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SUPREME COURT  
STATE OF WASHINGTON  
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SUPREME COURT NO. 100694-2  
SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

ANNA KASPAROVA,

Petitioner.

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**ANSWER TO PETITION FOR REVIEW  
AND CROSS-PETITION**

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**A. IDENTITY OF RESPONDENT**

The State of Washington is the Respondent in this case.

**B. COURT OF APPEALS DECISION**

The Court of Appeals decision at issue is State v. Anna Kasparova, No. 81109-6-I, filed November 15, 2021 (unpublished).

**C. ADDITIONAL ISSUES PRESENTED FOR REVIEW**

If this Court accepts review of this case, the State seeks cross-review of the following alternative arguments the State raised in the Court of Appeals:

1. Kasparova claims her right to confrontation was violated when the trial court excluded evidence of an unrelated incident that included an allegation of a theft committed by witness Perez with codefendant Abel Linares-Montejo.<sup>1</sup> The

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<sup>1</sup> The codefendant was referred to as Linares by all participants at trial, so the State has done the same in its briefing on appeal.

Court of Appeals held that the trial court erred in excluding cross-examination of Perez about that incident, but held that the error was harmless beyond a reasonable doubt. As alternative grounds to affirm, the State renews its arguments that the issue raised on appeal was not preserved in the trial court, and that cross-examination was properly limited, where the incident did not evidence bias by Perez. The State also objects to Kasparova's claim that this ruling was a confrontation violation as to an additional witness, Alondra Servin, because that claim was untimely raised for the first time in a motion for reconsideration at the Court of Appeals.

**D. STATEMENT OF THE CASE**

The defendant, Anna Kasparova, was convicted after a jury trial of first degree felony murder with a firearm enhancement for the killing of Edixon Velasquez on September 19, 2017. RCW 9A.32.030(1)(c)), RCW 9.94A.533(3)); CP

223, 226, 252; 2RP 1549-50.<sup>2</sup> The relevant facts are set forth in the State’s briefing before the Court of Appeals. Brief of Respondent at 4-14. The court imposed a standard range sentence. CP 336-41.

The Court of Appeals affirmed the convictions and sentence in a unanimous unpublished opinion. State v. Kasparova, 81109-6-I (Wash. Ct. App. November 15, 2021) (unpublished).

**E. ARGUMENT**

The State’s briefing at the Court of Appeals adequately responds to the issues raised by Kasparova in her petition for review. If review is accepted, the State seeks cross-review of alternative arguments it raised in the Court of Appeals. RAP

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<sup>2</sup> The State has adopted the method of referring to the Report of Proceedings used by the appellant, as follows: 1RP – the consecutively paginated volumes for February 7-8, 2018, February 8, April 5, May 17, August 19, and October 22, 2019, January 24, 2020, and February 7, 2020; 2RP – the consecutively paginated volumes for October 23, 2019, through December 5, 2019.

13.4(d). The provisions of RAP 13.4(b) are inapplicable because the State is not seeking review. However, in the interests of justice and full consideration of the issues, if review is granted it should include review of the alternative arguments raised by the State in the Court of Appeals. RAP 1.2(a); RAP 13.7(b). Those arguments are summarized below and set forth more fully in the briefing in the Court of Appeals.

**1. THE TRIAL COURT PROPERLY PROHIBITED CROSS EXAMINATION OF PEREZ ABOUT AN UNRELATED INCIDENT.**

Kasparova claims that the trial court deprived her of her right to confront witness Jesus Perez Arellano (Perez) with evidence of alleged bias against codefendant Linares when it refused to allow her to cross-examine Perez about an alleged theft that he committed with Linares. The Court of Appeals found that the trial court erred, but the error was harmless beyond a reasonable doubt. Kasparova, slip op. at 12-17. While the Court of Appeals was correct that any error was



harmless, as alternative grounds to affirm, the State renews its arguments that this claim was not preserved in the trial court and that the evidence was properly excluded.

a. Relevant Facts.

