IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 39766-1-III

On review from the Superior Court of Grant County, no. 21-1-00380-13

STATE OF WASHINGTON, Respondent,

v.

PATRICK GABRIEL MATHIS, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

In Patrick Mathis's trial for assaulting his wife Misty Leighter, the trial court excluded evidence that the conflict arose when Ms. Leighter assaulted a friend of Mr. Mathis's in a bar, requiring Mr. Mathis to restrain her, leading to an argument in which Mr. Mathis contended he needed to restrain Ms. Leighter from assaulting him. Because the excluded evidence was part of the *res gestae* of the crime and because it was directly relevant to Mr. Mathis's self-defense claim by establishing his knowledge of her physical violence and her initiation of the original conflict as the aggressor, the trial court's exclusion of the evidence deprived Mr. Mathis of his ability to present his defense. Alternatively, the trial court failed to conduct a meaningful inquiry into Mr. Mathis's ability to pay discretionary legal financial obligations ("LFOs") before imposing them and imposed a DNA collection fee that has been eliminated by statute. These LFOs should be stricken or,

alternatively, the case should be remanded for an inquiry into Mr. Mathis's ability to pay them.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court deprived Mr. Mathis of his right to present a defense when it excluded evidence that Ms. Leighter initiated the conflict by assaulting a man at a bar earlier in the evening.

ASSIGNMENT OF ERROR NO. 2: The $100 DNA collection fee should be stricken from the judgment and sentence because it has been eliminated.

ASSIGNMENT OF ERROR NO. 3: The trial court imposed discretionary LFOs without conducting the required inquiry into Mr. Mathis's ability to pay them.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Whether the trial court abused its discretion in concluding that Mr. Mathis's proffered evidence was either not relevant or unduly prejudicial.

ISSUE NO. 2: Whether the trial court's abuse of discretion deprived Mr. Mathis of a fair opportunity to present his version of what happened and why he believed he needed to restrain Ms. Leighter.

ISSUE NO. 3: Whether the trial court was required to conduct an individualized inquiry into whether Mr. Mathis had the likely future ability to pay the criminal filing fee and the domestic violence assessment before imposing them.

ISSUE NO. 4: Whether revisions to RCW 43.43.7541, which eliminated the $100 DNA collection fee effective July 1, 2023, apply to Mr. Mathis's case.

IV. STATEMENT OF THE CASE

In September 2021, Patrick Mathis and his wife, Misty Leighter, were at a bar called Big Daddy's with friends when one of them said something that angered Ms. Leighter. RP (Bartunek) 219-20, 305-07. In response, she threw her cell phone at the man's face and physically confronted him while Mr. Mathis held her arm to restrain her. Ex. D15. Angry that Mr. Mathis did not stand up for her, Ms. Leighter returned to her own home in Ephrata and sent numerous angry texts and voice messages to Mr. Mathis. RP (Bartunek) 220-21, 308-09.

Eventually, Ms. Leighter returned to the home she shared with Mr. Mathis and locked herself in the bedroom. RP (Bartunek) 202, 310. Ms. Leighter had been driving Mr. Mathis's car for work, so he asked her to return his car key so he could leave and she refused. RP (Bartunek) 205, 231, 311-12. At that point, Mr. Mathis forced the bedroom door open to take his keys from Ms. Leighter's bag next to the bed. RP (Bartunek) 203, 205, 312-13.

What happened next was disputed. Ms. Leighter claimed that Mr. Mathis then shoved her and she shoved him back before he grabbed her by the throat, making it difficult for her to breathe, and told her he could kill her right now. RP (Bartunek) 210. Mr. Mathis claimed that when he bent down to get his key out of Ms. Leighter's purse, he felt pain and then blood in his right ear and believed that she bit him, so he twisted around to get a hold of her neck to push her back on the bed and tell her to stop. RP (Bartunek) 313-14. He then took his key and left the room. RP (Bartunek) 211, 314. Mr. Mathis denied that he intended to harm Ms. Leighter and explained that he was just trying to get her off of him. RP (Bartunek) 321, 325.

Ms. Leighter then left the room and called her son to come give her a ride. RP (Bartunek) 212, 236-37. Police responded and took statements from both parties. RP (Bartunek) 265. The responding officer observed scrapes on Mr. Mathis's ear and some redness near Ms. Leighter's throat.

