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Supreme Court No. __
(COA No. 59027-1-II)

Case #: 1044623

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LAWRENCE BALANDRAN, JR.,

Petitioner.

PETITION FOR REVIEW

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A. INTRODUCTION

In cases involving sexual offense charges, a jury instruction exists that tells the jury "it is not necessary for the testimony of an alleged rape victim to be corroborated."[1] This jury instruction is unique to sexual offense cases, as in most criminal cases—including sex offense cases—the jury can convict or acquit a person based on the uncorroborated testimony of any witness.

At the same time, our state constitution prohibits courts from commenting on the evidence. A court comments on the evidence when it issues an instruction that allows the jury to infer that the judge personally believed certain testimony. And our state and federal constitutions prohibit courts from issuing jury instructions that dilute the State's burden of proof. Similarly, both constitutions prohibit courts from issuing

[1] Wash. Prac., Pattern Jury Instr. Crim., *WPIC 45.02* (5th Ed 2019).

misleading jury instructions that can cause the jury to believe a different burden of proof exists for certain witnesses.

Seventy-six years ago, this Court upheld the non-corroboration instruction against the appellant's challenge that the instruction was an improper comment on the evidence.[2] Since then, many defendants have continued to challenge the instruction as a comment on the evidence. And many Court of Appeals opinions have expressed that this instruction is problematic.[3] Nevertheless, being bound by this Court's decades-old opinion, the Court of Appeals has affirmed.

Just five years ago, this Court granted review to readdress whether non-corroboration instructions constituted

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[2] *State v. Clayton*, 32 Wn.2d 571, 576-78, 202 P.2d 922 (1949).

[3] *See, e.g., State v. Zimmerman*, 130 Wn. App. 170, 182-83, 121 P.3d 1216 (2005); *State v. Johnson*, 152 Wn. App. 924, 936-37, 219 P.3d 958 (2009); *State v. Chenoweth*, 188 Wn. App. 521, 538, 354 P.3d 13 (2015) (Becker, J., concurring).

comments on the evidence.[4] However, because the petitioner passed away shortly after this Court granted review, this Court dismissed the petition.[5] In the five years since this happened, the Court of Appeals continues to express misgivings about the non-corroboration instruction.[6]

Now is the time for this Court to weigh in and hold that this instruction is a comment on the evidence. In addition to being an improper comment on the evidence, this Court should hold the instruction violates due process because it dilutes the State's burden of proof and misleads the jury. This Court should accept review.

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[4] *State v. Svaleson*, No. 48855-8-II, 2018 WL 2437289 (Wash. Ct. App. May 30, 2018) (unpublished), *review granted* 195 Wn.2d 1008 (2020).

[5] *State v. Carson*, No. 82537-2-I, 2021 WL 3291664, *2 n.1 (Wash. Ct. App. Aug. 2, 2021) (unpublished).

[6] *See, e.g, State v. Kovalenko*, 30 Wn. App. 2d 729, 746, 546 P.3d 514 (2024); *State v. Rohleder*, 31 Wn. App. 2d 492, 494, 550 P.3d 1042 (2024).

B. IDENTITY OF PETITIONER AND DECISION BELOW

Lawrence Balandran asks this Court to accept review of the Court of Appeals opinion that affirmed his convictions. The Court of Appeals issued its opinion on July 15, 2025. The opinion is attached.

C. ISSUES PRESENTED FOR REVIEW

1. A jury instruction cannot dilute the State's burden of proof. Relatedly, a jury instruction cannot mislead the jury into believing a different burden of proof exists for certain witnesses. For most crimes, a jury can convict or acquit a person based on the uncorroborated testimony of any witness. At Mr. Balandran's two trials, the court instructed the jury that in order to convict Mr. Balandran, the State need not corroborate the complaining witness's testimony. The court did not issue a similar instruction for any other witness. By singling out the complaining witness, the court misled the jury to believe a special, reduced burden of proof applied to her testimony.

This Court should accept review and hold the non-corroboration instruction violates these principles. RAP 13.4(b)(3), (4).

2. A court impermissibly comments on the evidence when it issues an instruction that allows the jury to infer that the judge personally believed certain testimony. At both trials, the court instructed the jury that in order to convict Mr. Balandran, the State need not corroborate the complaining witness's testimony. The instruction exalted the complaining witness's testimony and downplayed the importance of the testimony of all other witnesses. However, over 70 years ago, this Court held the non-corroboration instruction was not a comment on the evidence. This Court should grant review because this opinion is incorrect and harmful. RAP 13.4(b)(2), (3), (4).

3. Before a court admits evidence of prior bad acts, the State must establish the evidence is relevant to prove an element of the charged crime or rebut a defense. Even if the evidence is relevant, the court must refuse to admit the evidence

if the evidence presents a danger of unfair prejudice to the accused. A reviewing court must reverse if a reasonable probability exists the trier of fact would have reached a different outcome absent the improper evidence. This analysis does not turn on whether sufficient evidence exists to uphold the conviction.

At Mr. Balandran's first trial, he asked the court to exclude any allegations of domestic violence between him and the complaining witness's mother. The court directed the State to submit an offer of proof before introducing such evidence. Nevertheless, during the complaining witness's testimony, she claimed she saw Mr. Balandran choke her mom. The court overruled Mr. Balandran's objection.

Without considering the merits of the ER 404(b) challenge, the Court of Appeals seemingly concluded this evidence was not prejudicial because there was other evidence at trial that satisfied the elements of the offense. However, that

is not the test for evaluating whether reversal is required. This Court should accept review. RAP 13.4(b)(1)-(4).

D. STATEMENT OF THE CASE

Lawrence Balandran has three children with his former partner of nearly 20 years, Heather Ewart. RP 253, 315-16. The two had a volatile relationship. RP 743. The couple split up in October of 2020. RP 317.

Mr. Balandran also had a rocky relationship with his teenage daughter, B.A.B. RP 268-69. In December of 2020, Mr. Balandran took his children to a playground to go skating. RP 289. B.A.B. wanted to leave, and she told Mr. Balandran she was going to call her mom. RP 289. B.A.B. started to walk away from the park towards her home. RP 289. Mr. Balandran instructed his children to instead get in the car, and he drove away from the park. RP 289. However, B.A.B. once again called her mother. RP 289. Mr. Balandran threw B.A.B.'s phone out the window. RP 289. This upset B.A.B. RP 303.

Rather than drive his children home, Mr. Balandran drove his children to his mother's house. RP 289. Mr. Balandran's mother, Helen Roy, heard B.A.B. outside the home crying and trying to leave. RP 252, 257. Ms. Roy pleaded for B.A.B. and the rest of the kids to first go inside of her home, and Ms. Roy assured B.A.B. she would drive her back to her mother's home. RP 257. B.A.B. then looked at Mr. Balandran and said, "you know what you did to me when I was sleeping." RP 258.

Ms. Roy asked Mr. Balandran what B.A.B. was talking about and what he did to her. RP 258. Mr. Balandran said "nothing," got angry, and left. RP 258. Before Ms. Roy dropped the children off with their mother, Ms. Roy told B.A.B. that she should tell her mother whatever happened while she was sleeping. RP 259-60.

B.A.B. did not tell her mother what supposedly happened until around New Year's Eve while on a trip with her siblings, father, and mother. RP 305-06, 330. While Mr. Balandran and

Ms. Ewart fought, B.A.B. told her father to stop fighting with her mother or else she would tell her what happened. RP 331. According to B.A.B, Mr. Balandran replied that he was "not a weirdo" and took a shower. RP 332.

