" the 2018 report that Freeman sexually assaulted Z.M. for lack of information. And he cross-examined Z.M. about her inability to remember certain

[4] At oral argument, Freeman argued the evidence was admissible under ER 608(b)(2). But ER 608(b)(2) permits inquiry into specific instances of conduct when the instances concern the "character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified." Here, no witness testified about Z.M.'s reputation for truthfulness. Because another witness did not put Z.M.'s character for truthfulness at issue, the evidence was not admissible under ER 608(b)(2).

details and her inconsistent retelling of the events. Also on cross-examination, Z.M. testified that Ives "push[ed]" Z.M. to disclose what Freeman did to her in 2018. Freeman also elicited testimony from Natasha that Z.M. never told her that Freeman entered her bedroom while she was sleeping and sexually assaulted her. Natasha also testified that she would have heard Freeman leave their shared room at night to enter Z.M.'s bedroom.[5]

For these reasons, the record shows that even without the excluded testimony, Freeman offered evidence supporting his theory that Z.M. lacked credibility and that her accusations against him were false. The trial court did not violate Freeman's constitutional right to present a defense.

2. Opinion Testimony

Freeman argues the State violated his right to a fair trial by eliciting improper opinions on his guilt from M.C. and Ives. The State contends the testimony did not amount to improper opinions and, even if it did, any error was harmless.[6] We agree that any error was harmless.

A witness may not provide an opinion, directly or by inference, on a defendant's guilt because doing so violates the defendant's constitutional right to a jury trial. *State v. Smiley*, 195 Wn. App. 185, 189, 379 P.3d 149 (2016). Specifically, it impedes the jury's ability to independently determine the facts. *State v. Fleeks*, 25 Wn. App. 2d 341, 368, 523 P.3d 220, *review denied*, 1 Wn.3d

[5] Further, on cross-examination, defense counsel elicited testimony from J.M. that he never woke up to find "Freeman in the bedroom" he shared with Z.M.

[6] The State also argues that Freeman waived these arguments by failing to object. We choose to exercise our discretion under RAP 2.5(a) and address the issues.

1014, 530 P.3d 185 (2023). Opinion testimony is improper when it comments on the witness' veracity or intent, tells the jury what decision to reach, or concludes a defendant is guilty. *Id.* at 369.

In determining whether statements are impermissible opinion testimony, we consider the type of witness, the specific nature of the testimony, the nature of the charges, the type of defense, and other evidence before the jury. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007). And, absent evidence otherwise, we presume the jury follows the court's instructions. *Id.* A constitutional error is harmless and not grounds for reversal if the State shows beyond a reasonable doubt that the jury would have reached the same verdict without the error. *State v. Orn*, 197 Wn.2d 343, 359, 482 P.3d 913 (2021).

A. M.C.'s Testimony

Freeman argues M.C. improperly expressed her opinion about his guilt. Specifically, he challenges M.C.'s testimony about how she felt after Z.M. told her about Freeman squeezing her buttocks. M.C. testified, "I was worried for her and her safety and I was disgusted and appalled. And I was just really worried about her."

Even if M.C.'s testimony amounted to an improper opinion, any error was harmless. M.C. did not explicitly testify that Freeman was guilty, nor did she comment on Z.M.'s veracity. And just before M.C. testified about how Z.M.'s disclosure made her feel, the trial court instructed the jury that testimony from other witnesses about Z.M.'s disclosure "cannot be considered as evidence of

the truth of [Z.M.'s] claims." The court also instructed the jury at the end of trial, "You are the sole judges of the credibility of each witness."

We presume the jury followed the court's instructions. So, Freeman fails to show M.C.'s testimony violated his right to a fair trial.

B. Ives' Testimony

Freeman argues that Ives also rendered an improper opinion on his guilt. Specifically, he challenges Ives' testimony about whether she felt Z.M. would be safe when she went home to Natasha. Ives testified, in relevant part:

> Q. Did you feel safe — did you feel [Z.M.] would be safe going home to mom?
> A. It's not mom but just the environment, not safe, no.
> THE COURT: And this isn't admitted for the truth, ladies and gentlemen, but for this witness's point of view, if you follow me. Her feelings, not for the truth of her feelings.

Again, even if Ives' testimony could be characterized as a comment on Freeman's guilt, any error was harmless. Ives did not comment on Z.M.'s veracity, and she was not the first witness to testify about her concern for Z.M.'s safety at home. Z.M. testified she stayed at M.C.'s house the night of the June 2020 incident because M.C.'s family "felt I was unsafe" at her own house. And the next morning, Combs testified she wanted to be sure it was safe for Z.M. to return home, which is why she called CPS. Freeman did not object to either statement. Further, just after Ives' testimony, the court instructed the jury that Ives' statement was not admitted "for the truth of her feelings."

Again, we presume the jury followed the court's instructions, and Freeman fails to show Ives' testimony violated his right to a fair trial.

3. Cumulative Error

Freeman argues that cumulative error denied him a fair trial. We disagree.

The cumulative error doctrine applies when cumulative errors produce a fundamentally unfair trial. *State v. Emery*, 174 Wn.2d 741, 766, 278 P.3d 653 (2012). Application of the doctrine "is limited to cases where there have been several trial errors." *State v. Azevedo*, 31 Wn. App. 2d 70, 85-86, 547 P.3d 287 (2024). And it does not apply where "the errors are few and have little or no effect on the trial's outcome." *State v. Venegas*, 155 Wn. App. 507, 520, 228 P.3d 813 (2010).

Freeman has not shown several trial errors, so he is not entitled to relief under the cumulative error doctrine.

