No._____



IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

RYAN MICHAEL PITTMAN,

Petitioner.

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# PETITION FOR REVIEW (CORRECTED)

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Court of Appeals No. 59432-3-II
Appeal from the Superior Court of Pierce County
Superior Court Cause Number 21-1-01700-1
The Honorable Michael Schwartz, Judge

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## I. IDENTITY OF PETITIONER

The Petitioner is Ryan Michael Pittman, Defendant and Appellant in the case below.

## II. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished opinion of the Court of Appeals, Division 2, case number 59432-3, which was filed on September 3, 2025. (Attached in Appendix A) The Court of Appeals affirmed the conviction entered against Petitioner in the Pierce County Superior Court.

## III. ISSUES PRESENTED FOR REVIEW

1. Was Ryan Pittman unfairly prejudiced by the trial court's refusal to sever the charges, where the strength of the State's evidence on each count was weak and evidence on one set of counts would not have been admissible at a separate trial on the other set of counts?
2. Did Ryan Pittman receive ineffective assistance of

counsel where his attorney did not renew the motion to sever at the close of the State's evidence, there was no reasonable tactical basis for failing to make a timely motion, and Pittman was unfairly prejudiced by the consolidated trial?

3. *Pro se* issues: (1) did the trial court err by denying Pittman's motion for a new trial; (2) did the trial court abuse its discretion by not holding an evidentiary hearing to assess Pittman's mental health status following his father's death; (3) did the prosecutor engaged in prejudicial misconduct; (4) did the trial court err by admitting EP's handwritten statement into evidence; (5) was Pittman's right to a fair trial prejudiced; and (6) is the record on appeal incomplete?

## IV. STATEMENT OF THE CASE

Ryan Pittman was accused of having sexual contact with his ex-girlfriend's minor daughters, EC and EP. Trial

on the counts related to EC should have been severed from trial on the counts related to EP because the State's evidence on every count was weak and evidence on each count would not have been admissible at separate trials.

A. SUBSTANTIVE FACTS

Ryan Pittman and Ariel Cutright started dating in early to mid-2017. (RP 394, 580-81, 583) Within a few months, Pittman moved into Cutright's home. (RP 583-84) Cutright had four children from previous relationships, including daughters EC and EP[1] (RP 576, 578) EC was around seven years old and EP was around

[1] EC was born female and identified as female at the time of the charged incidents, but identified as male at the time of trial. (RP 295, 401-02) Throughout trial, EC was referred to by different first names and nicknames, and by both female and male pronouns. Consistent with Division 2's written opinion, EC will be referred to by he/him pronouns in this brief, For the sake of clarity, and because the events relevant to the charges occurred when EC identified and presented as female, EC will be referred to by female pronouns throughout this brief. No disrespect is intended.

14-years old when Pittman moved in. (RP 296, 300, 505)

EC and her younger brother lived with Cutright full-time, while EP and her brother split time between Cutright's home and their father's home. (RP 584, 503-04) Pittman also had young children from a previous relationship. (RP 309, 508, 723) Pittman's children frequently visited and stayed overnight. (RP 505, 584, 598-99)

Cutright was misusing prescription drugs and occasionally using methamphetamine during this time. (RP 397-98, 521, 612, 620, 631) Pittman often drank alcohol, and sometimes he and Cutright used methamphetamine together. (RP 352, 396, 525, 620, 621, 630-31) There were frequently other houseguests staying at Cutright's property, and these guests also engaged in illegal drug use. (RP 306, 308, 342-43, 347-48, 517-18, 585-86, 589-90)

Cutright testified that she and Pittman frequently

argued. (RP 631-32) Cutright's relationship with EP was also fraught. (RP 521, 611) EP was acting out and drinking alcohol and taking drugs. (RP 520-21, 611-12) When EP was 16 years old, Cutright told EP to leave and to go live with her grandparents. (RP 510, 521, 611-12)

Pittman ended his relationship with Cutright and moved out around June of 2019. (RP 632, 725-26) Cutright was upset about the breakup, even more so the following summer when she found out through Facebook posts that Pittman had started dating someone new. (RP 632, 632-33, 726)

In June of 2020, Cutright contacted law enforcement after EC told her that Pittman had touched her sexually.[2] (RP 469-70, 473, 604-05, 619) An officer came to the house and took a report, and Cutright was

[2] Cutright said she contacted law enforcement to report EC's disclosure about a month after Pittman moved out, but her report was actually made a year later, on June 15, 2020. (RP 409-10, 468, 632, 637, 671, 686)

told to take EC for a medical examination and forensic interview. (RP 469-70, 472-73, 606, 608, 609) The results of EC's medical examination were normal, and the examining nurse noted nothing remarkable. (RP 669-700, 705-06, 707, 708) During EC's forensic interview, she described two "clearly defined" incidents of sexual contact. (RP 414-15, 438-39, 477, 484)

Cutright also spoke to EP about EC's allegations and asked if anything similar happened to her, but EP refused to discuss the topic. (RP 610, 611) A few months later, EP told her grandparents that Pittman had engaged in sexual acts with her. (RP 513, 553, 613, 619) They notified Cutright, who contacted the detective that had been assigned to EC's case and then took EP for a forensic interview. (RP 614-15, 615-16)

EP was angry about being asked to submit to a forensic interview and she refused to talk to the interviewer. (RP 556, 616. 647, 654, 657, 659) EP was

not comfortable discussing the allegations and felt like she was being forced to do so by her grandparents. (RP 556) EP was eventually brought in for a second interview, and this time she wrote a statement alleging that Pittman had sexually assaulted her. (RP 514-15, 616, 557-58, 659-60; Exh. 7)

At trial, EC described an incident that occurred at night while her mother was at work. (RP 314, 316, 332, 359) She testified that Ryan took her to her mother's bed and started kissing her on the lips. (RP 316-17) She remembered smelling alcohol on his breath and hearing a DVD movie playing in the background. (RP 318)

EC struggled to remember and describe the incident further. (RP 325-27) But after a brief recess and an opportunity to review notes from her forensic interview, she testified that Pittman's hand touched the area of her body used for "going number one," where yellow liquid comes out. (RP 327-29, 367) She said Pittman touched

her “a little bit inside” but “mostly outside” her body. (RP 339) She said Pittman also made her touch with her hand the part of his body that he uses for “peeing.” (RP 329-31)

Using similar euphemisms to describe the various body parts, EC testified that on a different night Pittman touched her rectum with his penis. (RP 331-32) The touching was “most of the time outside” her body but also inside. (RP 331-32) On a third occasion, and this time in EC’s bedroom, Pittman licked the area of her vagina. (RP 335-36, 373)

EP described two incidents. The first occurred at night in EP’s bedroom while everyone else was home but asleep. (RP 528, 529-30) EP testified that she was sitting on her floor, very drunk and “out of it” and “nodding out.” (RP 537, 540, 561-62) A man came into her bedroom, sat down next to her, grabbed her hair and pushed her head down, and forced her to perform oral

sex on him. (RP 530, 540, 541) EP testified that the incident was a blur and at first she thought the man was an individual who she was semi-dating at the time, but then she realized it was Pittman. (RP 540, 563-64) After Pittman ejaculated, he got up and left the room. (RP 541)

EP testified about a second incident that also occurred at night in her bedroom. (RP 545) She was laying in bed on her side trying to go to sleep. (RP 546) She was once again drunk. (RP 550) According to EP, Pittman came into her room, lay down on the bed next to her, and pulled down her pants. (RP 546-47, 550) She testified that she tried to push Pittman away, but Pittman pushed her arms down and put his penis into her vagina. (RP 550, 552) He ejaculated, got up, and left the room. (RP 553)

EP was not interested in testifying at trial, but her grandmother and mother convinced her to do it. (RP 511-12, 561) They told her that if EC could testify then EP

could as well, to make sure that Pittman "gets put away." (RP 511-12)

Pittman testified on his own behalf, and denied ever having any sexual contact or intercourse with EC or EP, or ever touching any child inappropriately. (RP 724-25, 726-27)

B. PROCEDURAL HISTORY

The State charged Pittman with three counts of first degree rape of a child against EC, and two counts of second degree rape against EP.[3] (CP 62-65) The State alleged that the offenses were aggravated because Pittman used his position of trust to facilitate the commission of the offenses. (CP 62-65)

Before trial, the defense moved to sever the two charges. (CP 41-53; RP 222-236) The trial court denied

[3] The State charged two alternative counts of third degree rape of a child against EP, but those counts were dismissed at sentencing on double jeopardy grounds. (CP 65-66, 289-90; RP 839-40)

the motion. (CP 80-81; RP 236-39) The trial court also denied Pittman's mid-trial motion to dismiss counts one and two for lack of proof of sexual intercourse. (CP 123-26; RP 709-20)

The jury found Pittman guilty as charged. (CP 109-22; RP 793-96) Pittman moved to vacate the verdicts and for a new trial because one of the jurors went to high school with Pittman, Cutright and EP's father, but had stated on his questionnaire that he did not know any of the parties or witnesses. (CP 129-41; RP 808-16) The trial court denied the motion because Pittman had recognized the juror before he was seated, and because the defense did not show the juror purposefully failed to reveal the connection or that he harbored any actual or implied bias against Pittman. (CP 291-93; RP 820-24)

The trial court imposed a standard range sentence totaling 318 months to life. (RP 857; CP 268, 273) Pittman filed a timely Notice of Appeal. (CP 294) The

Court of Appeals affirmed Pittman's conviction and sentence.

## V. ARGUMENT & AUTHORITIES

The trial court abused its discretion in denying Pittman's motion to sever the charges for trial. To the extent defense counsel waived Pittman's right to challenge the court's refusal to sever the offenses by failing to make a timely mid-trial objection, Pittman received ineffective assistance of counsel.

Division 2 held that Pittman waived the severance issue because he failed to renew his motion before or at the close of all the evidence, but the Court addressed the issue "only within the discussion of Pittman's ineffective assistance of counsel claim." (Opinion at 10-11) Division 2 then held that "severance of the charges was not required," and because Pittman "cannot show prejudice, his ineffective assistance of counsel claim based on a failure to renew a motion to sever charges fails." (Opinion

at 16)

The issues raised by Pittman's petition should be addressed by this Court because the Court of Appeals' decision conflicts with settled case law of the Court of Appeals, this Court and of the United States Supreme Court. RAP 13.4(b)(1) and (2).

### A. PITTMAN WAS UNFAIRLY PREJUDICED BY THE TRIAL COURT'S REFUSAL TO SEVER THE CHARGES.

Although CrR 4.3(a)[4] permits two or more offenses of similar character to be joined in a single charging document, "joinder must not be used in such a way as to prejudice a defendant." *State v. Ramirez*, 46 Wn. App.

[4] CrR 4.3(a) provides:

> (a) Joinder of Offenses. Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:
> (a) Are of the same or similar character, even if not part of a single scheme or plan; or
> (2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

223, 226, 730 P.2d 98 (1986). Washington courts recognize that "joinder is inherently prejudicial." *Ramirez*, 46 Wn. App. at 226. Even if multiple charges are properly joined in a single charging document, they must be severed for separate trials whenever "the court determines that severance will promote a fair determination of the defendant's guilt or innocence for each offense." CrR 4.4(b).

Consolidation of separate counts in a single trial "should never be used in such a way as to unduly embarrass or prejudice a defendant or deny him or her a substantial right." *State v. Russell*, 125 Wn.2d 24, 62, 882 P.2d 747 (1994). "Prejudice may result from joinder if … use of a single trial invites the jury to cumulate evidence to find guilt or infer a criminal disposition." *Russell*, 125 Wn.2d at 62-63.