While Mr. Balandran showered, B.A.B. claimed to her mother that on the morning after her sixteenth birthday, which was on November 22, 2020, Mr. Balandran touched her vagina. CP 5; RP 332. Despite learning about this allegation around New Year's Eve, Ms. Ewart did not report the allegation to the police until January 22, 2021. RP 242.

This single allegation resulted in the State charging Mr. Balandran with one count of incest in the second degree, one count of assault in the fourth degree (domestic violence) with sexual motivation, and one count of indecent liberties. CP 7-8.

First trial

At the first trial, B.A.B. detailed her accusation against Mr. Balandran. She claimed that on the evening of her birthday, which was on November 22, 2020, Mr. Balandran spent the

evening at her mother's home and slept on the couch. RP 274. She heard her mother leave in the morning to go to work. RP 276-77. Afterwards, B.A.B. claimed Mr. Balandran went to her room, took her pajama pants off, and touched her vagina for 30 minutes. RP 279-80, 283. B.A.B. claimed Mr. Balandran stared blankly at her as he did this. RP 283-84. She claimed the supposed touching stopped after she told him she was late for her Zoom class, which started shortly after 9:30 a.m. RP 284.

During B.A.B.'s testimony, she claimed that during the fight in the hotel room that prompted her to share her allegations with her mother, Mr. Balandran choked her mother. RP 291. Mr. Balandran objected to this testimony, but the court overruled the objection. RP 291. Additionally, B.A.B. claimed her grandmother saw Mr. Balandran tackling her outside her grandmother's home on the date he threw her phone out the window, but her grandmother denied this at trial. RP 263-64, 305.

Ms. Ewart also testified at Mr. Balandran's trial. She claimed that on the morning of November 23, 2020, Mr. Balandran arrived at her home at around 6:30 a.m. or 7 a.m. RP 323-24. She claimed they got into a "loud" argument, and she left for work at around 8:30 a.m. or 9:00 a.m. RP 326. She also claimed that she immediately reported the alleged sexual assault to the police on January 1, 2021, but this was not true. RP 242, 333-34.

Mr. Balandran disputed even being at Ms. Ewart's home on the evening of November 22, 2020 and the morning of November 23, 2020. He introduced evidence that proved he worked from 9:58 p.m. on the evening of November 22, 2020 until 6:30 a.m. on the morning of November 23, 2020. RP 453.

Mr. Balandran asked the court to not issue a jury instruction that stated the State did not need to corroborate B.A.B.'s testimony to convict him. CP 19-22, RP 471-72. The court denied the request and issued the instruction. RP 473.

The jury acquitted Mr. Balandran of the indecent liberties charge, hung on the incest charge, but found him guilty of the assault with sexual motivation charge. RP 565. The State decided to try Mr. Balandran again on the incest charge.

Second trial

B.A.B. again recounted her allegations against her father at the second trial. She claimed that on the morning after her birthday, she heard her parents argue. RP 746. She claimed that after her mom left, Mr. Balandran went to her room and put his fingers on her vagina. RP 756. She now claimed this happened around "7-ish." RP 749.

Significantly, Ms. Ewart admitted at the second trial that she committed perjury at the first trial regarding when she went to work on the morning of November 23, 2020. RP 876-77. This happened after it came to light that Ms. Ewart's timecard showed she clocked into work on the morning of November 23, 2020 at 6:06 a.m. RP 876. By the second trial, she claimed she clocked in at work around 6 a.m., remained on the clock, went

home, argued with Mr. Balandran, and went back to work. RP 877-78. She claimed that she only perjured herself so that she would not receive backlash from Mr. Balandran despite being the person that reported the allegation to the police and despite testifying against him at both trials. RP 876-77. Ms. Ewart also admitted that she did not report the alleged assault to the police until January 22, 2021 even though she claimed she reported it immediately at the first trial. RP 873.

Mr. Balandran again objected to the non-corroboration instruction. RP 968. The court overruled the objection. The jury convicted him of incest. CP 130.

E. ARGUMENT

1. This Court should accept review and hold that non-corroboration instructions are improper because they dilute the State's burden of proof and mislead the jury.

The Due Process Clause requires the State to prove its case with proof beyond a reasonable doubt. U.S. Const. XIV; Const. art. I, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Accordingly, jury instructions must hold the State to this burden. *See Sandstrom v. Montana*, 442 U.S. 510, 524, 99 S. Ct. 2540, 61 L. Ed. 2d 39 (1979); *accord State v. Taylor*, 18 Wn. App. 2d 568, 585, 490 P.3d 263 (2021). A court issues an erroneous instruction if a reasonable likelihood exists that the jury could have read the instructions to relieve the State of this burden. *Victor v. Nebraska*, 511 U.S. 1, 6, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994). To determine if such a likelihood exists, this Court evaluates the jury instructions as a whole. *Id*.

Relatedly, individuals have the right to a fair trial. U.S. Const. amends. VI, XIV; Const. art. I, § 22; *In re Glasmann*, 175 Wn.2d 696, 703, 286 P.3d 673 (2012). "To satisfy the constitutional demands of a fair trial, the jury instructions, when read as a whole, must correctly tell the jury of the applicable law, not be misleading, and permit the defendant to present his theory of the case." *State v. Weaver*, 198 Wn.2d 459, 465-66, 496 P.3d 1183 (2021).

To prevent the jury instructions from infringing on a person's right to a fair trial, the standard for clarity in a jury instruction is "higher than for a statute," and the instructions must be "manifestly clear." *Id*. at 466. Consequently, the instruction must make the law "manifestly apparent to the average juror," meaning "unmistakable, evident, or indisputable[.]" *Id*. If a jury instruction could mislead the jury regarding the law, this Court must reverse. *State v. Poling*, 128 Wn. App. 659, 669-70, 116 P.3d 1054 (2005).

The court issued jury instructions at both trials that fundamentally undermined (1) the State's burden to prove its case with proof beyond a reasonable doubt; and (2) Mr. Balandran's right to a fair trial free of misleading jury instructions. The jury instructions read as follows:

> In order to conviction a person of the crimes of Incest or Indecent Liberties as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated.
>
> In order to convict a person of the crime of Incest as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated.

CP 47, 123.

At both trials, Mr. Balandran objected to these instructions. CP 19-22; RP 471-72, 968. Mr. Balandran noted that the vast majority of crimes did not require the State to corroborate the complaining witness's testimony. CP 19-20. And the law did not even require Mr. Balandran to corroborate his own testimony to secure an acquittal. CP 20.

But such an instruction specifically singles out the complaining witness and instructs the jury that the State need not corroborate the complaining witness's testimony. In doing so, the instruction would "unfairly pus[h] the victim's uncorroborated testimony" over other witness's testimony. CP 20; RP 967-68. Moreover, the instruction was misleading and could "cause jurors to disregard evidence that contradicts the alleged victim's allegations." CP 21; RP 471. This is because the jury may read the term "corroboration" as meaning "support," which would make the jury understand the non-corroboration instruction to mean that "the testimony of the alleged victim does not need to be supported[.]" CP 21; *see also Corroborate*, Merriam-Webster (defining "corroborate" as "make more certain").[7]

One thing that can support a person's testimony is a perception that the person's testimony is credible. But the jury

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[7] https://www.merriam-webster.com/dictionary/corroborate (last visited May 23, 2024).

could read the instruction to mean it could convict Mr. Balandran even though the complaining witness's testimony lacked credibility.

In response, the State argued the non-corroboration instruction mirrored a statute that asserts the State need not corroborate the alleged victim's testimony in a sexual assault case. RP 472-73; RCW 9A.44.020(1). The legislature enacted this statute in 1913 because the law formerly required the State to corroborate the complaining witness's testimony in a sexual assault case. *Clayton*, 32 Wn.2d at 572-73.

