

FILED
SUPREME COURT
STATE OF WASHINGTON
1/24/2023 4:50 PM
BY ERIN L. LENNON
CLERK

NO. 101564-0
COA NO. 55375-9-II

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Respondent

v.

MILES MINKLER,
Petitioner

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAMANIA COUNTY
THE HONORABLE RANDALL C. KROG, JUDGE

ANSWER TO PETITION FOR REVIEW

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I. **ISSUES PRESENTED**

Does the decision of the Court of Appeals involve a significant question of law under the Constitution of the State of Washington or of the United States, with respect to the following rulings:

1. That co-defendant's counsel's indirect comment on the petitioner's decision not to testify did not deprive the petitioner of a fair trial when the petitioner's and the State's objections thereto were sustained, and the comment was a single comment within the context of a four-day trial?
2. That the co-defendant's counsel's questions about the petitioner's supposed drug use did not deprive the petitioner of a fair trial when no testimony on that subject was entered into the record and the jury was instructed that a lawyer's statements did not constitute evidence?
3. That the co-defendant's counsel's question about the co-defendants' connection on Facebook did not

deprive the petitioner of a fair trial when the petitioner's objection was sustained and other, non-excluded testimony established the co-defendants' association?

II. **STATEMENT OF THE CASE**

Petitioner Miles Minkler and his co-defendant Ryan Rodriguez were tried and convicted of robbery in the first degree, burglary in the first degree, assault in the second degree, and kidnapping in the first degree, related to an incident occurring on the night of November 12, 2019, at the residence of Edward Matheson. CP 054-056, 233-236.

After Minkler's arrest, but prior to Rodriguez's arrest, Matheson conducted research on social media and found a connection between Minkler and Rodriguez. RP 283-84. Prior to trial, the court excluded "any reference that [Matheson] looked at social media and determined that [Minkler and Rodriguez] were associated together" due to a lack of foundation. RP 288-89.

At trial, Matheson testified that he lived alone in his house on Highland Road, in Washougal, Washington. RP 564. Before the events of this case, Matheson suffered a brain injury resulting in memory problems, and a back injury limiting his movement. RP 566. For entertainment, Matheson often played computer games and watched sports. RP 566.

In the summer of 2019, Matheson hired Ryan Rodriguez to pressure wash his house. RP 570. Matheson and Rodriguez communicated primarily by text message. RP 570. Matheson removed window screens prior to the work being done. RP 571. Matheson stayed upstairs while Rodriguez and his team did their work. RP 572. At some point, Matheson heard a window open downstairs, which he believed was located next to his computer and an antique camera. RP 572-73. Looking through that window, a person would have been able to

see the computer and other property in the room. RP 573-74.

On the night of November 12, 2019, Matheson discovered the window to his computer room open and his computer missing. RP 579. Matheson went outside and saw his computer and camera sitting on the ground. RP 584. Someone appeared with a gun and threatened to shoot Matheson. RP 585. The person's face was not visible to Matheson. RP 587-88. Matheson charged at the person, who began striking Matheson in the head with the gun. RP 588. Matheson was briefly knocked out and fell to the ground. RP 589. Other individuals began kicking Matheson and hitting him with a flashlight. RP 589-90, 725. One of the kicks broke Matheson's left arm. RP 591. The person who held the gun was yelling for the others to "kick the shit out of him." RP 592. Eventually the individuals stopped kicking Matheson and disappeared. RP 592.

Matheson got up, retrieved a shotgun from his house, went back outside, and fired a shot into the ground. RP 592-93. Matheson walked to the end of his driveway and saw headlights approaching from the direction of his house. RP 596. Matheson shot the gun into the front bumper area of the vehicle. RP 596. The vehicle sped off down Highland Road toward Washougal. RP 599. In his 911 call, Matheson reported three or four individuals involved in the robbery. RP 605. Matheson testified that he discovered after the incident that the lights outside his house, which previously worked, were unscrewed and nonfunctional. RP 678.