The trial court was informed that on October 2, 2017, about two weeks after the murder of Edixon Velasquez, witness Perez and codefendant Linares were arrested by Auburn police for theft. CP 162. They were both charged and both cases were later dismissed without prejudice. CP 162. Defense counsel said that the police believed Perez distracted the victim while Linares accomplished the theft. 1RP 139-40. According to defense counsel, Perez blamed Linares and denied any knowledge of the theft. 1RP 140. Counsel argued that evidence relating to the incident showed Perez's bias because he would want to make Linares look bad in case that misdemeanor theft case ever was litigated and Linares became a witness, although that misdemeanor theft case was beyond the

statute of limitations. 1RP 141-44; 2RP 43. Defense counsel stated that they were not suggesting that Perez was another suspect in this case. 2RP 42. The court denied the motion to allow cross-examination on that subject, concluding that the evidence was irrelevant. 2RP 43-44.

On appeal, Kasparova argues that the relevance of the prior incident is that the theft arrest occurred the day before Linares was arrested at Perez's home. App.Br. at 45. The trial court was not informed of that alleged fact. Kasparova now claims that she was not permitted to ask Perez about his arrest and release from custody the day before Linares's arrest or whether that motivated Perez to give a statement to police. App.Br. at 45-46. Kasparova never asked to be allowed to question Perez about these alleged details. Trial counsel never argued that Perez's statement to Seattle Police detectives was a result of a desire to shift blame from himself or to avoid being charged with a crime, as Kasparova claims on appeal.

For the first time in her motion for reconsideration of the decision of the Court of Appeals, Kasparova argued that the evidence she intended to use in cross-examining Perez was relevant to show bias of Alondra Servin. This argument was not made to the trial court or in any prior appellate briefing.

b. This Claim Was Not Preserved.

The facts that are the basis of this claim on appeal were not presented to the trial court and the claim should be rejected as unpreserved. The claim that the proffered evidence was relevant to bias of a different witness, Alondra Servin, was untimely raised for the first time in a motion for reconsideration and should be rejected on that basis.

Generally, an appellate court will not consider an issue raised for the first time on appeal. RAP 2.5(a); State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). The policy encourages the efficient use of judicial resources, giving the trial court an opportunity to correct any error and avoid an

appeal. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). Where, as here, the facts that are the basis of the claim were not presented to the trial court, appellate courts should refuse to consider the claim. The trial court's ruling on the argument presented to it was not an abuse of discretion – the proffered evidence was irrelevant. It cannot have abused its discretion as to the facts and theory argued in this appeal because those facts and theory were not presented.

As to the claim Kasparova raised after the decision in the Court of Appeals, that this error was a confrontation violation as to Servin, defense trial counsel did not believe the evidence was relevant to alleged bias of Servin – they did not argue it was. The argument that it would have established bias of Servin should be rejected as unpreserved – it is essentially an argument that there was a confrontation violation as to Servin as well as Perez. A defendant must assert a confrontation violation in the trial court, or the right is waived. State v. Burns, 193 Wn.2d 190, 210-11, 438 P.3d 1183 (2019).

Kasparova has waived her new argument that the exclusion of evidence of the alleged theft by Linares and Perez was a confrontation violation as to witness Servin.

Moreover, the argument that Servin's testimony was tainted by the trial court's ruling precluding this cross-examination of Perez was raised for the first time in a motion for reconsideration in the Court of Appeals and should be rejected on that basis. New arguments are improper even in a reply brief and are entirely improper in a motion for reconsideration. *See* Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration."); State v. Pervez, 15 Wn. App. 2d 265, 272, 478 P.3d 103 (2020) (argument first raised in a reply brief is too late for consideration); Samra v. Singh, 15 Wn. App. 2d 823, 834, 479 P.3d 713 (2020) (additional factual arguments raised for the first time in reply brief will not be addressed).

c. The Evidence Proffered In the Trial Court Was Irrelevant And Properly Excluded.

The right to present evidence of a witness's bias is essential to the constitutional right to confront and cross-examine adverse witnesses. Davis v. Alaska, 415 U.S. 308, 316, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). But there is no constitutional right to present evidence that is not relevant to bias. State v. Gregory, 158 Wn.2d 759, 789-90, 147 P.3d 1201 (2006). A defendant has no right to present irrelevant evidence through cross-examination. Id. The trial court properly denied the request to question Perez about the theft because the information proffered did not evidence that Perez had any bias in this case, in which Linares was charged with murder and there was no suggestion that Perez was involved.

**F. CONCLUSION**


The State respectfully asks that the petition for review be denied. However, if review is granted, in the interests of justice the State seeks cross-review of the issues identified in Sections C and E, supra.

This document contains 1621 words, by calculation of Word software, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 29th day of March, 2022.

Respectfully submitted,

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**KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT**

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