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SUPREME COURT
STATE OF WASHINGTON
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NO. 96453-0

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of Paul Harell:

STATE OF WASHINGTON,

Respondent,

v.

PAUL HARELL,

Petitioner.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

KELLY A. PARADIS
WSBA #47175 / OID #91094
Assistant Attorney General
Attorney for the State of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-3001

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I. INTRODUCTION

In 2016, a jury found beyond a reasonable doubt that Paul Harell continues to be a sexually violent predator. On appeal, Harell does not dispute that the State proved he suffers from “other specified paraphilic disorder (nonconsensual sex).” Nor does he dispute that this disorder constitutes a mental abnormality and makes him likely to engage in predatory acts of sexual violence. Rather, Harell argues that he is entitled to a new trial because the trial court admitted expert testimony that his other mental disorders—antisocial personality disorder and alcohol use disorder—“interplay” with his mental abnormality, affecting his ability to control his sexually violent behavior and contributing to his risk of recidivism.

The Court of Appeals properly rejected Harell’s challenge. As the court correctly recognized, this testimony is relevant to whether Harell’s mental abnormality makes him likely to engage in predatory acts of sexual violence. Accordingly, it was well within the trial court’s broad discretion to admit this evidence at trial.

The Court of Appeals’ decision is consistent with settled decisions from this Court and the Court of Appeals recognizing that the factfinder can consider various factors affecting an individual’s risk of re-offense. No court has held that the factfinder must consider *only* the disorder constituting the mental abnormality when determining whether an

individual meets sexually violent predator criteria, and this Court should decline Harell's request to impose such a severe evidentiary limitation. A holding to that effect would deprive the factfinder of critical evidence about an individual's dangerousness, which is highly probative in sexually violent predator trials. This Court should deny discretionary review.

II. RESTATEMENT OF THE ISSUE

Where evidence of Harell's antisocial personality disorder and alcohol use disorder is relevant to whether Harell's mental abnormality makes him likely to engage in predatory acts of sexual violence, did the Court of Appeals correctly conclude that the trial court did not abuse its discretion when it admitted expert testimony about these disorders at trial?

III. RESTATEMENT OF THE CASE

A. Harell's Sexual Offending History

Paul Harell is a 46-year-old man with a history of sexual violence against women and teenage girls. CP 511-18. When Harell was 16 years old he raped his 18-year-old sister in their family home. RP 701-12, 314-15. The State charged Harell with attempted rape but later dismissed the charge after Harell obeyed the law the next year. RP 315, 413.

A few years later, in November 1992, Harell raped 15-year-old T.W. while they were alone at a party. RP 414, 735-37. The State charged Harell with rape in the third degree but later dismissed the case when T.W. declined to testify at trial. RP 414-15.

The next month, while the charge against T.W. was pending, Harell raped A.M. RP 745-46. Harell had been peeping into A.M.'s house when he saw her asleep on the couch. RP 771-72. He entered through the back door, turned off the power, unplugged the phone, put nylons over his face, and grabbed a knife. RP 776-87. He put the knife to A.M.'s throat and raped her. RP 788-97. He intended to rape A.M. a second time but fled when someone came to the door. RP 801-02.

Six months later, Harell peeped into a house and saw a couple having sex. RP 817. He masturbated while he watched. RP 820. He returned the next week and entered the house through a window. RP 821-24. Once inside, he put nylons over his face and grabbed a knife. RP 826. He went into a bedroom where K.C. was asleep. RP 829. He noticed a toddler in the bed with K.C. but was undeterred. RP 832. He brandished the knife, told K.C. that somebody else was with her infant, and raped her. RP 833-36.

One week later, Harell raped 17-year-old M.V. RP 408-10, 843. He broke into M.V.'s house, grabbed a sword from the garage, and put stockings over his face. RP 409-11, 870-79. He crawled into M.V.'s bed and showed her the sword. RP 882-90. He tore off her underwear, raped her, and forced her to perform oral sex on him. RP 888-90.

Harell ultimately pleaded to one count of rape in the first degree and two counts of rape in the second degree by forcible compulsion for these offenses. The court sentenced him to 194 months. RP 906, 319-20; CP 515.

B. Sexually Violent Predator Proceedings

In 2009, shortly before Harell's scheduled release from prison, the State filed a sexually violent predator petition seeking Harell's involuntary civil commitment under Chapter 71.09 RCW. CP 598-99. Harell stipulated to his commitment. Ex. 52. In 2014, Harell was conditionally released to a less restrictive alternative. CP 378.