Skamania County Sheriff personnel responded to Matheson's property following his 911 call. RP 689. Officers secured a realistic-looking BB pistol, a multitool, pill bottles, and a black nitrile glove from outside the residence. RP 690, 701. Officers observed a portion of the lawn outside the house that was compressed with

visible foot marks, where Matheson said the assault took place. RP 699.

Emergency physician Carolyn Martin attended to Matheson and determined he had a broken ulna and laceration on his head, among other more minor injuries. RP 768. Those injuries were consistent with being struck in the manner Matheson described. RP 769, 772.

Laura Dolezal, a DNA forensic scientist, tested the airsoft pistol recovered from Matheson's property. RP 794. Ms. Dolezal's analysis determined a very high probability that Rodriguez's DNA was present on the pistol, while excluding Minkler and Fischer. RP 795. Ms. Dolezal detected more limited support for finding Michael Fischer's DNA present on a mask recovered from Matheson's property. RP 799.

Officer Mayhugh of the Camas Police Department received a bulletin from the Skamania County Sheriff's Office with a description of a new black Toyota truck.

Mayhugh happened to drive past the Fern Prairie Market parking lot and noticed a maroon Toyota Tundra truck with its hood open and two male individuals close by. RP 889. One individual appeared to be putting coolant in the radiator. RP 889. One of the individuals appeared to be a white male with dark hair. RP 894.

Todd Dillmon, a Washington State Department of Corrections probation officer, testified that he knew Miles Minkler previously. RP 913. Dillmon received a Skamania County Sheriff's bulletin and identified the picture of the man in the bulletin as Miles Minkler. RP 914. Dillmon knew Miles Minkler, Ryan Rodriguez, and Michael Fischer were associated with each other. RP 915. After receiving the bulletin, Dillmon observed a red truck he believed was depicted in the bulletin he received outside of a residence on 157th Street in Vancouver, Washington that Dillmon knew was associated with Miles Minkler. RP 917.

Michael Fischer testified about his involvement in the robbery. Fischer had known and was friends with Minkler for about two years. RP 935. They had lived together at an address on 157th Street in Vancouver, Washington. RP 935. Fischer first met Ryan Rodriguez through Minkler in September of 2019. RP 937. Fischer sometimes drove his father's "newer" model Toyota Tundra. RP 940-41.

On November 12, 2019, Fischer met with Minkler and Rodriguez at Denny's restaurant in Jansen Beach, Oregon. RP 941. There, Rodriguez said his tools had been stolen by a man named Dakota Peak and described a way to get some money. RP 942-43. Rodriguez described someone who lived alone, from whom they could easily take some tools. RP 944.

The three men agreed to carry out that plan. RP 944. They dropped off Rodriguez's truck at the hotel where his girlfriend worked and rode in Fischer's truck.

RP 944. Rodriguez went inside to speak with his girlfriend. RP 950. The men cleared out garbage from the bed of the truck to make room for things of value they might find at their destination. RP 950-51. Next, the three men drove to Home Depot in east Vancouver, where Minkler bought gloves and some rope. RP 951. The men bought the rope in case they had to tie up anyone who got in the way of their robbery. RP 952-53. Fischer stated everyone seemed willing to participate in this plan. Fischer testified Rodriguez brought a BB pistol, which he showed to Fischer. RP 953. The pistol looked like a real firearm. RP 954. The gloves Minkler bought were black. RP 954.