The court said it appreciated Mr. Balandran's arguments, but it would issue the non-corroboration instruction because the instruction mirrored the law. RP 473.

The court's issuance of this jury instruction violated Mr. Balandran's right to due process.

As Mr. Balandran pointed out, the instruction accurately, but incompletely, stated the law. To convict or acquit Mr. Balandran, neither the State nor Mr. Balandran needed to

corroborate anyone's testimony. But the jury instructions do not reflect this. Instead, the non-corroboration instruction misleads the jury into believing the complaining witness's testimony is subject to a different and reduced quantum of evidence. After all, why would the court single out one person's testimony as not requiring corroboration if no one's testimony required corroborating evidence? The jury instruction "invite[d] the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." *State v. Stukes*, 787 S.E.2d 480, 499-500 (SC 2016).

And, as Mr. Balandran pointed out, a strong likelihood existed that the jury would misread the instruction and believe it could convict him despite the complaining witness's lack of credibility. Jurors can interpret a non-corroboration instruction "to mean that baseless testimony should be given credit and that they should ignore inconsistencies, accept without question the witness's testimony, and ignore evidence that conflicts with the witness's version of events." *Ludy v. State,* 784 N.E.2d 459,

462 (Ind. 2003). This instruction is therefore "confusing, misleading, and of dubious efficacy." *Id*.

Many jurisdictions have rightly rejected non-corroboration instructions like the one the court issued here for these reasons. *See, e.g., State v. Kraai*, 969 N.W.2d 487, 491-94 (Iowa 2022); *Gutierrez v. State,* 177 So.3d 226, 231, (Fla. 2015); *Garza v. State*, 231 P.3d 884, 890–91 (Wyo. 2010); *Stukes*, 787 S.E.2d 480 at 499-500.

This Court should join these jurisdictions and find the non-corroboration instruction unconstitutional. RAP 13.4(b)(3), (4).

2. This Court should accept review and hold that non-corroboration instructions constitute impermissible comments on the evidence.

A trial court may not comment on the evidence. Const. art. IV, § 16. "The purpose of prohibiting judicial comments on the evidence is to prevent the trial judge's opinion from influencing the jury." *State v. Lane,* 125 Wn.2d 825, 838, 889 P.2d 929 (1995). A court's instruction may unduly influence the

jury and constitute a comment on the evidence “if the court’s attitude towards the merits of the case or the court’s evaluation relative to the disputed issue is inferable from the [instruction.]” *Id.*

The application of this rule necessarily means that a jury instruction that emphasizes the value of someone’s testimony also constitutes an improper comment on the evidence. Indeed, “[t]he touchstone of error in a trial’s court comment on the evidence is whether the feeling of the trial court as to the truth value of the testimony of a witness has been communicated to the jury.” *Id.*

Consequently, a jury instruction which “allows the jury to infer from what the [instruction] said or did not say that the judge personally believed the testimony in question” constitutes a comment on the evidence. *State v. Swan*, 114 Wn.2d 613, 657, 790 P.2d 610 (1990). Such a comment may occur through mere implication. *State v. Jackman*, 156 Wn.2d 736, 744, 132 P.3d 136 (2006). And an instruction that conveys an opinion as

to the credibility, sufficiency, or weight the jury must assign to certain testimony can also constitute a comment on the evidence. *See Swan*, 114 Wn.2d at 657.

At both trials, the court issued non-corroboration instructions. CP 47, 123.

These jury instructions were improper comments on the evidence because the instructions singled out the complaining witness's testimony as special and worthy of independent consideration. This left the jury with the impression that it should also believe the complaining witness's testimony was special and worthy of unique consideration.

The instruction exalted the complaining witness's testimony and downplayed the importance of the testimony of all other witnesses. While the jury can convict a person based solely on the non-corroborated testimony of any witness, this instruction specifically singled out the complaining witness's testimony. The court did not instruct the jury that it could convict Mr. Balandran based on the non-corroborated testimony

of any other witness. The absence of such an instruction communicated to the jury that while every other witness's testimony might require corroboration, the complaining witness's testimony did not.

The court's instruction regarding the complaining witness's testimony left the jury with the question of why the court was specifically singling out her testimony. The jury's answer to this question was necessarily that the court believed that even though the State did not corroborate the complaining witness's testimony, it should still convict Mr. Balandran.

This case presents this Court with the opportunity to hold that *Clayton* was wrongly decided. In *Clayton*, the State charged the defendant with "attempting to carnally know a female child under the age of eighteen years[.]" 32 Wn.2d at 572. The court issued a non-corroboration instruction. *Id*. at 573.

The defendant argued this instruction constituted an improper comment on the evidence, but this Court disagreed. *Id*. This Court reasoned the instruction was not a comment on the evidence because it correctly stated the law. *Id*. at 574.

Clayton is wrong for several reasons. First, it is simply wrong on its merits—the non-corroboration instruction is a comment on the evidence. And since this Court issued its opinion in *Clayton*, this Court has clarified that the mere fact that a jury instruction accurately states the law does not immunize the instruction from a comment on the evidence challenge. Rather, a jury instruction "which **does no more** than accurately state the law pertaining to an issue in the case does not constitute an impermissible comment on the evidence[.]" *State v. Ciskie*, 110 Wn.2d 263, 282-83, 751 P.2d 1165 (1988) (emphasis added).

The jury instruction at issue certainly does more than accurately state the law. Again, the law in Washington is that the State need not corroborate any witness's testimony in order

to prove a sex offense. Similarly, a defendant charged with a sex offense need not corroborate his own testimony in order to cast a reasonable doubt as to his guilt or innocence. But the jury instructions do not reflect this. Instead, the instruction singles out the testimony of one particular witness—the complaining witness—and points out that the State need not corroborate her particular testimony. While this is legally correct, the instruction makes it seems as if the complaining witness's testimony is subject to a lower quantum of evidence than anyone else's testimony. And by referring only to the complaining witness's testimony, the instruction communicates to the jury that the complaining witness's testimony is significant, and the jury should assign a special noteworthiness to the testimony even if it lacks corroboration.

Furthermore, it is worth noting that this Court decided *Clayton* over 70 years ago, when societal attitudes toward sexual assault were far different. *See, e.g.*, *State v. Crossguns*, 199 Wn.2d 282, 293, 505 P.3d 529 (2022) (recognizing that

past court decisions in sexual assault cases have been based on "outdated, sexist assumptions and expectations"). The law has not required corroboration of a complainant's testimony in a sexual assault case for over 100 years. RCW 9A.44.020(1). It is unreasonable to think jurors would otherwise think the law demands corroboration in sexual assault cases.

The opinion is harmful because, while this Court presumes that comments on the evidence are prejudicial, *Clayton* allows courts to issue prejudicial comments on the evidence with impunity. *Clayton* allows the State to secure convictions that are won due to a comment on the evidence.

While the Court of Appeals and even the WPIC committee have cautioned against issuing non-corroboration instructions, it is highly likely several counties, including Clark County (the county at issue here), will continue to do so absent an opinion to the contrary. *See Rohleder*, 31 Wn. App. 2d at 494; *see also State v. Zwald*, 32 Wn. App. 2d 62, 78 n.4, 555 P.3d 467 (2024). This will result in uneven justice throughout

the State, which this Court should not tolerate. *See State v. Gregory*, 192 Wn.2d 1, 5, 12, 427 P.3d 621 (2018) (noting that probability of receiving death sentence differed by county).

This Court should accept review. RAP 13.4(b)(3), (4).

3. This Court should accept review because the Court of Appeals's opinion strays from precedent regarding how appellate courts evaluate ER 404(b) errors.