On appeal, a trial court's refusal to sever charges is reviewed for abuse of discretion. *Russell*, 125 Wn.2d at

62-63. To determine whether a trial court should have severed charges to avoid prejudice to a defendant, the reviewing court considers (1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial. *State v. Sutherby*, 165 Wn.2d 870, 884-85, 204 P.3d 916 (2009). Consideration of factors one, three, and four shows the court abused its discretion in denying Pittman's motion to sever.

First, the strength of the State's evidence on the EC counts and the EP counts was equally weak. First, EC struggled to describe or provide any details about the incidents. (RP 319-27, 328-36) EC repeatedly expressed that she was having trouble remembering what happened, that her memory was "foggy," and that there were "a lot of missing pieces." (RP 320, 321, 325, 336,

347, 365, 366) When asked if she made up anything during the forensic interview, EC testified "I don't think so, but my memory is very blurry." (RP 325)

EC's testimony was also riddled with inconsistencies. For example, she testified that Pittman's hand and penis did go inside her body, but later testified that there was never any penetration. (RP 331-32, 339, 352-53) She first testified that Pittman licked the area she used for "going number one" for about a minute and that it felt uncomfortable. (RP 335-36) At first she thought the licking was under her clothing, but later could not remember whether the lick was inside or outside of her clothing. (RP 373) EC also testified that Pittman once tried repeatedly to unzip the pajama onesie she was wearing, but she kept zipping it back up. (RP 340-41) At first she testified this occurred at a completely different time from the other three charged incidents, but later indicated it happened at the same time as one of the

other incidents. (RP 340-41, 356-57)

EP was more specific in her descriptions of events. But she also acknowledged that her memory of the first incident was "a blur." (RP 540) In fact, the next morning EP was not sure it actually happened and wondered if she had imagined it. (RP 543, 564) She also testified she was drunk during both incidents, and that her memory is poor when she has been drinking. (RP 567)

The weakness and/or vagueness of the testimony for each of the different counts relating to EC and to EP increased the probability that the jury would "cumulate evidence to find guilt or infer a criminal disposition." *Russell*, 125 Wn.2d at 62-63.

Next, the court's instructions were not sufficient to mitigate the prejudice caused by allowing the State to try both counts in a single proceeding. In *Sutherby*, although

the jury was instructed to decide each count separately,[5] it was not instructed that evidence of one crime could not be used to decide guilt for a separate crime. 165 Wn.2d at 885-86. The Supreme Court concluded this weighed in favor of finding that failure to sever the unrelated charges prejudiced Sutherby. 165 Wn.2d at 885-86.

As in *Sutherby*, the jury in this case was not instructed it could not use evidence of one crime to decide guilt for a separate crime. The instruction provided was identical to the one provided in *Sutherby*, and stated:

> A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

(CP 88) The jury was provided no limiting instruction

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[5] The jury instruction in *Sutherby* provided: "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." *Sutherby*, 165 Wn.2d at 885 n.6.

regarding the other act evidence. Thus, the jury instructions did not preclude the jury from using the evidence of one count to infer guilt for the other or from inferring a general criminal disposition. This factor weighs in favor of a finding of prejudice. *Sutherby*, 165 Wn.2d at 885-86.

Finally, evidence of one count would not have been admissible at a separate trial on the other count. This factor rests on the fundamental principle that "[a] defendant must be tried for the offenses charged, and evidence of unrelated conduct should not be admitted unless it goes to the material issues of motive, intent, absence of mistake or accident, common scheme or plan, or identity." *Sutherby*, 165 Wn.2d at 887; ER 404(b).[6]

[6] ER 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

The question is whether evidence of one charge or set of charges would have been admissible under one of these exceptions at a separate trial on the other charges. *Sutherby*, 165 Wn.2d at 887.

The trial court found that evidence relating to the offenses against EC would have been admissible in a separate trial for the offenses against EP, and vice versa, as proof of motive or proof of a common scheme or plan. (RP 238-39) The court was wrong. Though the different charges may have shared some basic similarities, they did not show any type of overarching plan or ongoing scheme. *See State v. Lough*, 125 Wn.2d 847, 860, 889 P.2d 487 (1995) ("evidence of prior conduct must demonstrate not merely similarity in results, but such occurrence of common features that the various acts are naturally to be explained as caused by a general plan of which the charged crime and the prior misconduct are the individual manifestations"). And motive is not an element

of the charge of rape or child rape, and is therefore irrelevant. *See State v. Saltarelli*, 98 Wn.2d 358, 364-65, 655 P.2d 697 (1982); *State v. Bowen*, 12 Wn. App. 604, 613, 531 P.2d 837 (1975).

Instead, the evidence would be relevant only to show that Pittman had a general predisposition to commit these acts. The evidence would therefore have been inadmissible under ER 404(b). *Sutherby*, 165 Wn.2d at 887. A lack of cross-admissibility "create[s] a strong likelihood of prejudice[.]" *See State v. Bythrow*, 114 Wn.2d 713, 718-719, 790 P.2d 154 (1990). Thus, this factor also demonstrates Pittman was prejudiced by the court's failure to sever the offenses.

If the State's evidence on any count is weak and evidence on each count would not have been admissible at separate trials, the denial of severance amounts to an abuse of discretion. *State v. Hernandez*, 58 Wn. App.

793, 800, 794 P.2d 1327 (1990).[7]

Here, the State's evidence on each count was weak and evidence pertaining to each victim would not have been admissible at separate trials. In addition, the jury was not sufficiently instructed it could not use evidence of one count to infer guilt for another. For these reasons, the trial court abused its discretion in denying Pittman's motion to sever.

### B. PITTMAN'S TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO RENEW THE MOTION TO SEVER AFTER THE STATE RESTED ITS CASE-IN-CHIEF.

Defense counsel moved prior to trial to sever the two counts. (CP 41-53) In some cases, counsel must also make a motion to sever charges at the close of the State's evidence in order to preserve the issue for appeal. CrR 4.4(a) provides:

(1) A defendant's motion for severance of

[7] Abrogated on other grounds by *State v. Kjorsvik*, 117 Wn.2d 93, 812 P.2d 86 (1991).

> offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.
> (2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

The purpose of requiring counsel to object before or at the close of all the evidence is that the actual prejudice caused by joinder may not surface until the evidence is presented at trial. *State v. Harris*, 36 Wn. App. 746, 749, 677 P.2d 202 (1984). If counsel fails to make a timely renewal of a motion to sever, the issue is waived and cannot be raised on appeal. *State v. Price*, 127 Wn. App. 193, 203, 110 P.3d 1171 (2005), aff'd, 158 Wn.2d 630, 146 P.3d 1183 (2006).

Counsel's failure to make a timely motion to sever may amount to ineffective assistance of counsel entitling the defendant to relief. To prevail on an ineffective

assistance of counsel claim, the defendant must show that (1) counsel's representation was deficient in that it fell below an objective standard of reasonableness and (2) the deficient performance prejudiced the defendant. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d (1984); U.S. Const. amend. VI.

If there is no reasonable legitimate strategic or tactical reason for counsel's failure to make a timely motion for severance, counsel's performance is deficient. *Sutherby*, 165 Wn.2d at 884. Failure to move for severance is not reasonable if evidence of one charge would not have been admissible at trial on the other charge. *Sutherby*, 165 Wn.2d at 884. The prejudice prong is satisfied if the motion would properly have been granted if made, and the outcome at a separate trial would probably have been different. *Sutherby*, 165 Wn.2d at 887; *Price*, 127 Wn. App. at 203.

As shown above, evidence of one charge would not have been admissible at a separate trial on the other charge and therefore counsel had no reasonable tactical reason not to renew the motion to sever. In addition, the outcome of separate trials would probably have been different. Pittman was therefore prejudiced and is entitled to relief. His convictions must be reversed.

C. *PRO SE* ISSUES

In his *pro se* Statement of Additional Grounds for Review (SAG), Pittman argues that (1) the trial court erred by denying his motion for a new trial; (2) the trial court abused its discretion by not holding an evidentiary hearing to assess Pittman's mental health status following his father's death; (3) the prosecutor engaged in prejudicial misconduct; (4) the trial court erred by admitting EP's handwritten statement into evidence; (5) his right to a fair trial was prejudiced by the prosecutor's actions; and (6) his due process rights were compromised

because the record on appeal is incomplete.

Pittman hereby incorporates by reference the arguments and authorities set forth in his SAG (attached in Appendix B). Division 2 rejected each of these asserted errors. (Opinion at 16-22)

## VI. CONCLUSION

The trial court abused its discretion in denying the motion to sever the two counts for trial, and Pittman's counsel provided ineffective assistance by failing to renew the motion. This Court should accept review, and reverse Pittman's convictions.

I hereby certify that this document contains 4,065 words, excluding the parts of the document exempted from the word count, and therefore complies with RAP 18.17.

DATED: October 1, 2025

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WSBA #26436
Attorney for Petitioner Ryan M. Pittman

# APPENDIX A

Court of Appeals Opinion in *State v. Ryan M. Pittman*, No. 59432-3-II

Filed
Washington State
Court of Appeals
Division Two

September 3, 2025

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>RYAN MICHAEL PITTMAN,<br><br>Appellant. | No. 59432-3-II<br><br>UNPUBLISHED OPINION |

CHE, J. — Ryan Pittman appeals his convictions for three counts of first degree child rape and two counts of second degree rape.

Pittman raped two of his ex-girlfriend's children, EC and EP. Prior to trial, Pittman moved to sever the counts involving one child from the other child. The trial court denied Pittman's motion and all the counts were tried together. Pittman did not renew his motion to sever. The jury convicted Pittman of three counts of first degree child rape involving EC and two counts of second degree rape involving EP.

Pittman argues that the trial court abused its discretion by denying his motion to sever and that he received ineffective assistance of counsel because his attorney failed to renew the motion to sever. He also raises multiple claims in a statement of additional grounds (SAG).

We hold that because Pittman failed to renew his motion to sever before or at the close of all the evidence, this issue is waived, Pittman's ineffective assistance of counsel claim fails because he has not shown prejudice, and Pittman's SAG claims are unreviewable or fail on the merits.

Accordingly, we affirm Pittman's convictions.

## FACTS

### BACKGROUND

Pittman met AC in 2017, and they began dating right away. Pittman then moved into AC's home. AC's household included her mother, adult roommates, and four children, including EC[1] and EP. EC was around 8 years old and EP was 14 years old when Pittman moved into their home. Pittman's three children intermittently stayed at the house as well.[2] Pittman lived in AC's home for about two years before moving out when they broke up in 2019.

According to EP, it was obvious that people, including her mother, were doing drugs in the home. AC admitted she had issues with methamphetamine use and that this interfered with how she ran the household. At some point, AC started a job that required her to work evenings through mornings, once every weekend. Pittman was in charge of the household in her absence.

In June 2020, AC reported to law enforcement that EC told her there had been sexual contact between EC and Pittman. An officer came to the house and took a report. Law enforcement told AC to take EC for a medical examination and forensic interview, which AC did.

EP moved out of the house before she turned 16 and at some point learned of EC's disclosure. EP did not talk directly to EC about what EC had disclosed. EP eventually disclosed that Pittman sexually abused her to her grandparents and mother. EP did so because it was

[1] After the incidents occurred but before trial, EC, born female, began using a different name and male pronouns. While the events occurred when EC identified as female, EC now identifies as male, so we use he/him pronouns.

[2] EC testified that he "[l]iked it when [Pittman's kids] were [at the house] because [Pittman] wouldn't do anything to [him] when they were there." 4 Rep. of Proc. at 346.

