NO. 97895-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JEREMIAH ALLEN TEAS, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-02097-6

ANSWER TO PETITION FOR REVIEW

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

RACHAEL A. ROGERS, WSBA #37878
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (564) 397-2261

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Unpublished Opinions

IDENTITY OF RESPONDENT

The State of Washington, plaintiff in the trial court, is the respondent herein.

STATEMENT OF THE CASE

The State charged Jeremiah Teas (hereafter 'Teas') with Rape in the First Degree by forcible compulsion and alleged he used a deadly weapon during the commission of the crime. CP 5. The charge arose from an incident that occurred on October 5, 2016 involving a female victim, R.C. Teas proceeded to a jury trial on the original charge. At trial the testimony and evidence presented as follows:

At the time of trial, R.C. was 29 years old and living in Vancouver, Washington. RP 280. R.C. had an advertisement posted on Backpage, a website similar to craigslist. RP 286. She posted her advertisement for massages in the escorts category on Backpage. RP 286, 326. On October 5, 2016, at about 3pm, R.C. got a phone call in response to her advertisement asking if she was available; she told the man she was, and texted him her address. RP 284-85. On the phone they discussed how long of a massage the man wanted and the price. RP 287-88. He said he was taking the bus to her, and then texted her as he arrived at the apartment complex asking for the apartment number. RP 284. He arrived at about

3:30pm. RP 291. The only other person in the apartment at the time was her roommate, Ms. Crawford. RP 295.

The man knocked on R.C.'s apartment door, and when R.C. opened the door she saw the defendant standing there. RP 293. He was wearing a hoody and jeans and was carrying a backpack. RP 293. R.C. tells him to come in and she takes him to her bedroom. RP 294. R.C. closed the door and bent over to put her phone down on a bedside table. RP 294, 296. Suddenly, before she had a chance to stand up straight, the defendant was on R.C.'s back, almost piggy-back ride style. RP 296. R.C. then looked back at him and saw he was holding a knife to her throat so close it was touching her skin. RP 294, 297. The knife was in the defendant's hand and the blade was exposed. RP 296. R.C. described the blade as the "box cutter part" of the knife. RP 296. The defendant told her he was going to rape her. RP 297. R.C.'s thoughts were about getting out of the situation alive, so she told the defendant she would do whatever he wanted if he put the knife away. RP 297. At first the defendant started to put the knife in his pocket, but she told him he had to put it in his backpack before she would do anything. RP 298. R.C. was afraid that the defendant was going to kill her and worried her kids would come home and find her. RP 324.

R.C. took her pants down, but does not think they were fully off; the defendant remained clothed except for his shoes, which he removed, and he pulled his pants partway down. RP 299-300. The defendant then asked R.C. to give him oral sex; she told him no. RP 298. The defendant asked R.C. to kiss him; she said no. RP 298. She told him to use a condom, and he put a condom on. RP 298. R.C. was positioned in a leaned-back sitting position facing the defendant, and the defendant was standing between her legs. RP 300. The defendant put the condom on his penis and then put his penis inside R.C.'s vagina, penetrating her vagina. RP 301. That lasted a couple minutes. RP 301. At some point during the rape the defendant put his mouth on her breasts. RP 320. The defendant was not maintaining an erection; R.C. told him they needed lubrication and told him to let her up to get some. RP 301. R.C. told him that a few times, hoping that if he let her up she could get away. RP 301-02. The defendant finally agreed to use some lubrication and he let R.C. get up. RP 302. R.C. immediately went to the bedroom door, but the defendant met her at the door and said, "don't leave the room." RP 302. At that moment, R.C. knew she had to get out of there and so she physically struggled with the defendant, who was trying to keep her inside the room, and "gave it all she had," managing to push past him and open the door. RP 302. The second R.C. was out of the room she was screaming out for her roommate,

yelling, "Savannah, where's the gun?" and ran to Ms. Crawford's room. RP 303. Ms. Crawford was in her room and R.C. burst in and told her that the guy had a knife. RP 303. R.C. was naked from the waist down. RP 305. Ms. Crawford ran past R.C. and pushed against the door; the defendant jiggled the handle. RP 303. R.C. knew her roommate had a gun and she was hoping it was with her in her bedroom, but Ms. Crawford did not have it there. RP 304.