ER 404(b) categorically bars the admission of evidence of prior bad acts to show the accused has a propensity to commit the crime at issue. *See State v. Gresham*, 173 Wn.2d 405, 420, 269 P.3d 207 (2012). This rule "prevent[s] the State from suggesting a defendant is guilty because he or she is a criminal-type person who would be likely to commit the crime charged." *State v. Foxhoven*, 161 Wn.2d 168, 175, 163 P.3d 786 (2007).

Nevertheless, in very limited circumstances, the State may introduce evidence of the defendant's prior bad acts, like prior physical assaults or sexual assaults, for purposes other

than proving propensity. ER 404(b). However, a "trial court must always begin with the presumption that evidence of prior bad acts is inadmissible," and the State's burden to establish an exception to the general bar on this evidence is "substantial." *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). The court cannot admit such evidence simply because the State claims it would like to use it for a purpose other than propensity. *State v. Lough*, 125 Wn.2d 847, 862, 889 P.2d 487 (1995).

Instead, the court must carefully consider whether the State's purported reason for introducing the prior acts evidence fits within one or more of ER 404(b)'s exceptions. *See State v. Saltarelli*, 98 Wn.2d 358, 361-63, 655 P.2d 697 (1982). Before the trial court admits evidence of prior acts for another purpose, a trial court must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the State's purpose for introducing the evidence, (3) determine whether the evidence is relevant to prove an element of the crime charged,

and (4) weigh the probative value of the evidence against its prejudicial effect. *Id*. at 853.

It is particularly important for a court to intelligently and methodically weigh the potential for prejudice in sex cases, "where the prejudice potential of prior acts is at its highest." *Saltarelli*, 98 Wn.2d at 363. Moreover, if one of the prior bad acts involves allegations of domestic violence, this also carries a high risk of causing unfair prejudice. *See State v. Gunderson*, 181 Wn.2d 916, 925, 337 P.3d 1090 (2014).

Evidentiary errors require reversal if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *Gower*, 179 Wn.2d at 857. This requires this Court to assess whether a reasonable probability exists that the trier of fact would have reached a different outcome. *Gunderson*, 181 Wn.2d at 926-27. The analysis does not turn on whether sufficient evidence exists to uphold the conviction. *Id*.

At Mr. Balandran's first trial, he asked the court to exclude any allegations of domestic violence between Mr. Balandran and Ms. Ewart. CP 19. When the court asked the State whether it would introduce such evidence, the State claimed it would not introduce the allegations for propensity purposes. RP 214. Instead, the State claimed it would introduce this evidence to show "the relationship dynamics and things of that nature," and it claimed it would use the evidence to "provide context about the initial incident as well as [] the late disclosure for at least a couple of months." RP 215. The court stated it would reserve ruling and would only admit the evidence subject to an offer of proof. RP 218-19.

At the first trial, the complaining witness recounted the alleged events that led her to tell her mother about the supposed sexual assault. Over a month after the alleged sexual assault, she claimed that while on a trip with her family, Ms. Ewart and Mr. Balandran yelled at each other. RP 291-92. She then

claimed Mr. Balandran "choked [her] mom on the bed." RP 291.

Mr. Balandran objected, arguing this evidence was irrelevant. RP 291. The State claimed this was evidence was relevant because it described "how she told her mom" about the allegation. RP 291. The court overruled the objection. RP 291. The complaining witness then claimed that she told Mr. Balandran that he "better stop" or else she was going "to tell" Ms. Ewart what happened. RP 291. Ms. Ewart later asked her daughter what she was referring to, and that is when Ms. Ewart learned about the alleged sexual assault. RP 291.

Without evaluating the merits of the ER 404(b) challenge, the Court of Appeals simply concluded reversal was not warranted because of the remaining evidence presented at trial. Op. at 16-17. This is not the appropriate test. Prejudice does not turn on the sufficiency of the evidence. Instead, evidence is unduly prejudicial and merits reversal if it is "likely to stimulate an emotional response rather than a rational decision." *Salas*,

168 Wn.2d at 671 (*referencing State v. Powell*, 126 Wn.2d 244, 264, 898 P.2d 615 (1995)).

The complaining witness's allegation that Mr. Balandran allegedly choked Ms. Ewart certainly stimulated an emotional response rather than a rational decision. Mr. Balandran was already on trial for the inflammatory charge of sexually assaulting his daughter, and this evidence further denigrated his character by painting him as a domestic abuser. The evidence portrayed him as erratic and dangerous, which the jury could interpret as making him more likely to commit the charged crimes. The jury likely also maligned him for choking Ms. Ewart in front of their children and subjecting them to secondhand trauma.

The Court of Appeals' opinion to the contrary was wrong. This Court should accept review. RAP 13.4(b)(1)-(4).

F. CONCLUSION

For the reasons stated in this petition, Mr. Balandran respectfully requests that this Court accept review.

This petition uses Times New Roman Font, contains 4,967 words, and complies with RAP 18.17.

DATED this 14th day of August, 2025.

Respectfully submitted,

/s Sara S. Taboada

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Filed
Washington State
Court of Appeals
Division Two

July 15, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LAWRENCE E. BALANDRAN, JR., Appellant.	No. 59027-1-II UNPUBLISHED OPINION

CHE, J. — Lawrence Balandran appeals his convictions for second degree incest and fourth degree assault (domestic violence) with sexual motivation.

At both of Balandran's trials, the trial court gave a "no corroboration" jury instruction, which stated that in order to convict Balandran of incest, "it is not necessary that the testimony of the alleged victim be corroborated." The trial court allowed testimony that Balandran strangled his ex-partner and that he previously sexually assaulted his daughter, BB.

Balandran argues that we should reverse his convictions because the no corroboration instructions lessened the State's burden of proof and misled the jury, the trial court impermissibly commented on the evidence by giving the instructions, and the trial court erroneously admitted irrelevant and inflammatory propensity evidence. Balandran also argues that, at minimum, we should reverse several community custody conditions because some are not crime related and one is unconstitutional.

We hold that the no corroboration jury instructions were constitutionally adequate; that the no corroboration instructions were not a comment on the evidence; that any alleged error in admitting the challenged testimony at the first trial was harmless; and that Balandran's objection to BB's testimony at the second trial was insufficient to preserve the issue for appeal. In addition, we hold that the trial court abused its discretion by imposing community custody conditions prohibiting Balandran from contact with all minors and possessing or using any electronic device capable of accessing the Internet without prior approval, but that the trial court lawfully imposed community corrections officer (CCO) directed urinalysis and breathalyzer testing.

Accordingly, we reverse the condition prohibiting Balandran from possessing or using any electronic device capable of accessing the Internet without prior approval and remand for the trial court to strike or modify this condition. We also reverse the condition prohibiting Balandran's contact with all minors and remand to the trial court with instructions to address, on the record, whether to impose the condition, taking into consideration Balandran's constitutional right to parent, the necessity of a provision prohibiting contact with all minors, and any viable, less restrictive alternatives that may exist. We affirm the condition requiring CCO-directed urinalysis and breathalyzer testing.

FACTS

BACKGROUND

Balandran had three children, including BB, with his ex-partner. Balandran and his ex-partner had a "rocky" relationship. Rep. of Proc. (RP) at 743. The two split up in October 2020.

Balandran also had a “rocky” relationship with his teenage daughter, BB. RP at 741. The two argued often, and their arguments involved yelling, “hitting, sometimes slapping, or throwing things.” RP at 743.

In December 2020, Balandran took his children to a playground. BB wanted to leave, told Balandran she was going to call her mother, and then started to walk toward her home. Balandran told his children, including BB, to get into the car, and when they got into his car, he drove away from the park. BB again told Balandran she was going to call her mother to pick her up, at which point Balandran threw BB’s phone out the window, upsetting BB.