RP (Bartunek) 269, 279; Exs. P9, P10, P11, P12. Mr. Mathis downplayed his injuries and did not tell police that Ms. Leighter bit him. RP (Bartunek) 270-71. He did tell them that he had forced the door open and held her down by her neck on the bed to keep her from attacking him because he was trying to get by her when she reached up and scratched him. RP (Bartunek) 271-72. He was shirtless and the shirt he had been wearing at the time appeared to be stretched out. RP (Bartunek) 278.

The State arrested Mr. Mathis and charged him with second degree assault by strangulation and malicious mischief in the third degree, both designated as domestic violence offenses. CP 34-35. Pretrial, the State moved to exclude any reference to or evidence about Ms. Leighter assaulting the man in the bar earlier in the evening, arguing that it was unfairly prejudicial. CP 22-23; RP (Bartunek) 42-49. Agreeing with the State, the trial court excluded video evidence showing the altercation as well as any testimony about the assault, allowing Mr. Mathis only to testify that there was an incident at the bar

she was upset about. RP (Bartunek) 49-52. In the court's assessment, the video was not relevant because the altercation in the home took place hours later. RP (Bartunek) 53.

After Ms. Leighter testified that the argument with Mr. Mathis that evening had started at the bar, Mr. Mathis again sought to admit the video from the bar showing her assaulting another patron and Mr. Mathis restraining her. RP (Bartunek) 219, 256-57. He argued that what happened at the bar was all part of the same incident and it was important because Ms. Leighter had her own separate home she could have gone to. RP (Bartunek) 256-58. The trial court again denied the request, and Mr. Mathis was never allowed to tell the jury about how the argument started. RP (Bartunek) 257-58.

Mr. Mathis proffered a defense of lawful use of force and the trial court gave a first aggressor instruction. CP 51-53. The jury convicted Mr. Mathis on both counts. CP 62-66. Having no prior criminal history, Mr. Mathis was sentenced to six

months in jail. CP 70, 72. The trial court asked whether Mr. Mathis could pay the criminal filing fee and was advised that Mr. Mathis was currently employed but losing his job. RP (Brittingham) 13. The court stated, "He can apply for a waiver later," and imposed $900 in LFOs including a $500 crime victim assessment, a $100 domestic violence assessment, a $200 criminal filing fee, and a $100 DNA collection fee. RP (Brittingham) 13, 74-75. Subsequently, the court found Mr. Mathis indigent for purposes of appeal, and this appeal timely followed. CP 96, 100.

V. ARGUMENT

The trial court deprived Mr. Mathis of his ability to present a defense when it prevented him from showing the jury that Ms. Leighter had initiated a physical confrontation at the bar that required Mr. Mathis to restrain her and which angered her to the point of assaulting him as well. The video provided essential context for the events that followed after, including the reasonableness of Mr. Mathis's expectation of violence from

Ms. Leighter and his response in restraining her. Without this context, the jury was deprived of critical information needed to evaluate who was the first aggressor and was, therefore, unable to meaningfully evaluate Mr. Mathis's self-defense claim. The trial court's abuse of discretion in excluding the evidence requires a new trial. Alternatively, LFOs should be stricken from the judgment and sentence or the case should be remanded for an inquiry into Mr. Mathis's ability to pay them.

A. The trial court deprived Mr. Mathis of his ability to present his self-defense claim when it excluded evidence of the argument starting when Ms. Leighter assaulted another man at a bar and required Mr. Mathis to restrain her.

Ordinarily, the Court of Appeals reviews a trial court's decision to admit or exclude evidence of prior misconduct for abuse of discretion. *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). A trial court abuses its discretion when it is

manifestly unreasonable or bases the decision on untenable grounds. *State v. Cayetano-Jaimes*, 190 Wn. App. 286, 295, 359 P.3d 919 (2015).

However, a defendant has a right of constitutional magnitude to present evidence supporting his defense. *State v. Franklin*, 180 Wn.2d 371, 378, 325 P.3d 159 (2014) (*citing Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)); *State v. Strizheus*, 163 Wn. App. 820, 829-30, 262 P.3d 100 (2011) (right to present a defense is protected by the Sixth Amendment to the U.S. Constitution and article 1, section 22 of the Washington Constitution). Due process principles grounded in the Fifth Amendment and article I, section 3 of the Washington Constitution also afford the defendant "the right to a fair opportunity to defend against the State's accusations." *Cayetano-Jaimes*, 190 Wn. App. at 295-96 (*quoting Chambers*, 410 U.S. at 294). Constitutional claims are reviewed *de novo* as questions of law. *Id.* at 295; *see also State v. Jones*, 168 Wn.2d 713, 719, 230 P.3d 576 (2010)

(review of the right to present a defense is *de novo*). Thus, in the context of claims concerning the right to present a defense, the court reviews the evidentiary rulings for abuse of discretion and whether those rulings violated the right to present a defense *de novo*. *State v. Arndt*, 194 Wn.2d 784, 797-98, 453 P.3d 696 (2019).

