NO. 100613-6

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEVEN EDWARD SHANNON, JR.,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Washington State:

Constitutional Provisions

Federal:

Washington State:

Rules and Regulations

Washington State:

A. INTRODUCTION

Petitioner Steven Shannon seeks review of one issue addressed in the Court of Appeals' unpublished opinion affirming his conviction for first-degree assault with a firearm. State v. Shannon, Unpublished, No. 80576-2-I, slip op. (January 3, 2022). Shannon contends that the Court of Appeals erred in declining to review, under RAP 2.5(a), his newly raised claim that the trial court violated his constitutional right to present a defense when it excluded testimony about an incorrect statement made by an unknown person weeks after the shooting.

The testimony Shannon attempted to elicit was that, in a conversation between the victim and two friends more than ten days after the shooting, one of them—the friend recounting the conversation did not remember who it was—stated their belief that the shooting incident started because someone called the victim "white boy." Shannon conceded to the trial court that no "white boy" comment had actually been made during the

incident, but asserted that the victim and witnesses' discussion of such a comment after the fact was relevant evidence of their state of mind and was thus admissible to help establish that racial dynamics were at play during the incident, which Shannon asserted supported his self-defense claim.

The Court of Appeals properly declined to review the claim after determining that Shannon had failed to establish a manifest constitutional error. The Court of Appeals properly applied this Court's caselaw, and the issue is not one of substantial public interest. Because the criteria for review identified by Shannon are not present here, this Court should deny the petition for review.

B. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question

of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

C. STATEMENT OF THE CASE

In the early hours of February 4, 2018, Shannon shot Ian McKnight five times outside a bar in Renton, Washington. 1RP 373, 528. The sole disputed issue at trial was whether Shannon acted in lawful self-defense. 1RP 320.

McKnight and Shannon started the evening as strangers and first encountered each other in the back of the JP Williams bar shortly after midnight. 1RP 23, 429, 544. McKnight, who was out with a small group of friends, was in good spirits. 1RP 421-23, 501. He joined an unidentified man, who appeared to be homeless based on the belongings he had with him, in playing a punching bag arcade game in the back of the bar. 1RP 434-35, 473, 499, 501. McKnight paid for the other man to play, and the two had a good time, laughing and, at one

point, hugging. 1RP 435, 501. McKnight was social, talking to nearly everyone in the back of the bar at one point or another. 1RP 548.

Shannon and a small group of his friends were among the six to eight people hanging out in the rear section of the bar. 1RP 434, 856-57, 859. Shortly after 1:00 a.m., McKnight approached Shannon and his friend Tiffany Dejohnette. 1RP 461, 897. McKnight asked if they were having fun and made a joke about the two looking "sinister." 1RP 545. Dejohnette interpreted McKnight's words as an insult. 1RP 870. As McKnight continued talking to Dejohnette, Shannon interjected that DeJohnette wasn't listening to him. 1RP 930. According to Dejohnette and Shannon, a verbal exchange between Shannon and McKnight quickly escalated to McKnight asking if Shannon wanted to take the matter outside, to which Shannon responded affirmatively. 1RP 872, 931. McKnight promptly walked outside, and Shannon followed immediately behind him. 1RP 902.

Dejohnette was concerned about the rapid escalation of the encounter and asked two of Shannon's other friends to follow Shannon and McKnight outside, but they refused, seeming unconcerned. 1RP 857, 872. Dejohnette was unaware that Shannon had a loaded semiautomatic pistol concealed in his waistband. 1RP 452, 904, 933, 935-36, 985-86. McKnight was unarmed except for a folding pocketknife that he carried for work, which remained closed in his pants pocket throughout the incident until it was used by a first responder to cut his shirt off after the shooting. 1RP 86, 96, 555.

None of McKnight's friends noticed his interaction with Shannon. 1RP 436, 501, 688. Richard Durant, who was not drinking that night, did not observe any hostility between McKnight and others inside the bar, and did not take note of Shannon at all until after he noticed McKnight had walked outside. 1RP 436-37, 439. Durant and McKnight's other friends were ready to leave, so Durant collected McKnight's coat and phone, which McKnight had left in the bar, and headed

outside. 1RP 438-39. As Durant reached the front of the bar, a woman (later identified as Dejohnette) suggested that he check on McKnight. 1RP 439, 909.