Balandran then drove his children to his mother’s house. Balandran’s mother, heard BB and Balandran fighting outside her home. BB wanted to leave, wanted her mother, was crying, and tried to walk away from her grandmother’s home. After her grandmother assured BB she should take BB to her mother, BB, her siblings, and Balandran eventually entered the grandmother’s home. BB then looked at Balandran and stated, “[Y]ou know what you did to me when I was sleeping.” RP at 258. The grandmother asked Balandran what he did to BB. Balandran said, “Nothing,” became angry, left his mother’s home, and drove away. RP at 258. Before the grandmother drove the children back to their home, she advised BB to tell her mother about the incident between her and Balandran.

BB did not tell her mother about the incident until around New Year’s Eve while on a family trip. During the trip, Balandran and his ex-partner fought in their hotel room, and BB told Balandran to stop fighting or BB would “tell her [mom].” RP at 331. Balandran “jumped off of [his ex-partner]” and “whisper[ed] to [BB] . . . not to tell . . . to be quiet.” RP at 331. Balandran

then repeatedly said he was "not a weirdo" and would not tell his ex-partner what BB was talking about. RP at 331.

While Balandran showered, BB was crying and told her mother that on the morning of November 23, 2020, Balandran touched her vagina. BB's mother did not report this incident to the police until January 22, 2021.

The State charged Balandran with second degree incest, fourth degree assault (domestic violence) with sexual motivation, and indecent liberties.

MOTIONS IN LIMINE

Balandran moved in limine to exclude "all evidence of prior bad acts," specifically, domestic violence allegations, claims, and convictions between Balandran and his ex-partner and/or BB, and that a no-contact order existed between Balandran and his ex-partner. Clerk's Papers (CP) at 18. The State indicated it would not seek to admit domestic violence allegations between Balandran and his ex-partner as propensity evidence, but as contextual evidence to explain their "relationship dynamics" and BB's late disclosure of sexual abuse. RP at 215. The trial court indicated that the State would need to make an offer of proof at trial and reserved ruling on the issue.

Balandran also moved to exclude the State's proposed no corroboration jury instruction, which stated, "In order to convict a person of the crimes of Incest or Indecent Liberties as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated." CP at 47. The trial court reserved ruling on the issue.

FIRST TRIAL

Witnesses testified consistently with the facts above.

At the first trial, BB testified that on the evening of November 22, 2020, Balandran was at her home to celebrate her birthday and had spent the night. The next morning, on November 23, BB heard her mother leave for work. Then, Balandran went to BB's room, took BB's pajama pants off, and asked if he could "play with [her genitals]." RP at 277-79. BB did not want Balandran to touch her and told him no. Balandran proceeded to touch "around [BB's] vagina" and penetrated her vagina with his fingers for around 30 minutes. RP at 281.

Balandran told BB sternly that she "was not allowed to tell [her mother]." RP at 281, 285-86. BB thought Balandran was going to be "very upset" with her if she told her mother about the incident. RP at 286. BB was also concerned that if she told her mother, then Balandran would hit or yell at BB .

BB testified that Balandran had touched her vagina before this incident but that it did not happen "all the time." RP at 288. Balandran did not object to this testimony. BB did not tell anyone about the prior incidents because she did not want to "get hit or get in trouble or have [her] parents fight." RP at 288.

BB further testified that during her parents' fight on their family trip, which prompted her to share the incident with her mother, Balandran strangled her mother. Balandran objected on relevance grounds, and the State responded that this evidence was relevant to show what led up to BB's disclosure to her mother. The trial court overruled Balandran's objection.

According to BB's mother, on the morning of November 23, Balandran arrived at her home between 6:30 and 7:00 a.m.[1] She testified that they got into a loud argument, and she then

[1] Balandran worked graveyard shifts from 10:00 p.m. to 6:30 a.m.

left for work at around 8:30 a.m. or 9:00 a.m. She believed she reported BB's sexual assault to the police on January 3, 2021.

Balandran introduced evidence that he worked from 9:58 p.m. on November 22 until 6:30 a.m. on November 23.

Consistent with his motion in limine, Balandran asked the trial court to exclude a jury instruction that said the State did not need to corroborate BB's testimony to convict him, or, alternatively, to issue a corroboration instruction with revised language. The court denied Balandran's request and issued the State's proposed instruction, noting that it more "closely mirror[ed] the instructions from the actual law and the case law." RP at 473.

The court also instructed the jurors that they were "the sole judges of the credibility of each witness" and "the value or weight to be given to the testimony of each witness." CP at 40. Also, each to-convict instruction included the following language: "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP at 50.

The trial court also issued a limiting instruction stating,

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of allegations of domestic violence between the defendant and [Balandran's ex-partner]. This evidence may be considered by you only for the purpose of providing context and background to relevant facts. You may not consider it for the purpose of assessing the defendant's character or propensity. Any discussion of the evidence during your deliberations must be consistent with this limitation.

CP at 60.

The jury acquitted Balandran of indecent liberties, could not reach a unanimous decision on incest, and found him guilty of fourth degree assault (domestic violence) with sexual motivation.

SECOND TRIAL

The State retried Balandran on the incest charge at a second trial. Before the second trial, Balandran renewed his previous motions in limine and the trial court made no changes to its rulings on the motion in limine from the first trial. Witnesses testified consistently with the facts above. At the second trial, BB again recounted the incident between her and Balandran. She testified that she had a "rocky" relationship with Balandran. RP at 741. On the morning after her birthday, BB heard her parents argue. She testified that after her mother left the house, Balandran entered BB's room, took her pants off, and put his fingers inside her vagina. At some point, she told Balandran to stop. BB said that this incident happened around "7-ish maybe." RP at 749. She testified that when Balandran entered her room, she "knew what was going to happen" because "[i]t had happened before." RP at 753. BB further testified that, "[i]t happened, not all the time, but it would happen every once in a while." RP at 754. Balandran objected to BB's "entire statement" but did not state any grounds for his objection, which the trial court overruled. RP at 754.

BB's mother testified that as a dental assistant, she normally began work at 6:00 a.m. During her shifts, if there were no patients, she would leave work while on the clock to go home or do other errands. On November 23, she testified that she arrived at work around 6:00 a.m., picked up Balandran after he finished work around 7:00 or 8:00 a.m., took him to her home where they fought, and then went back to work.

The State presented evidence that BB's mother clocked into work on November 23 at 6:05 a.m. On cross-examination, she explained she had testified at the first trial that she "started work late on Mondays" because she "didn't want any backlash from [Balandran]," did not want "everybody knowing" that she would leave work on the clock, and did not want to get her employer "in trouble." RP at 876-77. She further testified that she did not report BB's sexual assault to the police until late January.

The court instructed the jury, "In order to convict a person of the crime of Incest as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated." CP at 123. Balandran objected to the no corroboration instruction. The court overruled the objection. The court also instructed the jurors that they were "the sole judges of the credibility of each witness" and "the value or weight to be given to the testimony of each witness." CP at 116. Also, the to-convict instruction included the following language: "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP at 125.

The jury found Balandran guilty of second degree incest. The trial court imposed the following community custody conditions, among others. Balandran may not have "contact with minors," "[m]ay not possess or use any electronic device capable of accessing the internet

without prior approval from the Community Corrections Officer [CCO],"[2] and must "[s]ubmit to urine and/or breathalyzer screening at the direction of the [CCO]."[3] CP at 159, 160.