After Home Depot, the men went directly to a property in Washougal, Washington. RP 954. When they arrived, the men donned masks and gloves. RP 956. Fischer and Rodriguez used black T-shirts for a mask. RP 956. As they approached the house on foot, Rodriguez

loosened the motion detector lights to prevent them from turning on. RP 958. Fischer opened a window on the back of the house, removed a computer and a camera from inside, and put them on the ground. RP 958-59. Fischer intended to enter the house and unlock the front door. RP 960. Fischer heard shouting and found Rodriguez pointing a gun at the homeowner outside the house. RP 959. Fischer began kicking the homeowner and hitting him with a flashlight to knock him out. RP 961-62. Fischer observed Rodriguez kick the homeowner a few times. RP 963. Minkler held the homeowner down during the assault. RP 964. The men left the homeowner in the grass and Fischer retrieved the computer and ran back to the truck. RP 964. Minkler got into the driver seat, and the two men found Rodriguez on the side of the road signaling with his flashlight. RP 968-69. Fischer heard gunshots but was unaware the truck had been hit. RP 969-70.

The truck overheated as they drove toward Vancouver, and they eventually stopped at the Fern Prairie gas station. RP 971. Minkler went inside to get coolant. RP 972. Fischer called his girlfriend, Rachel Silvis, to pick them up. RP 973. As Fischer recalled, Ms. Silvis dropped Minkler and Rodriguez at the hotel where Rodriguez's girlfriend worked and took Fischer to his residence on 157th Street in Vancouver. RP 975.

Police recovered the stolen computer at Fischer's parents' house in Battle Ground, Washington, where Fischer had been staying. RP 978. After his arrest, Fischer told Ms. Silvis she could sell a component of the computer, which had been previously removed. RP 978. Fischer retained a defense attorney named Dino Gojak. RP 979. At that time, Rodriguez had not been charged with a crime in connection with the robbery. RP 980.

Upon the advice of Gojak, Fischer decided to strike a deal with the State to provide information about the

incident and Rodriguez's involvement in exchange for reduced charges. RP 980. After release from jail, Fischer met with Rodriguez and told him about his charges. Rodriguez seemed nervous and did not mention anything about an alibi relating to the night of the incident. RP 986-87. When they met at Denny's on November 12, 2019, Rodriguez never mentioned his BB pistol having been stolen. RP 1028-29.

The State introduced surveillance videos showing Fischer's truck parked at the Fern Prairie Market recorded the night of November 12, 2019. RP 1043. Teresa Murray worked as assistant manager at the Fern Prairie Market in Camas, Washington. RP 1033.

Skamania County Sheriff's Deputy Jennifer Vejar testified that she made a recording of surveillance video originally recorded at the Fern Prairie Market. RP 1155. The video depicted a pick-up truck parked in the parking lot and steam emitting from its front end. RP 1156. Two

people exited the vehicle, one with a flashlight, and examined the front. RP 1157.

Rachel Silvis, Michael Fischer's girlfriend at the time of the incident, knew Fischer and Minkler were friends. RP 1080-81. On the night of the incident, Ms. Silvis received a call from Fischer asking her to pick him up. RP 1085. Ms. Silvis recalled picking up Minkler, Fischer, and one other male individual, whom Ms. Silvis believed to be Rodriguez, near a gas station on the outskirts of Camas, Washington and dropped them off at a hotel in East Vancouver. RP 1086-94.

Dino Gojak, Fischer's defense attorney, testified that during his representation he met with Fischer and reviewed evidence supplied by the prosecution. RP 1130. Fischer recounted to Gojak details of the incident that were not found in the police report. RP 1133. Gojak recommended Fischer seek a deal with the State to provide information in exchange for reduced charges. RP

1134. In a meeting with the prosecution, Fischer provided new details of the incident, including about Rodriguez's and Minkler's involvement, that Gojak had not heard before or seen in evidence materials. RP 1140.

Skamania County Sheriff's Office Detective Jeremy Schultz testified that in 2018 he responded to a missing person report and coordinated a search and rescue operation, in which Rodriguez reported his friend, Minkler, was missing in rural Washougal. RP 1161-62. Detective Schultz created a bulletin that included photographs taken from the Fern Prairie Market to distribute to other law enforcement agencies in the area. RP 1176-77. Officers Dillmon and Mayhugh responded to Detective Schultz with information about Minkler, Fischer, and the Toyota Tundra. RP 1177. Detective Schultz verified via the National Crime Information Center that Camas Police had run the plate of a Toyota Tundra belonging to Michael

Fischer's father between 9:00 p.m. on November 12 and 1:00 a.m. on November 13. RP 1178.

