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SUPREME COURT NO. 101502-0
COURT OF APPEALS NO. 82125-3-I

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

JOHN RAY STEARNS,

Respondent.

APPEAL FROM KING COUNTY SUPERIOR COURT

AMENDED PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

The State of Washington, Petitioner here and Respondent below, respectfully requests that this Court review the published decision of the Court of Appeals in State v. Stearns, No. 82125-3-I (September 19, 2022), a copy of which is attached as an appendix.

B. INTRODUCTION AND ISSUES FOR REVIEW

John Ray Stearns raped and beat Crystal Williams to death, leaving her naked body in the mud outside a public restroom in Seattle's Central District, in 1998. The crime went unsolved until DNA evidence connected Stearns to the murder several years later. Stearns was at that time already serving a 60-year exceptional sentence after pleading guilty to the brutal physical and sexual assault of another woman in the same neighborhood. Although there was probable cause to charge Stearns by 2005, the State did not bring charges until 2017.

During the period between 2005 and 2017, there was no additional factual investigation conducted by police. However,

the assigned senior deputy prosecutor spent time developing the cold case as he was able, given the unique role he played in the King County Prosecuting Attorney's Office. Once satisfied that he could prove Stearns' guilt beyond a reasonable doubt, he charged Stearns with murder. A jury convicted Stearns and he was sentenced to life as a persistent offender.

Disregarding the implausibility of the argument Stearns made in the trial court and in the face of conclusive circumstantial evidence, the Court of Appeals reversed and dismissed the charges, holding that pre-charging delay violated Stearns' right to a fair trial.

This Court should grant review for two reasons. First, the Court of Appeals' analysis is inconsistent with this Court's jurisprudence, exaggerates the potential effect of a deceased witness' testimony, and fails to give appropriate deference to the trial court's evaluation of prejudice. Second, the court seems to have assumed that the State should file charges soon after it has probable cause to do so and fails to consider the

State's greater interests in prosecution of homicides, where there is no statute of limitations. This Court should grant review to clarify existing United States Supreme Court authority that probable cause is not a benchmark for evaluating delay and that fully developing a prosecution, beyond the narrower factual scope of a police investigation, is a legitimate interest.

C. STATEMENT OF THE CASE

John Stearns preyed upon women in the Central District during the 1980s and 1990s. In 1981, he attacked a woman in her apartment, strangled her, and vaginally raped her multiple times before fleeing with her television. CP 593, 633, 647-51. Stearns was convicted of second-degree rape. CP 639-41, 653. While on parole for that offense in 1989, Stearns attacked a woman in broad daylight, holding her by the neck while trying to digitally penetrate her vagina. CP 657-65. Stearns was convicted of attempted second-degree rape and first-degree

robbery. CP 667-77. In 1999, Stearns robbed a Central District minimart, beat its owner, slashed her face with a box cutter, and raped her before being caught in the act by police. CP 687-91, 737-41. The State charged him with attempted murder in the first degree, rape in the first degree, assault in the first degree with sexual motivation, and robbery in the first degree with a deadly weapon. CP 681-85. Stearns pleaded guilty to reduced charges and agreed to a 60-year exceptional sentence to avoid a life sentence under the Persistent Offender and Persistent Sex Offender laws. CP 693-717. Stearns also brutally attacked and raped an 81-year-old woman in her home but was not prosecuted for that offense. CP 633; 2RP 128. Each attack occurred within blocks of Stearns' home. CP 617.

While Stearns was in the community between prison sentences, Crystal Williams was raped and killed in a public park near Stearns' home. Her partially nude body was found in the mud next to public toilets at about 10:00 a.m. on January 14, 1998. 2RP 1492, 1501, 1516-17. Her top was pulled up

over her breasts, her bra pulled down under her breasts, and her buttoned pants were pulled down to mid-thigh, above her knees. 2RP 1493, 1516, 1624-25, 2274, 2286-87. An inner layer of clothing was pushed down below her knees, while her middle layer of thin fabric pants were pulled down to the knee level. 2RP 2286-87. Her face was bloody. 2RP 1625. There was visible trauma to her face and head. 2RP 1516. A used condom and condom wrapper were found near her body. RP 1705. It was immediately apparent that Williams was killed during a sexual assault. RP 1627, 1666, 1707, 1827.

