NO. 1014121

SUPREME COURT OF THE STATE OF WASHINGTON

DARCY L. JOHNSON, a single woman,

Petitioner,

v.

STATE OF WASHINGTON, LIQUOR AND CANNABIS BOARD,

Respondent.

STATE RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW

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I. INTRODUCTION

Under long established law, plaintiffs in slip-and-fall cases must prove the existence of an unreasonably dangerous condition and notice on the part of business owners to establish liability. *Charlton v. Toys R Us, Inc.*, 158 Wn. App. 906, 246 P.3d 199 (2010). Last year, this Court addressed the latter issue in *Johnson v. Liquor & Cannabis Bd.*, 197 Wn.2d 605, 486 P.3d 125 (2021). Johnson now seeks review again, this time on the former.

In *Johnson*, this Court held that notice exists where the nature of a business and its methods of operation are "such that the existence of unsafe conditions on the premises are reasonably foreseeable." 197 Wn.2d at 620 (quoting *Pimentel v. Roundup Co.*, 100 Wn.2d 39, 49, 666 P.2d 888 (1983)). Nevertheless, the Court cautioned that even where notice exists, "[d]etermining whether an unreasonably dangerous condition existed is not automatic." *Id.* at 619. Even if the nature of a business and its methods of operation make the existence of an unsafe condition

reasonably foreseeable, there still may not be proof of an unreasonably dangerous condition in a particular instance. *Id*.

That is precisely the case here. Johnson offered no evidence that there was water or any other substance on the floor prior to when she fell, and the clerk testified there was none prior to when Johnson entered the store. Johnson likewise offered no evidence that water would have made the floor unreasonably dangerous. Because the Court of Appeals decision reflects only that failure of proof, it does not conflict with other decisions of this Court, and review is not warranted under RAP 13.4(b)(1).

Johnson's argument that her friend Steve Pallas slipped in the same area a moment before she did likewise does not support review under RAP 13.4(b)(1). As the Court of Appeals noted, Mr. Pallas testified he "never personally saw water on the floor" when he entered the store, and the fact that his foot slid a split-second before Johnson fell does not establish the existence of an unreasonably dangerous condition. *Johnson v. Liquor & Cannabis Bd.*, 21 Wn. App. 2d 1041 at * 4 (2022) (unpublished).

Finally, Johnson presents no valid basis for review under RAP 13.4(b)(4). Just as it did not "disregard" Pallas's testimony, the Court of Appeals did not "re-weigh" the evidence as Johnson suggests. It found that, absent evidence of an extraordinary amount of water or foreign substance or some other evidence that the floor was dangerously slippery, Johnson failed to establish the existence of an unreasonably dangerous condition necessary to support liability. That unremarkable finding does not represent an "issue of substantial public interest" and therefore is not a basis for review under RAP 13.4(b)(4).

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Court of Appeals correctly determine that Johnson failed to offer sufficient evidence that the floor was unreasonably dangerous where Johnson offered no evidence that it was wet or dangerously slippery?

2. In light of Pallas's testimony that he "never personally saw water on the floor," did the Court of Appeals

properly find that his slip moments before Johnson did not establish the existence of an unreasonably dangerous condition?

3. Did the Court of Appeals act within the scope of its authority in determining that Johnson failed to meet her burden of proving that the floor was unreasonably dangerous?

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background

On a rainy day in June, Johnson fell in the entryway of a State-owned liquor store. Clerk's Papers (CP) 1-2. Johnson and her companion, Steve Pallas, had visited eight to ten garage sales that morning, and their shoes were wet as they drove to the store. Report of Proceedings (RP) 170-72; 441. It was still raining when they arrived, and the ground was soaked as they parked and walked inside. RP 442-43. Johnson admitted her shoes were wet as she entered the store about two feet behind Pallas. RP 444.

Pallas and Johnson crossed two rubber mats and two carpeted mats that had been placed in the entryway. RP 104-05. Neither felt the mats were saturated or heard them squish as they

entered. RP 173, 445. Stepping off the mats, Pallas felt his foot slide, though he did not fall. RP 148. He turned to warn Johnson, but before he could do so, she slipped and fell. RP 148.