Detective Schultz observed the truck at the 157th Street address, which was associated with Minkler and Fischer, and saw damage to the front of the vehicle evidently caused by birdshot. RP 1181-83, 1188-90. Detective Schultz observed a computer, later determined to belong to Matheson, in the back seat of a BMW vehicle registered to Fischer's father parked outside the 157th Street residence. RP 1184, 1191-92. Another vehicle parked at the residence was registered to Miles Minkler. RP 1212-13. Detective Schultz attempted to research a theft report at Rodriguez's home but was unable to locate any records of such a theft report. RP 1217-18.

After Rodriguez's arrest, Detective Schultz became aware of a note Rodriguez had addressed to "Milo," which Detective Schultz understood to refer to Minkler. RP 1219, 1233. The note stated in part that Rodriguez

planned to blame Dakota Peak. RP 1233. Detective Schultz became aware of a jail phone call between Minkler and his son, in which Minkler stated he rode in “Mike’s truck” to the “Fern Prairie Store.” RP 1234.

Raquel Garcia, Rodriguez’s girlfriend at the time of the incident, testified that in November 2019 she worked at the Springhill Suites hotel in Vancouver, Washington. RP 1348. Ms. Garcia testified Rodriguez and Minkler knew each other and were friendly together. RP 1351.

III. ARGUMENT

THIS COURT SHOULD DENY DISCRETIONARY REVIEW BECAUSE THE COURT OF APPEALS CORRECTLY DETERMINED MINKLER RECEIVED A FAIR TRIAL DESPITE REMARKS BY CO-DEFENDANT’S COUNSEL.

The Court of Appeals’ decision (hereinafter cited as, “Opinion”) correctly concluded Minkler received a fair trial notwithstanding certain improper questions or comments at trial by co-defendant Rodriguez’s defense counsel (hereinafter, “defense counsel”). Minkler argues that

“[t]his Court should accept review of the matter because it is a significant question of law under the Constitution of the State of Washington and of the United States.” Br. of Pet. at 10 (citing RAP 13.4(b)(3)). However, Minkler’s petition fails to show how the Court of Appeals’ decision in this case meets that criterion.

The Sixth Amendment to the United States Constitution guarantees a defendant a fair trial but not a trial free from error. *State v. Reed*, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). The Court of Appeals has evaluated alleged improper comments by counsel for co-defendant under the same standard as prosecutorial misconduct. *State v. Dickerson*, 69 Wn. App. 744, 747, 850 P.2d 1366 (1993). In cases of prosecutorial (and by extension co-defendant counsel’s) misconduct, the burden rests on the defendant to show that the conduct was both improper and prejudicial. *State v. Gregory*, 158 Wn.2d 759, 858, 147 P.3d 1201 (2006). Once proved, prosecutorial

misconduct is grounds for reversal where there is a substantial likelihood the improper conduct affected the jury. *Id.* at 841, 147 P.3d 1201; *State v. Belgarde*, 110 Wn.2d 504, 508, 755 P.2d 174 (1988).

In determining whether a trial irregularity prejudiced the jury so as to deny the defendant his right to a fair trial, courts consider: (1) the seriousness of the irregularity; (2) whether the statement at issue was cumulative evidence; (3) whether the jurors were properly instructed to disregard the remarks of counsel not supported by the evidence; and (4) whether the prejudice was so grievous that nothing short of a new trial could remedy the error. *State v. Mak*, 105 Wn.2d 692, 701, 718 P.2d 407 (1986).