4. LWOP Sentence under the POAA

Freeman next argues that the trial court erred by sentencing him to LWOP under the POAA because the POAA's "two-strikes" law is unconstitutional. The State contends we should reject Freeman's argument because it is "nearly identical" to that "rejected by Division Two of this Court" in *State v. Nelson*, 31 Wn. App. 2d 504, 550 P.3d 529, *review denied*, 3 Wn.3d 1030, 559 P.3d 496 (2024).[7] We agree with the State.

We review constitutional challenges de novo. *State v. Ross*, 28 Wn. App. 2d 644, 646, 537 P.3d 1114 (2023), *review denied*, 2 Wn.3d 1026, 544 P.3d 30

[7] The State also argues that Freeman waived this argument by not challenging the POAA below. We choose to exercise our discretion under RAP 2.5(a) and address the issue.

(2024). We presume statutes are constitutional and place the burden on the challenger to show unconstitutionality. *Id.*

Under the POAA, a "persistent offender" is an offender convicted of two of the felony sex offenses listed in RCW 9.94A.030(37)(b), or three of the felonies considered a most serious offense listed in RCW 9.94A.030(37)(a). Sentencing courts consider each offense listed in RCW 9.94A.030(37)(a) and (b) as a "strike" offense. *See Nelson*, 31 Wn. App. 2d at 512. The trial court "shall" sentence a persistent offender to life in prison without the possibility of release. RCW 9.94A.570.

Relying on *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018), Freeman asserts that courts administer the POAA's two-strikes law "in a racially disproportionate manner," violating the prohibition on cruel and unusual punishment. *See* WASH. CONST. art. I, § 14. In *Gregory*, our Supreme Court held that Washington courts imposed the death penalty in an arbitrary and racially biased manner, violating the state constitutional prohibition on cruel punishment. 192 Wn.2d at 35. As a result, the court converted all death sentences to life imprisonment. *Id.* at 36.

Freeman points out that like the death penalty, the POAA's two-strikes law has a "strikingly disproportionate impact on populations of color." But as Division Two explained in *Nelson*, "imposition of a[n] LWOP sentence under the POAA involves a different procedure than the imposition of the death penalty addressed

in *Gregory*."[8] 31 Wn. App. 2d at 515. Unlike the death sentence at issue in *Gregory*, sentencing courts do not administer the POAA on a case-by-case basis. *Id.* at 516. Instead, courts administer the POAA "the same way no matter who the defendant; *all* [persistent] offenders . . . will be sentenced to LWOP." *Id.* at 516-17. As a result, Division Two declined to conclude that the POAA was unconstitutional under *Gregory*'s framework. *Id.* at 517.[9]

Because the POAA mandates the trial court to impose an LWOP sentence for all persistent offenders, Freeman fails to show the act is unconstitutional.

5. VPA

Freeman argues we should remand for the trial court to strike the $500 VPA against him because he was indigent at the time of sentencing. The State does not object.

On July 1, 2023, four months after the trial court sentenced Freeman, the legislature's amendment to RCW 7.68.035 took effect, providing that the court "shall not impose the [VPA] under this section if the court finds that the defendant, at the time of sentencing, is indigent as defined in RCW 10.01.160(3)." LAWS OF 2023, ch. 449, § 1; RCW 7.68.035(4). And our Supreme Court has held that statutory amendments pertaining to costs imposed on

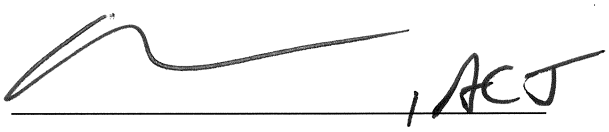
[8] We reached the same conclusion in several unpublished opinions and cite them here only for their persuasive value under GR 14.1(a). *See, e.g.*, *State v. Kennon*, No. 80813-3-I, slip op. at 23-28 (Wash. Ct. App. Aug. 16, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/808133.pdf; *State v. Legrone*, No. 85116-1-I, slip op. at 11-14 (Wash. Ct. App. Sept. 23, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/851161.pdf.

[9] We recognize that *Nelson* addressed only the POAA's three-strikes law, but Freeman does not identify how the POAA's two-strikes law meaningfully differs for this analysis.

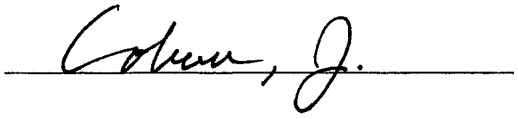
conviction apply prospectively to cases that are not yet final. *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018).

When the court sentenced Freeman in March 2023, it found him indigent. And his appeal was pending when the amendment took effect, so his case was not yet final. *Ramirez*, 191 Wn.2d at 749. We remand for the trial court to strike the VPA.

We affirm Freeman's convictions and sentence but remand for the trial court to strike the VPA from his judgment and sentence.



WE CONCUR:



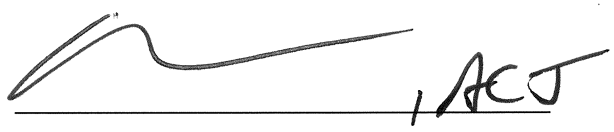
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON, Respondent, v. JERMAINE RODREGUS FREEMAN, Appellant.	No. 85134-9-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Jermaine Freeman filed a motion for reconsideration of the opinion filed on May 27, 2025. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



Judge

WASHINGTON APPELLATE PROJECT

July 18, 2025 - 4:07 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	85134-9
Appellate Court Case Title:	State of Washington, Respondent v. Jermaine Rodregus Freeman, Appellant

The following documents have been uploaded:

- 851349_Petition_for_Review_20250718160651D1772191_0063.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.071825-07.pdf

A copy of the uploaded files will be sent to:

- Samantha.Kanner@kingcounty.gov
- paoappellateunitmail@kingcounty.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Eleanor Rae Knowles - Email: ellie@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20250718160651D1772191