In February 2016, Harell petitioned for an unconditional release trial. CP 376-77. He argued that he had changed through treatment and no longer met the definition of a sexually violent predator. CP 380-83. The trial court granted this request, and the case proceeded to trial. CP 373-75.

During pretrial motions, Harell argued contradictory positions about whether evidence of two of his mental disorders—antisocial personality disorder and alcohol use disorder—was admissible at trial. While arguing one motion in limine, Harell expressly conceded that evidence of these disorders was admissible to show “his ultimate risk.” RP at 54-55. In a separate motion in limine, Harell moved to exclude evidence of these disorders. CP 365; RP 59-63. The trial court ruled that evidence of these disorders was admissible. RP at 62-63.

At trial, the State presented testimony from several witnesses, including Dr. Harry Goldberg, a forensic psychologist. Dr. Goldberg evaluated Harell in 2009 and 2016. CP 550-90; RP 371-73. During the most recent evaluation, Harell told Dr. Goldberg that had a “deviant thought” about one of his victims in 2014, and he admitted that his attraction to coercive sex “will always be there.” RP at 380, 81. Harell also told Dr. Goldberg that significant stressors would increase his sexual desires and that alcohol is a risk factor that decreases his inhibitions. RP at 381-82. Dr. Goldberg diagnosed Harell with three mental disorders: (1) other specified paraphilic disorder (nonconsensual sex), (2) antisocial personality disorder, and (3) alcohol use disorder. RP 422, 427, 439, 447.

Dr. Goldberg testified that Harell’s paraphilic disorder is the “primary disorder” and constitutes a “mental abnormality” as that term is defined by statute. RP 442-43. He confirmed that Harrell’s disorder is current, as evidenced by his recent sexual urges towards one of his victims and test results showing an ongoing arousal to coercive sexual encounters. RP 432-33, 397. Dr. Goldberg testified that the paraphilic disorder affects Harell’s volitional capacity and predisposes him to commit acts of sexual violence. RP 443-45. He also testified that it causes Harell serious difficulty controlling his sexually violent behavior and makes him likely to commit predatory acts of sexual violence. RP 445-46, 452-53.

Dr. Goldberg testified that Harell's other two diagnoses—antisocial personality disorder and alcohol use disorder—were not the driving force behind Harell's rapes and did not, by themselves, make Harell likely to commit future predatory acts of sexual violence. RP 550-51, 449-50. Rather, he testified that these disorders “interplay” with the paraphilic disorder, affecting Harell's ability to control his sexually violent behavior and contributing to his risk of recidivism. *See* RP 446-47, 449-50. Specifically, he testified that some of Harell's antisocial personality traits “exacerbate” the paraphilic disorder and make it “more likely to be expressed.” RP 447. And he testified that Harell's alcohol use disorder is a “risk factor” because alcohol decreases Harell's inhibitions. RP 449-50.

Harell presented testimony from several witnesses, including Dr. Michael O'Connell, his sex offender treatment provider. RP 1053. Dr. O'Connell testified that although Harell had made progress, he had not always complied with treatment requirements and still had risk factors that he needed to work on. RP 1088-89, 1123-24. He also testified that the two highest risk factors to reoffend are deviant sexual arousal and antisocial behavior. RP 1096. He testified that if an individual has both of those risk factors, “it increases risk of reoffense by a substantial amount.” RP 1096.

Consistent with the testimony at trial, the trial court instructed the jury that a “mental abnormality” was grounds for commitment. CP 26.

In closing argument, the State argued that Harell's paraphilic disorder constitutes the mental abnormality. RP 1252; *see also* CP 603 (State's PowerPoint). It argued that Harell's antisocial personality disorder and alcohol use disorder are "[f]actors that contribute to risk." RP 1253; *see also* CP 603 (State's PowerPoint).