"weighing on [her]," and she knew EC had made a disclosure. 6 Rep. of Proc. (Jan. 9, 2024) (6 RP) at 554.

The State charged Pittman with three counts of first degree child rape involving EC (counts 1-3), two counts of second degree rape involving EP (counts 4-5), and two counts of third degree child rape involving EP (counts 6-7), each with an aggravating circumstance of use of a position of trust, confidence, or fiduciary responsibility to facilitate commission of the crimes.

PRETRIAL MOTION TO SEVER CHARGES

Pittman moved to sever the counts involving EC (counts 1-3) from those involving EP (counts 4-7). In his motion, Pittman primarily argued that joinder would prejudice him because of a substantial likelihood that the jury would improperly cumulate the evidence rather than decide each charge based on its own merit. Pittman contended that the State's charges varied in strength, which would further lead the jury to "cumulate and confuse the evidence and use the strength of the proof as to some charges to infer guilt in those charges with less substantial evidence." Clerk's Papers (CP) at 46. Pittman also argued that the charges and the factual allegations underlying the charges were not cross admissible under Evidence Rule (ER) 404(b).

At the motion hearing, Pittman acknowledged that the offenses were similar, stating, "These two sets of counts are certainly similar, right? The nature in and of themselves, the words themselves of what the type of crime is is certainly similar. The relationship to Mr. Pittman is also similar. The residence is also similar." 3 RP (Jan. 3, 2024) (3 RP) at 222-23. But he argued the offenses were distinct by age and time. Additionally, Pittman argued that the counts involving EP included alcohol and intoxication from alcohol, but the counts involving EC

did not. Pittman confirmed that the defenses for both sets of counts would be the same, stating, "the title of the defense would be the same: [g]eneral denial for both." 3 RP at 225-26.

The trial court denied Pittman's motion to sever and analyzed four factors in reaching its decision:

> The first is strength of the State's evidence as to each count. Here, my understanding is that the alleged victims will be testifying as to what happened to them and that Mr. Pittman, the accused, is the one that did it. Militating against that is, of course, there's delayed disclosure on both, parts of both folks, both alleged victims, and at least in one of them, there is at least evidence that may undermine her credibility because of her intoxication. . . .
>
> Two is the clarity of the defendant's defenses. While it may be true that, as [defense counsel] points out, he would handle the defense differently as to each alleged victim, the defenses are the same. The defenses are, number one, it's general denial, but number two, that it's to undermine -- at its base is to undermine the credibility of each of these alleged victims. . . .
>
> Three is that the Court's trial instructions directing the jury to consider each count separately. . . . [T]he Court has already said that . . . its intention is to give an instruction that the jury should consider each of these counts separately of their own accord, independent of each other.
>
> And then four is the admissibility of evidence in separate trials, if not joined for trial. And that's basically a [ER] 404(b) analysis. . . .
>
> So [the State] pointed out that [it] thinks that this falls under common scheme or plan, and evidence of common scheme or plan may be used to show whether the incidents actually occurred or whether the victim is fabricating or mistaken. Evidence of other similar acts of sexual abuse is generally very probative of a common scheme or plan, and the need for such proof is unusually great in child sex cases and that's because, in most instances, the victim is younger, number one. Number two -- and so that, you know, their memory may be faulty. And number two, there's always -- not always, but in most instances, there's a delayed disclosure.
>
> In addition to that, the court can certainly conceptualize that . . . if we're talking about charged offenses and uncharged offenses, that the uncharged offenses would be admissible for the purposes of motive and intent. Even though motive is not an element of the crime, the prosecutor is entitled to present evidence of such. And certainly to the extent here that these -- you know, that these acts are similar

> to each other, they occurred in relatively the same place, and these are sisters, I believe. Their mother may or may not have been present.
>
> And the other thing that I find really interesting in the description . . . is the similarities in what it's alleged that Mr. Pittman said to each victim is rather manipulative . . . I think [it] goes [to] the issue of not only common scheme or plan but motive and intent.

3 RP at 237-39.

The trial court noted that although it was denying Pittman's motion, Pittman could renew his severance motion at any time. Pittman did not renew his severance motion.

EC'S TESTIMONY

EC testified that he and Pittman initially got along well, and Pittman acted like a "dad figure" to him, helping take care of him. 6 RP at 302. But their relationship changed when AC started her evening job. One night, when AC had gone to work, Pittman and EC went into AC's bedroom and laid on the bed together before Pittman made EC kiss him a couple of times on the lips. EC smelled alcohol on Pittman's breath during this incident, and EC primarily felt scared. After kissing EC, Pittman used his hand to touch EC's vagina, and he made EC put his hand on Pittman's penis. Pittman touched "a little bit inside [EC's vagina] . . . [but] [m]ostly outside."[3] 6 RP at 339.

Within the same month of the first incident, EC and Pittman were on AC's bed, and Pittman put his penis against and inside EC's anus. EC smelled alcohol on Pittman's breath.

EC further testified that on another occasion, Pittman licked the inside and outside of EC's vagina but mostly the outside of EC's vagina. EC felt uncomfortable, but Pittman told EC

[3] At times, EC struggled to testify and could not clearly remember details of the incidents.

that it was okay for him to lick EC's vagina because he also did this to his daughter, and his daughter liked it.[4]

EC also testified to an additional encounter when AC and his younger brother were asleep in the same bed as EC. EC wore zip down pajamas, which Pittman repeatedly tried to unzip. According to EC, Pittman unzipped his pajamas "all the way down" a couple of times and tried to touch EC's stomach area, but he moved Pittman's hand and zipped his pajamas back up because he felt uncomfortable. 6 RP at 340-41. EC disclosed the sexual abuse after Pittman moved out.

MID-TRIAL RECESS

Mid-trial, while the State was still presenting its case-in-chief, Pittman informed the trial court that he found his father, who had committed suicide, in Pittman's garage. Pittman requested a recess, but otherwise, the parties were unsure of how to proceed. The trial court discussed various concerns about "calling a recess of sort of unknown length," including that witnesses had travelled from out of state; defense counsel had asked the court to accommodate his travel plans; the jury had been informed of when their duties would end; and EC had already testified, which appeared to be a "very traumatic experience" for him. 5 RP (Jan. 8, 2024) (5 RP) at 453, 454.

The trial court expressed its sympathy for Pittman's situation and recessed the trial for 24 hours, stating, "[C]learly, that doesn't mean that Mr. Pittman is going to be beyond this in 24 hours, but at this point, given all the factors that we've discussed, I think that's the best we can

[4] Pittman's daughter was 13 or 14 years old at the time.

do short of recessing for a couple of weeks or declaring a mistrial." 5 RP at 454. Trial resumed after the recess.

EP'S TESTIMONY

EP testified that she and Pittman initially got along well because Pittman would give her marijuana.[5] And "[w]hatever [she] wanted, he would . . . go get it." 6 RP at 522. EP's relationship with Pittman changed after an incident where Pittman was "super drunk" and told EP in front of her friend that they "should f[*]ck." 6 RP at 525.

One night, EP "was drunk," feeling "really out of it," sitting on her bedroom floor, and wearing only a tank top and underwear when Pittman came into her room and started rubbing her leg. 6 RP at 537. AC was asleep in another room.

EP testified that Pittman grabbed the back of EP's hair and "forced [her] to suck his d[*]ck." 6 RP at 540. Pittman "forc[ed]" her to go "up and down" on his penis until he ejaculated in her mouth. 6 RP at 541. Then, Pittman left the room. When EP woke up the next morning, she was not sure if she had imagined the incident. She "just . . . felt so violated." 6 RP at 543. EP eventually talked to Pittman to confirm whether the incident had occurred, and Pittman "act[ed] . . . really confused and . . . mix[ed] up his words." 6 RP at 544.

EP also testified that what happened to her was not a dream and was real. EP stated the incident "was a blur," and that she did not understand what was happening. 6 RP at 540. Initially, EP thought that the man "might have been some dude [she] was messing with." 6 RP at 540. But as the incident progressed, she realized "that [she was] in [her] own house and . . . not even anywhere with another dude." 6 RP at 540.

[5] At the time, EP regularly smoked marijuana and drank alcohol.

Less than one month later, EP was in her pajamas and lying on her bed when Pittman came into her room, laid next to her, "grabb[ed]" her pajama pants, and started touching her butt and thighs. 6 RP at 549-50. Without saying anything, Pittman started to pull down EP's pants. EP looked at Pittman and pushed him "a little bit," but Pittman pushed her arm down. 6 RP at 550. EP "kind of just gave up after he pushed [her] arm down" because she was weak from being "drunk, [and] had no strength in [her] arms." 6 RP (January 9, 2024) at 570. EP asked Pittman what he was doing, but Pittman did not respond. He pulled EP's pants down and penetrated her vagina with his penis for about five minutes until Pittman ejaculated inside of her. He then pulled his pants back up and left the bedroom. EP never spoke to Pittman about the incident.

The trial court admitted exhibit 7, EP's handwritten statement made during her forensic interview, which states, "[Pittman] would wait until I was sleeping or super out of it because the drugs I used to take and he would come into my room and rape me . . . rape as in have unwanted intercourse." Ex. 7. EP testified that she was slightly uncomfortable with talking about the incidents because she had not wanted to "come forward at all" but was "encouraged to do so" by her mother. 6 RP at 560-61.

PITTMAN'S TESTIMONY AND MOTION FOR NEW TRIAL

Pittman testified at trial, denying all allegations. When asked whether he had ever done anything he was ashamed of while drinking between 2018 and 2020, Pittman testified that he "wouldn't remember." 7 RP (Jan. 10, 2024) (7 RP) at 727.

The trial court instructed the jury, "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." CP at 88.

The jury found Pittman guilty of three counts of first degree child rape involving EC and two counts of second degree rape involving EP.[6] The jury found by special verdict that Pittman used his position of trust or confidence to facilitate the commission of the crimes. CP at 116-22. The court imposed a standard range sentence totaling 318 months to life in prison.

Pittman moved for a new trial under CrR 7.5(a)(2), arguing that juror 2 likely committed misconduct. During voir dire, when the trial court asked the venire whether anyone knew Pittman or the trial attorneys, juror 2 did not respond affirmatively. Pittman was concerned that the juror 2 (the presiding juror) likely knew him and other involved parties because juror 2 attended the same high school as Pittman. Pittman's wife discovered that Pittman and juror 2 had many mutual friends on social media and that Pittman had "liked" or otherwise reacted to some of juror 2's public social media posts. CP at 137-140. Pittman's counsel acknowledged that during voir dire, Pittman mentioned that he may know juror 2, but counsel did not ask juror 2 whether juror 2 recognized Pittman. Pittman suggested at the hearing on the motion for a new trial that the trial court could speak with juror 2.

The State responded that Pittman provided no analysis to meet his burden of showing that juror misconduct occurred. In its supplemental response, the State transcribed recordings of jail phone calls between Pittman and his wife, arguing that they "conspired to present evidence to the Court that would falsely give the appearance that juror #2 knew Mr. Pittman." CP at 151.

The trial court denied Pittman's motion for a new trial, finding that Pittman had not shown juror 2 was actually or impliedly biased. Pittman appeals his convictions.

[6] The jury also found Pittman guilty of two counts of third degree rape involving EP, but the trial court later vacated Pittman's two convictions for third degree child rape involving EP.