Pallas did not hear Johnson's shoes[1] squeak when she fell, and he testified he "never personally saw water on the floor." RP 174. Pallas also did not testify that he ever saw dirt, sand, grit, gravel, or any other foreign substance on the floor either before or after Johnson fell. RP 174.

Johnson likewise did not see any water on the floor before she fell, nor did she see any mud, sand, dirt, or any other foreign substance. RP 446. She testified that after she fell, she felt that the outside of her pant leg was wet. RP 384-85. Asked whether she looked to see what it was, Johnson said she "assumed it was water." RP 385. However, she admitted she had "no idea" if any

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[1] Johnson's description of her shoes having "grippy rubber soles" finds no support in the record. *See* Pet. for Rev. at 5, 14. Pallas testified only that he purchased the boots for Johnson and that he wore the same brand. RP 146-147. Neither he nor anyone else testified the boots possessed any slip-resistant characteristics as compared to any other type of shoe.

water had been on the floor before she fell, and she acknowledged it was possible any such water "came in on the bottom of her own shoes" or those of Pallas, who entered in front of her. RP 447.

The clerk, Jay Smiley, testified he opened the store at 10:00 a.m., about an hour before Johnson and Pallas arrived. RP 89. He saw no water on the floor of the entryway when he unlocked the front door, nor did any customers report water or any other foreign matter prior to Johnson's fall. RP 95-96. Smiley's checkout stand sat adjacent to the entryway, and he was the only employee on duty that day. RP 95-96. While Smiley admitted that "rainy days always brought muddy footprints," Johnson fell less than two hours after the store opened. RP 90, 97. At the time she fell, there was no water or other foreign substance on the floor, nor had any been tracked in from outside. RP 97. Smiley also testified there was nothing unusual about the floor that made it especially slippery when wet, and there were

no other conditions or maintenance that made the floor especially slippery. RP 98.

Immediately after Johnson fell, Smiley inspected the floor where she fell and found no water. RP 99. While it was his practice to put out a warning sign whenever it rained, this was done as a prophylactic safety measure, not as a result of a known hazard. RP 97-98. Smiley did not put out the sign that day because, despite the rain outside, there was no condition inside the store that required the placement of the sign prior to Johnson's fall. RP 96-98. Johnson offered no testimony that the floor was unreasonably dangerous,[2] and nobody had ever previously fallen in the store. RP 106.

B. Procedural History

At the conclusion of Johnson's case, the State moved for judgment as a matter of law, arguing she offered no evidence that

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[2] The trial court excluded Johnson's expert, finding his opinions lacked sufficient scientific and factual foundation. RP 24-26; RP 35-36. Johnson did not assign error to the exclusion of her expert in the Court of Appeals on remand from this Court.

the store had notice that the floor was wet, or that the floor was unreasonably dangerous even if it was wet. RP 472-79. Johnson argued Smiley's testimony that he normally put out a caution sign whenever it rained created an issue of fact because Smiley was aware that rain outside could potentially cause a dangerous condition inside. RP 479-83. The trial court denied the motion. RP 484-85. The jury returned a verdict in favor of Johnson, and the State appealed.

The Court of Appeals reversed, finding Johnson failed to present evidence that the store had notice of a dangerous condition. *Johnson*, 10 Wn. App. 2d 1011 at *3 (2019) (unpublished). The Court noted that Johnson presented no evidence to contradict Smiley's testimony that he neither saw any water on the floor before Johnson fell, nor had any customers informed him of water on the floor or complained that the floor was slippery. *Id*. The court also noted that "there was no evidence that water was even on the floor before Johnson entered," and it found that "the precaution of placing a 'slippery when wet' sign

out when it rains does not establish constructive notice of an unreasonably dangerous condition." *Id*.