The right to present a defense establishes limits on the authority of courts to exclude probative evidence in a criminal trial. *Holmes v. South Carolina*, 47 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006). Certainly, a defendant has no right to present irrelevant evidence, but when evidence of at least minimal relevance is proffered, the right to present a defense strongly favors its admission. *See Jones*, 168 Wn.2d at 720. "A defendant has the right to present relevant evidence, and if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." *Cayetano-Jaimes*, 190 Wn. App. at 297-98 (internal quotations omitted). Finally, the State's interest in

excluding prejudicial evidence is weighed against the defendant's interest in presenting it and only if the State's interest outweighs the defendant's need is relevant information excluded. *State v. Horn*, 3 Wn. App. 2d 302, 310, 415 P.3d 1225 (2018).

In this case, the proffered evidence that the argument between Ms. Leighter and Mr. Mathis began when she assaulted another man in a bar was highly relevant to his claim of self-defense. This court has explained:

> In considering a claim of self-defense, the jury must take into account all the facts and circumstances known to the defendant. *State v. Allery*, 101 Wn.2d 591, 594-95, 682 P.2d 312 (1984); *State v. Wanrow*, 88 Wn.2d 221, 234, 559 P.2d 548 (1977) (plurality opinion). Because the "'vital question is the reasonableness of the defendant's apprehension of danger,'" the jury must stand "'as nearly as practicable in the shoes of [the] defendant, and from this point of view determine the character of the act.'" *Wanrow*, 88 Wn.2d at 235, 559 P.2d 548 (*quoting State v. Ellis*, 30 Wash. 369, 373, 70 P. 963 (1902)). Evidence of a victim's propensity toward violence that is known by the defendant is relevant to a claim of self-defense "'because such testimony tends to

> show the state of mind of the defendant ... and to indicate whether he, at that time, had reason to fear bodily harm.'" *State v. Cloud*, 7 Wn. App. 211, 218, 498 P.2d 907 (1972) (*quoting State v. Adamo*, 120 Wash. 268, 269, 207 P. 7 (1922)). Thus, such evidence is admissible to show the defendant's reason for fear and the basis for acting in self-defense. *State v. Walker*, 13 Wn. App. 545, 549, 536 P.2d 657 (1975).

State v. Duarte Vela, 200 Wn. App. 306, 319-20, 402 P.3d 281 (2017), *review denied*, 190 Wn.2d 1005 (2018). In addition, a victim's specific acts of violence are admissible when the defendant knows about them and asserts self-defense. *Id.* at 326.

Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Relevance is a low threshold to admit evidence. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). Here, Mr. Mathis's proffered evidence was relevant to his self-defense claim because it tended to prove that Ms. Leighter was the initial aggressor

whose conduct provoked the need for a physical response after she continued to berate Mr. Mathis for not standing up for her. *See* CP 53 (first aggressor instruction); RP (Bartunek) 46-47, 221. Further, the evidence bears directly on Mr. Mathis's perception that Ms. Leighter would injure him if he did not physically restrain her and the reasonableness of his response. Consequently, to the extent the trial court deemed the evidence to be irrelevant, that was an abuse of discretion.

Because the evidence was relevant, the State bore the burden to show that it was "so prejudicial as to disrupt the fairness of the fact-finding process at trial." *Jones*, 168 Wn.2d at 720. Here, the State argued primarily that the events at the bar were too remote from the events in the home. *See* RP (Bartunek) 44-46. However, Mr. Mathis would have testified that Ms. Leighter was continuing to berate him over the events in the bar once they returned home, which precipitated him asking for his keys in order to leave. RP (Bartunek) 46-47. Because the incident at the bar initiated the conflict that

culminated in the house, it was part of the *res gestae* of the alleged crime. *See State v. Lane*, 125 Wn.2d 825, 831, 889 P.2d 929 (1999) (*res gestae* evidence is admissible to complete the story of the crime on trial by providing its immediate context).