R.C. and Ms. Crawford soon heard the front door open and close, and R.C. looked out the bedroom window and saw the defendant putting his shoes on the sidewalk below. RP 305, 351. R.C. yelled out the window, calling him a name and saying the cops would find him. RP 305. R.C. was emotional and angry at this point, and still hysterical. RP 305, 352. She and Ms. Crawford decided to follow him. RP 305, 352. They went down to the parking lot and got in Ms. Crawford's car. RP 306, 353. They saw the defendant near the rental office towards the front of the complex and were about 20 feet away from him. RP 308, 357. R.C. was hysterical and yelling at the defendant that he wasn't going to get away with it. RP 357. When the defendant reached the street, he headed south. RP 309, 359. The street was a one way street travelling in the opposite direction, so R.C. and Ms. Crawford had to first head north before they could go back around to try to find the defendant again. RP 309-10. They

were unable to find the defendant after a few minutes, so R.C. and Ms. Crawford returned to their apartment. RP 310.

When they returned, R.C. and Ms. Crawford talked for a bit and then R.C. called her mom, trying to decide what to do. RP 310. R.C. decided to call 911 and police responded to her apartment. RP 311. She told them what had happened and then she went to the hospital for a rape examination. RP 311. Ms. Crawford went to the hospital with R.C. for support. RP 362. R.C. found the rape examination to be very invasive and it was really emotional for her, not something that was easy to go through. RP 311-12. The nurse had R.C. describe exactly what happened, they collected her clothes, and took swabs from her nipples, her private areas, and every body cavity. RP 312. After the rape exam, some detectives talked to R.C. and had her again explain what had happened. RP 313. R.C. let the detectives download her cell phone for potential evidence so the police could find the defendant. RP 314. The police also searched R.C.'s apartment. RP 314. The defendant had left a hat on R.C.'s bed and the knife he used had fallen to the floor, but R.C. had picked it up and put it on the bed. RP 315-16. R.C. had noticed the defendant had a small injury to the back of his hand and a little blood got on her sheet and on her bra strap. RP 315-16.

R.C. admitted she had twice shoplifted from Walmart 7 years prior to the trial because she was a struggling single mother and she was trying to give her kids something for Easter. RP 322. R.C. also admitted she was convicted of theft of rental property after she leased a computer from Rent-A-Center and then stopped making payments on it after the computer was stolen. RP 322.

Ms. Crawford indicated that after the incident, R.C. wasn't the same. RP 364. R.C. slept in Ms. Crawford's room with her, and for weeks she pushed a chair up against the door. RP 364. R.C. was constantly scared that someone was going to come into the apartment and do something to her, and she was really worried that the defendant hadn't been caught. RP 364.

Deputy Adam Beck of the Clark County Sheriff's Office collected the rape kit containing the evidence from R.C.'s exam from the hospital and took it to the police station and entered it into evidence. RP 440. Deputy Chris Luque obtained a search warrant to obtain a sample of Teas' DNA. RP 576-77. Brad Dixon from the Washington State Patrol Crime Lab used that sample as a reference sample to compare to the DNA profiles he obtained from items of evidence collected by police and by the sexual assault nurse examiner. RP 620-35. The hat that Teas left on the victim's bed matched Teas' profile, with a random match probability as 1

in 130 quintillion (130,000,000,000,000,000,000). RP 629. There was a stain on the bed sheet that appeared to possibly be blood, but did not test presumptively positive for blood. RP 627. Nevertheless, the major contributor of the DNA from that stain on the bedsheet was Teas, again with a random match probability of 1 in 130 quintillion. RP 629-30. The handle of the knife tested positive for both Teas' and R.C.'s DNA with a random match probability of 1 in 27 quadrillion (27,000,000,000,000,000). RP 630. The swab of R.C.'s left breast tested positive for Teas' DNA with a random match probability of 130 quintillion. RP 631.