## ANALYSIS

### I. MOTION TO SEVER CHARGES AND INEFFECTIVE ASSISTANCE OF COUNSEL

Pittman argues the trial court abused its discretion by denying his motion to sever the charges for trial, thereby unfairly prejudicing him. He also contends that, to the extent he waived his right to challenge the court's denial of his motion to sever, he received ineffective assistance of counsel. The State responds that Pittman waived his severance claim by failing to renew his motion during trial, and Pittman fails to show the outcomes would have been different if the charges had been severed. We agree with the State.

#### A. *Pittman Waived the Severance Issue*

We review a trial court's denial of a motion to sever for manifest abuse of discretion. *State v. Medina*, 112 Wn. App. 40, 52, 48 P.3d 1005 (2002). To show that the trial court abused its discretion in denying severance, the defendant "must be able to point to specific prejudice." *State v. Bythrow*, 114 Wn.2d 713, 720, 790 P.2d 154 (1990). If the trial court has denied a defendant's pretrial motion to sever, they may renew the motion on the same ground "before or at the close of all the evidence." CrR 4.4(a)(2). If the party does not timely make or renew a motion for severance, "[s]everance is waived." CrR 4.4(a)(1), (2); *State v. McDaniel*, 155 Wn. App. 829, 859, 230 P.3d 245 (2010) (holding that where McDaniel failed to renew his severance motion, he waived the issue of whether the trial court abused its discretion by denying the motion, thus limiting the court's discussion of the issue within his ineffective assistance of counsel).

Here, Pittman timely moved to sever the charges involving EC from those involving EP. However, Pittman failed to renew his motion before or at the close of all the evidence.

Accordingly, we hold that this issue is waived and address it only within the discussion of Pittman's ineffective assistance of counsel claim.

B. *Pittman's Ineffective Assistance of Counsel Claim Fails*

Pittman contends his attorney provided ineffective assistance by failing to renew his motion to sever the charges. We disagree.

Criminal defendants have a right to effective assistance of counsel. U.S. CONST. amend. VI; WASH. CONST. art. I, §22. When a defendant claims ineffective assistance of counsel, they must show their counsel's performance was deficient and resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Failure to make either showing defeats the claim. *State v. Bertrand*, 3 Wn.3d 116, 128, 546 P.3d 1020 (2024).

First, counsel's performance is deficient if, based on the entire record, it falls below an objective standard of reasonableness. *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). The defendant must overcome the strong presumption that their counsel's performance was effective by showing there was no possible legitimate trial tactic that would explain counsel's performance. *Bertrand*, 3 Wn.3d at 130; *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

Second, if a defendant's ineffective assistance of counsel claim is based on counsel's failure to make a motion, the defendant must demonstrate prejudice by first showing that the motion would likely have been granted. *State v. Sutherby*, 165 Wn.2d 870, 884, 204 P.3d 916 (2009); *State v. Price*, 127 Wn. App. 193, 203, 110 P.3d 1171 (2005), *aff'd*, 158 Wn.2d 630 (2006). Next, the defendant must show a reasonable probability that the outcome of the trial would have differed absent counsel's deficient performance. *Sutherby*, 165 Wn.2d at 884;

*Bertrand*, 3 Wn.3d at 129. A mere showing that errors had some conceivable effect on the outcome of the proceeding is not enough. *Strickland*, 466 U.S. at 693.

Washington law does not favor separate trials. *State v. Dent*, 123 Wn.2d 467, 484, 869 P.2d 392 (1994). "Severance of charges is important when there is a risk that the jury will use the evidence of one crime to infer the defendant's guilt for another crime or to infer a general criminal disposition." *Sutherby*, 165 Wn.2d at 883. A defendant seeking severance bears the burden of showing that a trial involving all charges "would be so manifestly prejudicial as to outweigh the concern for judicial economy." *Bythrow*, 114 Wn.2d at 718.

Courts consider four nondispositive factors to assess the potential for prejudice to the defendant when determining whether to sever charges:

> (1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.

*State v. Slater*, 197 Wn.2d 660, 677, 486 P.3d 873 (2021).

In considering the first factor, we look at whether the strength of the State's evidence on each count was similar. *State v. Russell*, 125 Wn.2d 24, 63-64, 882 P.2d 747 (1994). "When one case is remarkably stronger than the other, severance is proper." *State v. MacDonald*, 122 Wn. App. 804, 815, 95 P.3d 1248 (2004). Here, the evidence for the charges involving EC and EP was not distinctly stronger in one instance over the other. The primary evidence for each count was EC and EP's testimonies. There was no physical evidence or corroborating witnesses concerning the allegations of sexual abuse. Pittman testified, denying all allegations. Because the strength of the type of evidence as to the counts involving EC and EP was similar, the first factor weighs against severance.

Regarding the second factor, the likelihood that joinder will cause a jury to be confused about the defendant's defenses is "very small where the defense is identical on each charge." *Russell*, 125 Wn.2d at 774. Pittman's defense on each count was identical—general denial. Pittman confirmed with the trial court that the defenses for both sets of counts would be the same, stating, "the title of the defense would be the same: [g]eneral denial for both." 3 RP at 225-26. At trial, Pittman testified and denied all allegations of sexual abuse. The joinder of the charges did not affect Pittman's ability to make his defenses clear to the jury. Thus, the second factor weighs against severance.

As for the third factor, the parties do not dispute that the trial court instructed the jury to decide each count separately. Specifically, the instruction stated, "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." CP at 88. Courts have repeatedly found this instruction sufficient to mitigate prejudice to the defendant when offenses are joined. *See, e.g.*, *Bythrow*, 114 Wn.2d at 723; *McDaniel*, 155 Wn. App. at 859; *State v. Cotten*, 75 Wn. App. 669, 688, 879 P.2d 971 (1994).

Pittman now claims that the trial court should have given a limiting instruction to "not use evidence of one crime to decide guilt for a separate crime." Br. of Appellant at 17; *see Sutherby*, 165 Wn.2d at 885-86. But because Pittman failed to request a limiting instruction during the trial, he is precluded from arguing that the lack of a limiting instruction was error. *State v. Athan*, 160 Wn.2d 354, 383, 158 P.3d 27 (2007) (stating that "the failure of a court to give a limiting instruction is not error when no instruction was requested"). Thus, the third factor weighs against severance.

Pittman primarily challenges the fourth factor. This factor considers whether evidence of each charge would be cross admissible in separate trials under ER 404(b) if severance was granted. *Russell*, 125 Wn.2d at 66.

ER 404(b) prohibits evidence of "other crimes, wrongs, or acts" to prove the character of a person in order to show that they acted in conformity with that character. However, ER 404(b) permits evidence of prior bad acts for other, limited purposes, such as to show intent, motive, preparation, or plan, among other things.

The trial court concluded that evidence for the charges involving EC and EP would be cross admissible in separate trials to show a common scheme or plan as well as motive and intent. Pittman contends that while the different charges may have shared some basic similarities, they did not show any type of overarching plan or ongoing scheme. We disagree.

To admit evidence of a common scheme or plan, there must be "substantial similarity between the prior bad acts and the charged crime." *State v. DeVincentis*, 150 Wn.2d 11, 21, 74 P.3d 119 (2003). There is sufficient similarity where the "various acts are naturally to be explained as caused by a general plan." *State v. Lough*, 125 Wn.2d 847, 860, 889 P.2d 487 (1995). "[A] common plan or scheme may be established by evidence that the [d]efendant committed markedly similar acts of misconduct against similar victims under similar circumstances." *Id.* at 852.

Here, the evidence demonstrated a common scheme or plan. Pittman abused similar victims—EC and EP were minor-aged siblings, were Pittman's ex-girlfriend's children, and were living in the same home as him. Additionally, Pittman abused EC and EP in similar ways and under similar circumstances. At the severance motion hearing, Pittman acknowledged as much, stating, "These two sets of counts are certainly similar, right? The nature in and of themselves,

the words themselves of what the type of crime is is certainly similar. The relationship to Mr. Pittman is also similar. The residence is also similar." 3 RP at 222-23.

Pittman first befriended EC and EP. Both siblings testified that initially, they got along well with Pittman. EC testified that Pittman acted like a "dad figure" to him, taking care of him. 6 RP at 302. And EP testified that Pittman would give her marijuana, and "[w]hatever [she] wanted, he would . . . go get it." 6 RP at 522. During overlapping periods of time, Pittman then began sexually touching and penetrating both EC and EP. All incidents of abuse occurred in the same house, at night, and while EC and EP were under Pittman's care. The evidence shows Pittman committed similar acts of abuse against similar victims under similar circumstances. *Lough*, 125 Wn.2d at 852. Thus, the evidence for the charges involving EC and EP would have been cross admissible in separate trials to show a common scheme or plan. Thus, the fourth factor weighs against severance.

The State contends that even if the evidence for counts involving EC and EP was not cross admissible, severance was not required. Br. of Resp't at 32. We agree.

A lack of cross admissibility does not necessarily constitute a sufficient ground for severance. *Slater*, 197 Wn.2d at 679; *Bythrow*, 114 Wn.2d at 720. The defendant must still demonstrate that the prejudicial effect of not severing the charges outweighs the need for judicial economy. *Slater*, 197 Wn.2d at 679.

> When the issues are relatively simple and the trial lasts only a couple of days, the jury can be reasonably expected to compartmentalize the evidence. . . . Under these circumstances, there may be no prejudicial effect from [not severing] even when the evidence would not have been admissible in separate trials.

*Bythrow*, 114 Wn.2d at 721.

Here, the issues were relatively simple; testimony lasted for two-and-a-half days; only EC and EP testified as to the acts of sexual abuse; and EC and EP each described distinct incidents even though Pittman committed similar acts of sexual abuse against them. Thus, the jury could be reasonably expected to compartmentalize the evidence. *Bythrow*, 114 Wn.2d at 721. And as explained above, the trial court instructed the jury to consider each count separately and to not allow the verdict on one count to control the verdict on any other count, and we presume jurors follow instructions. *Lough*, 125 Wn.2d at 864.

Pittman fails to demonstrate that the prejudicial effect of not severing the charges outweighs the need for judicial economy where no prejudice-mitigating factor is dispositive and all four factors weigh against severance. Considering the four factors, severance of the charges was not required. Because Pittman fails to show that a motion to renew his severance motion would likely have been granted, he likewise fails to show a reasonable probability that the outcome of the trial would have differed absent counsel's alleged deficient performance. Because Pittman cannot show prejudice, his ineffective assistance of counsel claim based on a failure to renew a motion to sever charges fails.

## II. STATEMENT OF ADDITIONAL GROUNDS

Pittman raises multiple claims in his SAG. We hold that Pittman's SAG claims are unreviewable or fail on the merits.

### A. *Legal Principles*

We will "review the decision or parts of the decision designated in the notice of appeal." RAP 2.4(a). RAP 10.10(a) allows criminal defendants to "file a pro se statement of additional grounds for review to identify and discuss those matters related to the decision under review."

(Emphasis added.) Here, the decision under review is Pittman's convictions for three counts of first degree child rape and two counts of second degree rape.

We will consider an issue raised in a SAG only when it adequately informs us of "the nature and occurrence of alleged errors." RAP 10.10(c); *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). We do not address claims on direct appeal that depend on evidence outside the record on appeal. *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995).

B. *Hearing to Determine Juror Bias*

Pittman challenges the trial court's denial of his motion for a new trial. He claims that the trial court abused its discretion by not holding an evidentiary hearing because "there was a high probability" juror 2 knew Pittman and other involved parties and was actually biased. SAG at PDF 6 (capitalization omitted).[7] We disagree.

