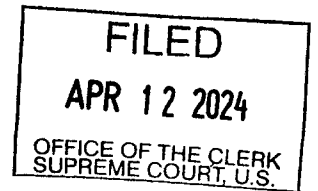


23 - 7341

No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
RONALD THOMPSON— PETITIONER

vs.

THE PEOPLE OF THE STATE OF COLORADO— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Colorado Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ronald Thompson

(Your Name)

Fremont Correctional Facility

(Address)

Canon City, CO 81215

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

Whether the Court of Appeals erred in finding the trial court's error in failing to define the term consent was constitutional harmless error.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix\_\_\_\_\_to the petition and is

☐ reported at\_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix\_\_\_\_\_to the petition and is

☐ reported at\_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at\_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Colorado Court of Appeals appears at Appendix B to the petition and is

☐ reported at\_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.



## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was\_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date:\_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix\_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including\_\_\_\_\_ (date) on\_\_\_\_\_ (date) in Application No.\_\_\_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was\_. A copy of that decision appears at Appendix\_\_\_\_\_A\_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date:\_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix\_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including\_\_\_\_\_ (date) on\_\_\_\_\_ (date) in Application No.\_\_\_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **ISSUES PRESENTED FOR REVIEW**

Whether the Court of Appeals erred in finding the trial court's error in failing to define the term consent was harmless.

Whether the Court of Appeals incorrectly held the trial court's refusal to allow the admission into evidence that other male DNA had been recovered from the alleged victim's intimate swabs, and her statement regarding a previous encounter, was not reversible error.

Whether the Court of Appeals erred in holding the trial court's refusal to allow the alleged victim to be questioned before the jury regarding her false reporting contacts violated Thompson's Sixth Amendment constitutional right to cross-examine witnesses was not reversible error.

## **BASIS OF JURISDICTION**

The Court of Appeals issued its opinion in this case on August 3, 2023 (*People v. Ronald Leon Thompson*, 2020CA1084), affirming Thompson's judgment of conviction. A copy of the opinion is attached to this petition. Neither party filed a petition for rehearing in the Court of Appeals, and the deadline for filing a petition for rehearing has passed.

This petition for writ of certiorari is timely.<sup>1</sup> This case presents special and important reasons for this Court's review. *See* C.A.R. 49(a)(2). This Court has jurisdiction pursuant to Colo. Const. art. VI, § 2 and C.A.R. 49.

### STATEMENT OF THE CASE

In October 2018, two bystanders walking by a landscaped area outside a church heard a woman calling for help and saw a man, whose pants were down, "thrusting on top of" a woman. (TR 3/4/20, p 31:1-3). They called 911 and Thompson was arrested a short time later. (TR 3/4/20, pp 145:11-13, 173:8-19). Thompson admitted having intercourse with the woman. (TR 3/4/20, pp 146:4-19, 176:9-13).

Thompson was charged with sexual assault, causing submission of the victim through the actual application of physical force or physical violence, pursuant to section 18-3-402(1)(a), (4)(a), C.R.S. 2018. (CF, p 9). Representing himself at trial, his defense was that she had consented to the sexual acts. (TR 2/28/20, p 26:9-10).

The jury found Thompson guilty as charged. (TR 3/5/20 PM, pp 75:13-22, 76-77; CF, p 289). He was sentenced as a sexually violent predator to an indeterminate

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<sup>1</sup> On September 22, 2023, this Court issued an order granting an extension of time to file this petition.

term of imprisonment in the Department of Corrections to 10 years to life. (TR 5/4/201, p 26:4-8, 9-11).

On appeal, Thompson argued, *inter alia*, that the trial court's failure to define the term consent for the jury, was error requiring reversal, that the trial court erred in refusing to allow the admission into evidence that male DNA, not belonging to Thompson, was recovered from the alleged victim's intimate swabs, and the admission of the victim's statement to the SANE that her last consensual sexual encounter had been a year prior to the incident at issue, and that the trial court's refusal to permit Thompson to cross-examine the alleged victim before the jury regarding her multiple police contacts for false information violated his Sixth Amendment right to confront his accuser and challenge her credibility.

### **REASONS FOR GRANTING THE WRIT**

#### **I. The Court Of Appeals Incorrectly Rejected Thompson's Argument That The Court Should Have Instructed The Jury On The Definition Of The Term "Consent."**

##### **A. Standard of Review and Preservation**

When a court misinstructs the jury on an element of an offense, either by omitting or misdescribing that element, that error is subject to constitutional harmless or plain error analysis, depending on whether the error was preserved. *Griego v. People*, 19 P.3d 1, 7 (Colo. 2001). Under the constitutional harmless error

analysis, reversal is required unless the error was harmless beyond a reasonable doubt (although here, the term “consent” did not appear in the elements of the charged offense or any applicable affirmative defense, so the failure to define this term did not misdescribe or omit an element). *Griego*, 7; *Hagos v. People*, 2012 CO 63, ¶11. Under this standard, reversal is required if there is a reasonable possibility that the error might have contributed to the conviction. *Id.*

The trial court’s error in refusing to instruct the jury on the definition of the term “consent” was preserved by the prosecution request to do so. *People v. Anderson*, 2020 COA 56, ¶11.