The State also presented surveillance video from the public bus that Teas took on October 5, 2016, the number 25 C-TRAN bus that goes from downtown Vancouver, through St. Johns and up to 99th street. RP 474-76. The video ran about 14 minutes, ending at 3:31pm on October 5, 2016. RP 481-82. Just before the Steeple Chase apartment complex, the bus surveillance video shows a man with a hat and a backpack get off the bus. RP 499.

Deputy Luque created a photo montage for a photo laydown to see if R.C. and Ms. Crawford could identify a suspect. RP 549. They both selected the photo of Teas as the assailant. RP 549.

Deputy Luque made contact with Teas in person during his investigation. RP 574-75. Teas was arrested and submitted to a recorded interview. RP 576. During the interview Teas told police that he was in the area on October 5, 2016 seeing a friend named Chris. RP 586-87. Teas initially indicated that he had communicated with Chris by phone, but that the day before they severed ties so he no longer had Chris' phone number. RP 587. Teas indicated he got off work at 3pm on October 5, 2016 and took the number 25 bus up to St. Johnson to see Chris. RP 588. Teas said he only stayed with Chris for a few minutes because he had to leave to go to a birthday party. RP 588. Deputy Luque told Teas that he didn't think Teas was there to see a guy, but rather that he was with a female. RP 588. In response, Teas said, "I'm sticking to the story." RP 589. Teas told Deputy Luque that he was not familiar with anyone named "Miley," that he didn't leave his knife at a friend's house and doesn't know why police would be asking him about a knife. RP 590. Additionally, when police told Teas that two women identified him as the person who tried to rape one of them and what would Teas say if they found his DNA on the victim, Teas said he thought the deputy was lying to him. RP 591.

Teas decided to testify in his defense. RP 645. Teas testified that he was looking on Backpage, looking at the adult services portion of the site, specifically under escort services, and that he found an ad for

massages by Miley. RP 647-48. On October 5, 2016, Teas got off work at 3pm and arranged to come to Miley's apartment. RP 649-50. Teas took the number 25 bus to Miley's apartment. RP 650-51. The bus ride took about 15 minutes. RP 651. Teas had his backpack with him, a pocket knife, and wore a Seahawks hat. RP 653. A woman opened the door and had Teas come inside and took him to the master bedroom. RP 654. They did not discuss services or fees. RP 656. Teas claimed the woman he knew as Miley sat down on the bed and told him to take off his pants. RP 656. Teas pulled his pants down and Miley took off her pants. RP 657. Teas asked her if they could kiss and if she could perform oral sex, and Miley said no. RP 657. Miley told Teas he had to wear a condom because she was not on birth control. RP 658. Teas testified that Miley provided him the condom. RP 658. Teas was having issues obtaining an erection, so Miley asked if she could get some lubricant or a penis pump; she asked this multiple times as Teas continued to have issues. RP 658-59. Teas testified that as he was trying to get himself erect, Miley suddenly got up and ran away screaming. RP 659. Teas then amended that testimony to say that he was reaching into his pocket to try to get the money out to pay Miley when his knife came out because it was in the same pocket. RP 659.

Teas testified that he did not follow Miley, he simply grabbed his belongings and went to the front door and left the apartment. RP 660. As

he walked out of the complex, Miley and another woman were in a car and Miley yelled at him that she was going to get him, that she had his stuff and used foul language towards him. RP 661. Teas walked away and walked towards the mall and later went to a birthday party. RP 664.

On October 7, two days later, Teas had contact with police. RP 664. Teas told police that he was visiting a friend named Chris on October 5 in or near the same apartment complex that the woman he knew as Miley lived at. RP 665. Teas testified he told police that because he was ashamed about going to an escort service and did not want his family to know. RP 665-66. Teas agreed the story he told police was something he made up. RP 667.