ANALYSIS

I. JURY INSTRUCTIONS

Balandran argues the no corroboration instructions inflated the value of BB's testimony, thereby diluting the State's burden of proof. Relatedly, Balandran contends the instructions singled out BB's testimony, misleading the jury into believing her testimony was subject to unique consideration. Balandran also argues that the trial court impermissibly commented on the evidence by issuing the no corroboration instructions. We disagree.

A. *Legal Principles*

The due process clause of the Fourteenth Amendment to the United States Constitution requires jury instructions to adequately convey to the jury that the State bears the burden of proving every element of the charged crime beyond a reasonable doubt. *State v. Imokawa*, 194 Wn.2d 391, 396-97, 450 P.3d 159 (2019).

We review a defendant's challenges to the jury instructions de novo, within the context of the instructions as a whole. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). Jury instructions are constitutionally adequate when, taken as a whole, they state the law, are not

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[2] The trial court imposed a condition that Balandran may not possess or access sexually explicit materials that are intended for sexual gratification. Balandran does not challenge this condition on appeal.

[3] The trial court imposed a condition that Balandran may not possess or consume alcohol, marijuana, or controlled substances. Balandran does not challenge this condition on appeal.

misleading, and allow the defendant to argue their theory of the case. *State v. Knapp*, 197 Wn.2d 579, 586, 486 P.3d 113 (2021).

B. *The No Corroboration Jury Instructions Did Not Lessen the State's Burden of Proof or Mislead the Jury*

The no corroboration instructions given were based on RCW 9A.44.020(1), which states, "In order to convict a person of any crime defined in this chapter[,] it shall not be necessary that the testimony of the alleged victim be corroborated." For decades, courts have used jury instructions conveying this principle, known as "no corroboration jury instruction[s]." *State v. Rohleder*, 31 Wn. App. 2d 492, 502, 550 P.3d 1042 (2024), *review denied*, 3 Wn.3d 1029 (2024); *see State v. Clayton*, 32 Wn.2d 571, 573-74, 202 P.2d 922 (1949).

Courts have repeatedly upheld the no corroboration instruction as a correct statement of the law. *E.g.*, *Rohleder*, 31 Wn. App. 2d at 499-500; *State v. Chenoweth*, 188 Wn. App. 521, 537, 354 P.3d 13, *review denied*, 184 Wn.2d 1023 (2015); *State v. Johnson*, 152 Wn. App. 924, 936, 219 P.3d 958 (2009); *State v. Zimmerman*, 130 Wn. App. 170, 182, 121 P.3d 1216 (2005), *adhered to on remand*, 135 Wn. App. 970, 146 P.3d 1224 (2006).

In the first trial, the trial court instructed the jury, "In order to convict a person of the crimes of Incest or Indecent Liberties as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated." CP at 47. In the second trial, the court instructed the jury, "In order to convict a person of the crime of Incest as defined in these instructions, it is not necessary that the testimony of the alleged victim be corroborated." CP at 123.

The court also instructed the jurors that they were "the sole judges of the credibility of each witness" and "the value or weight to be given to the testimony of each witness." CP at 40. Also, each to-convict instruction included the following language: "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP at 50.

Viewing the no corroboration instructions within the context of the instructions as a whole, the no corroboration instructions state the law accurately, are not misleading, and did not preclude Balandran from arguing his theory of the case. *Knapp*, 197 Wn.2d at 586. The instructions conveyed that BB's testimony did not need to be corroborated in order for the jury to convict Balandran of the charged crimes. This was an accurate statement of law. *See* RCW 9A.44.020(1). Furthermore, the instructions were not misleading because they did not attach any particular weight to BB's testimony and, viewing the instructions *as a whole*, they accurately informed jurors of their role as "judges of the credibility of each witness" and the State's burden to prove every element of the charged crimes beyond a reasonable doubt.

Thus, we hold that the no corroboration jury instructions were constitutionally adequate.

C. *The No Corroboration Jury Instructions Were Not Comments on the Evidence*

Balandran argues that the trial court impermissibly commented on the evidence by issuing the no corroboration instructions. We are bound by the Supreme Court's opinion in *Clayton*, holding that a no corroboration instruction is not an improper comment on the evidence—even if worded slightly differently, as it is here—and therefore, we reject Balandran's argument.

Under Article IV, section 16 to the Washington Constitution, "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law." A trial court improperly comments on the evidence if it gives a jury instruction that conveys to the jury its personal attitude toward the merits of the case. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). "But because it is the trial court's duty to declare the law, a jury instruction that does no more than accurately state the law pertaining to an issue is proper." *Rohleder*, 31 Wn. App. 2d at 496.

We review alleged instructional errors de novo, within the context of the jury instructions as a whole, to determine if the trial court has improperly commented on the evidence. *Levy*, 156 Wn.2d at 721.

In *Clayton*, the defendant argued that the no corroboration instruction was an improper comment on the evidence. 32 Wn.2d at 573. The no corroboration instruction stated,

> You are instructed that it is the law of this State that a person charged with attempting to carnally know a female child under the age of eighteen years may be convicted upon the uncorroborated testimony of the prosecutrix alone. That is, the question is distinctly one for the jury, and if you believe from the evidence and are satisfied beyond a reasonable doubt as to the guilt of the defendant, you will return a verdict of guilty, notwithstanding that there be no direct corroboration of her testimony as to the commission of the act.

Id. at 572.

The Supreme Court disagreed, holding that the instruction was not an improper comment on the evidence because the instruction "expressed no opinion as to the truth or falsity of the testimony of the [victim], or as to the weight which the court attached to her testimony, but submitted all questions involving the credibility and weight of the evidence to the jury for its decision." *Clayton*, 32 Wn.2d at 573-74.

Furthermore, in *Rohleder*, a case involving multiple child sex abuse crimes, we recently addressed and rejected the argument that a no corroboration jury instruction is a comment on the evidence. 31 Wn. App. 2d at 494. Rohleder argued, like Balandran here, that the trial court erred by issuing the no corroboration instruction because it was a comment on the evidence. *Rohleder*, 31 Wn. App. 2d at 493-94. The defendant contended that we should not follow *Clayton* because the instruction did not include the same, additional clarifying language as that in *Clayton*. *Rohleder*, 31 Wn. App. 2d at 495-96; *see Clayton*, 32 Wn.2d at 572 (the instruction also stated, "[T]he question is distinctly one for the jury, and if you believe from the evidence and are satisfied beyond a reasonable doubt as to the guilt of the defendant, you will return a verdict of guilty" notwithstanding the absence of corroboration). We held that the differences in instructional language were irrelevant and applied *Clayton*, reasoning that *Clayton* remained binding precedent and that "[u]ntil the Supreme Court addresses this issue, we are constrained by *Clayton* to conclude that giving a no corroboration instruction is not a comment on the evidence." *Rohleder*, 31 Wn. App. 2d at 501.

Nevertheless, Balandran contends that *Clayton* is not controlling because the instructions suggested that the jury could believe only BB's uncorroborated testimony and not Balandran's testimony, and the instructions lacked the additional language found in *Clayton*. But the no corroboration instruction here is not significantly different from that in *Clayton* so as to take it beyond *Clayton's* reach. Balandran's underlying arguments were rejected in *Rohleder* based on

Clayton.[4] *See Rohleder*, 31 Wn. App. 2d at 499, 500. And based on *Clayton*, Balandran's contention fails.

We agree with *Rohleder* that we are bound by the Supreme Court's decision in *Clayton*. Because *Clayton* remains binding precedent, and the Supreme Court has not yet readdressed the issue,[5] we hold that giving a no corroboration instruction is not a comment on the evidence. *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) (stating that "once [our Supreme Court] has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled."). Thus, the trial court did not err by issuing the no corroboration jury instructions in both trials.

