No. 39816-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

ISAIAH ALEKSANDR LACSON,

Appellant.

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

The Honorable Travis C. Brandt

APPELLANT'S OPENING BRIEF

Jeff Compton, WSBA #24082

Hagara Law, PLLC
1410 N. Mullan Rd. Ste. 207
Spokane Valley, WA 99206
Phone: (509) 290-6540
jeff@hagaralaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal authorities

Statutes

Rules

Washington Supreme Court

Washington Court of Appeals

A. INTRODUCTION

Isaiah R. Lacson was charged with residential burglary with sexual motivation by an information filed in Chelan County on October 13, 2022. The charge arose from an incident which took place on the evening of October 10, 2022, near the 300 block of Division Street in Cashmere, Washington. Mr. Lacson entered a residence located on Division Street.

Prior to his entry into the home, Mr. Lacson knocked on the door. Inside the home at that time, were two teenaged females, S.C. and Z.C., who heard the knocking. The older female went to the door and saw it was open. She saw Mr. Lacson standing in the doorway. Neither she nor her sister knew Mr. Lacson. S.C. shut the door and told Mr. Lacson to go away. She threatened to call 911. Despite this, Mr. Lacson did not leave and entered the house. The girls locked themselves in the bathroom and called for help. Mr. Lacson asked to be let into the bathroom. He invited them to come out and watch a movie. He also expressed a desire to engage in sexual conduct with the S.C.

Eventually, law enforcement, along with the girls' mother, arrived at the home. Both S.C. and Z.C. exited the house. Police took Mr. Lacson into custody. Mr. Lacson talked about being part of a computer simulation; he claimed to be part of the matrix.

The case was tried in two days before a jury. During the course of the trial, the prosecution moved to exclude any testimony of statements Mr. Lacson made to Dr. Cedar O'Donnell. The defense called Dr. O'Donnell to testify about Mr. Lacson's mental condition at the time of the incident. The prosecution argued Mr. Lacson's statements to Dr. O'Donnell were hearsay. The court granted the motion. The court erred in excluding Mr. Lacson's statements to Dr. O'Donnell when they were not offered for the truth of the matter asserted.

At the conclusion of the trial, the prosecution offered a set of jury instructions. The instructions included instructions related to the lesser-included offense for first-degree criminal trespass. Defense counsel had informed the court he planned to offer these instructions. The prosecutor already had the

instructions prepared in anticipation of the defense counsel's request. This constituted deficient performance by defense counsel as first-degree criminal trespass is not a lesser-included offense of residential burglary. After deliberations, the jury acquitted Mr. Lacson of residential burglary but convicted him of first-degree criminal trespass with sexual motivation. The option to convict Mr. Lacson of a lesser crime would not have been an option but for the deficient performance of his counsel.

The trial court sentenced Mr. Lacson to 364 days in jail. The court also imposed a requirement that Mr. Lacson's DNA be collected. The applicable statute does not authorize the collection of DNA for the offense of first-degree criminal trespass with sexual motivation. The trial court could also not impose this term as a condition of probation because the trial court did not suspend any jail time.

B. ASSIGNMENTS OF ERROR

Issue 1: The trial court erred in ruling that Mr. Lacson's statements to Dr. O'Donnell were inadmissible as hearsay when they were not offered for the truth of the matter asserted.

Issue 2: Mr. Lacson received ineffective assistance of counsel when his defense counsel offered a jury instruction of first-degree criminal trespass which is not a lesser-included offense of residential burglary as a matter of law.

Issue 3: The trial court erred when it ordered the collection of Mr. Lacson's DNA and imposition of the $100 fee as the applicable statute does not authorize that as a part of his sentence and no jail time was suspended.

C. STATEMENT OF THE CASE

Isaiah R. Lacson suffers from psychosis, for which he has been repeatedly hospitalized. (Report of Proceedings hereinafter "RP", 261). On October 10, 2022, Mr. Lacson, delusional, entered a residence at 313 Division Street in Cashmere, Washington. (RP 140, 264).

Sixteen-year-old S.C. lived at the residence with her mother and younger sister Z.C. (RP 139, 140). About 10 p.m. that night, Z.C. ran into her room looking scared. (RP 144). Z.C.

told her that somebody was at the door of their home. (RP 144). S.C. ran downstairs to the front door and saw it was open. (RP 144). In the doorway was a man she did not know, and he was holding her dog Loki. (RP 144-45). S.C. grabbed her dog and shut the door on the man. (RP 145). She locked the doors and called her mother. (RP 145).

The man asked to come inside. S.C. told the man she had called 911. (RP 145-46). The man continued to say that he believed she wanted him to come inside. (RP 148).