A defendant's failure to object at trial waives any error unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured any resulting prejudice. *State v. Emery*, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012). Under this heightened

standard, the defendant must show that (1) no curative instruction would have obviated any prejudicial effect on the jury and (2) the misconduct resulted in prejudice that had a substantial likelihood of affecting the jury verdict. *Id.* at 761.

A. **The Court Of Appeals Correctly Concluded Co-Defendant's That Counsel's Indirect Remarks About Minkler's Decision Not To Testify Did Not Violate His Right To A Fair Trial.**

The Court of Appeals correctly determined Rodriguez's counsel did not violate Minkler's right to a fair trial in relation to two comments indirectly touching upon Minkler's decision not to testify.

First, on redirect examination of Fischer, defense counsel engaged in the following exchange:

[Defense counsel] And just to reiterate what Lanz had said -- you are here today because -- and I asked that at the beginning. Do you know why you're testifying? Why are you testifying? Why have you decided to testify? Can you tell the jury? . . . Why have you decided to sit here and come here instead

of having a lawyer, like why, you know, Minkler?

[Fischer] I don't think I had much of a choice. . . .

[Defense counsel] What do you mean?

[Fischer] I couldn't just have my lawyer come do this.

[Defense counsel] What do you mean by that?

[Fischer] That I'm supposed -- I have to be here.

[Defense counsel] Yeah, yeah. I mean, do you know -- why are you doing this? Why are you testifying against Minkler and Rodriguez, my client? Why are you doing that?

[Fischer] I guess to get a lesser sentence.

RP 1026-27. Defense counsel's question to Fischer never even alluded to Minkler's decision not to testify. RP 1026. As the Court of Appeals properly, noted, questioning shows defense counsel intended to undermine Fischer's credibility as a witness for the State, rather than comment on Minkler's decision not to testify. Opinion at 29-30. Far from prejudicial, Fischer's admission that he was testifying against the co-defendants "to get a lesser

sentence,” RP 1027, likely helped Minkler, as the Court of Appeals noted, Opinion at 30.

Second, the Court of Appeals properly found that the following exchange, while improper, did not prejudice Minkler:

[Defense counsel] Now I want to ask you -- you heard here during the testimony that Lanz had said my Client wishes to not testify. Did you hear that?

[Rodriguez] Yes, I heard that.

MR. LANZ: Your Honor, I’m going to object as far as wherever this is going. It’s not relevant and it’s improper.

THE COURT: Overruled. And I’m going to watch where –

[Defense counsel] You heard that?

[Rodriguez] I heard that.

[Defense counsel] Why are you testifying?

[Rodriguez] Because I’ve got nothing to hide.

MR. ROBINSON: Objection -- relevance.

THE COURT: Sustained.

RP 1602-03. Here, Minkler’s counsel objected, but failed to request a curative instruction or move for mistrial.

The Court of Appeals correctly found the trial court’s

instructions to the jury minimized any prejudice arising from defense counsel's remarks. Instruction No. 5 provided, "A defendant is not required to testify. You may not use the fact that a defendant has not testified to infer guilt or to prejudice him in any way." CP 196. Instruction No. 3 informed the jurors that "[t]he defendant has no burden of proving that a reasonable doubt exists [and] is presumed innocent." CP 194. The jury is presumed to follow the court's instructions. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). This single comment within the context of the four-day trial was highly unlikely to have influenced the jury's decision. Because neither of defense counsel's comments substantially prejudiced Minkler, neither deprived him of a fair trial.

Minkler's citation to the Fifth Circuit Court of Appeals case, *De Luna v. U.S.*, 308 F.2d 140, 1 A.L.R. 969 (5th Cir. 1962) for analogous support is distinguishable from our record and non-binding. There,

the Court reversed the defendant's conviction upon finding counsel for the co-defendant made repeated and direct remarks during closing argument imputing guilt to De Luna for his decision not to testify at trial. *Id.* at 155. Co-defendant's counsel's defense strategy relied heavily upon drawing attention to the De Lunas silence to shift suspicion away from the co-defendant. Those remarks included but were not limited to the following:

Well, at least one man was honest enough and had courage enough to take the stand and subject himself to cross examination and tell you the whole story, and tell you that, "Yes, I first colored the story, but when I got back to my senses I told the truth, and that's the whole thing." You haven't heard a word from this man (de Luna).