We review a trial court's denial of a motion for a new trial for an abuse of discretion. *State v. Meza*, 26 Wn. App. 2d 604, 609, 529 P.3d 398 (2023). A trial court abuses its discretion when its decision is based on untenable grounds or made for untenable reasons. *Meza*, 26 Wn. App. 2d at 609. Courts should hold an evidentiary hearing before ruling on a motion for a new trial when "the moving party has made a prima facie showing of [juror] bias." *State v. Jackson*, 75 Wn. App. 537, 544, 879 P.2d 307 (1994).

To prove juror 2 should have been disqualified for actual bias, Pittman must demonstrate "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2). In a

[7] The attachments to the SAG contain no pagination, therefore, we cite to the PDF document number.

challenge for actual bias, the challenged juror's expressed opinion or appearance of a formed opinion alone is insufficient to sustain the challenge. RCW 4.44.190. "[T]he court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially." RCW 4.44.190. "Actual bias must therefore be established by proof." *State v. Sassen Van Elsloo*, 191 Wn.2d 798, 808, 425 P.3d 807 (2018). A mere possibility of bias is insufficient to prove actual bias. *Id.* at 809. The trial court ruled Pittman did not meet his burden.

Here, Pittman failed to make a prima facie showing of actual bias. Even assuming without deciding that juror 2 knew Pittman or others involved in the case, the record contains no indication that juror 2 had formed an opinion about Pittman or that such opinion would prevent juror 2 from trying the case impartially. At most, Pittman showed a mere possibility of bias, which is insufficient to prove actual bias or to satisfy the prima facie standard of showing actual bias for the court to hold a hearing. *Sassen Van Elsloo*, 191 Wn.2d at 809; *Jackson*, 74 Wn. App. at 544. Thus, the trial court did not abuse its discretion by not holding an evidentiary hearing before denying Pittman's motion for a new trial.

C. *Mental Health Evaluation*

Pittman contends that the trial court abused its discretion by not holding an evidentiary hearing to assess his "trauma and mental health status" following his father's death. SAG at PDF 8 (capitalization omitted). But Pittman, through his counsel, did not request an evidentiary hearing on his mental health from the trial court. Rather, Pittman requested a recess of unknown length, and after the trial court discussed various concerns with recessing trial, it permitted a 24-hour recess. The next day, Pittman did not ask for a further recess; instead, Pittman notified the court that if an emotional event occurred, he would ask for a recess. Because the record

shows neither that Pittman made any request for an evidentiary hearing on his mental health nor that Pittman's mental health precluded him from continuing with the trial after the brief recess, this claim fails.

D. *Prosecutorial Misconduct*

Pittman asserts that the State engaged in various instances of "misconduct." SAG at PDF at 19. We disagree.

To prevail on a claim of prosecutorial misconduct, Pittman must demonstrate "'that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and the circumstances at trial.'" *State v. Magers*, 164 Wn.2d 174, 191, 189 P.3d 126 (2008) (quoting *State v. Hughes*, 118 Wn. App. 713, 727, 77 P.3d 681 (2003)). Pittman must show prejudice by proving that "'there is a substantial likelihood [that] the instances of misconduct affected the jury's verdict.'" *Id.* (alteration in original) (quoting *State v. Pirtle*, 127 Wn.2d 628, 672, 904 P.2d 245 (1995)). If Pittman failed to object, the "failure to object to an improper remark constitutes a waiver of error unless the remark is so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." *Russell*, 125 Wn.2d at 86.

Pittman contends that many of the State's comments during the proceedings were improper and cites various parts of the record, notably where Pittman did not object. *See, e.g.*, SAG at PDF 12 (the State alleged to have mispresented evidence); SAG at PDF 17 (the State alleged to have impugned defense counsel during closing argument); SAG at PDF 18 (the State alleged to have improperly injected itself during EP's testimony); SAG at PDF 19 (the State alleged to have expressed its personal belief in the veracity of the witnesses during closing argument); SAG at PDF 20 (the State alleged to have vouched for a witness); SAG at PDF 22

(the State alleged to have made inconsistent remarks showing misconduct). But Pittman does not argue, let alone show, that these comments, taken in context, prejudicially affected his trial. Moreover, Pittman fails to show that the State's remarks were so flagrant and ill-intentioned such that the resulting prejudice could not have been cured by jury instructions. Thus, Pittman's prosecutorial misconduct claims are waived.

E. *Inadmissible Evidence*

Next, Pittman claims the trial court erred by admitting EP's handwritten statement into evidence. Pittman baldly asserts that the trial court erred because the State failed to demonstrate that the written statement "contained minimal guarantees of truthfulness, or that [EP's] statement was given under penalty of perjury." SAG at PDF 21 (capitalization omitted). We disagree.

Prior to the trial court admitting EP's handwritten statement, the State showed EP the handwritten statement while EP was testifying under oath. EP confirmed the handwriting was hers. EP testified that she had read the statement, that she made the statement, and that the statement was true. Thus, Pittman's claim that the trial court erred by admitting the handwritten statement into evidence fails. To the extent that Pittman is arguing that EP was not credible, we do not review that claim on appeal because credibility determinations are solely for the trier of fact. State v. Cardenas-Flores, 189 Wn.2d 243, 266, 401 P.3d 19 (2017).

Relatedly, Pittman contends that his attorney was ineffective for not objecting to the admission of EP's written statement into evidence. Because Pittman fails to show that the trial court erred in admitting EP's written statement, his ineffective assistance of counsel claim based on a failure to object to that evidence fails.

F. *Right to Fair Trial*

Pittman also claims his right to a fair trial was prejudiced "[f]rom the very begin[ni]ng" because the deputy prosecutor left "a note" stating Pittman was being "charged in superior court for the crimes [he was] now convicted of" on an information in a different matter in district court. SAG at PDF 23-24 (capitalization omitted). Pittman also claims his presumption of innocence was denied because the deputy prosecutor allegedly told defense counsel, "It [is] about [Pittman's attorney] proving [Pittman's] innocen[ce]." SAG at PDF 24(capitalization omitted). These claims rely on evidence outside of the record on appeal. Therefore, we do not consider them in this direct appeal.[8] *McFarland*, 127 Wn.2d at 338.

G. *Insufficient Record on Appeal*

Pittman claims the trial court violated his due process rights because the record on appeal is incomplete. He asserts that the verbatim report of proceedings for only one of five continuance hearings is part of the record because the clerk's office does not put agreed continuances on the record. Pittman argues that this "does not forf[e]it [his] right to effect[ive] review of the record on appeal." SAG at PDF 14 (capitalization omitted).

Criminal defendants have the right to appeal in all cases. WASH. CONST. art. I, § 22. A criminal defendant is "'constitutionally entitled to a record of sufficient completeness to permit effective appellate review'" of their claims. *State v. Waits*, 200 Wn.2d 507, 509-10, 520 P.3d 49 (2022) (quoting *State v. Tilton*, 149 Wn.2d 775, 781, 72 P.3d 735 (2003)). A complete verbatim transcript is not necessarily required for a record to be sufficiently complete for appellate review.

[8] The appropriate means of raising issues that rely on evidence outside of the trial record is doing so through a personal restraint petition. *McFarland*, 127 Wn.2d at 335; *see also Grier*, 171 Wn.2d at 29.

*Waits*, 200 Wn.2d at 510. The facts necessary to adjudicate Pittman's claims on appeal are in the record, and he does not otherwise show that the record is not sufficiently complete to permit effective appellate review. Therefore, this claim merits no further consideration.

CONCLUSION

We hold that because Pittman failed to renew his motion to sever the charges before or at the close of all the evidence, this issue is waived; Pittman's ineffective assistance of counsel claim fails because he has not shown prejudice; and Pittman's SAG claims are unreviewable or fail on the merits.

Accordingly, we affirm Pittman's convictions.

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.

Che, J.

We concur:

J, J

Lee, J.

Veljacic, A.C.J.

# APPENDIX B

*Pro Se* Statement of Additional Grounds for Review

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )
)
Respondent, )
) No. 594323 - Div II
v. )
) STATEMENT OF ADDITIONAL
Ryan michael pittman ) GROUNDS FOR REVIEW
(your name) )
)
Appellant. )

I, Ryan Pittman, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Abuse of Discretion.
1) Failed to have evidentary hearing regarding Juror misconduct.

2) Failed to have evidentary hearing on the state of mind of defendant, where no case law could be relied on.

Additional Ground 2

Prosecutor misconduct.

Improper vouching, facts outside the record.

Impugn defense, Appeals to the sympathy and prejudices of the jury. expressions of personal opinion Appealing to the prestige of the state

If there are additional grounds, a brief summary is attached to this statement.

Date: 10/1/2024 Signature: Ryan M. Pittman

Form 23

STATE OF WASHINGTON COURT OF APPEALS
DIVISION II

| | |
|---|---|
| state of washington | NO: 594323 |
| V. | |
| Ryan Pittman | RAP 10.10 (SAG) |

COMES NOW, Ryan Pittman, Hereby moves this court to recieve This statement of Additional Grounds.
RAP 10.10, To THE Record

- Supported by ~~AFFIDAVIT~~

10/10/24
DATE

Ryan
SIGNITURE

STATE OF WASHINGTON COURT OF APPEALS
Division II

| | |
|---|---|
| STATE OF WASHIGTON | NO: 594323 |
| V. | RAP 10.10 (SAG) (AFFIDAVIT) |
| Ryan Pittman | RESERVE TO SUPPLEMENT |

1) DEFENDENT RESERVES TO FURTHER "SUPPLEMENT" IN ACCORDANCE TO RAP 18.17, (C)(7), UP TO 12,000 words - 50 PAGES

2) ABUSE OF DISCRETION
   - FAILURE TO CONDUCT EVIDENTURY HEARING
   - INCOMPLETE RECORD
3) PROSECUTOR MISCONDUCT

PREJUDICE IS SHOWN, WHEN " A PROABIITY SUFFICENT TO UNDERMINE CONFIDENCE IN THE OUTCOME," (Price, 566 F3d at 911)

ABUSE OF DISCRETION

A DEFENDANT MUST RECEIVE A FAIR TRIAL IN A FAIR TRIBUNAL.

BOTH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND THE SIXTH AMENDMENT RIGHT TO TRIAL MANDATE THAT AN ACCUSED RECEIVE "A FAIR TRIAL IN A FAIR TRIBUNAL" BEFORE A PANEL OF "IMPARTIAL, INDIFFERENT JURORS." GROPPI V. Wisconsin, 400

"ACTUAL BIAS" IS "THE EXISTENCE OF A STATE OF MIND THAT LEADS TO AN INFERENCE THAT THE WILL NOT ACT WITH ENTIRE IMPARTIALITY" U.S. V. KECHEDZIAN, 902 F.3d, 1023, 1027 (9th Cir. 2018).

ACTUAL BIAS MAY BE REVEALED BY THE JURORS STATEMENTS OR BY CIRCUMSTANTIAL EVIDENCE. Id

ON OR ABOUT FEBRUARY 9th 2024
DEFENSE MOTION TO VACATE / MISTRIAL
Pg 822 Line 3-6
"(One such circumstance is where a prospective
Juror deliberatley withholds information
during Voir dire in order to increase the
Likelihood of being seated on this Jury")
"And we don't have evidence of that"
ABUSE OF DISCRETION
WERE THE COURT DID NOT FIRST LOOK
AT OR GO OVER EVIDENCE SHOWING POTENTIAL
JUROR MISCONDUCT, HAVE A EVIDENTARY HEARING
TO MIDAGATE WETHER OR NOT THERE WAS
SUFFICENT CAUSE TO MIDAGATE THIS CLAIM
BY DEFENSE THAT JUROR NUMBER 2 NOT ONLY
KNEW THE DEFENDANT, BUT ALSO KNEW OTHERE
PARTYS EMVOLVED, AND BECAME THE FLOOR PERSON
OF THE JURY.