S.C. took Z.C. and their dog to the bathroom and locked the door. (RP 187). She could hear somebody in the house. (RP 188). She and her sister tried to stay quiet, but the dog made noise. (RP 188).

The man eventually located them in the bathroom. (RP 188). He shook the handle to the door. (RP 188). He told the girls to come out and they could celebrate together. (RP 189). He told them that he would put a movie on, and they would enjoy it.

(RP 188). He told the girls that he was going to "fuck their faces". (RP 190).

S.C.'s mother called while the girls were in the bathroom. She told the girls she was by the sliding door, and nobody was near the bathroom. (RP 190-91). The girls were able to run out of the bathroom and exit the house through the sliding glass door. (RP 190-91). The police had arrived by the time the girls left the house. (RP 191).

Responding Chelan County Deputy Jerrod Biggar contacted the man, identified as Mr. Lacson, who repeatedly stated he had complete dominance and authority over a simulation. (RP 159-60). Mr. Lacson carried a foam sword. (RP 167-68). Two other responding deputies, Tristan Jurgensen and Matthew Barnes, also heard Mr. Lacson rambling about a simulation over which Mr. Lacson had control. (RP 173-74, 183).

Mr. Lacson's conduct led to him being charged by an information out of Chelan County with residential burglary with

sexual motivation. (Clerk's Papers hereafter "CP" 1). While the case was pending, Mr. Lacson was evaluated for competency to stand trial. (CP 6-12). The trial court deemed Mr. Lacson competent to stand trial. (CP 13,14).

The case proceeded to trial before a jury. S.C. testified and recounted the events of October 10, 2022. (RP 139, 144-152).

The State called Deputy Tristan Jurgensen as the next witness. The deputy testified to receiving a disturbance call around 9:50 p.m. and going to 313 Division Street, Cashmere Washington. (RP 163). He further testified to talking to the reporting party and instructing her to go into a room that she could lock. (RP 163-64). The deputy described how the girls were able to get out of the house. (RP 164-65). Both girls were clearly distraught. (RP 166). The deputy observed a pair of feet walking down the stairs. (RP 165). The deputy identified Mr. Lacson in court as the person he saw in the home. (RP 169).

With some effort, law enforcement officers took Mr. Lacson into custody. (167-68).

Deputy Matthew Barnes testified next. He described going to the house and escorting S.C. and Z.C. out of the house. (RP 179). He was wearing a body-worn microphone at the time. (RP 179). The contents of the audio recording from the microphone were admitted into evidence and played for the jury (RP 180-180). Deputy Jerrod Biggar also testified consistently with the facts above (RP 153-161).

The defense called one witness, Dr. Cedar O'Donnell. (RP 232-286). Prior to trial, the State moved to exclude Mr. Lacson's statements to Dr. O'Donnell. (CP 21). The State renewed its motion just prior to the doctor's testimony. (CP 21, RP 214-232). In essence, the State objected to admission of any statements made by Mr. Lacson to Dr. O'Donnell and information contained in his medical records or previous forensic evaluations. (RP 219). The State argued that Mr. Lacson's statements to Dr. O'Donnell were hearsay and inadmissible as

the statements did not qualify under the medical exception in ER 803(4) as the statements were not made for treatment. (RP 216-17). The prosecutor did not object to the doctor offering her conclusions. (RP 218).

The defense argued that it should be allowed to elicit testimony showing how Dr. O'Donnell reached her conclusion. (RP 222). The interview with Mr. Lacson was a major component in how Dr. O'Donnell reached her conclusion. (RP 222). The defense further argued that there was a hearsay exception under ER 803(3) for the existing mental, emotional or physical condition. (RP 224). The defense also argued it was necessary to show that Mr. Lacson did not have the intent to commit a crime but an alternate intent. (RP 225).

The trial court reviewed ER 702, ER 703, ER 704, and ER 705. (RP 227-28). The trial court concluded the interview conducted by Dr. O'Donnell was not done for medical treatment. (RP 228). The court further concluded that the State was rightfully concerned that the defense was trying to introduce the

defendant's testimony without Mr. Lacson testifying. (RP 229). The court ruled that the doctor could testify about her conclusion and how she reached those conclusions. (RP 229). The court did not allow specific statements made by Mr. Lacson to Dr. O'Donnell. (RP 229-30).