The jury found beyond a reasonable doubt that Harell continues to be a sexually violent predator. CP 18. The trial court entered an order of commitment, which Harell appealed to the Court of Appeals. CP 17, 1. On appeal, he challenged the admission of the testimony regarding his antisocial personality disorder and his alcohol use disorder, arguing that the evidence was irrelevant. *In re Det. of Harell*, ___ Wn. App. ___, 426 P.3d 260, 265 (2018). The Court of Appeals rejected this argument, reasoning that the evidence was relevant to whether Harell's mental abnormality makes him likely to engage in predatory acts of sexual violence. *Id.* at 265-66. Harell now seeks discretionary review in this Court.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Harell seeks discretionary review under RAP 13.4(b)(4). Pet. at 7. This Court will accept a petition on that ground only if it involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4). This case does not present such an issue. The issue in this appeal is a routine evidentiary question, which the Court of Appeals

correctly resolved. The court's decision is thorough, well-reasoned, and consistent with settled decisions from this Court and the Court of Appeals. In addition, the court's decision offers clear guidance to lower courts about the admission and relevance of diagnostic testimony in sexually violent predator trials. For these reasons, review of this case is unwarranted.

A. The Court of Appeals Correctly Concluded That the Trial Court Did Not Abuse Its Discretion by Admitting Expert Testimony About Harell's Antisocial Personality Disorder and Alcohol Use Disorder

The Court of Appeals correctly concluded that the trial court did not abuse its discretion by admitting expert testimony about Harell's antisocial personality disorder and alcohol use disorder. As the court recognized, evidence of these disorders is relevant to whether Harell's mental abnormality of other specified paraphilic disorder (nonconsensual sex) makes him likely to engage in predatory acts of sexual violence. Moreover, there is no support for Harell's assertion that the factfinder can consider *only* the mental abnormality when determining an individual's risk of re-offense. In contrast, both this Court and the Court of Appeals have recognized that the factfinder can consider various risk factors when determining whether the individual is likely to engage in predatory acts of sexual violence. The decision in this case is consistent with those opinions and does not warrant this Court's further review.

1. Evidence of those disorders is relevant to whether Harell’s mental abnormality makes him likely to engage in predatory acts of sexual violence

The Court of Appeals correctly determined that expert testimony about Harell’s antisocial personality disorder and alcohol use disorder was admissible. As the court properly recognized, evidence of those disorders is relevant to whether Harell’s mental abnormality makes him likely to engage in predatory acts of sexual violence. *Harell*, 426 P.3d at 265-66.

Appellate courts review a trial court’s decision to admit or exclude evidence for abuse of discretion. *In re Det. of West*, 171 Wn.2d 383, 396, 256 P.3d 302 (2011). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Id.* at 397.

Relevant evidence is “evidence having *any* tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401 (emphasis added). In a sexually violent predator trial, “evidence is relevant only if it increases or decreases the likelihood that a fact exists that is consequential to the jury’s determination of whether the respondent is a sexually violent predator.” *West*, 171 Wn.2d at 397. “Because relevance is a judgment dependent on the surrounding facts, the trial court enjoys broad discretion in deciding whether evidence is relevant” to the sexually violent predator determination. *Id.*

In an unconditional release trial, the State has the burden to prove beyond a reasonable doubt that the individual continues to meet the definition of a sexually violent predator. RCW 71.09.090(3)(c). A “sexually violent predator” is “any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.” RCW 71.09.020(18). “Mental abnormality” and “personality disorder” are defined by statute. RCW 71.09.020(8), (9). The State need not prove both a mental abnormality and a personality disorder. Rather, these are alternative means for making the sexually violent predator determination. *In re Det. of Halgren*, 156 Wn.2d 795, 810, 132 P.3d 714 (2006).

Here, the trial court instructed the jury that a mental abnormality was grounds for commitment. CP 26. It did not instruct the jury that a personality disorder was grounds for commitment. Jury Instruction 5 correctly set forth the burden of proof. It required the jury to find beyond a reasonable doubt: (1) “That Paul Harell was previously found to be a sexually violent predator;” (2) “That Paul Harell continues to suffer from a mental abnormality which causes him serious difficulty controlling his sexually violent behavior”; and (3) “The mental abnormality continues to make Paul Harell likely to commit predatory acts of sexual violence unless

confined to a secure facility.” CP 26, RP 1188.¹ The third element is a “compound determination” that requires finding both causation and that the probability of the respondent’s reoffending exceeds 50 percent. *In re Det. of Post*, 170 Wn.2d 302, 310, 241 P.3d 1234 (2010).

As the Court of Appeals properly recognized, and as Harell conceded in a pretrial hearing, evidence of Harell’s antisocial personality disorder and alcohol use disorder is relevant to the third element—whether the mental abnormality makes Harell likely to engage in predatory acts of sexual violence. *Harell*, 426 P.3d at 265-66; *see also* RP at 54-55 (conceding that these disorders are relevant to “his ultimate risk”).