Teas denied having sexual intercourse with the woman he knew as Miley. RP 672. He testified that his penis was never inserted in her vagina because he could not maintain an erection. RP 672.

Teas asked the trial court to give an instruction on consent. RP 685. The trial court declined to give the instruction, noting that Teas was still able to argue his theory of the case. RP 687. The court gave a lesser offense instruction on Rape in the Second Degree by forcible compulsion. CP 37. No other lesser included offenses were offered for the jury's consideration.

Teas did not object to any statements the prosecutor made during closing argument. RP 720-50. Relevant portions of the State's closing argument are quoted in the pertinent argument section below. The jury returned a verdict of guilty on the charge of rape in the first degree and returned a special verdict finding that Teas used a deadly weapon during the commission of the crime. RP 42-43.

Teas' prior conviction for Child Molestation in the First Degree was agreed by Teas to count as his first of two strikes under the persistent offender law. RP 787-93. The court sentenced Teas as a persistent offender to life without parole. CP 46-64. Teas then timely appealed. CP 65. The Court of Appeals affirmed Teas' conviction in a published opinion issued on August 20, 2019. *State v. Teas*, 10 Wn.App.2d 111, 447 P.3d 606 (2019). This petition for review timely follows.

ARGUMENT AS TO WHY PETITION SHOULD BE DISMISSED

Teas has failed to show any basis under RAP 13.4 that provides for review by this Court. RAP 13.4(b) provides the bases under which this Court will accept review of a decision terminating review. Those bases include 1) that the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; 2) that the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;

3) that the issues involve a significant question of law under the U.S. and/or Washington State constitutions; and 4) that the issues involved are of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1)-(4). Teas alleges every basis under RAP 13.4(b) is present in this case. On the contrary, none of the bases listed under RAP 13.4(b) indicate that review should be granted in this case. Accordingly, this Court should not grant review of the Court of Appeals' decision.

I. There is no basis for review of the Court of Appeals' application of the "flagrant and ill-intentioned" prosecutorial misconduct standard of review.

Teas argues this Court should accept review because the Court of Appeals misapprehended *State v. Emery*, 174 Wn.2d 741, 278 P.3d 653 (2012) and therefore its decision is in conflict with precedent from this Court. Teas also argues the Court of Appeals improperly took a piecemeal approach to its analysis of Teas' prosecutorial misconduct claims and the Court of Appeals improperly applied the holding in *State v. Martin*, 171 Wn.2d 521, 252 P.3d 872 (2011). The Court of Appeals properly considered Teas' prosecutorial misconduct claims, applying the correct legal standard, and reasonably concluded any misconduct was not prejudicial. Accordingly, the Court of Appeals opinion does not merit review by this Court.

Teas claims the Court of Appeals erred in applying the "flagrant and ill-intentioned" standard of review to Teas' prosecutorial misconduct claims instead of the constitutional harmless error standard. As Teas raised the issue as prosecutorial misconduct in his briefing to the Court of Appeals, the Court of Appeals properly considered the issue as one of prosecutorial misconduct and properly applied the "flagrant and ill-intentioned" standard.

In *Emery*, *supra,* this Court addressed the defendant's request for the Court to consider a prosecutorial misconduct claim under the constitutional harmless error standard. *Emery*, 174 Wn.2d at 756-57. There, the defendant alleged the prosecutor improperly made a "truth statement" and misstated the burden of proof, infringing on his constitutional rights. *Id.* This Court noted that it had already declined to apply the constitutional harmless error standard in prosecutorial misconduct cases when a prosecutor makes a truth statement and misstates the burden of proof. *Id.* at 756 (citing to *State v. Warren*, 165 Wn.2d 17, 26 n. 3, 195 P.3d 940 (2008)). This Court also did not apply the constitutional harmless error standard when the prosecutor misstated the law by misstating the standard upon which the jury could find the defendant had actual knowledge in *State v. Allen*, 182 Wn.2d 364, 373-74, 341 P.3d 268 (2015). The constitutional harmless error standard has been