Dejohnette went outside before Durant and found Shannon and McKnight standing face to face with their hands at their sides. 1RP 872, 876, 906-07. Dejohnette testified that she heard McKnight say, "I'm going to shoot you in your fucking face," but that McKnight had nothing in his hands, did not clench his hands, and did not reach for anything. 1RP 906-08. Shannon did not say anything in response. 1RP 908. Dejohnette tried to convince Shannon to "break it up" and leave, but he ignored her—neither Shannon nor McKnight acknowledged her presence. 1RP 908-09. At that point, Durant came around the corner and joined Dejohnette. 1RP 443, 909. Dejohnette promptly went back inside because she believed Durant would handle the situation, leaving Durant as the only witness to the shooting besides Shannon and McKnight. 1RP 877.

Durant testified that he exited the bar and followed the sound of two people talking loudly as he walked around the corner to the parking lot on the side of the bar. 1RP 440-41, 443. When he turned the corner, he saw McKnight and Shannon standing three to four feet apart. 1RP 443-44. McKnight had his hands up in a shrug-like position and it sounded like he was asking Shannon a question. 1RP 443, 448. McKnight's hands were empty, and Shannon's were in his pockets. 1RP 448, 451. Durant called McKnight's name several times, but McKnight and Shannon remained focused on each other. 1RP 447, 449. A very short time after Durant rounded the corner,[1] Shannon pulled a gun from his waist, pointed it at McKnight, and began shooting. 1RP 444, 470.

[1] Durant testified that he didn't know how many seconds elapsed between when he turned the corner and when the shooting started, but it "happened quick." 1RP 450. References to the video at trial indicate that Dejohnette had not yet reached the interior of the bar when she heard the first shot. 1RP 910-11.

McKnight's empty hands were still in the air when the first shot was fired, neither holding nor reaching for anything. 1RP 451.

McKnight's memory of the events leading up to the shooting was incomplete,[2] but he remembered going around the corner outside the bar, turning around, seeing Shannon, and "getting a really bad feeling in [his] stomach and being really, really scared." 1RP 531, 549. McKnight saw Shannon moving his hands by his belt buckle and assumed—incorrectly—that Shannon had a knife. 1RP 549, 552. McKnight froze, put his empty hands out, said something like "whoa, whoa, whoa, stop," and then Shannon started shooting at him. 1RP 552-53, 555. McKnight had no visual memories of the shooting itself; he only remembered the smell of gunpowder and trying to dodge left and right to avoid the bullets. 1RP 550. He

[2] Although McKnight was drinking on the night of the shooting, his friends testified that he was not visibly intoxicated shortly beforehand, leaving it unclear whether the holes in McKnight's memory were due to alcohol consumption or the trauma of the shooting. 1RP 497, 684.

remembered thinking, as the shots continued, that Shannon was not going to stop until McKnight was dead. 1RP 550.

Shannon fired six shots at McKnight within six to seven seconds, striking him five times. 1RP 451, 506, 528, 805, 995. Durant, who had run inside as Shannon began shooting, returned outside once the shooting stopped and called 911. 1RP 444-45, 450. As Durant and others emerged from the bar to investigate, they saw Shannon walking away. 1RP 453, 502, 657-58. Shannon walked across the street and got into the passenger seat of a vehicle idling in a nearby parking lot, which promptly drove away. 1RP 502-03.

McKnight lost consciousness after the shooting and was transported by paramedics to the hospital, where he remained for 10 days. 1RP 551, 558, 612. One of the bullets had gone through his thumb, into his cheekbone, and out through his ear; part of McKnight's thumb had to be amputated as a result. 1RP 560-61. Another bullet went through the left side of his chest, a third went through his right bicep, and a fourth went through

his right shoulder. 1RP 562-63. A fifth bullet struck McKnight in the upper part of his left buttocks. 1RP 563, 619. That bullet traveled forward through McKnight's lower spine and into his abdomen, causing a life-threatening injury to the largest vein in McKnight's body and going through both his small and large intestines before lodging in the front of his abdomen. 1RP 619. Emergency surgery to tie off the large vein was required to prevent McKnight from bleeding to death. 1RP 622. The path of the fifth bullet indicated that McKnight had been facing away from the shooter at the time he was shot. 1RP 620.

A soundless surveillance video from the bar showed the events inside the bar and the area outside the front entrance but did not capture the parking lot where the shooting took place. 1RP 381-82; 2RP 28. An extremely poor-quality surveillance video from a nearby business captured the area of the shooting and showed six muzzle flashes, but it depicted only vague shadows of McKnight's and Shannon's movement. 1RP 794, 805, 824, 829.

At trial, the State presented testimony from McKnight, Durant, two other friends who were at the bar with them, the bartender working that night, a trauma surgeon, and numerous police officers.