DEFENSE COUNSEL, AT THIS HEARING
BROUGHT, 1) FACEBOOK Timestamp transcripts
2) 3 out of 4 year's, yearbooks showing Defendant
Juror, father of EP, AC, all pictued. 3 of 22

THE COURT ABUSED ITS DISCRETION BY NOT HAVING AN EVIDENTARY HEARING, TO SPEAK WITH JUROR NUMBER 2 OR AT THE VERY LEAST GO OVER EVIDENCE THE DEFENSE HAD SHOWING, THERE WAS A HIGH PROBABILITY THIS JUROR NOT ONLY NEW THE DEFENDANT, BUT ALSO NEW, AC, EP, AND EP'S FATHER,

THE COURTS RESPONSE TO DEFENSE COUNCIL, OF WHETHER OR NOT DEFENSE COUNCIL REACHED OUT TO THE JUROR IN QUESTION WAS INAPPROPRITE, THE COURT ABUSED DISCRETION IN NOT SETTING AN EVIDENTARY HEARING TO INVESTIGATE THIS MISCONDUCT, WERE DEFENSE COUNCIL HAD NO AUTHORITY. AND THE COURT DID IS AN ABUSE OF DISCRETION

ON OR ABOUT JANUARY 8th 2024
DEFENSE DISCUSSION REG. RECESS.
DUE TO DEATH IN DEFENDANTS HOME,
THE COURT ABUSED ITS DISCRETION
BY NOT HAVING EVIDENTARY HEARING
WHERE THERE WAS NO CASE LAW TO BE
RELIED ON, AND THE PARTY'S WERE
NOT SURE WHAT TO DO.

DEFENDANTS RIGHTS TO A FAIR PROCEEDING
DOESN'T END WHEN THERE'S NO SET PRECEDENTS
TO BE RELIED ON, ITS LONG SET IN OUR
JUDICAL SYSTEM THAT A PERSON OF UN-
SOUND MIND CAN NOT STAND TRIAL,
WERE THE ADVASERAL PROCEDURE
REQUIRES EQUAL PARTICAPATION TO
BRING ABOUT A FAIR AN JUST CONCLUSION,
A MATTER WERE THE DISCRETION OF
THE COURT FAILS TO ADHERE TO THE
VERY BASIC STANDARD OF FAIRNESS IN
THE COURTROOM MUST HAVE IT'S
CONCLUSION SETASIDE.

IN CONCLUSION THE JUDICIAL SYSTEM OF THE UNITED STATES SETS ITSSELF TO THE HIGHEST LEVEL OF CONSTITUTIONAL OVERSIGHT AND JUDICIAL STANDARDS. ALTHOUGHT THIS COULD BE CONCIDERED A DIFFICULT ENDEVOR, THE VERY BEDROCK OF OUR SOCIETY DEMANS OUR COURTS, APPLY FOLLOW AND ADHERE TO THOSE STANDARDS SETFORTH, TO NOT ONLY INSURE THE FULL PROTECTION OF RIGHTS AND FREEDOMS, BUT TO UPHOLD THE GUARANTEES GIVE US BY GOD, AN INSHRIND IN OUR CONSHITUTION.

THE COURT ABUSED DISCRETION WHEN IT ONLY CONCIDERED SELECT PARTYS WITH IN THIS MATTER. TO WHETHER THERE PARTICIPATION WOULD BE PREJUICED IF THE COURT RECCESSED ANY AMOUNT OF TIME, DEFENDANTS Trauma and Mental Health Status WAS NOT PUT IN TOO QUESTION, THE COURT ABUSED DISCRETION, AN PREJUIDICED DEFENDANT BY ONLY CONCIDERING FACTORS THAT DID NOT INSURE A FAIR PROCEEDING FOR ALL PARTYS INVOLVED

INCOMPLETE RECORD

DUE-PROCESS CLAIMS WELL NOT RESULT IN DISMISSAL ABSENT THE SHOWING OF PROSECUTORIAL MISCONDUCT DESIGNED TO OBTAIN A TACTICAL ADVANTAGE, BY DELAYING THE PROCEEDINGS OR TO ADVANCE SOME OTHER IMPERMISSIBLE PURPOSE

ON OR ABOUT JUNE 9th 2023 CONTINUANCE HEARING AT PIERCE COUNTY SUPERIOR COURT ROOM 760.

- SEE sworn affiddavit (2)

CONTINUANCE GRANTED -

AT THIS HEARING THE COURT RELUCTANTLY MOVED TO CONTINUE. STATEING," THIS MATTER IS 758 DAYS OLD, OBIVIOUSLY MY FIRST THOUGHT IS WHATS TAKING SO LONG", DEFENSE COUNCIL, "WE HAVE BEEN WAITING FOR THE STATE TO COMPLETE INTERVIEWS, AND SCHEDULE WITNESS INTEVIEWS THAT HAS NOT HAPPENED, ALSO THE STATE HAS OUTSTANDING EVIDENCE IN THE WASHINGTON STATE PATROL CRIME LAB.

SEE AFFIDAVIT (2)

- CONT -

- CONT -

THE COURT, "KNOWING THAT TIME FOR TRIAL RULE, WERE IS THE STATE IN REG'S TO TRIAL"?) "PROSECOTOR, I HAVE SET DATES FOR INTERVIEWS. IT'S BEEN DIFFICULT, ALLEGE VICTIMS TRACKING THEM DOWN, AND GETTING THEM TO CORROBATE!" "THE COURT, SO AT THIS POINT YOUR NOT READY TO PROCIDE CORRECT"? PROSECUTOR "YOUR HONOR AT THIS POINT I WOULD ASK FOR A CONTINUANCE, BASED ON A WARRANT FOR HIS DNA, "THE COURT" DNA WARRANT, I SEE YOU WERE DENIED A WARRANT DAYS AGO FOR NO PROBIBLE CAUSE, FOR THE SAME ITEM, WHATS CHANGED," PROSECUTOR. "WE KNOW THERE'S MALE DNA, I'M GETTING A WARRANT FOR HIS DNA TODAY," THE COURT, I WILL RELUCTANTLY GRANT A CONTINUANCE ON THE BASES OF DNA, AS DNA IS PIVITOL TO A CASE. I WANT TO REMIND THE STATE, THAT THERES SET PRECEDENT THAT CONGESTION AT THE CRIME LAB IS NOT A LAWFUL REASON TO CONTINUE

— CONT -

-CONT-

WITH OUT A SHOWING OF THE NATURE, THE CONGESTION, AND THE STATES STEPS TO GET AROUND CONGESTION OR BACKLOG IN A REASONABLE TIME FRAME WITH IN WHICH THE CASE CAN BE BROUGHT TO TRAIL, IN THE RECORD.

MOTION TO CONTINUE GRANTED,

- THE STATE WAS DENIED A WARRANT BEFORE THIS HEARING, THE PROSECUTOR MISREPRESENT INFORMATION TO GET A CONTINUANCE, OBTAING A TACTICAL ADVANTAGE DELAYING PROCEEDING'S WHERE "IT" ~~WAS~~ HAS BEEN DIFFUCULT GETTING ALLEGED VICTIMS TO CORROBRATE")

" THE FACT THAT EVIDENCE FROM THE RESULTS OF TESTING AT THE WASHINGTON CRIME LAB MIGHT BE EXCULPATORY, IS NOT A VAILD BASES FOR CONTINUING THE CRIMINAL TRIAL BEYOND 3.3 RULE TIME FOR TRIAL",

9/23/22 - CONTINUANCE
- OUTSTANDING DNA EVIDENCE
1/20/23
- OUTSTANDIG DNA EVIDENCE
- COUSELING INTERVIEWS
6/9/23
- OUTSTANDING DNA EVIDENCE
- ALLEGED VICTUM INTERVIEWS
11/13/23
- OUTSTANDING DNA EVIDENCE
- CPS, RECORDS, MOTION TO COMPEL IN PERSON INTERVIEWS
12/11/ 2023
- NOTICE OF THREE DNA PROFILES ON EVIDENCE AT WASHINGTON CRIME LAB.

THE STATE MISREPRESENTED INFORMATION JUNE 9th 2023 TO GET PAST RULE 3.3. MAKING A TACTICAL DECISION TO EXTEND TIME BECAUSE" ITS BEEN DIFFICULT TO GET VICTIMS IN THIS CASE TO CORROBORATE, WHERE NO DNA MARKER WAS ENOUGH TO SUCCESFULLY OBTAIN A WARRANT

SEE AFFIDAVIT (2)

— CONT —

THE STATE SAID "WE KNOW THERES MALE DNA, AND IM GETTING A WARRANT FOR HIS DNA",

WHERE THE STATE WAS DENID 10 DAYS BEFORE, BECAUSE ALLEGED EVIDENCE CAME BACK WITH NO IDENTIFYING MARKERS, THEREFORE A WARRANT WAS DENIED ON LACK OF PROBALE CAUSE.

ON OR ABOUT AUGUST 28TH 2024 Appelatte cousnel MOTION THE COURT OF APPEALS FOR PERMISSION TO AMEND THE RECORD FOR REVIEW. OPON RECIVING THE SUPPLEMENTED RECORD. Appellate Counsel INFORMED THE DEFENDANT "I HAVE RECEIVED FIVE CONTINUANCE HEARINGS, UNFORTUNITLY SUPERIOR IS NOT RECORDING AGREED APON CONTINUANCE. THERES ONLY ONE RECORDED,

"WASH. CONT. ART 1. § 22 GUARANTEED RIGHT TO APPEAL, TO PERMIT EFFECTIVE APPELLATE REVIEW,"

SEE AFFIDAVIT (1)

RAP 9.13, 9.11

9.11

THE APPELLATE COURT MAY DIRECT THAT ADDITIONAL EVIDENCE ON THE MERITS OF BE TAKEN BEFORE THE DECISION OF A CASE ON REVIEW,

9.13

A PARTY MY OBJECT TO A TRIAL COURTS DECISION RELATING TO THE RECORD BY A MOTION IN APPELLATE COURT

8.3

INSURES EFFECTIVE AND EQUITABLE REVIEW.

A VERBATIM REPORT OF PROCEEDINGS GENERALLY ALLOWS AN APPELLATE ATTORNEY TO REVIEW THE ENTIRE RECORD. OF EVERY HEARING IDENTIFY ISSUES AND TRANSMIT THOSE RELEVANT PORTIONS OF THE RECORD TO THE REVIEW COURT,

AN "AGREED UPON CONTINUANCE" DOES NOT FORFIT MY RIGHT TO EFFECT REVIEW OF THE RECORD ON APPEAL,

THE SUPERIOR COURT OF PIERCE COUNTY HAS NO AUTHORITY "TO NOT PROVIDE ALL HEARINGS MANDATED BY THE COURT OF APPEALS, IT ALSO VIOLATED MY RIGHT TO FULL REVIEW.

"BECAUSE WE HAVE HELD THAT THERE IS NO WAY TO ASCERTAIN THE IMPACT ON THE RESULT OF A TRIAL DENIAL OF DUE PROCESS MUST BE PRESUMED PREJUDICIAL".