Johnson petitioned for review and this Court reversed, holding that there is an exception to the notice requirement for areas in which the "nature of the proprietor's business and his methods of operation are such that the existence of unsafe conditions on the premises are reasonably foreseeable." *Johnson*, 197 Wn.2d at 618 (quoting *Pimentel*, 100 Wn.2d at 49). In doing so, however, the Court cautioned that "[r]emoving the self-service requirement does not obviate the need to prove the existence of the unreasonably dangerous condition itself." *Id*. at 618-19. To the contrary, the Court noted "it could be *reasonably foreseeable* that the floor *could* become unreasonably dangerous through being wet and slippery, but, at the same time, there might *not* be proof that the floor *was* unreasonably dangerous in *a* particular instance." *Id*. at 619 (emphasis in original). The Court therefore remanded the matter to the Court of Appeals to

determine whether Johnson offered sufficient evidence of an unreasonably dangerous condition. *Id*. at 622.

On remand, the Court of Appeals again reversed, finding Johnson offered "no evidence that an unreasonably dangerous condition actually existed." *Johnson v. Liquor & Cannabis Bd.*, 21 Wn. App. 2d 1041 at *1 (2022) (unpublished). Citing "over 70 years of case law establishing that a wet floor is not, without more, an unreasonably dangerous condition," the Court rejected Johnson's argument that the practice of placing out a "slippery when wet" sign whenever it rained was evidence of an unreasonably dangerous condition. *Id*. at *3 (citing *Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446, 450, 433 P.2d 863 (1967)). The Court observed:

> It is common knowledge that wet floors are slippery. Rain may cause pedestrians to track in water causing the floor to become wet and slippery, but this does not prove that the wet floor was so slippery that it created an unreasonably dangerous condition. Nor does it prove that the floor actually was wet and slippery when Johnson entered the liquor store and fell.

Id.

The Court of Appeals also rejected Johnson's argument that Pallas's slip moments before hers was evidence of an unreasonably dangerous condition. *Id*. at *4. Citing Pallas's testimony that he "never personally saw water on the floor," the Court noted "Pallas's testimony does not establish that the floor was even wet before Johnson fell [nor did it] establish anything about the floor or its properties that would establish that the floor was unreasonably dangerous when it was wet." *Id*.

Finally, the Court of Appeals rejected Johnson's argument that there was circumstantial evidence of more than an ordinary amount of water on the floor. *Id*. The Court noted that neither Smiley, Pallas, nor Johnson testified to seeing any water on the floor before Johnson fell. *Id*. Accordingly, the Court held "Johnson has not shown that there was any water on the floor before she fell; thus, there is no evidence to show that there was any, let alone an extraordinary amount of, water on the floor." *Id*.

IV. ARGUMENT

Johnson identifies no conflict between the Court of Appeals' opinion and any decision of this Court. As this Court has repeatedly held, wet floors are not an inherently dangerous condition. *Brant*, 72 Wn.2d at 448-49; *Merrick v. Sears, Roebuck & Co.*, 67 Wn.2d 426, 429, 407 P.2d 960 (1965); *Shumaker v. Charada Inv. Co.*, 183 Wash. 521, 530-31, 49 P.2d 44 (1935). In this case, Johnson simply failed to offer any evidence, direct or circumstantial, establishing that this particular floor was unreasonably dangerous.

Nor did the Court of Appeals impermissibly "re-weigh" the evidence as Johnson alleges. Pet. for Rev. at 22. The Court of Appeals simply considered whether Johnson presented sufficient evidence to sustain a verdict in her favor – a routine act that it performs every day – and found that she did not. Because Johnson's failure of proof does not present an issue of substantial public importance, review should be denied.

A. Johnson's Failure to Provide Evidence that the Floor was Unreasonably Dangerous Does Not Merit Review.

Johnson does not identify a decision of this Court with which the Court of Appeals decision conflicts under RAP 13.4(b)(1). Instead, she argues the Court of Appeals erroneously focused on the amount of water on the floor rather than its dangerousness, and she points to circumstantial evidence from which she argues the jury could have inferred that the floor was dangerous. Pet. for Rev. at 12-14. But as the Court of Appeals found, Johnson failed to provide evidence that there was *any* water on the floor, much less that water would have made the floor unreasonably dangerous. *Johnson*, 21 Wn. App. 2d 1041 at *4. Regardless, none of the evidence Johnson cites supports an inference that the floor was unreasonably dangerous. This Court should therefore deny review.