One of the friends who testified was Mack McClinton. McClinton was with McKnight and Durant the night of the shooting but did not notice any part of McKnight's interaction with Shannon—he did not realize anything was wrong until he heard gunshots and was informed by Durant that McKnight had been shot. 1RP 688-89. During cross-examination, Shannon, through his counsel, asked McClinton whether someone later told him "that the whole thing started because somebody said something to the effect of, 'Get out of here white boy[]'?" 1RP 708. The State objected on hearsay grounds. 1RP 708. Shannon responded that the statement "doesn't go to the truth of the matter asserted. It goes to the mindset of the group of the people discussing the issue." 1RP 708. The court sustained the

objection but stated that Shannon could rephrase the question. 1RP 708.

Shannon then elicited that McClinton had a conversation with McKnight and Durant at some point after the incident. 1RP 709. Other testimony indicated that this conversation happened at least 10 days, but perhaps considerably longer, after the shooting.[3] 1RP 465, 558. Shannon asked McClinton to confirm that, during the conversation, "you think that either Rich [Durant] or Ian [McKnight] told you that the whole thing started because someone called Ian a white boy; right?"[4] 1RP 709. The State objected, and the trial court sustained the objection. 1RP 709. The record does not reflect what

[3] Durant testified that he was not allowed to see McKnight at the hospital. 1RP 466. The next time he saw McKnight after the shooting was a night when they watched a pay-per-view UFC fight together at McKnight's residence. 1RP 465. McKnight was in the hospital for 10 days. 1RP 558.

[4] Neither McKnight nor Durant corroborated McClinton's memory of the conversation.

McClinton's answer would have been had he been permitted to answer either question.

The next time the jury was out of the room, Shannon explained that "[t]he purpose of that question [wa]s not to elicit hearsay because I don't -- I'm not offering it for the truth of the matter asserted. I don't believe that statement was made.[5] But I believe it goes to the state of mind of Mr. McClinton, Mr. Durant, and Mr. McKnight that they discussed that as the reason." 1RP 712-13. The Court stated, "I am sustaining the objection because, again, it was after the fact and not at the -- at the time of the incident. [The] [q]uestion was about a conversation afterwards and not during and so the Court is sustaining that objection." 1RP 713.

After the State rested, Shannon presented testimony by Dejohnette and took the stand in his own defense. Shannon claimed that when McKnight suggested they go outside the bar,

[5] Neither Shannon nor anyone else present at the bar reported hearing anyone call McKnight "white boy."

he had no idea why and he expected that they would merely talk about their disagreement when they exited the bar. 1RP 932-33. Shannon also claimed that as soon as they got outside, McKnight began acting like a police officer and demanding that Shannon freeze, put his hands up, and empty his pockets, as well as threatening to "blow [his] head off." 1RP 939-41.

Shannon claimed that McKnight's hand had been in his pocket and that Shannon's hands had been in the air throughout the entire encounter except when he turned his coat pockets inside out at McKnight's demand. 1RP 939-41. This contradicted the testimony of Dejohnette and Durant, both of whom testified that Shannon's hands were at his sides or in his pockets throughout the encounter. 1RP 448, 907. At one point in his testimony, Shannon claimed that he thought he saw a gun in McKnight's pocket, but at another point he testified that he did not see a gun but merely became scared because McKnight made a motion as if he was going to pull out a weapon. 1RP 939, 971.

Shannon asserted that he pulled out his gun and shot McKnight out of fear while McKnight was momentarily distracted by Durant calling his name. 1RP 941-43. He told the jury that he did not call the police after the shooting because he was overcome with the stress of the situation. 1RP 945. Shannon admitted that he left the scene immediately after he shot McKnight, but claimed without corroboration that, as he left, he yelled to the bartender and others who had run out to the bar's smoking area, "Somebody call the police. This guy [referring to McKnight] just shot to kill me." 1RP 944, 974-75. Shannon admitted that he never told the police his account of the shooting and claimed that he had believed his parting words at the crime scene were sufficient to inform them that he had acted in self-defense. 1RP 949, 973. However, the bartender testified that as Shannon walked away, the only thing he did was turn back to make a gesture toward the area where the bartender and one of Shannon's friends were standing that seemed to say "we gotta go." 1RP 655, 658-59, 1098.