## **B. Discussion**

The crime of sexual assault with which Thompson was charged provided, in pertinent part, that a person commits sexual assault if they “inflict[] sexual intrusion or sexual penetration on a victim” and “cause[] submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim’s will.” §18-3-402(1)(a), C.R.S. 2018. And section 18-3-408.5(1), C.R.S. unequivocally provides that, upon request of any party, “the jury **shall** be instructed on the definition of consent as set forth in section 18-3-401(1.5)” in a prosecution for sexual assault described in section 402(1)(a) (emphasis added). The trial court refused the prosecution request to provide the jury with the definition. (TR 3/5/20

PM, pp 5:17-22, 7:2-6). Thus, as the Court of Appeals correctly concluded, under the plain language of section 18-3-408.5(1), the trial court's refusal was error. However, the court erred in concluding the error was harmless beyond a reasonable doubt, as the record shows a reasonable possibility that the error contributed to Thompson's conviction.

In order to convict a defendant of sexual assault, a jury must be satisfied, beyond a reasonable doubt, that the prosecution has proved the victim did not consent to having sex with the defendant. *People v. Everett*, 250 P.3d 649, 655 (Colo. App. 2010). Thompson's defense was that he and H.G-R. had engaged in a consensual act, and therefore, he was not guilty of the charged crime. (TR 3/2/20, p 35:2-5).

The evidence presented was that the alleged victim was intoxicated to a degree that her breath still smelled of alcohol many hours after the incident, making her account of the events unreliable. (TR 3/4/20, 101:22-23). She gave conflicting accounts of how the alleged attack occurred, likely due to her intoxicated state. Thompson's testimony, by contrast, was detailed in its description of mutually consented-to acts that led to a consensual sexual encounter.

The prosecution repeatedly zeroed in on Thompson's consent defense on closing, and Thompson himself, on closing, told the jury the act was consensual. (TR

3/5/20 PM, pp 40:17-19, 60:10, 64:6). However, the jury never heard the legal definition of consent.

In finding the error harmless, the Court of Appeals circularly reasoned that because the jury found that Thompson had committed all the elements of the offense of sexual assault, and proving the elements of the offense negates the victim's consent, the absence of the definition of consent did not contribute to the verdict. However, without the definition of consent, which the General Assembly required to be given upon request, the jury could not make a valid finding of guilt.

The Court of Appeals also held that the common and statutory meanings of consent are similar, comparing the statutory definition of consent found in section 18-3-401(1.5), "cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act," with Webster's Third New International Dictionary 1392 (2002) defining consent as "to give assent or approval." However, they are not the same. "Consent has a specialized meaning in the context of sexual assault," *People v. Garcia*, 2012 COA 72, ¶38, and it is important to explain to the jury that specialized meaning. *People v. Pahlavan*, 83 P.3d 1138, 1142 (Colo. App. 2003). A trial court "must instruct the jury on the technical or particular definition of an element of an offense if the element constitutes a term that has acquired a

technical or particular meaning, whether by legislative definition or otherwise.

*People v. Riley*, 2015 COA 152, ¶23.

The General Assembly, presumably well aware that a dictionary definition and a common meaning existed, nonetheless directed that a consent definition must be provided to the jury upon request, and the Court of Appeals should have followed the intent of the General Assembly, and not decided that the dictionary definition and statutory definition were sufficiently similar to justify ignoring the plain meaning of the statute. *People v. Dist. Court*, 713 P.2d 918, 921 (Colo. 1986) (“Our primary task in construing a statute is to ascertain and give effect to the intent of the General Assembly.”).

Because consent was the very crux issue at this trial, the court erred in not providing the definition to the jury, and the failure was not harmless in the context of this case. Accordingly, the Court of Appeals erred in affirming the conviction, and it is appropriate that this Court review the court’s holding.



## **II. The Court Of Appeals Erred In Affirming The Trial Court's Refusal To Allow The Admission Into Evidence That Other Male DNA Was Recovered From The Alleged Victim's Intimate Swabs And Her Statement Regarding A Prior Sexual Encounter.**

### **A. Standard of Review and Preservation**

A trial court's evidentiary rulings, including its determination of admissibility under the rape shield statute, are reviewed for an abuse of discretion. *People v. Sims*, 2019 COA 66, ¶44. A trial court's determination of whether evidence falls within the purview of section 18-3-407, C.R.S., 2022, the Rape Shield statute, is a question of law which is reviewed de novo. *People v. Orozco*, 210 P.3d 472, 478 (Colo. App. 2009).