1. Johnson Provided No Evidence That There Was Water or Any Other Foreign Substance on the Floor Before She Fell.

Washington law is clear that water on a floor alone is not an unreasonably dangerous condition, and no inference of

negligence may be drawn from it. *Brant*, 72 Wn.2d at 448-49; *Merrick*, 67 Wn.2d at 429; *Shumaker*, 183 Wash. at 530-31. Water along with some other foreign substance may permit an inference of dangerousness. *See*, *e.g.*, *Brant*, 72 Wn.2d at 448-49; *Hooser v. Loyal Order of Moose, Inc.*, 69 Wn.2d 1, 416 P.2d 462 (1966) (wax); *Messina v. Rhodes Co.*, 67 Wn.2d 19, 406 P.2d 312 (1965) (sand, mud, and water); *Presnell v. Safeway Stores, Inc.*, 60 Wn.2d 671, 374 P.2d 939 (1962) (banana peel). In any event, there must be evidence that some combination of water and/or a foreign substance made the floor unreasonably dangerous. *Brant*, 72 Wn.2d at 448-49.

In this case, Johnson provided none. Despite the fact that his register sat adjacent to the entryway, the clerk testified he never saw any water on the floor from the time he opened the store at 10:00 a.m. until 11:30 a.m. when Johnson fell. RP 95-98. Pallas likewise testified he never saw water or any other foreign substance on the floor before or after Johnson fell. RP 174. Johnson too admitted that she did not see any water on the floor

before she fell. RP 446. She testified only that her pant leg was wet after she fell and that she "assumed" it was from water that had been absorbed from the floor. RP 385. As the Court of Appeals recently held, however, neither the wetness of Johnson's pant leg after she fell nor her assumption that it was made wet by water that had been on the floor before she fell is sufficient to support an inference that the floor was unreasonably dangerous. *See Yamada v. Earl's Restaurant (Bellevue), Inc.*, 22 Wn. App. 2d 1058 (2022) (unpublished) (holding that wet spots on the clothes of a patron who fell in a restaurant were insufficient to establish the existence of a dangerous condition).

Johnson points to the clerk's testimony that, in general, "rainy days always bring muddy footprints." RP 97. But she offered no evidence that muddy footprints had actually been tracked into the store before she fell, and the only witnesses who testified to the condition of the floor – Johnson, Pallas, and Smiley – saw no such thing. RP 174, RP 446, RP 97-98.

Based on this lack of evidence, and following this Court's reasoning in *Brant*, the Court of Appeals found "Johnson has not shown that there was any water on the floor when she fell; thus, there is no evidence to show that there was any, let alone an extraordinary amount of, water on the floor." *Johnson*, 21 Wn. App. 2d 1041 at *4. Because Johnson identifies no decision of this Court with which that determination conflicts, review is not warranted under RAP 13.4(b)(1).

2. Johnson Provided No Circumstantial Evidence from Which It Could Be Inferred that the Floor Was Unreasonably Dangerous.

Johnson identifies no authority contradicting the Court of Appeals' determination that she failed to submit sufficient circumstantial evidence from which an inference of dangerousness could be drawn. *See* Pet. for Rev. at 12-19. She quotes the store's "slippery when wet" sign, along with the clerk's testimony that it was "needed" whenever it rained. Pet. for Rev. at 14-15. She argues mere *possession* of such a sign is "tantamount to an admission" that the floor was unreasonably

dangerous when wet. Pet. for Rev. at 15-16. She cites to testimony that the store's floor had recently been "polished." Pet. for Rev. at 14. And she points to the fact that Pallas slipped a split-second before her as evidence of dangerousness; evidence she claims the Court of Appeals erroneously "disregarded." Pet. for Rev. at 20-21. None of these facts, standing alone or in combination, support an inference that the floor was unreasonably dangerous.

a. The store's possession of a sign saying "slippery when wet" is not evidence of an unreasonably dangerous condition.