Shannon admitted that he did not return home after the shooting and instead stayed with a cousin in Portland, Oregon, for the next three weeks, and then with another cousin in Federal Way for another three weeks. 1RP 947-48. On cross-examination, Shannon claimed to not remember the name of the friend who drove him to Portland. 1RP 1000. He admitted that he'd shaved his dreadlocks off and gotten rid of the gun as a result of the shooting. 1RP 999. He also admitted that he'd known since at least April 2018 that there was a warrant out for his arrest, but that he never turned himself in and was finally found by police in December 2018. 1RP 1001-02. Critically, Shannon admitted that McKnight tried to evade the bullets as he was shooting, and that Shannon adjusted his aim and continued shooting McKnight as he was moving. 1RP 1005-06. Shannon also admitted that McKnight started running away towards the end and that the final shot—the shot that would have killed McKnight if not for emergency surgery—hit him from behind. 1RP 1005.

In closing, the State argued that Shannon's account of the shooting was inconsistent with what Durant and even Dejohnette saw and was therefore not credible. 1RP 1046, 1098. The State also argued that even if the jury believed Shannon's version of events, he was still guilty. 1RP 1058. The prosecutor pointed out that Shannon had the upper hand once he had a gun pointed at McKnight, and at that point had no reasonable belief that shooting at him once, let alone six times, was necessary. 1RP 1058, 1097. He also pointed out that even if Shannon had reasonably believed that shooting McKnight was necessary to save his own life, he used more force than necessary when he continued shooting as McKnight was trying to escape. 1RP 1097-98, 1105.

Shannon argued in closing that he reasonably feared for his life when McKnight threatened to "blow [his] . . . head off," and shot McKnight in lawful self-defense. 1RP 1079, 1086-87. Although Shannon had not testified about the racial dynamics of his confrontation with McKnight or suggested that his

identity as a Black man or McKnight's identity as a White man played any role in the incident, Shannon's counsel was permitted to argue, without objection,[6] that the racial dynamics of the situation likely made McKnight's threat to "blow his face off" seem more realistic to Shannon than it might appear to a white person. 1RP 917-1006, 1076-79.

The jury found Shannon guilty as charged of assault in the first degree while armed with a firearm. CP 37-38.

D. THIS COURT SHOULD DENY THE PETITION FOR REVIEW BECAUSE THIS CASE DOES NOT MEET THE CRITERIA FOR REVIEW

The Court of Appeals correctly determined that Shannon failed to establish a manifest constitutional violation warranting review under RAP 2.5(a) of his claim that the exclusion of the challenged testimony violated his constitutional right to present

[6] The State's sole objection during Shannon's closing arose when defense counsel started to use his own experiences as a white man to illustrate the contrast between the lived experiences of a black man and a white man. 1RP 1077. The State's objection to "facts not in evidence" was overruled. 1RP 1077.

a defense. As a result, they did not reach alternative arguments, such as the fact that any error was harmless beyond a reasonable doubt. Because none of the criteria for review are present here, and because a reversal on the RAP 2.5 issue would not affect the outcome of the case, this Court should deny review.

A criminal defendant has a constitutional right to cross examine witnesses and present a defense under the Sixth Amendment of the federal constitution and article I, section 22 of our state constitution. State v. Wade, 186 Wn. App. 749, 763, 346 P.3d 838 (2015); State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). However, the evidence presented by the defendant "must be of at least minimal relevance"—a defendant has no constitutional right to present irrelevant evidence. State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010); Darden, 145 Wn.2d at 621.

Additionally, a "defendant's right to present a defense is subject to 'established rules of procedure and evidence designed

to assure both fairness and reliability in the ascertainment of guilt and innocence.'" State v. Lizarraga, 191 Wn. App. 530, 553, 364 P.3d 810 (2015) (quoting Chambers v. Mississippi, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)). Although "the long-standing rule against the admission of hearsay evidence 'may not be applied mechanistically'" to exclude critical evidence bearing "persuasive assurances of trustworthiness" equivalent to longstanding hearsay exceptions, a defendant's constitutional right is not violated by the exclusion of hearsay lacking such assurances of trustworthiness. Lizarraga, 191 Wn. App. at 553, 557 (quoting Chambers, 410 U.S. at 302).

When reviewing a claim that the right to present a defense was violated, appellate courts utilize a two-step standard of review. State v. Arndt, 194 Wn.2d 784, 797, 453 P.3d 696 (2019). First, the court "review[s] the trial court's evidentiary rulings for abuse of discretion and defer[s] to those rulings unless no reasonable person would take the view

adopted by the trial court." State v. Clark, 187 Wn.2d 641, 648, 389 P.3d 462 (2017) (internal quotation marks omitted); also Arndt, 194 Wn.2d at 797. If the trial court made a reasonable evidentiary ruling that excluded relevant defense evidence, the reviewing court next "determine[s] as a matter of law whether the exclusion violated the constitutional right to present a defense." Clark, 187 Wn.2d at 648-49; also Arndt, 194 Wn.2d at 797.