WITHOUT FULL REVIEW OF THE RECORD MY RIGHTS TO APPEAL HAVE BEEN VIOLATED NOT HAVING CONTINUANCE HEARING RECORDS TO RELY ON, CLEARLY VIOLATES DUE-PROCESS ALONG WITH BOTH WASHINGTON AND FEDERAL CONSTITUTIONAL RIGHTS. THE COURTS RESPONSE "NOT RECORDING AGREED UPON" IS WRONG, THEY PREJUDICED ME, RIGHT WHEN THESE RIGHTS MUST BE PROTECTED, THE COURT MUST UPHOLD RIGHTS, RULES, STANDARDS AN ORDERS, BY FAILING TO PROVIDE FULL RECORD THERE'S INSUFFICENT, OR INCOMPLETE RECORD ON REVIEW WHERE A CONSTITUTIONAL RIGHT WAS VIOLATED.

PROSECUTOR MISCONDUCT

"THE RESPONSABILITY OF THE PROSECUTOR IN THE MATTER OF A FAIR TRAIL IS REFFER TO IN," PEOPLE V. FIELDING (1899), 158 N. Y. 542. 547. 53N. 497. 46 L. R. A. 641, "LANGUAGE WHICH MIGHT BE PERMITTED TO COUNSEL IN THE SUMMING UP A CIVIL ACTION CANNOT WITH PROPRIETY BE USED BY A PUBLIC PROSECUTOR, WHO IS A QUASI-JUDICIAL OFFICER, REPRESENTING THE PEOPLE OF THE STATE, AND PRESUMED TO ACT IMPARTICIALTY IN THE INTEREST ONLY OF JUSTICE IF HELAYS ASIDE THE IMPARTIALITY THAT SHOULD CHARACTERIZED HIS OFFICAL ACTION TO BECOME A HEATED PARTISAN, AND BY VITUPERATION OF THE PRISONER AND THE APPEALS TO PREJUDICE SEEKS TO PROCURE A CONVICTION AT ALL HAZARDS, HE CEASES TO PROPERLY REPRESENT THE PUBLIC INTEREST WHICH DEMANDS NO VICTIM, AND ASKS NO CONVICTION, THROUGH THE AID OF PASSION, SYMPATHY or RESENTMENT

IMPUGN DEFENSE THEORY

CLOSING ARGUMENT

Pg 756 Line 14-16

"THEY DID IT BECAUSE ... BECAUSE WHAT HE'S GOING TO SAY IS THEIR MOM PUT THEM UP TO IT, RIGHT?, REALLY?"

Pg 779 Line 16-19

"I THINK WITHOUT EXPLICITLY SAYIN IT, THE DEFENSE ARGUMENT IS, ARIEL FED EDDIE THE STORY, OKAY? AND EDDIE COULDN'T REMEBER AND THATS WHY HE STRUGGLED ON THE STAND, RIGHT?

Pg 785 Line 7-11

"BUT THE DEFENSE THEORY OF THE CASE IS THAT THIS WHOLE THING HAPPENED BECAUSE ARIEL WANTED IT TOO."

VOUCHING / OFFICE TO BOLSTER

Pg 782 Line 7-9

("THATS NOT A FED STORY, RIGHT? THATS SOMEBODY WHO DOESN'T WANT TO TALK ABOUT IT,")

APPEALS to Sympathy OR Prejudices,

(THIS IS FOR THE TRIER OF FACT TO DECIDE)

IMPROPE REMARKS

CLOSING ARGUMENTS

Pg 739 LINE 19-20

"AND THEN IT SAY'S THE DEFENDANT ENGAGED IN SEXUAL INTERCOURSE WITH EP, AND I UNDERLINED THAT BECAUSE I WANT TO MAKE THE POINT"....

Pg 738 9-10

" THAT WE ARE TALKING ABOUT THINGS THAT HAPPENED TO EVEllY PILLOW."

FACTS OUTSIDE / IMPROPER / APPEALS to SYMPATHY

Pg 275 Line 1-5

"AT SOME POINT DURING THAT TIME, LIZZY DECIDED THAT SHE DID NOT WANT TO BE A GIRL ANYMORE, SHE DECIDED SHE WANTED TO BE A BOY."

IMPROPER INJECTING DURING WITNESS STATEMENT.

EP DIRECT Pg 512 (2-7)

"IF IZZY WAS ABLE TO DO IT AND I NEED TO MAKE SURE HE GETS PUT AWAY",

("OKAY NO. NO. NOPE. DON'T JUST) KEEP TALKING")

PROSECUTER MISCONDUCT

"IT IS MISCONDUCT FOR A PROSECUTOR TO EXPRESS PERSONAL BELIEF IN THE VERACITY OF A WITNESS, VOUCHING OCCOURS IF A PROSECUTOR EITHER,

1) PLACES THE PRESTIGE OF THE GOVERNMENT BEHIND THE WITNESS.

2) SUGGESTS THAT INFORMATION NOT PRESENTED TO THE JURY SUPPORTS THE WITNESS TESTIMONY, BUT PROSECUTORS MAY ARGUE REASONABLE INFERENCES FROM THE EVIDENCE, INCLUDING EVIDENCE RESPECTING THE CREDIBILITY OF WITNESSES.

(BLACKS LAW)

REASONABLE INFERENCE, (1945)

STATE V. JACKSON, 150 WN. APP. 877

IN RE Det. OF MACKEY. (2024) WASH. APP

STATE V. MORIARTY, (2017). WASH. APP. LEXIS 858, [36][37]

UNITED STATES V. YOUNGER (587)

UNITED STATES V. BENTLEY

UNITED STATES V. TOOLNEY

UNITED STATES V. BEAMAN. 361 F3d. 1061. 1065. (2004)

USING PRESTIGE OF THE OFFICE TO BOLSTER
VOUCH FOR WITNESS,
CLOSING ARGUMENT
Pg 756 Line 12-14
" DOES SOMONE HAVE A PERSONAL INTEREST
IN THE OUTCOME?, YOU THINK EVELYN
WANTED TO BE HERE? ARE YOU KIDDING ME?"
Pg 783 Line 2-6
" SO I'm ALMOST DONE HERE. AGAIN. MADE UP
STORY, RIGHT? WE ARE GOING TO TRICK ALL
THESE PEOPEE, THAT'S WHAT IT COMES DOWN.
TO, RIGHT? IF YOU CONSPIRE TO PERJURE
YOURSELF OR ~~TO~~ SUBORN PERJURY; PROBABLY
WANT TO MAKE YOURSELF LOOK GOOD."
FACTS OUTSIDE EVIDENCE PRESENTED TO THE
JURY.
CLOSING PG 776 Line 16-21
(" RYAN PITTMAN TESTIFIED THAT HE BROKEUP
WITH AREIL A YEAR BEFORE THE DISCLOSURES, OKAY?
HE'S THE ONLY PERSON WHO SAID THAT;")
WITNESS VOUCHING Pg 782 Line 18-19
("THAT'S -- THAT'S THE EXPLANATION FOR EDDIES
TESTIMONY. MAKES SENSE")
PROSECUTOR, KNEW I HAD BEEN out That House since
June of 2019, EVIDENT by his own actions.

INAMISSABLE EVIDENCE

THE STATE FAILED TO DEMONSTRATE THE VICTIMS WRITTEN STATEMENT CONTAINED MINIMAL GUARANTEES OF TRUTHFULNESS, OR THAT HER STATEMENT WAS GIVEN UNDER PENALTY OF PERJURY, THEREFORE IT WAS NOT SUFFICENTLY RELIABLE, THE TRIAL COURT ~~E~~ERRED IN ADMITTING THE STATEMENT AS SUBSTANTILE EVIDENCE,

(E~~P~~XDIRECT)

Pg 557 Line 15-20

PLAINTIFFS EXHIBIT NUMBER 7

THE COURT ABUSED DISCRETION BY ALLOWING THIS STATEMENT TO BE SUMMITTED TO THE JURY, AND DEFENSE COUNCIL WAS ~~INEFFE~~EFFECTIVE FOR NOT OBJECTING TO THIS AT TRIAL.

INFLUENCE OF TESTIMONY

THRU OUT THIS MATTER, LANGUAGE USED BY THE STATE AND THE STATE'S WITNESSES, SHOW BOTH INCONSISTENT REMARKS, AND ALIKE VERBAGE POINTING TO MISCONDUCT,

OPENING STATEMENT

Pg 282 Line 24-25

"I THINK WHEN YOU HEAR FROM ARIEL YOU'LL FIND HER TIMELINE IS PRETTY FOGGY")

EC Direct

Pg 321 Line 12

"BUT MY MEMORY IS A BIT FOGGY THERE",

EC CROSS

Pg 365 Line 22

"NOT Great, Its..... EVERY.... THERE'S A LOT OF MISSING PIECES"

Pg 367 Line 2 EC CROSS

"YEAH I HAD.... I HAD SOME PIECES FILLED IN, MEMORY REFRESH

[I]T IS A GENERAL AND UNDISPUTABLE
RULE, THAT WHERE THERE IS LEGAL
RIGHT, THERE IS ALSO LEGAL REMEDY
BY SUIT OR ACTION AT LAW, WHENEVER
THAT RIGHT IS INVADED.
MARBury V. MADISON, 15 U.S., 137, 163 (Crach 137,
2L. Ed. 60 (1803)
THE COURT OF APPEALS STATES "A DEFEDANT
IS CONSTITUTIONAL DUE THE RIGHT TO
A FAIR TRIAL NOT A PERFECT ONE",
FROM THE VERY BEGINNG OF THIS MATTER,
My RIGHT TO A FAIR CRIMINAL PROCEEDING
WAS PREJUDICE, AT THE START I WAS
UNDER PROBATION ON ANOTHER MAPTER IN
DISTRICT COURT. IN PIERCE COUNTY WHERE
I WAS ORDERED TO NOT BE FIFETEEN HUNDRED FEET
WITHIN ARIEL CUTRIGHT OR HER HOME,
THIS CONTRIDICTED THE STATES CHARGING
PERIODS, AN THOSE WERE CHANGED,
DURING A HEARING IN DISTRICT COURT
My ATTORNEY NOTICED A NOTE LEFT BY
DEPUTY PROSECUTOR THOMAS HOWE, STATING
THAT I WAS BEING CHARGED IN SUPERIOR

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COURT FOR THE CRIMES I AM NOW CONVICTED OF, THE ATTORNEY AT THIS DISTRICT COURT MATTER, SAID "YOUR HONOR I'M PERPLEXED I HAVE NEVER SEE A PROSECUTOR WRITE A STATEMENT ON A DEFENDANTS INFORMATION FROM ANOTHER COURT WITH NO JURISTRICTION, IN THE MATTER HERE, IN THIS COURT TODAY, AN FOR THAT MATTER, MR. PITTMAN HAS NOT EVEN BEEN ARIGANED ON THOSE ALLEGATIONS YET, AND I WANT TO REMIND THE COURT, HE IS PRUSEMED INNOCENT UNTIL PROVEN GUILTY, ALSO THAT ANY MATTER FROM ANY OTHER JUDICIAL JURISTRICTION HAS NO DECIDING FACTOR HERE; MOVING FOWARD MY RIGHT TO THE PRESUMPTION OF INNOCENTS WAS SETASIDE, THAT WAS CLEAR IN THE REMARKS DIRECTLY FROM THE PROSECUTOR, "IT WAS ABOUT ME PROVING MY INNOCENTS, IT WAS ABOUT SUPPRESSION OF FAVORABLE EVIDENCE For DEFENSE, THIS ENTIRE MATTER CAN BE SUMMED UP TO, "DEPUTY PROSECUTOR THOMAS HOWE, HAS A PERSONAL STAKE IN THE OUTCOME OF MY TRIAL."