The Court of Appeals properly rejected Johnson's argument that the store's ownership of a "slippery when wet" sign supports an inference of dangerousness. Pet. for Rev. at 15-16 (arguing "[t]he content of the sign is tantamount to an admission that water makes the floor where [she] fell dangerous"). Johnson cites no authority for this argument, and what authority there is suggests the contrary. *See Charlton*, 158 Wn. App. at 911-15 (finding insufficient evidence of negligence

even where the store had placed out large yellow cones stating "Caution, Wet Floor"). Regardless, the store did not write the content of the sign, nor had it adopted the content of the sign by owning it. Mere *possession* of such a sign is not evidence of anything; nearly all retail establishments possess such signs for use when their floors become wet to warn customers that the floor may be slippery. That, however, is not evidence of an unreasonably dangerous condition. As this Court has repeatedly held, not all wet or slippery floors support liability. *Brant*, 72 Wn.2d 450; *Merrick*, 67 Wn.2d at 428; *Shumaker*, 183 Wash. at 530. Only floors that are unreasonably dangerous do. *Johnson*, 197 Wn.2d at 619-20; *Wiltse v. Albertson's, Inc.*, 116 Wn.2d 452, 459-60, 805 P.2d 793 (1991); *Kalinowski v. Young Women's Christian Ass'n*, 17 Wn.2d 380, 391, 135 P.2d 852 (1943).

To prove that the floor was unreasonably dangerous, Johnson bore the burden of producing evidence that it "presented an unreasonable risk of harm." *Charlton*, 158 Wn. App. at 915. As the Court of Appeals held, the "slippery when wet" sign "does

not prove that the wet floor was so slippery that it created an unreasonably dangerous condition." *Johnson*, 21 Wn. App. 2d 1041 at *3. Nor does mere possession of the sign "prove that the floor actually was wet and slippery when Johnson entered." *Id*.

b. Smiley's testimony that the "slippery when wet" sign was "needed" whenever it rained is not evidence of an unreasonably dangerous condition.

The Court of Appeals also properly rejected Johnson's argument that the rain coupled with Smiley's testimony that the sign was "needed" whenever it rained was evidence that the floor was unreasonably dangerous. Pet. for Rev. at 14-15. Smiley testified it was his practice to put out the sign whenever it rained as a precaution, whether the floor was wet or not. RP 109. Such prophylactic measures are not evidence of dangerousness because they are not triggered by, and exist independently of, an actual danger. *Charlton*, 158 Wn. App. at 915 (citing *Kangley v. United States*, 788 F.2d 533, 534-35 (9th Cir. 1986)). As Smiley's testimony made clear, the sign was "needed" only to

comply with precautionary best practices, not due to any special characteristic of the floors or existing hazard. RP 98, 109.

"To prove negligence, the plaintiff must prove that water makes the floor dangerously slippery . . . and that there was water on the floor at the time the plaintiff slipped." *Wiltse*, 116 Wn.2d at 459-60 (quoting *Kangley*, 788 F.2d at 534-35). Anything less "would place an intolerable burden on businesses in areas . . . where it is often wet outside." *Id*. As the Court of Appeals correctly found, Smiley's testimony did not meet that burden.

c. Johnson proffered no evidence that the store's maintenance of the floor made it unreasonably dangerous.

Even if Johnson had provided evidence regarding the store's floor maintenance – and she did not – that evidence would not show that the floor was unreasonably dangerous on the day she fell. Johnson describes the floor as having been "waxed linoleum" which "had been polished the night before." Pet. for Rev. at 5. However, Johnson offered no evidence the floor had been waxed, and the store's maintenance contractor, Jason

Billings, testified that the last time he serviced the floors prior to Johnson's fall was March 29, 2011, eighty-three days before she fell. RP 560-61. Billings further testified that the process of burnishing the floors did not require application of any slip-resistant material because it only involved running a buffer over the floor to clean it. RP 559. He distinguished the process of burnishing from refinishing, which is performed "once every couple of years" and which does involve the application of wax. RP 564-565. He did not testify that he had waxed the floor prior to Johnson's fall, and he testified that even if he had, wax does not make the floor slippery. RP 565.