Dr. Goldberg’s testimony directly linked Harell’s antisocial personality disorder to his inability to control his sexually violent behavior such that he is likely to re-offend. Dr. Goldberg diagnosed Harell with antisocial personality disorder based on Harell’s failure to conform to social norms, deceitfulness, impulsivity, irritability, aggressiveness, reckless disregard, consistent irresponsibility, and lack of remorse. RP 436-37. He testified that Harell’s antisocial personality disorder “interplay[s]” with his mental abnormality, which causes him serious difficulty in controlling his

¹ A separate instruction defined “mental abnormality” as “a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit criminal sexual acts to a degree that makes the person a menace to the health and safety of others.” CP 27.

sexually violent behavior. RP 446-47. Specifically, he testified that some of Harell's antisocial traits "exacerbate" the paraphilic disorder, making it "more likely to be expressed." RP 447. Dr. Goldberg considered Harell's antisocial traits when he conducted his risk assessment and identified many as risk factors. *See* RP 483-89. Dr. Goldberg ultimately concluded that Harell could not be safely unconditionally released. RP 504.

Harell's witness, Dr. O'Connell, also connected antisocial personality traits to increased risk of re-offense. He testified, "the two highest risk factors – from years of research – are deviant sexual arousal and antisocial behavior." RP 1096. And he testified that if an individual has both of those traits, "it increases risk of reoffense by a substantial amount." RP 1096. Thus, as demonstrated by the testimony of both experts, evidence of Harell's antisocial personality disorder is directly relevant to assessing whether Harell is likely to commit future predatory acts of sexual violence.

Evidence of Harell's alcohol use disorder is relevant for the same reason. Dr. Goldberg diagnosed Harell with alcohol use disorder based on Harell's own statements and offending history. RP 448-49. Harell acknowledges that alcohol has been a long-term issue in his life, that he drank during the period of time that the rapes occurred, and that alcohol is a trigger for his offending. RP 334, 848-50, 449-50.

Dr. Goldberg’s testimony directly linked Harell’s alcohol use disorder to his inability to control his sexually violent behavior and risk of re-offense. Dr. Goldberg testified that Harell’s alcohol use disorder also “interplay[s]” with his mental abnormality, affecting his ability to control his sexually violent behavior. RP 450. Dr. Goldberg testified that alcohol use disorder is a “risk factor” for Harell, because if he started using alcohol again, it would decrease his inhibitions. RP 449-50. In short, as seen by Harell’s admissions and Dr. Goldberg’s testimony, evidence of Harell’s alcohol use disorder is also relevant to whether Harell is likely to commit predatory acts of sexual violence.

2. Neither the statute nor the jury instructions preclude the admission of this diagnostic testimony

Harell relies on the statute defining “sexually violent predator” and the jury instructions to argue that testimony about his other mental disorders was inadmissible. Pet. at 6-7, 9-16. He claims that the statute “does not authorize consideration of any other mental disorder in assessing risk.” Pet. at 6. And he claims that because the jury was instructed only on the mental abnormality means, the State was required to prove that the mental abnormality “standing alone” made him likely to re-offend. Pet. at 10, 12.

The Court of Appeals properly rejected these arguments. Nothing supports Harell’s assertion that the statute and jury instructions preclude

consideration of this diagnostic testimony. In fact, the plain language of the statute and the jury instructions support the conclusion that evidence of an individual's mental disorders and other risk factors are relevant when assessing an individual's risk of re-offense. The statute expressly requires the factfinder to consider whether the mental abnormality "makes *the person* likely to engage in predatory acts of sexual violence" RCW 71.09.020(18) (emphasis added). Thus, the particular individual's characteristics, personality traits, habits, and full mental condition are essential to this inquiry. Similarly, the jury instructions required the jury to consider whether "the mental abnormality continues to make *Paul Harell* likely to commit predatory acts of sexual violence." CP 26 (emphasis added). Accordingly, consideration of Harell's individual characteristics, including his full mental condition, was an important part of this inquiry.