rarely applied to prosecutorial misconduct claims, and only in circumstances wherein the prosecutor directly commented on the defendant's right to remain silent and to a prosecutor's injection of improper racial biases into the trial. *See State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011); *State v. Gregory*, 158 Wn.2d 759, 808 n. 24, 147 P.3d 1201 (2006), *overruled on other grounds, State v. W.R., Jr.,* 181 Wn.2d 959, 336 P.3d 1134 (2014); *State v. Easter*, 130 Wn.2d 228, 242-43, 922 P.2d 1285 (1996). Whereas other, more regular prosecutorial misconduct claim, those involving "trial irregularities" that do not independently violate a defendant's constitutional rights, are analyzed under the usual prosecutorial misconduct standard of review. *See State v. Davenport*, 100 Wn.2d 757, 761 n. 1, 675 P.2d 1213 (1984).

The prosecutorial misconduct standard of review determines whether a defendant's right to a fair trial was violated. The Court of Appeals appropriately applied that standard of review to Teas' claims. The prosecutor did not comment directly on Teas' right to remain silent, or his exercise of his right to remain silent as seen in prior case law wherein the constitutional harmless error analysis has applied. The prosecutor here also did not inject racial bias, or otherwise directly comment on Teas' constitutional rights. The Court of Appeals appropriately applied the

"flagrant and ill-intentioned" standard to Teas' unpreserved prosecutorial misconduct claims.

The Court of Appeals also appropriately considered each claim of prosecutorial misconduct Teas alleged, considering it both individually, and then cumulatively under Teas' cumulative error claim. The Court of Appeals did not improperly consider the arguments under a "piecemeal" approach.

The Court of Appeals also did not overlook the reasoning in *State v. Martin*, 171 Wn.2d 521, 252 P.3d 872 (2011) in considering Teas' tailoring prosecutorial misconduct claim. *Martin* does not categorically prohibit a prosecutor from arguing a defendant tailored his testimony unless that argument was preceded by cross-examination of the defendant on the subject. In *Martin*, this Court expressly declined to address general tailoring arguments. *Martin*, 171 Wn.2d at 536 n. 8. In *State v. Berube*, 171 Wn.App. 103, 286 P.3d 402 (2012), *review denied*, 178 Wn.2d 1002 (2013), Division I of the Court of Appeals noted that the evil addressed by *Martin* was "a closing argument that burdens the exercise of constitutional rights without an evidentiary basis and in a fashion preventing the defendant from meaningful response." *Berube*, 171 Wn.App. at 116-17. However, "[w]hen tailoring is alleged based on the defendant's testimony on direct examination, the argument is a logical attack on the defendant's

credibility and does not burden the right to attend or testify." *Id.* at 117. There is no requirement that a prosecutor raise the issue on cross-examination in order to make a credibility argument in closing. *Id.* Thus the prosecutor in *Berube* did not commit misconduct when he argued that the defendant testified to "make his version of events conform with" what he had heard another witness testify to. *Id.*

In Teas' case, the prosecutor based his argument off the defendant's own testimony because the defendant's testimony differed so substantially at trial from the statements he made to police. An argument that Teas tailored his testimony to fit into the State's evidence was a reasonable inference from the evidence. This argument did not unduly burden Teas' exercise of his constitutional right to testify and it did not offend *Martin, supra*. There is no basis to review the Court of Appeals' decision on this issue under RAP 13.4.