In evaluating whether the State had disproved Shannon's self-defense claim, the jury had to evaluate whether Shannon reasonably believed that he was about to be injured and whether he use no more force than was necessary, "taking into consideration all of the facts and circumstances known to [Shannon] at the time of and prior to the incident." CP 28.

Shannon argued in the Court of Appeals that the trial court should have admitted McClinton's answers about someone telling him that the altercation started because someone called McKnight "white boy" because the testimony

was relevant (1) as "evidence that the fight started because of a racial issue" and (2) as evidence of McKnight's and Durant's "state of mind at the time of the incident." Br. of Appellant at 19, 22. Shannon has now abandoned the former argument and raises only a modified version of the second, arguing that the excluded testimony was relevant because it corroborated his alleged perception—about which Shannon never testified—that "racial dynamics were at play during the incident." Petition for Review at 15.

As a preliminary matter, the record does not indicate how McClinton would have testified had he been permitted to answer Shannon's questions. 1RP 708-09, 712-13. On that basis alone, Shannon failed to establish that the trial court erred or that the asserted error prejudiced his rights at trial. ER 103(a)(2).

Even assuming that McClinton would have answered the questions as Shannon hoped, the only person whose state of mind was relevant to Shannon's self-defense claim was

Shannon's. See, e.g., State v. Duarte Vela, 200 Wn. App. 306, 319, 402 P.3d 281 (2017) (information about victim is relevant to self-defense claim only if that information was known to the defendant); see also Br. of Respondent at 22-25. And even if the state of mind of the victims or witnesses during the incident were somehow relevant, a false statement about the cause of the altercation made by an unspecified person and relayed in a conversation weeks *after* the incident had no relevance to anyone's state of mind *during* the incident. Because there is no constitutional right to present irrelevant evidence, the trial court properly excluded the challenged testimony. See Clark, 187 Wn.2d 641, 648-49; Jones, 168 Wn.2d at 720.

However, even if this Court were to find that the excluded hearsay was somehow marginally relevant, Shannon's constitutional right to present a defense was not violated, because, as the Court of Appeals correctly noted, the exclusion of the evidence did not prevent Shannon from using other admitted evidence to argue to the jury that the racial dynamics

of the altercation heightened the reasonability of his belief that he needed to defend himself. Slip op. at 8; Arndt, 194 Wn.2d at 813-14 (no violation of right to present a defense where court's limitations did not prevent defendant from advancing her defense theory through other evidence). Shannon's argument would have been no stronger had the challenged testimony been admitted.

Shannon fails to establish that any of the criteria for review are satisfied in this case. He asserts that this is a matter of substantial public interest because "because the Court of Appeals decision diminishes the value of race evidence presented in the courts," but the dispositive issue here is a simple one of relevance. Petition at 18. Whether a particular false statement made weeks after the shooting is relevant to Shannon's self-defense claim is not an issue of substantial public interest.

Shannon also asserts that the Court of Appeals misapplied RAP 2.5(a) and the framework set out in State v.

Hudlow, 99 Wn.2d 1, 659 P.2d 514 (1983), for evaluating claims regarding the right to present a defense. Petition at 18-21. However, his true complaint about the Court of Appeals' reasoning is not that they misapplied RAP 2.5 or Hudlow—he does not dispute that the exclusion of irrelevant evidence does not violate a defendant's right to present a defense and is thus not a manifest constitutional error. See Hudlow, 99 Wn.2d at 15 ("[A] criminal defendant has no constitutional right to have irrelevant evidence admitted."). Instead, Shannon's primary complaint is simply that he disagrees with the Court of Appeals' conclusion that an erroneous statement about the cause of the fight, made weeks later, was not relevant to whether Shannon reasonably believed he was in was about to be injured and used no more force than necessary when he shot at McKnight six times. Because Shannon fails to establish that any of the criteria for review are present in this case, this Court should deny the petition for review.

If this Court grants review of this issue and reverses the Court of Appeals' RAP 2.5 analysis, it should also address related issues the Court of Appeals did not reach, such as whether any error was harmless beyond a reasonable doubt. As explained in the Brief of Respondent, Shannon's claim fails on that basis as well. Br. of Respondent at 29-30.

E. CONCLUSION

For the foregoing reasons, the petition for review should be denied.

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DATED this 4th day of March, 2022.

Respectfully submitted,

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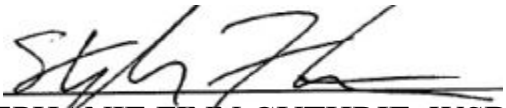
By: 
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