Dr. O'Donnell testified about the information she reviewed in Mr. Lacson's case. (RP 238-40). She testified that Mr. Lacson had a long history of substance abuse. (RP 241). At one point during her testimony, the doctor referenced a document that contained information on how Mr. Lacson's substance abuse affected his ability to function in society (RP 242). The State made an objection which necessitated the jury being excused from the courtroom. (RP 242-43). After argument by both parties the court ruled that the doctor could reference incidents in the record; but she could not just read them. (RP 243-250). The prosecution asked for a limiting instruction and the court granted the request. (RP 250-57).

Dr. O'Donnell continued her testimony, testifying about Mr. Lacson being hospitalized as a result of psychotic symptoms. (RP 261). Dr. O'Donnell explained that psychosis can take the form of hallucinations or delusions. (RP 261-62). The doctor explained the Mr. Lacson suffered from delusional beliefs as a result of his substance abuse; he would have believed he was in an alternate reality. (RP 262). She concluded that Mr. Lacson had the intent to escape the matrix on October 10, 2022. (RP 265).

On cross-examination, the doctor agreed that Mr. Lacson had the capacity to form intent. (RP 267). The prosecutor further questioned the doctor about whether Mr. Lacson could have had the intent to get in bathroom with the girls or engage in sexual activity. (RP 274). The doctor conceded that was possible. The doctor conceded a person could intend their actions even if their reasoning was flawed. (RP 275). After the doctor's testimony concluded, the defense rested. (RP 283).

The State offered a set of jury instructions, which included an instruction for the lesser included offense of trespass in the first degree. (CP 32, 51-56, 58). Mr. Lacson's attorney had informed the trial court that he intended to offer first-degree criminal trespass as a lesser included offense instruction. (RP 206). The lesser included instructions were included in the court's instructions to the jury. (CP 70, 76-78, 81,82, 85, RP 296-97).

Following deliberations, the jury found Mr. Lacson not guilty of the crime of residential burglary with sexual motivation. (CP 84, RP 340). The jury found Mr. Lacson guilty of the crime of criminal trespass in the first degree with sexual motivation. (CP 85, RP 34).

At sentencing, the court imposed a sentence of 364 days in jail. The court required Mr. Lacson's DNA to be collected and typed and imposed a $100 fee. (CP 100, RP 380).

Mr. Lacson timely appeals.

D. ARGUMENT

Issue 1: The trial court erred in ruling that Mr. Lacson's statements to Dr. O'Donnell were inadmissible as hearsay when they were not offered for the truth of the matter asserted.

The trial court erred when it ruled that Mr. Lacson's statements to Dr. O'Donnell were inadmissible as hearsay. Evidence Rule (ER) 803(c) provides: "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Whether a statement is hearsay is reviewed de novo. *State v. Gonzalez-Gonzales,* 193 Wash. App. 683, 688-89, 370 P.3d 989 (2016). Unless an exception applies, hearsay is inadmissible. ER 802. Whether statements are hearsay depends upon the purpose for which they are offered. *State v. Hamilton,* 58 Wash. App. 229, 231, 792 P.2d 176 (1990). If offered to prove the truth of the matter asserted, the evidence is hearsay; if offered for another purpose, it is not. *Id.* It is well established that out-of-court statements offered to show the defendant's state

of mind are not hearsay and are admissible. ER 801(c); *Hamilton,* at 232.

The purpose of Dr. O'Donnell's testimony was to provide information about Mr. Lacson's state of mind at the time of his entry into the residence. The law enforcement officers who interacted with Mr. Lacson testified about his delusional statements about a computer simulation or being part of the matrix. The defense in this case centered around Mr. Lacson lacking any intent to commit a crime against persons in the residence because of his delusions. This makes Mr. Lacson's mental condition critical to his defense.

Any statements Mr. Lacson made to Dr. O'Donnell would have been for the purpose of the doctor to evaluate his condition. The statements would not have been admitted for the truth of the matter asserted. The statements would have been admitted to show how Dr. O'Donnell came to her conclusions about Mr. Lacson's mental condition. The trial court erred in excluding the statements.

Issue 2: Mr. Lacson received ineffective assistance of counsel when defense counsel offered a jury instruction for first-degree criminal trespass which is not a lesser included offense of residential burglary as a matter of law, and Mr. Lacson was convicted of first degree criminal trespass.

Mr. Lacson received ineffective assistance of counsel when his defense counsel offered a lesser included offense of first-degree criminal trespass. First-degree criminal trespass is not a lesser-included offense of residential burglary. Mr. Lacson was acquitted of residential burglary by the jury and was convicted of an offense that should not have been an option as a lesser offense.