Thompson's objection to the preclusion of evidence of the other man's DNA and a H.G-R.'s statement to a SANE, preserved the issues for appellate review. (TR 3/2/20, pp 27:14-16, 28:1-4, 34:1-4).

### **B. Discussion**

Part of the support for the People's theory that Thompson had sexually assaulted H.G-R. was evidence of bruises on her body, introduced to show that he had caused her to submit to sexual contact against her will, an element of the crime of sexual assault with which he was charged. §18-3-402(1)(a), C.R.S. 2018. (TR 3/4/20, pp 214:1-2, 215:10).

The court precluded under the Rape Shield statute evidence another male's DNA was found on H.G-R.'s intimate swabs, as well as a statement the prosecution told the court she had made to a SANE, that she had not had a consensual sexual encounter for a year prior to her SANE exam. (TR 3/2/20, pp 25:14-25, 28:21-22, 46:24-47:2, 48:3-5).<sup>2</sup>

Unless otherwise provided by constitution, statute, or rule, all relevant evidence is admissible. *Yusem v. People*, 210 P.3d 458, 463 (Colo. 2009); CRE 401. However, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." CRE 403. *People v. Salazar*, 2012 CO 20, §17.

By contrast, the Rape Shield statute creates a presumption that a witness' prior or subsequent sexual conduct is irrelevant. *Salazar, supra*; *People v. Gulyas*, 2022 COA 34; *see* §18-3-407(1). To overcome the presumption, a defendant must show that the evidence is relevant to a material issue in the case. *People v. MacLeod*, 176 P.3d 75, 76–77 (Colo. 2008); *People v. Villa*, 240 P.3d 343, 354 (Colo. App. 2009); *see* §19-1-307(2)(f), C.R.S. 2013.

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<sup>2</sup> The written motion in limine filed by the prosecution did not contain that statement.

The evidence fit within a specific exception to the Rape Shield presumption of inadmissibility, “evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered for the purpose of showing that the act or acts charged were or were not committed by the defendant,” §18-3-407(1)(b), as it would explain the bruises on her body, and therefore was relevant to the issue of consent, and should not have been excluded.

The prosecution introduced evidence of H.G-R.’s bruises, and in closing argument, reminded the jury of that evidence, arguing the bruises were caused when Thompson forced her to have sex against her will. (TR 3/4/20, p 214:1-2; 3/5/20 PM, pp 43:22- 25, 44:1-4, 47:1-5).

The DNA evidence at issue would have been offered to support that the bruises had been inflicted by the man whose DNA was recovered from her body, with whom she had had **nonconsensual** intercourse, which, in connection with H.G-R.’s also-precluded statement to the SANE that she had not had *consensual* intercourse in more than a year, would have directly refuted the prosecution position that the bruising established one of the necessary elements of the crime of sexual assault.

H.G-R. was deeply intoxicated during the event, and indeed remained intoxicated for many hours later. (TR 3/4/20, p 101:16, 22-24). Given her state of

impairment, it is possible that she confused a previous, recent, nonconsensual encounter with the male whose DNA was recovered from her, and who had inflicted bruises on her, with the consensual encounter she had with Thompson. Had the jury heard the precluded evidence, it is likely that they would have disregarded the People's argument that the bruises were evidence of her lack of consent to the encounter with Thompson, and reasonable doubt would have existed with respect to his guilt.<sup>3</sup>

The Court of Appeals, in rejecting this argument, notes that the parties on appeal "mischaracterize the victim's statement to the SANE" and states that her "actual statement," was "broader and less exceptional." (Opinion, p 23). However, in a pretrial hearing, the prosecutor, in arguing against the admission of the nonconsensual statement, represented that this statement was made by her (the trial court also referenced the statement). (TR 3/2/20, pp 25:22-25, 28:20-25, 46:24-47:2, 48:3-5).<sup>4</sup>

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<sup>3</sup> The fact that Thompson acknowledged having had intercourse with the victim does not change the analysis.

<sup>4</sup> While the statement provided in the prosecution's motion in limine is as the Court of Appeals correctly notes, there is nothing in the record to indicate that she did not also make the nonconsensual statement.

For these reasons, the trial court abused its discretion in refusing to permit the introduction of evidence that likely would have resulted in a different outcome at trial, and the Court of Appeals erred in holding otherwise. It is appropriate that this Court review this case to consider under what circumstances evidence is admissible under this exception to the Rape Shield statute.

