If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 26, 2025 3:00 PM
v	No. 356493 Wayne Circuit Court
ROBERT STEWART ALDERTON, Defendant-Appellant.	LC No. 19-004601-01-FC

ON REMAND

Before: K. F. KELLY, P.J., and MARIANI and WALLACE, JJ.

MARIANI, J. (*concurring*).

I concur in the result reached by the majority, but based on more limited reasoning. Our Supreme Court remanded this matter to us for reconsideration of two specific points: (1) "whether the verified statements in support of the petition for a personal protection order [PPO] were testimonial in light of *People v Washington*, 514 Mich [583, 594-595; 22 NW3d 507 (2024)]," and (2) "whether the victim's statements to his girlfriend and other children were admissible under MRE 803(3) in light of th[e] Court's January 22, 2025 order in *People v Propp*, ___ Mich ___ (2025) (Docket No. 164313)." *People v Alderton*, ___ Mich ___ (2025) (Docket No. 166825). I do not see, in these particular points of reconsideration, grounds to reach a different result than the original panel of this Court[1] did.

As to the first point, the original panel concluded that the verified statements in support of the PPO petition were not testimonial under the "ongoing emergency" doctrine. *People v Alderton*, unpublished per curiam opinion of the Court of Appeals, issued January 18, 2024 (Docket No. 356493), p 7 (*Alderton I*). There is, in my view, ample reason to question that conclusion, and I would likely reach a different one if I were presented with the issue in the first instance. But *Washington*, as I read it, did not purport to alter or disrupt the analysis applicable to the "ongoing

[1] As the majority notes, two of the three judges reconsidering this case on remand (myself included) were not on the panel of this Court that originally considered and disposed of this appeal.

emergency" doctrine or the scope of circumstances that may fall within it. See *Washington*, 514 Mich at 594-595. Thus, while I may disagree with the original panel's substantive treatment of this issue, that disagreement does not have anything in particular to do with *Washington* or any reconsideration of the issue in light of it—and so I do not view my reasons for potentially rejecting the original panel's disposition of this issue as within the scope of the instant remand.

Similarly, as to the second point of reconsideration, our Supreme Court's order in *Propp* makes clear that the victim's statements to his girlfriend and children must not be viewed as "categorically admissible under MRE 803(3)." *Propp*, ___ Mich at ___. Beyond that, however, the *Propp* order does not provide meaningful guidance regarding what portions of those statements, if any, may be admissible under that rule. Were I addressing the issue in the first instance, I would likely find error in the admission of at least some of those statements. But again, that disagreement with the original panel is not particularly based on anything set forth in the *Propp* order. And more fundamentally, nothing in the *Propp* order provides reason to revisit or depart from the original panel's alternative conclusion that any error in the admission of those statements was harmless. See *Alderton I*, unpub op at 6. That harmlessness conclusion is itself dispositive of the issue and, given that the conclusion is not impacted by reconsideration of the issue in light of *Propp*, its reevaluation by the instant panel does not strike me as warranted.

/s/ Philip P. Mariani