Under the Sixth Amendment, a criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington,* 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984). "A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal." *State v. Kyllo,* 166 Wash.2d 856, 862, 215 P.3d 177 (2009). The claim is reviewed de novo. *State v.*

Sutherby, 165 Wash.2d 870, 883, 204 P.3d 916 (2009). Mr. Lacson's attorney informed the court he planned to ask for the lesser included instruction. The prosecutor had the necessary instructions prepared in anticipation of defense counsel's potential request. If an instructional error is the result of ineffective assistance of counsel, the invited error doctrine does not preclude review. *Kyllo,* at 862.

To establish ineffective assistance of counsel, a defendant must demonstrate: (1) defense counsel's representation was deficient, *i.e.,* it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient performance prejudiced the defendant, *i.e.* there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. McFarland,* 127 Wash. 2d 322, 334-35. 899 P.2d 1251 (1995). Reasonable conduct includes a duty to research the relevant law. *Kyllo,* 166 Wash. 2d at 862, (citing *Strickland,* 466 U.S. at 690-91).

Mr. Lacson was originally charged with residential burglary with sexual motivation in violation of RCW 9A.52.025. A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle. RCW 9A.52.025(1). RCW 9A.52.070 defines first degree criminal trespass:

> A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building.

Both the prosecution and the defense may seek a lesser included offense jury instruction. *State v. Berlin,* 133 Wash. 2d 541, 548, 947 P.2d 700 (1997). The court applies a two-part test, known as the *Workman* test, when ascertaining whether a party is entitled to a jury instruction on a lesser included offense. *State v. Workman,* 90 Wash. 2d 443, 447-48, 584 P.2d 382 (1978). In part one, the court considers whether each of the lesser included offense elements also are necessary to conviction of the greater, charged offense. *Id.* In part two, the court considers whether the

evidence presented in the case supports an inference that only the lesser offense was committed, to the exclusion of the greater, charged offense. *State v. Condon,* 182 Wash. 2d 307, 316, 343 P.3d 357 (2015). The first prong is the legal prong, and the second prong is the factual prong. *Berlin,* at 546. The proponent of the jury instruction must satisfy both prongs. *Condon,* at 316.

In *State v. Brown,* 25 Wash. App.2d 634, 528 P.3d 370 (2023), the Court of Appeals, Division III, held that second degree criminal trespass is not a lesser included offense of the crime of second-degree burglary. *Id.* at 642. The legal prong was not satisfied because the crime of second-degree criminal trespass requires that the entry must be *knowingly* unlawful. *Id.* (italics added). It is possible to commit the crime of second-degree burglary without knowing that the entry was unlawful. *Id.* 641-42. Thus, the lesser crime of second-degree criminal trespass contains an element which is not included in the greater crime of burglary. *Id.*

When the reasoning found in *Brown* is applied to the present case, the inescapable conclusion is that first-degree criminal trespass is not a lesser included offense of residential burglary because the legal prong of the *Workman* test is not satisfied. Like second-degree criminal trespass, first degree criminal trespass requires that the person making the entry know the entry is unlawful. The difference between the two statutes is that first-degree criminal trespass requires a knowing, unlawful entry into a building while second degree criminal trespass merely requires entry onto premises. RCW 9A.52.070; RCW 9A.52.080. The residential burglary statute and the second-degree burglary statute are similar; the difference between the two statutes is residential burglary requires the unlawful entry to be inside of a dwelling rather than just a building. RCW 9A.52.025 The residential burglary statute does not have a requirement that the entry be knowingly unlawful. Thus, the first-degree criminal trespass statute contains an element not found in the residential burglary statute. Like the two statutes in

the *Brown* case, the legal prong is not satisfied, and the instruction should not have been given.

Mr. Lacson's attorney had a duty to be aware of the applicable law. It is deficient performance to fail to research the applicable law. *Kyllo,* 166 Wash.2d at 862. The lesser-included instructions should not have been offered. The first prong of the test found in *Strickland* is satisfied.

The deficient performance prejudiced Mr. Lacson. The jury acquitted Mr. Lacson of the offense of residential burglary. If there had not been a lesser offense, Mr. Lacson would not have been convicted of any offense at all. Criminal defendants generally may be convicted only of crimes with which they have been charged. *State v. Irizarry,* 111 Wash.2d 591, 592, 763 P.2d 432 (1988). One statutory exception is a defendant may be convicted of a lesser-included offense. RCW 10.61.006, *Berlin,* at 545. Consequently, Mr. Lacson would not have been subject to criminal sanctions which were the result of his conviction.

The prejudice prong of the test found in *Strickland* is also satisfied. Mr. Lacson received ineffective assistance of counsel.

Issue 3: The trial court erred when it ordered the collection of Mr. Lacson's DNA and imposition of the $100 fee as the applicable statute does not authorize that as a part of his sentence and no jail time was suspended.