Id. at 143. *See also id.* at n.1 (providing additional context).

In contrast to *De Luna*, defense counsel's line of questioning constituted an isolated reference to a fact already known by the jury. While Rodriguez's statement

that he “had nothing to hide” may have carried a prejudicial inference that Minkler had something to hide, this was an indirect suggestion, for which Minkler’s attorney did not request an instruction or mistrial. Unlike the attorney in *De Luna*, defense counsel here did not emphasize the co-defendant’s silence as a defense strategy. During closing argument, defense counsel never raised that subject and never even mentioned Minkler. Instead of attempting to shift blame to Minkler, defense counsel’s strategy was concerned with portraying his client as being open and forthright in response to the State’s charges, while also attempting to undercut the credibility of the State’s witnesses. The Court of Appeals correctly found Minkler failed to demonstrate prejudice substantially likely to affect the jury’s verdict.

B. **The Court Of Appeals Correctly Concluded That Co-Defendant's Counsel's Questioning About Drug Use Did Not Violate Minkler's Right To A Fair Trial.**

The Court of Appeals properly determined defense counsel's question about drug use had no impact on Minkler's right to a fair trial. Minkler identifies three instances. Br. of Pet. at 14-16. In the first, defense counsel cross-examined Fischer:

[Defense counsel] What would you [and Minkler] do together if you guys were friends?

[Fischer] I don't know, hang out at the house; go to the casino sometimes -- I don't know. Whatever.

[Defense counsel] When you say whatever, would you guys like do drugs together --

MR. LANZ: Objection, Your Honor -- 404(b).

THE COURT: Thank you. Sustained.

RP 1019-20. Following the objection, defense counsel immediately moved on to other subjects. RP 1020.

In the second instance, after asking Fischer about a graphics card he sold that he had aided in stealing from Matheson, defense counsel asked:

[Defense counsel] And do [graphics cards] have value?

[Fischer] Yeah.

[Defense counsel] In the past, were you a drug addict?

[Fischer] Yeah.

[Defense counsel] Do you know with drug addicts if they have to get their fix, do -- do some people have to get any kind of money to get their fix?

MR. ROBINSON: Objection -- relevance.

THE COURT: Sustained.

RP 1024-25.

In the third instance, while cross-examining Ms. Silvis, defense counsel asked:

[Defense counsel] On that day though when you were -- I mean, were you drunk in any way?

[Ms. Silvis] No, absolutely not.

[Defense counsel] Drugged?

[Ms. Silvis] I'm not a drinker. I don't do drugs.

[Defense counsel] No drugs at all?

[Ms. Silvis] Not at all.

[Defense counsel] And you're not sure if you saw any signs of whether any of the other people in the car were drunk or on drugs?

[Ms. Silvis] Honestly, I just figured that they were all on drugs because I --

MR. LANZ: Objection, Your Honor, to speculation.

THE COURT: Sustained. Disregard the last question and comment.

RP 1110-11.

The Court of Appeals' correctly decided that Minkler was not prejudiced by the above questioning because the trial court's instructions to the jury to disregard prevented testimony about drug use from entering the record. The Court noted that, absent a motion to strike or instruction to disregard, that testimony "remains part of the record for the jury to consider." *State v. Fluker*, 5 Wn. App. 374, 396, 425 P.3d 903 (2018). It is well-accepted that when instructed to disregard certain testimony, the jury is presumed to have followed the court's instructions. *State v. Cunningham*, 51 Wn.2d 502, 505, 319 P.2d 847 (1958).