Against this, Johnson offered no percipient testimony or expert opinion that the characteristics of the floor or the store's maintenance made it unreasonably dangerous, with or without water on it. Absent such testimony, Johnson offered no evidence that the store's maintenance of the floor made it unreasonably dangerous.

d. Pallas's slip a step ahead of Johnson's fall does not support an inference that the floor was unreasonably dangerous.

Johnson cites no case from Washington's wet-floor jurisprudence establishing that Pallas's near-simultaneous slip was evidence that the floor was unreasonably dangerous. Setting aside the fact that Pallas did not fall, the Court of Appeals did not "disregard" his testimony as Johnson claims. Pet. for Rev. at 20-21. In fact, the Court of Appeals *cited* Pallas's testimony in finding Johnson failed to provide evidence of an unreasonably dangerous condition. *Johnson*, 21 Wn. App. 2d 1041 at *2. Regardless, none of the cases Johnson cites are slip-and-fall cases applicable to Washington's wet-floor jurisprudence. *See* Pet. for Rev. at 20-21 (citing *Bussard v. Fireman's Fund Indem. Co.*, 44 Wn.2d 417, 267 P.2d 1062 (1954); *O'Dell v. Chicago, M., St. P. &. P. Ry. Co.*, 6 Wn. App. 817, 496 P.2d 519 (1972); and *Turner v. City of Tacoma*, 72 Wn.2d 1029, 435 P.2d 927 (1967). Under that jurisprudence, "negligence cannot be inferred

from a fall alone." *Brant*, 72 Wn.2d at 448 (citing *Merrick*, 67 Wn.2d at 429)).

In *Bussard*, a widow sought to collect on a life insurance policy after her husband was found dead near a rail line. *Bussard*, 44 Wn.2d at 418. The insurance company denied coverage, claiming his death was a suicide. *Id*. At trial, the deputy sheriff who investigated testified that when he visited the location months later, he fell in the same area, spraining his wrist. *Id*. at 420. Affirming the trial court's refusal to strike the testimony and award a new trial, this Court stated that the dangerous condition of the rail line ballast "could be shown by evidence of the slipping of persons other than the deceased." *Id*.

Bussard is not remotely analogous. It did not involve a wet floor, it was not a slip-and-fall case, and the deputy who fell in the same location testified he fell fifteen months *after* the incident. *Id*. at 419. Moreover, the issue in *Bussard* was the admissibility of the sheriff's testimony, not whether it was sufficient to support a verdict for the plaintiff. *Id*. at 420.

O'Dell is likewise inapposite. In that case, the plaintiff, whose motorcycle struck the side of a train in dense fog, produced evidence of one prior accident and three "near-accidents." *O'Dell*, 6 Wn. App. at 820. Finding that admission of the prior "near-accidents" was not an abuse of discretion, the Court of Appeals held that "[p]roof of other accidents at the same crossing *at other times* . . . may be received for the purpose of showing the existence of a dangerous condition." *Id*. at 826 (emphasis added).

Like *Bussard*, *O'Dell* was not a slip-and-fall case. Moreover, like *Bussard*, *O'Dell* merely held that it was not an abuse of discretion to admit evidence of prior near accidents, not that they were sufficient to support a verdict in favor of the plaintiff. *O'Dell*, 6 Wn. App. at 820. And, crucially, the prior near-accidents in *O'Dell* were "at other times," and thus showed the character of the crossing itself as dangerous, not at virtually the same time as the accident at issue, as Pallas's slip was here.

Finally, *Turner* is likewise inapplicable. There, the plaintiff walked into a fire escape that obstructed a sidewalk. *Turner*, 72 Wn.2d at 1031. The City's negligence was "definitely established" because the fire escape violated state law and the City's municipal code, so the only issue was the contributory negligence of the plaintiff. *Id*. at 1031-35. After remanding for retrial on that issue, the Court held that evidence of prior accidents under similar circumstances was admissible for the purpose of proving that the fire escape constituted a dangerous condition. *Id*. at 1036.