Moreover, remoteness in time was rejected as a basis for excluding a threat by the victim to a defendant who alleged self-defense when the threat occurred more than two years earlier. *Duarte Vela*, 200 Wn. App. at 322. This is because a threat does not need to be recent or even directly connected to the alleged criminal acts in order to generate a fear of harm, and it is for the jury to evaluate the reasonableness of that fear in light of the time that has elapsed since the threat was issued. *See id.* at 323. Here, Ms. Leighter's violence was recent and she remained angry and abusive about Mr. Mathis's behavior in the bar up to the point of the altercation in the bedroom, which would reasonably lead Mr. Mathis to be concerned for his own physical safety.

The prejudice identified by the State of admitting evidence that is potentially remote in time falls far short of establishing a disruption to the fairness of the fact-finding process; to the contrary, it falls within the ordinary function of the jury to evaluate the evidence. Because fundamental fairness demands that the defendant have an opportunity to tell his side of the story, "it is best to admit relevant evidence and trust the State's cross-examination to ferret out falsities." *Duarte Vela*, 200 Wn. App. at 324. If the State did not believe Ms. Leighter's conduct at the bar was pertinent to what happened later, it was entitled to argue that position to the jury. Because the evidence here was relevant and not unduly prejudicial, excluding it violated Mr. Mathis's constitutional right to present a defense.

Reversal is required if, considering the entire record, the omitted evidence creates reasonable doubt that did not otherwise exist. *See Duarte Vela*, 200 Wn. App. at 326 (*citing U.S. v. Blackwell*, 459 F.3d 739, 753 (6th Cir. 2006)). In

Duarte Vela, exclusion of past threats prevented the defendant from testifying about the reasons for his fear of the victim. *Id.* at 326-27. Here, the jury was presented with two competing versions of events and asked to determine who provoked the physical conflict and whether Mr. Mathis acted reasonably to prevent further harm from Ms. Leighter. There is a strong social bias that discounts female-perpetrated violence and presumes men are the aggressors. *See* Machado, Andreia et al., *Male Victims of Female-Perpetrated Partner Violence: A Qualitative Analysis of Men's Experiences, the Impact of Violence, and Perceptions of Their Worth*, 21 Psychology of Men & Masculinities (2020), at 612-21. Had the jury known that the argument had begun with violence initiated by Ms. Leighter that Mr. Mathis had to restrain, this would have provided essential context for the jury to evaluate his claim that he believed he had to restrain her from physical violence at the end of the argument, a claim which many would consider unbelievable without this context.

The essence of a self-defense claim requires the jury to place itself in the shoes of the defendant. *See Wanrow*, 88 Wn.2d at 235. The jury here was unable to effectively do so because Mr. Mathis was prevented from telling his story, which commenced with Ms. Leighter's violence in the bar. A fully-informed jury was likely to reach a different conclusion. For this reason, a new trial is necessary.

B. The LFOs imposed in this case should be stricken due to intervening changes in the law and the trial court's failure to conduct an adequate inquiry into Mr. Mathis's ability to pay them.

The trial court did not find Mr. Mathis indigent at sentencing but conducted only a brief inquiry into Mr. Mathis's present employment, which it was told was ending, before imposing discretionary LFOs and observing that Mr. Mathis could "apply for a waiver later." RP (Brittingham) 13. This reverses the standard established in *State v. Blazina*, 182 Wn.2d

827, 344 P.3d 680 (2015) and *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018) requiring a meaningful inquiry into the defendant's likely future ability to pay LFOs before imposing them. Further, the $100 DNA collection fee has been statutorily eliminated. If the court does not reverse the conviction, the case should be remanded to strike the DNA collection fee and to conduct a meaningful *Blazina* inquiry before imposing the remaining LFOs.

1. *The trial court failed to conduct the required individualized inquiry into Mr. Mathis's likely future ability to pay discretionary LFOs before imposing them.*

In general, the court's exercise of discretion to impose legal-financial obligations ("LFOs") is reviewed for abuse of that discretion. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015), *review granted in part and remanded on other grounds*, 187 Wn.2d 1009 (2017). However, the legal question of whether a sentencing court's inquiry into the defendant's

ability to pay LFOs is adequate under *Blazina* is reviewed *de novo*. *State v. Glover*, 4 Wn. App. 2d. 690, 694, 423 P.3d. 290 (2018). Moreover, the court may only impose discretionary LFOs when it determines the defendant has the ability to pay them, a determination which is reviewed under a clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 403-04, 267 P.3d 511 (2011), *review denied*, 175 Wn.2d 1014 (2012).