10/10/24

FACTS OUTSIDE THE RECORD,

CHARGING INDICTMENT IS 2016- 2019,
THE STATE SAYS IN CLOSING ARGUMENT,
"RYAN IS THE ONLY ONE THAT SAYS THE
DISCLOUSERS CAME A YEAR AFTER HE LEFT,"
- DISCLOUSERS

- 911 call is made June 16th 2020
- Ryan is Arrested by pierce county Sherriffs June 2019, for another matter.
- Early July Ryan is Released from Pierce county Jail with State ordered protection and CCO Rules,
- Ryan Is under commutiles custody and Dip Not go with in 1500 ft of Ariel cutright or Her Home, from July 2019, - ON

THE STATE SAID multiple Times, The wrong DATES, That I WAS The only one that Says These Dates, when The prosecutor Wrote notes on District court information, he knew I was on probation, he Knew it was beginning in July 2019, He therefore Knew The Disclousers, came in June 2020, telling the Jury "Im the only one that says that, and we Know The Disclousers was a few months after I Left, Is NOT TRUE, the Prosecutor knowingly told the Jury FACTS outside the Record.

Signature Ryan [illegible] 1 of 1

UNCONSTITUTIONAL STATUE
9A.44.020(1)
ALLOWS FOR NOT ONLY, THE BURDEN OF PROOF
TO BE LIFT FROM THE STATE, IT ALSO GRANTS
IMMUNITY, VIOLATES EQUAL JOSTICE UNDER LAW
IN WASHINGTON STATE IN MATTERS
WERE 9A, IS READ TO A JURY THE
CONVICTION RATE NEARS ONE HUNDRED
PERCENT, ALTHOUGHT THE SUPREME COURT
SAYS IFS NOT A COMMENT ON THE
EVIDENCE, THERES CASES BEING REVERSED
AND PRECEDENTS BEING SET BY THERE
FEDERAL COUNTER PARTS. 9A.44.020(1)
IS USED AS A TACTIC TO MAKE A DEFENDANT
APPEAR GUILTY IN TRIAL TO SECURE THIER
VERDICT. BY NOT "TAKING" A DEAL, I ALL
BUT SECURED MY FATE. WHEN THE STATE CAN
USE A STATUTE THAT WORKS TOWARD EITHER
THE SIGNING OF A DEAL, WHERE YOUR TOLD
"IF YOU DONT YOU WILL LOSE, AND THE STATE
WELL ADD CHARGES, IF YOU GO TO TRIAL",) AND
CAN ENGINEER PROSECUTIONS, IS UNCONSTITUTIONAL
SEE, CARMELL V TEX... 529. U.S 513 Supreme
CT OF US NOV 1999, May 2000
REVESED PETITIONERS CONVICTION HELD AMEND STATUE
VIOLATED THE EX POST DEFECTO CLAUSE OF THE CONSTITION.

I RYAN PITTMAN DECLARE TO MAKE THIS AFFIDAVIT WILLINGLY AND AM OF AGE AND ABLE TO TESTIFY, IN A COURT OF LAW.

I RYAN DECLARE THE FOLLOWING TO BE TRUE AND CORRECT UNDER PENALTY OF PERJURY, UNDER THE LAWS OF WASHINGTON STATE, PURSUANT 18 USC§ 1621

ON JANUARY 4th 2024

DEPUTY PROSECUTOR THOMAS HOWE SAID TO ME RYAN PITTMAN, AND MY DEFENSE ATTORNEY CHARLIE VARNI," IF YOUR GOING TO IMPEACH THIS WITNESS (EC) HERE'S THE VIDEO OF HER INTERVIEW, YOU'LL HAVE TO USE THIS, AND NOT THE TRANSCRIPT IF YOU WANT HER TO READ ANY STATEMENTS, SHE CAN'T READ,

EC CROSS-EXAMINE

Pg 367 Line 8-9

"IT WAS NOTES FROM THAT THAT I LOOKED OVER THAT I REMEMBERED THINGS FROM",

CHARLIE VARNI #4662 THOMAS HOWE #34050

DATE 10/12/24 SIGNATURE:

I RYAN PITTMAN DECLARE TO MAKE THIS AFFIDAVIT WILLINGLY AND I AM OF AGE AND ABLE TO TESTIFY, IN COURT OF LAW.

I RYAN DECLARE THE FOLLOWING TO BE TRUE AND CORRECT UNDER PENALTY OF PERJURY, UNDER THE LAWS OF WASHINGTON STATE, PURSUANT 18 U.SC. § 1621

ON 6/9/23 AT CONTINUANCE HEARING THE COURT GRANTED A CONTINUANCE SOLELY ON PROSECUTOR THOMAS HOWE'S PROMISE OF "WE KNOW THERES MALE DNA, I'M GETTING A WARRANT FOR HIS DNA." I TURNED TO MY ATTORNEY THAT WAS REPRESENTING ME AT THE TIME, BRAD BARSHIS, I ASK" WHATS CHANGE THEY WERE DENIED A WARRANT DAYS AGO." BRAD SAYS "NOTHING WAS CHANGED AND HE KNOWS THAT, AND HE JUST SAID THAT ON THE RECORD."

NEWTON & HALL ATTORNEY AT LAW
BRAD BARSHIS #44302



DATE: 10/10/24

SIGNATURE: Ryan Pittman

I RYAN PITTMAN
DECLARE TO MAKE THIS AFFIDAVIT
WILLINGLY AND AM OF AGE AND ABLE
TO TESTIFY IN A COURT OF LAW.
I RYAN PITTMAN DECLARE THE
FOLLOWING TO BE TRUE AND CORRECT
UNDER PENALTY OF PERJURY UNDER THE
LAWS OF WASHINGTON PURSUANT TO 18 USC.
§ 1621

ON AUGUST 28TH 2024
MY APPEAL ATTORNEY STEPHANIE C. CUNNINGHAM
SENT ME AN EMAIL AFTER MOTION IN
THE COURT OF APPEALS TO SUPPLEMENT
THE RECORD, UPON RECIEPT OF FIVE
CONTINUANCE'S HEARINGS ONLY ONE HEARING
WAS RECORDED, MRS. CUNNINGHAM STATED
IN AN EMAIL, "THE CLERK'S OFFICE SAID
ONLY ONE CONTINUANCE HEARINGS WAS RECORDED
THE REASON FOR THAT IS BECAUSE THEY
DON'T PUT AGREED CONTINUANCES ON THE
RECORD"
"AN AGREED UPON CONTINUANCE" DOES NOT FORFIT
MY RIGHT TO EFFECTIVE REVIEW OF THE
RECORD ON APPEAL,



STEPHANIE C. CUNNINGHAM #26436
DATE, 10/12/24
SIGNATURE:

I RYAN PITTMAN,
DECLARE TO MAKE THIS AFFIDAVIT
WILLINGLY AND AM OF AGE AND ABLE
TO TESTIFY IN A COURT OF LAW.
I RYAN PITTMAN DECLARE THE
FOLLOWING TO BE TRUE AND CORRECT
UNDER PENALTY OF PERJURY, UNDER THE
LAWS OF WASHINGTON PURSUANT TO 18 USC
§ 1621

On OR ABOUT JANUARY 22ND 2022
MY DEFESAISE ATTORNEY CHARLIE VARNI
AFTER A CONTINUANCE HEARING,
MEET WITH DEPUTY PROSECUTOR
THOMAS HOWE, TO GO OVER SCHEDULEING
CONFLICTS, AFTER THIS MEETING, MY
ATTORNEY SAID "YOUR NOT GOING TO BELIEVE
WHAT THE PROSECUTOR SAID," HE MUST BE
HAVING A BAD DAY," HE JUST SAID ITS
NOT ABOUT HIM PROVING YOUR GUILTY",
"ITS ABOUT ME PROVING YOUR INNOCENT!"

DATE: 10/12/24 SIGNATURE:

CHARLIE VARNI #46662
THOMAS HOWE #34050

10/11/24

I RYAN PITTMAN
DECLARE TO MAKE THIS AFFIDAVIT WILLINGLY AND AM OF AGE AND ABLE TO TESTIFY IN A COURT OF LAW.
I RYAN PITTMAN DECLARE THE FOLLOWING TO BE TRUE AND CORRECT UNDER PENALTY OF PERJURY, UNDER THE LAWS OF WASHINGTON STATE PURSUANT TO 18 USC § 1621.
(RAP) 9.11
THE Appellate court may direct that additional Evidence on the merits of Be taken Before the Decision on Review.
Defense Theory, Is Ariel outright Coached her kids, we Have Defense Interviews that are transcripbed and ceretified. IN (EC) Interviews, She Speakss IN great Detail about watching Law an Order SVU, ("I know must the words" "I know its more of An ADULT Show,") but my mom Really Likes to watch it with me") After searching Law m order episodes") we found An episode called "undercover" were they use the same Language (EC) uses in the Foresnic Interview, and on the stand. Like, "Loose skin," "stick with Loose skin" -CONT-

Date 10/11/24

Signature

-CONT-

Along with other Language IN this show was said, either on the stand or In-forensic interviews, I understand that the court of Appeals has procedure, ALthought I can't tell you why my Defense Attorney did not bring up the Interview were (EC) TALKS about Watching a show, whos premeise is sexual assults and the prosecution of them, especially watching said show with your child you claim has Been Harmed IN the same matter, DoesnA make sense, unless you wanted Language to be Remebered. ("I know all the words we watch A so much") I wrote the Judge in my case showing this, an that 2 other men have had Allegations of this type Coming from Ariel cutright or about her children even one (EP) thats involved In my case, I know this sounds crazy, but its true, If you leave Ariel Cutright, You'll pay, She planned because She knew I wanted out, She is a violent person, who has Done nothing but Lead everyone around her to pain in Suffering, I understand this may not matter to the Court of Appeals.



Date 10/11/24

Signature

10/11/24

I RYAN PITTMAN, DECLARE TO MAKE THIS AFFIDAVIT WILLINGly AND Am OF AGE AND ABLE TO TESTIFY IN A COURT OF LAW. I RYAN PITTMAN DECLARE THE FOLLOWING TO BE TRUE And CORRECT UNDER PENALTY OF PERJURY UNDER THE LAWS OF WASHINGTON STATE PURSUANT TO 18 USC, SS 1621.

I RYAN MET ARIEL CUTRIGHT IN AUGUST OF 2017, FROM August 2017 Thru June of 2019 When I Left her home, Which is on Record with the pierce county sheriffs office when I Left her home an DID not Return, June of 2019, At NO TIME FROM August 2017 – Thru June of 2019 DID I EVER HAVE SEXUAL INTERCOURESE, WITH EVELLyn PILLOW OR ELIZABETH "EDDIE" CUTRIGHT, My CONVICTIONS ARE WRONG, I AM AN INNOCENT MAN, I DID NOT EVER HAVE ANY INAPPROPRIATE SEXUAL CONTACT with Either Alleged victim in my case, I HAVE BEEN WRONGfully CONVICTED, Thank you.

DATE 10/11/24 signature

## October 01, 2025 - 4:34 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division II |
| **Appellate Court Case Number:** | 59432-3 |
| **Appellate Court Case Title:** | State of Washington, Respondent v Ryan M. Pittman, Appellant |
| **Superior Court Case Number:** | 21-1-01700-1 |

**The following documents have been uploaded:**

- 594323_Petition_for_Review_20251001162724D2805150_1073.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was Pittman P4R Corrected.pdf*

**A copy of the uploaded files will be sent to:**

- PCpatcecf@piercecounty.wa.gov
- madeline.hill@piercecountywa.gov
- pcpatcecf@piercecountywa.gov

**Comments:**

CORRECTED (WORD COUNT ADDED)

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**Note: The Filing Id is 20251001162724D2805150**