An autopsy confirmed extensive injuries, including a fractured skull, and Williams had been strangled. 2RP 2269. The medical examiner estimated that Williams had been dead for “several hours” by the time she was found. 2RP 2265. Semen found inside Williams’ vagina and in the condom was so fresh that the sperm cells still had tails—unusual to find. RP 1919, 2120. The volume of semen left inside of Williams’ vagina, together with the fact that there was extremely little

male DNA found in the crotch area of Williams' innermost clothing layers, vividly established that Williams was raped on the ground and never got back up. 2RP 2098, 2128-30.

Williams was addicted to crack cocaine and sometimes worked as a prostitute or facilitated drug sales to meet her needs. 2RP 1539-40, 1714-20. She frequently spent time with a group of women engaged in this lifestyle, including her girlfriend Lisa Warner, her half-sister Yvonne Hicks, Taffy Gober, and Zanette White. 2RP 1546, 1730. Police interviewed the women, who each recalled last seeing Williams walking with a man toward the park where she was killed. 2RP 1546-47, 1730-32, 1832; CP 271-73.

Each of the women's accounts differed with respect to the time, exact location, and description of the man with whom Williams walked away. Hicks said Williams walked away with a dark-complexioned six-foot-tall thin Black man in his 40s after 6:00 a.m. CP 271-74. She believed it was after 6:00 a.m. because she was drinking a beer, which was not sold before

6:00 a.m. CP 271-72. Warner also recalled Williams walking away with a Black man in his 40s, describing him as only about 5'5" and wearing glasses, but said this happened before 2:00 a.m., which she remembered because they had just procured beer, which was not sold after 2:00 a.m. CP 283; 1RP 726.

White said she last saw Williams walking toward the park around 6:30 a.m. with a man of a different description: "Black male, 27-30, 5^[']9^[']", medium build, dark complexioned, carrying a blue jacket with checks on the inside lining, possibly having short braids." CP 283. Gober saw Williams at about 4:00 a.m. with a "Black male about 45 to 50 years old, mustache, 6-foot to 6'2", thin build, medium complexion, possibly wearing glasses, a fedora type hat, tweed sports coat, brown khaki pants, dark shoes ... carrying a small ... bag with a shoulder strap. He also carries a cheap wooden cane." CP 285.

In sum, Williams' associates' statements established that she walked to the park with a man one or more times as early as

before 2:00 a.m. and as late as 6:30 a.m. Since their descriptions are not identical, it is possible the women were describing more than one event. If one of the men they saw killed Williams, any of their time estimates would be consistent with the best estimate of Williams' time of death—"several hours" before her body was found at 10:00 a.m. 2RP 2265.

Gober identified Jimmy Horner from a photographic montage as the man with whom she thought Williams walked toward the park. CP 289. After investigation, Horner was later eliminated as a suspect. CP 291; 2RP 2030-31. Several other suspects were also ruled out. 2RP 2029-30. With no further viable suspects, the case went cold. 2RP 340.

In 2004, the crime lab updated the DNA testing of the semen found in Williams' vagina. 2RP 1917. The DNA was determined to have been contributed by a single male, John Stearns. 2RP 1925-26. Stearns was then in prison. 2RP 342. Detectives interviewed him in 2005. 2RP 1948. Stearns denied ever meeting or having sex with Williams, even when

confronted with the DNA evidence. 2RP 1965-67. Following this interview, police had probable cause to believe that Stearns raped and murdered Williams and did no further investigation. 2RP 349, 2032.

The senior deputy prosecutor assigned to the case from its inception was not aware in 2005 of Stearns' involvement in the many other attacks on women in the Central District in the 1980s and 1990s. 2RP 347-48. A detective reviewed the case in 2017 and asked the prosecutor about charging Stearns. 2RP 347. The prosecutor worked to tie up loose ends of the investigation, learned as much as he could about Stearns' other crimes to see if they would be admissible to show a common scheme or plan, and then filed charges. 2RP 348.

Stearns moved to dismiss the charges based on preaccusatorial delay. CP 156-59. He vaguely alleged that he was prejudiced because witnesses were unavailable and Stearns' own memory had faded. CP 158. The court denied the motion because Stearns' "bare bones" motion had not

established prejudice. 1RP 81-82. Stearns renewed the motion, only then specifying that the charging delay prejudiced him because Hicks, who died several months after charges were filed, was unavailable to corroborate Gober's expected testimony that she last saw Williams with Jimmy Horner. 2RP 371-72. Noting that the defense theory of prejudice had changed significantly since its initial ruling, the trial court again denied the motion, finding only speculative prejudice. 2RP 385-87. "[T]he mere possibility that we have different timelines from midnight to 6:30 a.m. as could be testified to by different associates of the decedent doesn't create actual prejudice." Id.