Trial courts may not impose discretionary LFOs unless a defendant has the likely present or future ability to pay them. RCW 10.01.160(3); *Blazina*, 182 Wn.2d at 838. To make this determination, the trial court must make an individualized inquiry into a defendant's ability to pay discretionary LFOs before imposing them, and the inquiry must, at a minimum, consider the effects of incarceration and other debts, as well as whether the defendant meets the GR 34 standard for indigency. *Blazina*, 182 Wn.2d at 838-39; *Ramirez*, 191 Wn.2d at 742); *see also* RCW 10.01.160(3) ("In determining the amount and

method of payment of costs for defendants who are not indigent, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.").

The $100 DV assessment imposed in this case derives from RCW 10.99.080(1), which provides:

> All superior courts, and courts organized under Title 3 or 35 RCW, may impose a penalty of one hundred dollars, plus an additional fifteen dollars on any person convicted of a crime involving domestic violence; in no case shall a penalty assessment exceed one hundred fifteen dollars on any person convicted of a crime involving domestic violence. The assessment shall be in addition to, and shall not supersede, any other penalty, restitution, fines, or costs provided by law.

See CP 109 (*citing* RCW 10.99.080). By its plain language, the statute establishes a discretionary assessment because it states that the court "may" impose it. *See In re Marriage of Kim*, 179 Wn. App. 232, 250-51, 317 P.3d 555, *review denied*, 180 Wn.2d 1012 (2014) ("The word 'may' in a statute denotes discretion and is distinct from the word 'shall,' which indicates

a mandatory action."). Moreover, a subsection of the same statute encourages the trial court to solicit input from the victim in assessing the defendant's ability to pay the penalty, thus underscoring the need to conduct an ability-to-pay evaluation. RCW 10.99.080(5).

Likewise, the $200 criminal filing fee requires a determination of indigency or non-indigency before it may be imposed. *See* RCW 36.18.020(h) (providing that convicted adult "shall" be liable for $200 fee, but it "shall not" be imposed on an indigent defendant and may be waived or reduced due to indigency). The trial court cannot comply with the statutory directive to impose the fee on non-indigent defendants while not imposing it on indigent defendants without determining whether the defendant standing before the court is indigent or not. This determination requires the inquiry set forth in *Blazina* or, at a bare minimum, an evaluation whether the defendant meets the GR 34 standard for indigency. Neither was done in this case.

Because both assessments were imposed without an inquiry into Mr. Mathis's ability to pay them, they should be stricken from the judgment and sentence or remanded for a meaningful inquiry to be conducted.

2. *The $100 DNA collection fee has been statutorily eliminated, and that revision applies to Mr. Mathis's case on appeal.*

The legislature eliminated the $100 DNA collection fee established by RCW 43.43.7541 in the spring of 2023 and became effective July 1, 2023. Laws of Wash. c. 449 § 4. Although Mr. Mathis's judgment and sentence preceded the effective date of the act, the revision applies to his case on appeal and requires that the fee be stricken.

The Supreme Court has held that the precipitating event for application of a prospective statute concerning attorney fees and costs is the termination of the case. *Ramirez*, 191 Wn.2d at 749. Because a case is not terminated until it is final on appeal,

the statute applies prospectively to cases that are pending on appeal at the time the statute was enacted. *Id.* The Court of Appeals has specifically concluded that the amendments at issue in this case apply to cases pending on appeal following the reasoning of *Ramirez*. *State v. Ellis,* 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023).

Thus, under *Ramirez* and *Ellis*, the revisions to the DNA collection statute apply to Mr. Mathis's case on appeal. Under the revisions, the fee is no longer authorized. Accordingly, the assessment should be stricken from the judgment and sentence.

VI. CONCLUSION

For the foregoing reasons, Mr. Mathis respectfully requests that the court REVERSE his conviction and REMAND the case for a new trial; or, alternatively, STRIKE the $200 criminal filing fee, the $100 DV assessment, and the $100 DNA collection fee from his judgment and sentence.

RESPECTFULLY SUBMITTED this 10 day of January, 2024.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by placing a copy in the U.S. mail, with first-class postage thereon prepaid, addressed to the following:

Grant County Prosecuting Attorney
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed and sworn this 10 day of January, 2024 in Kennewick, Washington.

Andrea Burkhart