In addition, Harell's argument is incompatible with the science behind risk assessments and with his own strategy at trial. As this Court has explained, experts often consider "a wide range of risk factors" when assessing an individual's dangerousness. *In re Det. of Thorell*, 149 Wn.2d 724, 753, 72 P.3d 708 (2003). Those may include "protective factors," which mitigate risk. *See* RP at 492. Both experts testified about protective factors in this case. *See* RP 492-97, 1088. For example, Dr. Goldberg testified that Harell's age and participation in treatment

reduced his risk of re-offense. RP 493-96. And Dr. O’Connell also testified about Harell’s progress in treatment. RP 1152-53. Harell did not object to this evidence, which was to his benefit. But it remains to be explained how under Harell’s view of the law—where the jury can consider *only* the mental abnormality—testimony about these mitigating factors would not also be irrelevant. And if that were the case, it would often work to the detriment of the respondent, by preventing the jury from considering factors that *lower* the risk of re-offense, such as successful alcohol treatment.

Lastly, despite Harell’s claims to the contrary, admission of this testimony does not pose a constitutional problem. *See* Pet. at 16-17. The State is required to establish a link between a mental abnormality and the likelihood of future acts of sexual violence. *Thorell*, 149 Wn.2d at 742-43, 761-62. But the State met that requirement when Dr. Goldberg testified that the paraphilic disorder causes Harell serious difficulty controlling his sexually violent behavior and makes him likely to commit predatory acts of sexual violence. RP 445-46, 452-53. The admission of evidence of Harrell’s other disorders did not “sever” that link. Instead, it established Harell’s even *greater* risk of re-offense by showing that these disorders exacerbate Harell’s paraphilic disorder, affect his ability to control his sexually violent behavior, and contribute to his risk of recidivism. Rather than undermine substantive due process, this evidence helps ensure that courts are

distinguishing the “dangerous sexual offender” from the “dangerous but typical recidivist.” See *Thorell*, 149 Wn.2d at 732 (quoting *Kansas v. Crane*, 534 U.S. 407, 413, 122 S. Ct. 867, 151 L. Ed. 2d 856 (2002)).

3. Both this Court and the Court of Appeals have recognized that the factfinder may consider various factors when assessing an individual’s risk of re-offense

Both this Court and the Court of Appeals have recognized that the factfinder may consider various risk factors when assessing an individual’s risk of re-offense. The opinion in this case is consistent with those decisions.

In rejecting Harell’s evidentiary challenge, the Court of Appeals properly looked to this Court’s decision in *In re Det. of Audett*, 158 Wn.2d 712, 147 P.3d 982 (2006) and the Court of Appeals’ decision in *In re Det. of Sease*, 149 Wn. App. 66, 201 P.3d 1078 (2009). Although those cases involved sufficiency challenges, they both support the court’s conclusion that the diagnostic testimony challenged in this case is relevant to assessing risk of re-offense. In *Audett* and *Sease*, the courts relied on evidence of other risk factors, including alcoholism and additional mental disorders, to conclude that the State offered sufficient proof of the individuals’ likelihood of re-offense.

In *Audett*, it was undisputed that Audett suffered from pedophilia, a mental abnormality or personality disorder under the statute. 158 Wn.2d at 728. Audett argued only that the State presented insufficient proof of the

following element: “That such mental abnormality or personality disorder makes [Audett] likely to engage in predatory acts of sexual violence if not confined in a secure facility.” *Id.* at 727. This Court rejected his challenge. In doing so, it relied on evidence of other risk factors in addition to Audett’s pedophilia diagnosis. *Id.* at 728-29. In particular, it relied on testimony from both experts that “Audett’s inability to control his alcoholism was a significant additional factor contributing to his risk of re-offense, as was his lack of knowledge regarding his offending patterns.” *Id.* at 729.

In *Sease*, it was undisputed that Sease suffered from at least one personality disorder. 149 Wn. App. at 79. He argued only that the State failed to prove a “risk to reoffend which stems from a mental disorder.” *Id.* The Court of Appeals rejected this argument. *Id.* at 79-80. In doing so, it relied on evidence of Sease’s alcohol dependency and narcissistic personality disorder, which the State’s expert had characterized as “other risk considerations.” *Id.* at 72. The court pointed to this testimony as evidence “that Sease’s borderline and antisocial personality disorders, combined with the risk factors of alcohol dependency and narcissistic personality disorder, caused Sease to be more likely to reoffend if he was not confined to a secure facility.” *Id.* at 79-80.