II. ER 404(b) EVIDENCE

Balandran contends that the trial court improperly admitted BB's testimony at the first trial that Balandran strangled BB's mother and BB's testimony at the second trial that Balandran sexually assaulting her on prior occasions because the court did not require the State to provide an offer of proof and did not undergo ER 404(b)'s four-pronged test before admitting the

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[4] The clarifying language in the *Clayton* instruction was included in the trial court's other jury instructions. For example, instruction 1 read, "You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness." CP at 40. Also, each to-convict instruction included the following language: "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP at 50. Thus, Balandran's attempt to distinguish *Clayton* fails.

[5] The two most recent cases upholding the use of no corroboration instructions based on the court's holding in *Clayton* suggest that the "better practice" is to not give a no corroboration instruction. *Rohleder*, 31 Wn. App. 2d at 501; *State v. Kovalenko*, 30 Wn. App. 2d 729, 746, 546 P.3d 514, *review denied*, 3 Wn.3d 1036 (2024). But we are bound to comply with *Clayton* as long as it remains good law. And the Supreme Court denied review in both *Rohleder* and *Kovalenko*.

evidence. We conclude that for the first trial, even assuming without deciding that the trial court erred in admitting the contested testimony, any alleged error was harmless, and for the second trial Balandran failed to preserve the error.

A. *Legal Principles*

We review a trial court's decision to admit or exclude ER 404(b) evidence for an abuse of discretion. *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). A trial court abuses its discretion when its decision is unreasonable or based on untenable reasons or grounds. *State v. Arredondo*, 188 Wn.2d 244, 256, 394 P.3d 348 (2017).

Under ER 404(b), courts may not admit evidence of a defendant's other crimes, wrongs, or acts to prove their character and show they acted in conformity with said character. ER 404(b); *State v. Gresham*, 173 Wn.2d 405, 420, 269 P.3d 207 (2012). While ER 404(b) prohibits evidence of other misconduct to demonstrate a defendant's propensity to commit the crime charged, such evidence may be admissible, "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." ER 404(b).

Before a trial court admits ER 404(b) evidence, it must first "(1) find by a preponderance of the evidence the misconduct actually occurred, (2) identify the purpose of admitting the evidence, (3) determine the relevance of the evidence to prove an element of the crime, and (4) weigh the probative value against the prejudicial effect of the evidence." *Fisher*, 165 Wn.2d at 745. The court must conduct this analysis on the record, and if it admits the evidence, it should give a limiting instruction. *Arredondo*, 188 Wn.2d at 257. In doubtful cases, the court should exclude the evidence. *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002).

When a court admits evidence in violation of ER 404(b), "we apply the nonconstitutional harmless error standard." *State v. Gunderson*, 181 Wn.2d 916, 926, 337 P.3d 1090 (2014). In doing so, we determine whether there is a reasonable probability the outcome of the trial could have been materially affected had the error not occurred. *Id.* at 926. The error is harmless if the improperly admitted evidence is of little significance in light of the evidence as a whole. *State v. Fuller*, 169 Wn. App. 797, 831, 282 P.3d 126 (2012).

B. *Even if the Trial Court Erred in Admitting the Challenged Testimony at the First Trial, Any Alleged Error Was Harmless*

To convict Balandran of fourth degree assault (domestic violence) with sexual motivation at the first trial, the State had to prove beyond a reasonable doubt that Balandran assaulted BB, his family member, for the purpose of his sexual gratification. RCW 9A.36.041(1); RCW 10.99.020; RCW 9.94A.835.

Evidence at the first trial showed that BB was Balandran's daughter; that Balandran and BB had a tumultuous relationship; that Balandran went to BB's room, took her pajama pants off, and asked if he could "play with" her genitals; that BB did not want Balandran to touch her and told him no; that Balandran proceeded to touch "around [BB's] vagina" and penetrated her vagina with his fingers; and that Balandran had touched her vagina before this incident but that it did not happen "all the time." RP at 277-79.

BB's testimony that Balandran strangled her mother during a fight on a family trip, prompting BB to disclose the incident with her mother, is of minor significance in reference to the overall evidence as a whole. Based upon the evidence discussed above, the jury could have found that Balandran committed fourth degree assault (domestic violence) with sexual

motivation. This evidence, taken together, establishes that there is no reasonable probability that the outcome of the first trial would have been different absent the alleged evidentiary error. Furthermore, the trial court issued a limiting instruction for allegations of domestic violence between Balandran and BB's mother. And we presume the jury follows the court's instructions. *State v. Gamble*, 168 Wn.2d 161, 178, 225 P.3d 973 (2010). Thus, we hold that any evidentiary error was harmless.

C. *For the Contested Evidence at the Second Trial, Balandran Waived His Objection by Failing to Properly Preserve His Objection*

The State contends that by failing to make a sufficient objection to BB's testimony at the second trial that Balandran previously sexually assaulted her, Balandran waived any evidentiary error regarding this testimony. We agree that Balandran's objection was insufficient to preserve this issue for appeal.

"[A]n objection must be sufficiently specific to inform the trial court and opposing counsel of the basis for the objection and to thereby give them an opportunity to correct the alleged error." *State v. Padilla*, 69 Wn. App. 295, 300, 846 P.2d 564 (1993). ER 103(a)(1) requires "a timely objection . . . stating the specific ground of objection, *if the specific ground was not apparent from the context*." (Emphasis added).

At the second trial, Balandran objected to BB's testimony that he had sexually assaulted her on prior occasions, but Balandran did not state the specific ground for his objection. The question becomes whether the specific ground for objection that Balandran now raises on appeal, ER 404(b), was "apparent from the context." It was not. Before the second trial, Balandran

renewed his previous motion in limine for the trial court to exclude "all evidence of prior bad acts," but he made no specific mention of instances of prior sexual assault. CP at 18.

Given this context, it is not apparent whether Balandran sufficiently informed the trial court and the State that ER 404(b) was the basis of his objection. In addition to Balandran not stating a basis for his objection, he did not ask to be heard on his objection, and did not make a further record on this matter at any time. Thus, Balandran's objection to BB's testimony at the second trial was insufficient to preserve the issue for appeal.

III. Community Custody Conditions

Balandran challenges three community custody conditions included in his judgment and sentence. He contends that the conditions restricting him from possessing or using devices that can connect to the Internet without prior approval and requiring him to submit to urine and/or breathalyzer screening should be stricken because they are not crime related. Balandran also argues that the condition restricting his contact with minors should be stricken because it "carves no exception for his minor children," thereby violating his fundamental right to parent. Br. of Appellant at 50.

A. *Legal Principles*

Under RCW 9.94A.505(9), a trial court may impose "crime-related prohibitions" as part of a sentence. A crime-related prohibition disallows "conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10).

We review de novo whether the trial court had authority to impose a sentencing condition. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). But we review a challenge that a community custody condition is not crime related for an abuse of discretion.

State v. Sanchez Valencia, 169 Wn.2d 782, 792, 239 P.3d 1059 (2010). The trial court abuses its discretion when it imposes an unconstitutional sentencing condition. *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). The court also abuses its discretion when it imposes a condition that lacks a reasonable relationship to the crime. *State v. Nguyen*, 191 Wn.2d 671, 678, 425 P.3d 847 (2018).

B. *Balandran's Challenges to Community Custody Conditions*

Balandran challenges three community custody conditions in his judgment and sentence.

The first challenged condition states that Balandran "[m]ay not possess or use any electronic device capable of accessing the internet without prior approval from the [CCO]." CP at 159. Balandran argues that this condition is not crime related. The State responds that the condition is crime related but concedes that it should be amended to conform with existing case law. We accept the State's concession.