In the first two instances, objections to defense counsel's questions about drug use prevented improper testimony from entering the record for the jury's consideration. In the third instance, the trial court sustained an objection and instructed the jury to disregard the question and answer. Instruction No. 1 to the jury stated in part, "if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict." CP 190. The Court of Appeals aptly determined that the questioning about drug use did not enter the record and did not deprive Minkler of a fair trial.

C. **The Court Of Appeals Correctly Concluded That Co-Defendant's Counsel's Questioning Regarding Matheson's Use Of Social Media Did Not Violate Minkler's Right To A Fair Trial.**

The Court of Appeals properly found no violation of Minkler's right to a fair trial when co-defendant's defense counsel questioned Matheson about his online

investigation of the co-defendants. Addressing pretrial exclusionary motions, the trial court excluded “any reference that [Mr. Matheson] looked at social media and determined that [the co-defendants] were associated together.” RP 289. Minkler suggests the following exchange violated the court’s order:

[Defense counsel] Did you connect -- you said Miles Minkler. Did you connect that name with Ryan?

[Mr. Matheson] I found out that they had a business together, with through Google. It was connected to Ryan Rodriguez’s Facebook work page.

[Defense counsel] Did you have any -- oh, that’s what I was going to ask you. So you linked it between a Facebook?

[Mr. Matheson] Well, there’s --

MR. LANZ: And, Your Honor, I’m going to object as far as now having a lack of foundation and hearsay.

THE COURT: Sustained.

RP 673.

The Court of Appeals correctly found only minimal prejudice from the above exchange, given later admissible testimony established the co-defendants

associated together prior to the incident. Opinion at 31-32. This decision follows precedent establishing that improper admission of evidence constitutes harmless error if the evidence is cumulative or of only minor significance in reference to the evidence as a whole. *Brown v. Spokane County Fire Protection Dist. No. 1*, 100 Wn.2d 188, 196, 668 P.2d 571 (1983).

Other testimony by Matheson stated he discovered through a Google search that Minkler and Rodriguez had a business relationship, RP 674, did not violate the trial court's order. In addition, Fischer testified that Minkler and Rodriguez were "[f]riends," RP 937, and that Minkler "would help [Rodriguez] with things," RP 938, and that Fischer met with both to plan the burglary of Matheson's residence, RP 942-44. Fischer's girlfriend, Rachel Silvis, testified that she knew Minkler and Rodriguez were friends. RP 1082. Rodriguez testified Minkler was his employee, that they worked together, and that Rodriguez

invited him to his house more than once. RP 1590-93. Detective Schultz had knowledge that the co-defendants knew each other since 2018. RP 1161-62. Also, Todd Dillmon, a Washington State Department of Corrections probation officer, testified that he knew Miles Minkler, Ryan Rodriguez, and Michael Fischer were associated with each other. All this testimony mitigated any prejudice from Matheson's testimony about discovering the co-defendants' association via Facebook. Defense counsel's improper questioning of Matheson was therefore unlikely to have substantially affected the jury's verdict.

IV. **CONCLUSION**

The Court of Appeals correctly applied legal precedent to the particular facts of the case. Therefore, no significant questions of law under the Constitution of the State of Washington or of the United States are involved, and this decision does not qualify for discretionary review.

The petitioner received a fair trial. This Court should deny the petition for discretionary review.

Respectfully submitted this 24th day of January, 2023. (I certify that this document contains 4,700 words, excluding the parts of the document exempted from the word count by RAP 18.17.)

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V. **CERTIFICATE OF SERVICE**

Service was effected via the Court of Appeals upload portal upon counsel for the petitioner:

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DATED: 1/24/2023



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January 24, 2023 - 4:50 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,564-0
Appellate Court Case Title: State of Washington v. Miles J. Minkler & Ryan J. Rodriguez
Superior Court Case Number: 19-1-00083-8

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- 1015640_Answer_Reply_20230124164618SC038238_0518.pdf
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