As Harell concedes, both *Audett* and *Sease* demonstrate that courts have long relied on other risk factors, including alcoholism and other mental

disorders, when assessing an individual’s risk of re-offense. *See* Pet. at 19. This Court’s decision in *In re Detention of Halgren*, 156 Wn.2d 795, 132 P.3d 714 (2006) provides additional support. There, this Court recognized that the two alternative means—mental abnormality and personality disorder—”may work in conjunction.” 156 Wn.2d at 810. While this case is not an alternative means case, it nonetheless supports the conclusion that other mental disorders may be relevant.

Finally, although this is the first published case addressing the relevancy of this type of diagnostic testimony, the Court of Appeals has consistently rejected this same argument in unpublished decisions, and this Court has denied review. *See In re Det. of Halvorson*, No. 32762-1-III, 2016 WL 4259134, at *2-3 (Wash. Ct. App. Aug. 11, 2016) (unpublished), *review denied*, 187 Wn.2d 1006 (2017); *In re Det. of Dillingham*, No. 68147-8-I, 2013 WL 3990891, at *6 (Wash. Ct. App. Aug. 5, 2013) (unpublished), *review denied*, 179 Wn.2d 1004 (2013).² There is no reason for this Court to depart from those settled decisions.

In addition, the evidence admitted in this case is not materially different from other evidence of risk, which has withstood similar challenges. For example, in *In re Personal Restraint of Duncan*,

² Citation to these unpublished opinions is in accordance with GR 14.1.

167 Wn.2d 398, 405, 219 P.3d 666 (2009), this Court held that evidence that the respondent planned to live with another convicted sex offender upon release was relevant information in a sexually violent predator commitment proceeding. In *Thorell*, this Court held that actuarial evidence and predictions about future dangerousness has high probative value and is “directly relevant” to whether an individual should be committed as a sexually violent predator. 149 Wn.2d at 758. And in *In re Young*, 122 Wn.2d 1, 53, 857 P.2d 989 (1993), this Court held that victim testimony about prior crimes was relevant, because “prior sexual history is highly probative of his or her propensity for future violence.” Because the evidence in this case is probative for the same reasons, review of this case is unnecessary.

B. Review of This Case Is Unwarranted Because even if the Admission of This Testimony Was Error, It Was Harmless

Even if there was a question about the relevance of the evidence, the error was harmless. An evidentiary error is “not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.” *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). “The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.” *Id.*

Here, the outcome of the trial would not have been different had the evidence of Harrell's other disorders been excluded. Harrell does not dispute that the State presented sufficient evidence to support commitment based solely on his paraphilic disorder. He readily acknowledges expert testimony that the paraphilic disorder causes him serious difficulty controlling his sexually violent behavior and makes him likely to engage in predatory acts of sexual violence. *See Pet.* at 3. Further, the evidence of the other disorders was of minor significance, particularly given that the jury instructions prevented the jury from relying on either disorder as the basis for commitment. *See State v. Grisby*, 97 Wn.2d 493, 499, 647 P.2d 6 (1982) (the jury is presumed to follow the court's instructions). In short, the admission of testimony about Harrell's other diagnoses did not affect the final outcome of this case.

V. CONCLUSION

For the foregoing reasons, the State asks that this Court deny review.

RESPECTFULLY SUBMITTED this 19th day of December, 2018.

ROBERT W. FERGUSON
Attorney General



KELLY A. PARADIS
WSBA # 47175 / OID #91094
Assistant Attorney General

NO. 96453-0

SUPREME COURT OF THE STATE OF WASHINGTON

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DECLARATION OF
SERVICE

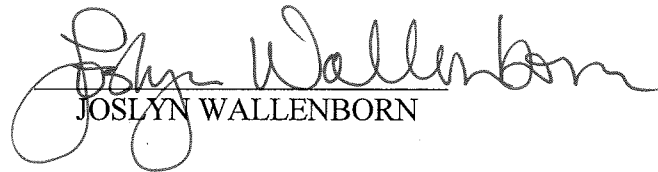
I, JOSLYN WALLENBORN, declare as follows:

On December 19, 2018, I sent via electronic mail, per service agreement, a true and correct copy of Answer to Petition for Review and Declaration of Service, addressed as follows:

NIELSEN, BROMAN, & KOCH
SLOANEJ@NWATTORNEY.NET

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of December, 2018, at Seattle, Washington.


JOSLYN WALLENBORN

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

December 19, 2018 - 4:42 PM

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