II. The Court of Appeals did not err in holding no consent instruction was necessary

Teas argues the Court of Appeals erred in its decision finding that no jury instruction on the definition of consent was necessary and that the State met its burden of proof of disproving consent by proving forcible compulsion beyond a reasonable doubt. Teas appears to argue this decision is in conflict with Supreme Court precedent and review should be

accepted under RAP 13.4(b)(1) and that it involves a significant question of law under RAP 13.4(b)(3). Teas argues the Court of Appeals improperly relied on dicta from *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014). Teas further argues that this Court should treat a consent defense more like other defenses such as diminished capacity or voluntary intoxication and should give a consent instruction whenever the defense has presented evidence of consent. However, the Court of Appeals' reliance on *W.R.* was appropriate and given the facts of this case, a consent instruction was not necessary for the jury to be fully informed of the law and for Teas to be able to argue his theory of the case.

Consent is an affirmative defense to rape as it negates the element of forcible compulsion. *State v. W.R.*, 181 Wn.2d 757, 763, 336 P.3d 1134 (2014). The State has the burden of proving forcible compulsion beyond a reasonable doubt in a charge of rape by forcible compulsion. *See id.* If the State proves forcible compulsion, it has necessarily disproved consent. The "State's burden to prove forcible compulsion encompasses the concept of nonconsent." *Id.* at 767. No additional jury instructions are necessary to adequately instruct the jury on the State's burden of proving forcible compulsion and thus disproving consent. "Because the focus is on forcible compulsion, jury instructions need only require the State to prove the elements of the crime. It is not necessary to add a new instruction on

consent simply because evidence of consent is produced." *Id.* at 767 n. 3. As Division I of this Court noted in the unpublished case of *State v. Stanley*, 200 Wn.App. 1058 (Div. I, 2017) (unpublished),[1] even if the defendant produces enough evidence to put consent in issue, "the supreme court cautioned ... '[i]t is not necessary to add a new instruction on consent.'" *Stanley*, slip. op. at 2 (quoting *W.R.*, 181 Wn.2d at 767 n.3). In addition, the comment to WPIC 40.05, the definition of consent, the Washington Pattern Instruction Committee indicated that,

> An instruction on consent is generally not appropriate in prosecutions for first or second degree rape. To prove first degree rape, or second degree rape under RCW 9A.44.050(1)(a), the State must prove that sexual intercourse occurred by forcible compulsion. In the overwhelming majority of cases, the focus should be on forcible compulsion rather than consent. Except in unusual cases, an instruction on consent may confuse the jurors about the burden of proof, without providing them meaningful guidance. In *State v. W.R., Jr.,* 181 Wn.2d 757, 336 P.3d 1134 (2014), the Supreme Court held that although the victim's alleged consent to sexual intercourse negated the 'forcible compulsion' element of second-degree rape, a separate instruction on consent is not needed 'simply because evidence of consent is produced.'

WPIC 40.05, cmt (quoting *W.R.*, 181 Wn.2d at 767 n. 3). Therefore, no consent instruction is needed even if the defendant has sufficiently put evidence of consent into the record at trial.

---

[1] GR 14.1 allows for citation to unpublished opinions of the Court of Appeals issued on or after March 1, 2013. These opinions are not binding on this Court and may be given as much persuasive value as this Court chooses.

Even if this Court finds the Court of Appeals erred in finding the trial court did not need to give an instruction on consent, any error was harmless; even if the jury had been given the instruction Teas requested, the same result would have been reached. A constitutional error is harmless if it appears "'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Neder v. U.S.*, 527 U.S. 1, 15, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1996) (quoting *Chapman v. Cal.*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)). At trial, the State was required to prove beyond a reasonable doubt that the sexual intercourse was achieved by forcible compulsion. As discussed above, proving forcible compulsion necessarily disproves consent. *W.R.*, 181 Wn.2d at 767. "There can be no forcible compulsion when the victim consents, as there is no resistance to overcome. Nor is there actual fear of death, physical injury, or kidnapping when the victim consents." *W.R.,* 181 Wn.2d at 765. The jury found Teas used forcible compulsion to accomplish sexual intercourse with the victim; therefore the jury necessarily found the victim did not consent to the sexual intercourse. The instruction, as confirmed by this Court in *W.R., supra*, was unnecessary, and the instructions given to the jury in this case accurately identified the elements of the crime of rape in the first degree, and properly put the entire burden of proving the elements on the State. CP 25, 35. The