Gober, Warner, and Horner testified at trial. Horner denied any involvement. 2RP 1858. Gober disavowed her identification of Horner and recalled that she had last seen Williams around 3:00 or 4:00 a.m. 2RP 1548, 1562-66, 1575. Warner could no longer recall the date or time she last saw Williams, but recalled that one of the places she looked for

Williams was the corner store where they would get alcohol before 2 a.m. 2RP 1733, 1737.

D. REASONS REVIEW SHOULD BE ACCEPTED AND ARGUMENT

RAP 13.4(b) permits review by this Court where a decision of the Court of Appeals conflicts with a decision of the Supreme Court, raises a significant question of law under the Washington State or United States Constitution, or deals with an issue of substantial interest. The decision below meets these criteria because its erroneous application of the Due Process clause to preclude Stearns' prosecution is inconsistent with this Court's interpretation of Supreme Court precedent and deprives the people of Washington of the opportunity to hold Stearns accountable for this horrendous crime.

1. THE DECISION BELOW CONFLICTS WITH ESTABLISHED PRINCIPLES GOVERNING REVIEW OF DUE PROCESS CLAIMS BASED ON PRE-CHARGING DELAY, WHICH REQUIRE DEFENDANT TO PROVE BOTH ACTUAL PREJUDICE AND INVALID REASON FOR THE DELAY.

There is no dispute that the 12-year delay in charging Stearns with murder was unusual. But courts do not presume prejudice from the length of the charging delay alone. The primary guarantee against bringing overly stale criminal charges is the applicable statute of limitations. United States v. Marion, 404 U.S. 307, 324-25, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971). “Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice.” Id. (citation omitted). They “provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant’s right to a fair trial would be prejudiced.” Id. Our Legislature has determined that, given the importance of holding murderers accountable, a case may be brought at any time. To presume prejudice from even an extraordinary delay “would be inconsistent with the Legislature’s declining to impose a statute of limitations for murder, among the most serious of crimes. To avoid murder charges due to delay, the defendant must affirmatively show

prejudice.” People v. Nelson, 43 Cal. 4th 1242, 185 P.3d 49, 54 (2008).

In Marion, the Supreme Court refused to create a bright-line rule about when pre-charging delay would violate due process. Id. at 325. After all, “[a]ctual prejudice to the defense of a criminal case may result from the shortest and most necessary delay; and no one suggests that every delay-caused detriment to a defendant’s case should abort a criminal prosecution.” Id. at 324-25. The Court specifically rejected a rule that would require the government to file charges “the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction.” Id. at 325 n.18 (quoting from Hoffa v. United States, 385 U.S. 293, 310, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966)). Accordingly, even when a defendant has made a showing of actual prejudice from a pre-charging delay, “the sound administration of justice ... will necessarily involve a delicate judgment based on the

circumstances of each case.” Id. See also United States v. Lovasco, 431 U.S. 783, 789-90, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977) (actual prejudice “is generally a necessary but not sufficient element of a due process claim,” and its existence merely “makes a due process claim concrete and ripe for adjudication.”).

In State v. Oppelt, 172 Wn.2d 285, 291-92, 257 P.3d 653 (2011), this Court expanded on Marion, holding that even a negligent delay can violate due process if the government’s action violates fundamental conceptions of justice. However, “if mere negligent conduct is asserted, the ... prejudice suffered by the defendant will have to be greater than where intentional or deliberate government conduct is alleged.” Id. at 293.

This Court most recently articulated the proper analysis of an alleged due process violation from precharging delay as follows: “(1) the defendant must show he or she was actually prejudiced by the delay; (2) if the defendant shows actual prejudice, the court must determine the reasons for the delay;

and (3) the court must weigh the reasons for the delay and the prejudice to determine whether fundamental conceptions of justice would be violated by allowing the prosecution.” State v. Maynard, 183 Wn.2d 253, 352 P.3d 159 (2015). Crucial to the defendant’s claim is a showing that the asserted prejudice was caused by the government’s conduct.