**III. The Trial Court's Refusal To Allow H.G-R. To Be Questioned Before The Jury Regarding Her False Reporting Violated Thompson's Sixth Amendment Constitutional Right To Cross-Examine Witnesses And Was Reversible Error.**

**A. Standard of Review and Preservation**

Thompson properly preserved his claim of error by requesting the evidence of H.G-R.'s multiple prior police contacts for false reporting be presented to the jury. (TR 3/4/20, pp 115:14-22, 117:5- 18). A trial court's evidentiary rulings will not be disturbed absent a showing of an abuse of discretion, which occurs only if the trial court's ruling is manifestly arbitrary, unreasonable, or unfair, and a possible constitutional violation is reviewed de novo. *People v. Elmarr*, 2015 CO 53, ¶20; *People v. Dominguez-Castor*, 2020 COA 1, ¶67.

A defendant's objection to the admission of evidence is reviewed for harmless error. *People v. Thomas*, 2014 COA 64, ¶16. Under this standard, even if there is error, reversal is not required unless the error affects the substantial rights of the

accused. *Id.* An error of nonconstitutional dimension is prejudicial where there is a reasonable probability that it contributed to a defendant's conviction by substantially influencing the verdict or impairing the fairness of the trial. *Id.*, ¶17.

Because Thompson never asserted in the trial court that his Sixth Amendment constitutional right to confrontation was implicated when he complained about being prevented from asking H.G-R. about her multiple false reporting contacts, plain error review is applied to this claim. *People v. Wilson*, 2014 COA 114.

### **B. Discussion**

Thompson wanted to address at trial the “prior false reporting convictions” of H.G-R., arguing the convictions indicated that H.G-R. had committed perjury in the instant case and asked to cross-examine her about them. (TR 3/4/20, p 115:14-22). Her criminal history showed arrests or Denver City tickets from 1992, 1994, 2000, and 2006, likely for “false reporting of identifying information to law enforcement authorities,” generally a class 2 misdemeanor pursuant to section 18-8-111.5, C.R.S. (TR 3/4/20, pp 113:21-25, 114:5-13). Convictions were obtained in the cases, but the records did not indicate for what. (TR 3/4/20, p 119:16-21).

The court denied the request but returned H.G-R. to the court and questioned her under oath about the multiple “false information” police contacts. (TR 3/4/20, pp 122:13-25, 123:1-10; 3/5/20 AM, p 15:24-25). She told the court she could not

remember the arrests and said that she might have lied about drinking in public. (TR 3/5/20 AM, pp 16:14-25, 17:1-9, 14-21).

The court ruled that because she could not remember any specific instances of untruthfulness, and that asking her about them “would simply serve to suggest that there’s a conviction for those or a charge or police conduct,” and that the arrests were so old they were unlikely to be probative, Thompson was precluded from asking her about them. (TR 3/5/20 AM, pp 26:5-24, 27:11-21).

“The right of a criminal defendant to confront the witnesses against him ... requires that the defendant be given an opportunity for effective cross-examination.” *Merritt v. People*, 842 P.2d 162, 165-66 (Colo. 1992) citing *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974). While the court may limit the scope and duration of cross-examination subject to “well-established rules,” it is a violation of a defendant’s Sixth Amendment Confrontation right for a trial court to limit excessively a defendant’s cross-examination of a witness regarding the witness’ credibility. *Merritt*, 842 P.2d 162; *People v. Dunham*, 2016 COA 73, ¶26.

Error in limiting a defendant’s ability to challenge the credibility of the evidence against him or her implicates “the basic right to have the prosecutor’s case encounter and ‘survive the crucible of meaningful adversarial testing.’” *Krutsinger v. People*, 219 P.3d 1054, 1061 (Colo. 2009) citing *Crane v. Kentucky*, 476 U.S. 683,

690-91 (1986). The question in determining whether a restriction on cross-examination violates the constitutional right of confrontation is whether a “‘reasonable jury might have received a significantly different impression of a witness’s credibility’ had the court not erroneously excluded otherwise appropriate evidence.” *Krutsinger*, 1061.

A witness's credibility may be attacked through character evidence under CRE 608, the purpose of which is to allow specific instances of conduct to be admitted to impeach a witness’s character for truthfulness. “Such evidence allows the jury to evaluate the witness’s capacity for truthfulness as the rule provides.” *McGill v. DIA Airport Parking, LLC*, 2016 COA 165, ¶21.

Here, Thompson’s Sixth Amendment constitutional confrontation right was violated, and the court abused its discretion when it refused to allow Thompson to cross examine H.G-R., in front of the jury, regarding her four prior police contacts for false reporting, as her credibility was the crucial issue at stake in this case. Certainly, the information that someone repeatedly provides untruthful information to public officials is relevant and germane to an assessment of that person’s credibility. H.G-R.’s capacity for truthfulness was the key issue for the jury’s determination.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ronald Thompson



11<sup>th</sup>  
Date: April, 2024