instructions did not shift any burden to the defendant. And despite Teas' argument, the jury would not have been able to find the defendant used "physical force which overc[a]me[] resistance," or "a threat, express or implied, that place[d] [the victim] in fear of death or physical injury to herself [] or another person, or in fear that she [] would be kidnapped," if they had a reasonable doubt as to whether the victim consented to the act. *See* RCW 9A.44.010(6). Instead, the jury clearly weighed the evidence and determined the credibility of the witnesses, and did not believe the defendant's version of events.

In *State v. Buzzell*, 148 Wn.App. 592, 200 P.3d 287 (2009) Division I of the Court of Appeals found that while the trial court's refusal to give a consent instruction at the defendant's request was erroneous, that error was harmless. *Buzzell*, 148 Wn.App. at 601. The Court noted that even without the consent instruction, the defendant was able to argue consent as his theory of the case. *Id.* The case turned on which testimony the jury believed: the victim's or the defendant's. *Id.* The court found that since the defendant testified that the sexual contact was consensual, the jury could not have accepted his testimony and still returned a guilty verdict. *Id.* Thus the error was harmless. *Id.*

As in *Buzzell,* the jury necessarily rejected the Teas' version of events by finding him guilty of rape. By finding the State proved every

element of the crime of rape in the first degree, the jury necessarily found the victim did not consent. Any potential error the trial court committed in not giving an instruction on consent was harmless.

The Court of Appeals' holding in this case does not conflict with *W.R., supra*, nor does it conflict with any other case law from the Court of Appeals. This Court clarified this issue in *W.R., supra*, and there is no need for additional clarification through this case; accordingly, this is not an issue of substantial public interest, nor is there a remaining significant question of law to be resolved. There is no basis for this Court to grant review of this issue and accordingly Teas' petition should be denied as to this issue.

III. This Court should deny review of the Court of Appeals' decision that the trial court properly sentenced Teas as a persistent offender.

Teas argues this Court should accept review of the Court of Appeals' decision affirming Teas' sentence as a persistent offender because Teas committed his first strike offense during a time period that included time when Teas was ages 17 to 19 years old. As Teas committed the predicate offense as an adult, including at the ages of 18 and 19, this decision does not raise doubts on the constitutionality of imposing a life sentence when one of the predicate strike offenses occurred when the defendant was a youth as Teas alleges. There is no basis for this Court to grant review.

Teas entered a guilty plea to Child Molestation in the First Degree in his prior case, admitting that he committed the offense between a date range that included 7 months when Teas was 17 years old, and time when Teas was 18 years old and 19 years old.

When a person enters a guilty plea, that person admits to the conduct occurring on the date range included in the plea statement. In *In re Crabtree*, 141 Wn.2d 577, 9 P.3d 814 (2000), the defendant entered a guilty plea to Rape of a Child in the First Degree, Child Molestation in the First Degree, and Statutory Rape in the First Degree, that occurred between June 1, 1988 and August 31, 1988. *Crabtree*, 141 Wash.2d at 580. The Supreme Court found Crabtree admitted he committed the offense after the effective date of the statute by virtue of his plea:

> ...in Crabtree's guilty plea statement he admitted he committed rape of a child and child molestation between June 1, 1988 and August 31, 1988. This constituted an admission of criminal acts between July 1 and August 31. Crabtree was convicted and sentenced for crimes he admitted occurred after the effective date of the statute."

Id. at 585. Similarly, from Teas' judgment and sentence, we can see he entered a plea to a crime that occurred on a date range, thus constituting an admission of that criminal act on all the dates included in the date range. *See* CP 97-98. Teas admitted this act occurred over a time period. By doing so, he therefore admitted this occurred between February 6, 1995

and September 2, 1996, after he turned 18 years old. Teas admitted to sufficient facts to sustain a finding that he committed the crime as an adult.