At the time of his sentencing, the trial court ordered that Mr. Lacson's DNA be collected and he be assessed a $100 DNA fee. First degree criminal trespass is not a crime for which the legislature authorizes DNA collection. The court also could not impose the collection or fee as a condition of probation when Mr. Lacson received the maximum sentence. The requirement for the collection of DNA and the fee must be stricken.

Illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ross,* 152 Wash. 2d 220, 229, 95 P.3d 1225 (2004). The fixing of legal punishments for criminal offenses is a legislative function. *State v. Mercado,* 181 Wash. App. 624, 631, 326 P.3d 154 (2014). A defendant cannot agree

to punishment in excess of that which the legislature has established. *Id.*

RCW 43.43.754(1)(a) contains a list of offense that require the collection of DNA from convicted offenders. The crime of criminal trespass in the first degree with sexual motivation is not one of the offenses that requires the collection of DNA from an offender. The trial court did not have the authority to order the collection of DNA pursuant to that statute.

RCW 9A.20.021(2) established the maximum penalty for a gross misdemeanor at 364 days in jail. First-degree criminal trespass is a gross misdemeanor. RCW 9A.52.070(2). RCW 9.95.210 allows a court to suspend imposition of the sentence and grant probation. A court may impose probationary conditions that bear a reasonable relation to the defendant's duty to make restitution or tend to prevent the future commission of crimes. *State v. Williams,* 97 Wash. App. 257, 263, 983 P.2d 687 (1999). The imposition of probation is not authorized when the

maximum jail sentence is imposed on an offender. *State v. Gailus,* 136 Wash. App. 191, 201, 147 P.3d 1300 (2006).

Mr. Lacson received the maximum sentence, thus the collection of DNA could not be imposed as a condition of probation. The requirement of DNA collection and imposition of any fee was not lawful.

E. CONCLUSION

The trial court erred when it ruled that Dr. O'Donnell could not testify about statements made to her by Mr. Lacson. Such statements were not hearsay as they were not offered to prove the truth of the matter asserted. On this basis, Mr. Lacson's conviction should be reversed, and the case remanded for a new trial.

Alternatively, Mr. Lacson was denied his Sixth Amendment right to effective assistance of counsel when his attorney offered a jury instruction for the lesser included offense of first-degree criminal trespass. First degree-criminal trespass is not a lesser included offense of the crime of residential

burglary. This prejudiced Mr. Lacson because he was acquitted of the greater crime and convicted of one that should never have been an option for the jury's consideration. The charge of first-degree criminal trespass should be dismissed.

Finally, the trial court erred in imposing a requirement for DNA collection and imposing a $100 fee. This condition was not authorized by statute. It could not be imposed as a condition of probation as all possible time was imposed as a condition of sentence. No conditions can be imposed if no jail time is suspended. Thus, order for DNA collection and fee should be stricken.

I certify this document contains 4499 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 2nd day of January, 2024.

/S/ Jeff Compton
Jeff Compton, WSBA #24082

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent vs. ISAIAH A. LACSON, Defendant/Appellant.	) COA 39816-1-III)))))) PROOF OF SERVICE)

I, Jeff Compton, counsel for the Appellant herein, do hereby certify under penalty of perjury that on January 2, 2024, with prior permission, I served the attached Appellant's Opening Brief on the Respondent at Chelan County Prosecutor's Office at prosecuting.attorney@co.chelan.wa.us

Dated this 2nd day of January, 2024.

/s/ Jeff Compton
Jeff Compton, WSBA #24082
Hagara Law, PLLC
1410 N. Mullan Rd., Ste. 207
Spokane Valley, WA 99206
Phone: (509) 290-6540
jeff@hagaralaw.com

cc: brooke@hagaralaw.com

HAGARA LAW PLLC

January 02, 2024 - 9:56 AM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	39816-1
Appellate Court Case Title:	State of Washington v. Isaiah Aleksandr Lacson
Superior Court Case Number:	22-1-00422-4

The following documents have been uploaded:

- 398161_Briefs_20240102095538D3302019_9525.pdf
  This File Contains:
  Briefs - Appellants
  The Original File Name was Appellants Opening Brief for filing.pdf

A copy of the uploaded files will be sent to:

- prosecuting.attorney@co.chelan.wa.us

Comments:

Sender Name: Brooke Hagara - Email: brooke@hagaralaw.com
Address:
1410 N MULLAN RD STE 207
SPOKANE VALLEY, WA, 99206-4046
Phone: 509-230-0220

Note: The Filing Id is 20240102095538D3302019