Like *Bussard* and *O'Dell*, *Turner* is not a slip-and-fall case. The issue in *Turner* was again the admissibility of evidence, not whether such evidence, if offered, would have been sufficient to sustain a verdict in favor of the plaintiff. *Id*. at 1036. And the "prior accidents" found admissible were again on prior occasions and thus tended to show that the character of the sidewalk itself was dangerous; there was no argument that the plaintiff's brother, who had been with her, had also struck the fire escape,

or that such evidence would have been sufficient to sustain a finding of dangerousness.

Unlike *Bussard*, *O'Dell*, and *Turner*, Johnson offered evidence not of a *prior fall*, but of a *simultaneous slip*. Citing Pallas's own testimony that he "never personally saw water on the floor," the Court of Appeals found that slip insufficient to establish negligence. *Johnson* 21 Wn. App. 2d 1041 at *4 (noting Pallas's testimony "does not establish that the floor was even wet before Johnson fell in the store [nor does it] establish anything about the floor or its properties that would establish [it] was unreasonably slippery when wet"). Johnson identifies no decision of this Court with which that finding conflicts, particularly in light of her admission that any such water could have come from her own shoes or those of Pallas, with whom she had visited eight to ten garage sales that morning in the rain. RP 170-72; 441; 447. Review is therefore not warranted under RAP 13.4(b)(1).

B. Johnson Fails To Show An Issue of Substantial Public Interest.

This Court remanded this case to the Court of Appeals to determine whether Johnson offered sufficient evidence of an unreasonably dangerous condition. *Johnson*, 197 Wn.2d at 621-22. The Court of Appeals did exactly that and found that she did not. *Johnson*, 21 Wn. App. 2d 1041 at *4. Nevertheless, Johnson now argues the Court of Appeals exceeded the scope of its review by "re-weighing the evidence" and that this represents an issue of substantial public interest under RAP 13.4(b)(4). Pet. for Rev. at 22-25.

Johnson's argument misses the mark. The Court of Appeals did not simply disagree with the jury; it found that Johnson failed to offer sufficient evidence to withstand a motion for judgment as a matter of law. *Johnson*, 21 Wn. App. 2d 1041 at *1. Judgment as a matter of law "must be granted when 'viewing the evidence most favorable to the nonmoving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a verdict for the

nonmoving party.'" *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 531, 70 P.3d 126 (2003) (quoting *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 29, 948 P.2d 816 (1997)). "Substantial evidence is evidence that is sufficient 'to persuade a fair-minded, rational person of the truth of a declared premise.'" *Id*. (quoting *Hellman v. Sacred Heart Hosp.*, 62 Wn.2d 136, 147, 381 P.2d 605 (1963)).

Johnson identifies no precedent of this Court with which the Court of Appeals' opinion conflicts, and she offers nothing but her personal disagreement with the Court of Appeals opinion in support of her argument. As the Court of Appeals found, Johnson proved "nothing more than that she slipped on a floor. She has not proven that an unreasonably dangerous condition existed." *Johnson*, 21 Wn. App. 2d 1041 at *4. No issue of substantial public importance is presented by a petitioner who merely asks this Court to reconsider that finding. Review should therefore be denied.

V. CONCLUSION

The Court of Appeals' determination that Johnson failed to offer evidence that the floor was unreasonably dangerous does not conflict with any opinion of this Court, nor does it represent an issue of substantial public importance. Review under RAP 13.1(b)(1) or RAP 13.4(b)(4) is therefore inappropriate, and the State respectfully asks that the petition be denied.

RAP 18.17 CERTIFICATE

Undersigned counsel certifies that this answer contains 4,999 words, excluding parts exempted from the word count under RAP 18.17(c)(10).

Respectfully submitted this 22nd day of November, 2022.

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DECLARATION OF FILING AND SERVICE

I declare under penalty of perjury in accordance with the laws of the State of Washington that on the below date the original of the preceding "STATE RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW" was filed in the Supreme Court of the State of Washington, and electronically served on the following parties, according to the Court's protocols for electronic filing and service.

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DATED this 22nd day of November 2022, at Tumwater, Washington.

s/ Tam Truong
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