The issue in *Crabtree*, was whether the defendant had been convicted of a crime that occurred before the statute was in effect. The court found that because he pled guilty and admitted to the relevant conduct, that he was not prejudiced by the charging document containing one month out of three that was before the effective date of the statute. *Crabtree, supra* at 585. The Court found that Crabtree was not prejudiced by this charging document "because he was *not* convicted of an offense that *may have* occurred during the month before the statute came into effect." *Id.* (emphasis original). He admitted he committed these crimes during a charging period which included time after the statute went into effect. *Id.* Though the court in *Crabtree* also found there was evidence outside of the guilty plea to support this finding, the court's holding is clear that a guilty plea to a date range which spans the commencement date of a statute admits the relevant conduct after the statute is in effect. Teas is in the same position as Crabtree. When a defendant pleads guilty to an information, he pleads guilty to the information as charged. *State v. Bowerman*, 115 Wn.2d 794, 799, 802 P.2d 116 (1990). Thus Teas is not an individual who was sentenced to a life sentence for a crime he

committed as a juvenile, and he is not an offender who was sentenced to a life sentence after a second strike wherein the first strike was based on conduct committed wholly when the offender was a juvenile. The protections of newer precedent calling into question the sentencing of juvenile offenders is simply inapplicable in Teas' case.

Furthermore, the Court of Appeals properly noted that in a categorical bar challenge, the court considers "'(1) objective indicia of society's standards to determine whether there is national consensus against sentencing those [of a particular class] to mandatory life imprisonment and (2) [its] own understanding of the prohibition of cruel punishment.'" *State v. Teas*, 10 Wn.App.2d 111, 133, 447 P.3d 606 (2019) (quoting *State v. Moen*, 4 Wn.App.2d 589, 601, 422 P.3d 930 (2018), *review denied,* 192 Wn.2d 1030, 439 P.3d 1063 (2019)). Additionally, in *State v. Moretti*, No. 95263-9 (Wash. Aug. 15, 2019), this Court noted that the constitutional bar on cruel punishment does not "require a categorical bar on sentences of life in prison without the possibility of parole for fully developed adulted offenders who committed one of their prior strikes as young adults." *Moretti*, (slip op. at 2). The Court of Appeals also noted several other jurisdictions which allow for sentencing adults as persistent offenders when their predicate offenses were "youthful." *Teas*, at 134.

Additionally, the persistent offender accountability act's goal of separating repeat offenders from the rest of society is served by punishing an adult who continued to commit violent crimes after being given a chance at rehabilitation. This goal was served in Teas' case. He is not a juvenile offender being sentenced to a life sentence. The Court of Appeals properly recognized this and properly analyzed the issue. There is no basis for this Court to revisit the Court of Appeals' decision. Teas' petition for review should be denied as to this issue.

CONCLUSION

Teas has failed to show any basis under RAP 13.4 that provides for review by this Court. Accordingly, this Court should not grant review of the Court of Appeals' decision.

DATED this 27th day of February, 2020.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: _____
RACHAEL A. ROGERS, WSBA #37878
Senior Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

February 27, 2020 - 4:25 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97895-6
Appellate Court Case Title:	State of Washington v. Jeremiah Allen Teas
Superior Court Case Number:	16-1-02097-6

The following documents have been uploaded:

- 978956_Answer_Reply_20200227162438SC072838_3290.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review.pdf
- 978956_Motion_20200227162438SC072838_0678.pdf
  This File Contains:
  Motion 1 - Overlength Answer
  The Original File Name was Motion - overlength answer.pdf

A copy of the uploaded files will be sent to:

- sara@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Ashley Smith - Email: ashley.smith@clark.wa.gov
Filing on Behalf of: Rachael Rogers - Email: rachael.rogers@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:
PO Box 5000
Vancouver, WA, 98666-5000
Phone: (564) 397-5686

Note: The Filing Id is 20200227162438SC072838