The State cites to *Nguyen* in support of its argument that prohibitions meant to prevent access to sexually explicit materials are crime related in sex cases. In *Nguyen*, the Supreme Court held that the condition prohibiting Nguyen from possessing or viewing "'sexually explicit materials'" was reasonably related to his crimes of child rape and molestation because "Nguyen committed sex crimes and, in doing so, established his inability to control his sexual urges." *Id.* at 686. While *Nguyen* provided that sentencing courts may use "their discretion to impose prohibitions that address the cause of the present crime or some factor of the crime that might cause the convicted person to reoffend," it maintained that there must be a sufficient connection between the prohibition and the convicted crime. *Id.* at 684-86.

Unlike in *Nguyen*, here, the Internet condition does not focus on sexually explicit materials but rather, wholly restricts Balandran's Internet access regardless of subject matter. The State does not point to any evidence in the record connecting the Internet to any of Balandran's crimes.

We have struck community custody conditions restricting Internet access where there is no connection between Internet usage and the convicted crime. *See State v. O'Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008). In *O'Cain*, Division One struck a condition that required the defendant to get prior approval from his CCO to use the Internet because it was not crime related. *Id.* at 774. There, the court reasoned that "[t]here is no evidence that [the defendant] accessed the Internet before the rape or that Internet use contributed in any way to the crime." 144 Wn. App. at 775. Similarly, here, there is no evidence in the record to suggest that the Internet contributed in any way to Balandran's offenses.

Balandran alternatively argues that we should strike this condition because it is overly broad, thereby impermissibly infringing on his right to free speech. We agree.

The Washington Supreme Court recently approved a community custody condition that the offender shall "not use or access the World Wide Web unless specifically authorized by [his community custody officer] through approved filters." *State v. Johnson*, 197 Wn.2d 740, 744, 487 P.3d 893 (2021) (alteration in original) (internal quotation marks omitted). In *Johnson*, the court concluded that "any danger of arbitrary enforcement is constrained by other documents related to" Johnson's convictions. *Id.* at 749. According to the court,

> Johnson committed his crimes using the Internet. A proper filter restricting his ability to use the Internet to solicit children or commercial sexual activity will reduce the chance he will recidivate and will also protect the public. While a blanket ban might well reduce his ability to improve himself, a properly chosen

> filter should not. We encourage Johnson's future community custody officer to have a meaningful conversation with Johnson about appropriate Internet use and to choose filters that will accommodate Johnson's legitimate needs.

Id. at 745-46.

Here, the Internet condition is not narrowly tailored like that in *Johnson*. Indeed, "unlike in *Johnson*, the State's supervision of [Balandran's] Internet use is not tempered by the use of a filter. Instead, [Balandran's] every action on a computer or the Internet must be preapproved. This is unnecessarily broad." *State v. Geyer*, 19 Wn. App. 2d 321, 330, 496 P.3d 322 (2021). Accordingly, we reverse this condition and remand for the trial court to strike or modify the condition.

The next challenged condition states that Balandran must "[s]ubmit to urine and/or breathalyzer screening at the direction of the [CCO]." CP at 160. Balandran argues that this condition is not crime related. Here, the trial court had the authority to impose conditions that prohibited Balandran from using alcohol or drugs. *See* RCW 9.94A.703(2)(c), (3)(e); *see State v. Kinzle*, 181 Wn. App. 774, 786, 326 P.3d 870 (2014). Once the court imposed these conditions, as it did here and which Balandran does not challenge, the trial court also had authority to impose random compliance testing regardless of whether alcohol or drugs played a role in the underlying crimes. *State v. Greatreaks*, __ Wn. App. __, 893, 566 P.3d 886 (2025) ("The challenged condition [requiring Greatreaks to submit to random urinalysis and breathalyzer testing] does not need to be crime related"); *see State v. Nelson*, __ Wn.2d __, 917-18, 565 P.3d 906 (2025) (rejecting Nelson's argument that because his underlying offenses have no direct tie to drug or alcohol use, random urine and breathalyzer testing is constitutionally

prohibited, holding that these community custody conditions, "regardless of their crime-relatedness," do not make them unconstitutional). Accordingly, we affirm this condition.

Lastly, Balandran challenges the condition that he may not have "contact with minors." CP at 159. Balandran argues that this condition violates his fundamental right to parent because it "carves no exception for his [other] minor children." Br. of Appellant at 50. Balandran further argues that we should remand to the trial court to conduct the required analysis on the record. We agree that remand is appropriate.

We review conditions implicating the constitutional right to parent for an abuse of discretion. *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010). When a condition interferes with the right to parent, the condition must be sensitively imposed and reasonably necessary to accomplish the essential needs of the State and public order. *Id.* at 377.

"A parent has a fundamental constitutional right to the care, custody, and companionship of their children." *State v. DeLeon*, 11 Wn. App. 2d 837, 841, 456 P.3d 405 (2020). The State may interfere with this right only if doing so is "reasonably necessary to prevent harm to a child." *Id*. "Such conditions 'must be narrowly drawn' and '[t]here must be no reasonable alternative way to achieve the State's interest.'" *Id.* (alteration in original) (internal quotation marks omitted) (quoting *State v. Warren*, 165 Wn.2d 17, 34-35, 195 P.3d 940 (2008)).

Before the trial court prohibits a defendant from ever contacting their children, it must address on the record (1) the defendant's constitutional right to parent, (2) explain why the condition prohibiting contact is reasonably necessary to achieve the State's interest in protecting the defendant's children, and (3) analyze whether less restrictive alternatives exist. *Id.* at 841-42; *State v. Martinez Platero*, 17 Wn. App. 2d 716, 725, 487 P.3d 910 (2021) (remanding to trial

court for failure to "analyze whether [the defendant] should be prohibited from contacting his . . . daughter before" prohibiting him from contacting minors without supervision).

Here, the trial court did not conduct the required analysis on the record. Thus, the trial court abused its discretion. Accordingly, we reverse the condition prohibiting Balandran's contact with all minors and remand to the trial court with instructions to address, on the record, whether to impose the condition, taking into consideration Balandran's constitutional right to parent his other minor children, the necessity of a provision prohibiting contact with all minors, and any viable, less restrictive alternatives that may exist.

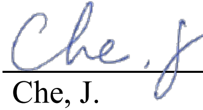
CONCLUSION

We hold that the no corroboration jury instructions were constitutionally adequate; that the no corroboration instructions were not a comment on the evidence; that any alleged error in admitting the challenged testimony at the first trial was harmless; and that Balandran's objection to BB's testimony at the second trial was insufficient to preserve the issue for appeal. In addition, we hold that the trial court abused its discretion by imposing community custody conditions prohibiting Balandran from contact with all minors and possessing or using any electronic device capable of accessing the Internet without prior approval, but that the trial court lawfully imposed CCO-directed urinalysis and breathalyzer testing.

Accordingly, we reverse the condition prohibiting Balandran from possessing or using any electronic device capable of accessing the Internet without prior approval and remand for the trial court to strike or modify this condition. We also reverse the condition prohibiting Balandran's contact with all minors and remand to the trial court with instructions to address, on the record, whether to impose the condition, taking into consideration Balandran's constitutional

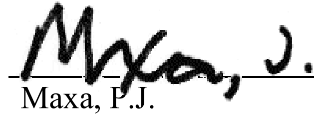
right to parent, the necessity of a provision prohibiting contact with all minors, and any viable, less restrictive alternatives that may exist. We affirm the condition requiring CCO-directed urinalysis and breathalyzer testing.

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.



Che, J.

We concur:



Maxa, P.J.

Price, J.

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