In Maynard, the defendant lost the benefits of juvenile court jurisdiction after the State waited until a month before his 18th birthday to file charges and defense counsel failed to move to extend jurisdiction. Id. at 259-60. Even though it was logically true that juvenile court jurisdiction would not have so soon expired had the State earlier filed charges, and even though the loss of juvenile court jurisdiction caused actual prejudice, this Court found no due process violation. This Court held that Maynard could not establish actual prejudice “because preaccusatorial delay did not cause the loss of juvenile jurisdiction” where the State filed charges before juvenile jurisdiction expired. Id. at 260. That prejudice was caused by

defense counsel's failure to move to extend jurisdiction within the 12 days of juvenile jurisdiction that remained. Id. "This failure and the consequential loss of jurisdiction was not the result of the State's actions." Id.

Here, Stearns argued that the precharging delay caused him actual prejudice because Yvonne Hicks had died before trial. The State concedes that had it filed charges sooner, there was a greater likelihood that Hicks would have been available for trial. But, as in Maynard, the fact that Hicks died before trial was not the result of the State's actions. Hicks was alive when the State filed charges against Stearns in 2017. There is no evidence that her death months later was foreseeable to the State, and no indication that the State waited to file charges to increase the odds that witnesses would become unavailable. Just as Maynard could have acted within the short time available to extend juvenile court jurisdiction, Stearns could have interviewed Hicks to document the facts to which she would have testified. No governmental action or inaction

caused Hicks to die before trial. To be consistent with Maynard, the Court of Appeals should have held that Stearns established no actual prejudice.

Further, because Stearns cannot show that the State deliberately delayed charges to gain a tactical advantage, he must demonstrate a greater degree of prejudice. Oppelt, 172 Wn.2d at 293. But Stearns' assertion of prejudice, which has evolved dramatically from that presented to the trial court, has only ever been speculative. He now posits, based on Hicks' statement to police at the time, that she would have testified that she saw Williams with a man who was not Stearns after 6 a.m., and this evidence would have been to his benefit by narrowing the amount of time during which he could have killed her.

At best, Hicks' putative testimony would have established that another man had an opportunity to kill Williams. But even without Hicks, Stearns emphasized evidence suggesting that Jimmy Horner was the killer and that

Williams was a sex worker who may have met with other men that night. 2RP 1399, 1404-08, 1417-28, 2365-82. In the second trial after a mistrial, Stearns also emphasized that other male DNA was detected on Williams' clothing in 2020, suggesting that any of those contributors might have killed her. 2RP 2365-71, 2392-93. Hicks' testimony was plainly not necessary for Stearns' defense theory.

Oppelt is instructive. There, the defendant charged with child molestation argued that preaccusatorial delay prejudiced him because the victim's grandmother could no longer recall what lotion she had given the victim at the time, which precluded him from arguing that the lotion caused the symptoms alleged to have been caused by the molestation. 172 Wn.2d at 296. Noting that "[w]here the State's reason for delay is mere negligence, establishing a due process violation requires greater prejudice to the defendant than cases of bad faith delay," this Court rejected the claim. Id. The Court explained, "The loss of testimony about the exact lotion used is very slight

prejudice” because “the defendant was not *precluded* from arguing that the lotion *might* have caused redness and swelling.” Id. (first emphasis added).

In the context of this case, the loss of Hicks’ testimony that she saw Williams with a different man after 6 a.m. is likewise only of speculative value. It was obvious from the evidence at trial that Williams, a sex worker, may have had sex with other men that night. But the critical question for the jury was whether some *other* man came along *after* Stearns had ejaculated in Williams, and then that man (and not Stearns) killed her.

Hicks’ putative testimony did not elucidate that question. She and others could say only that in the predawn hours Williams had gone into the park with a man who did not match Stearns’ description. Such testimony was uncontroversial in light of Williams’ prostitution activity. Hicks’ testimony about when and with whom she last saw Williams was not necessary to make out the defense that someone else did it. Nor would

that testimony increase the likelihood that the killer was someone other than Stearns. Although Hicks described the park incident as closer in time to Williams' murder, her putative testimony merely established a narrower window of time between Williams' entering the park and the discovery of her body. She could say nothing about whether, given the evidence showing Williams was killed by the person who ejaculated into her and left her to die, somebody other than Stearns could have done this. Hicks simply could not know. Because other witnesses described Williams entering the park with a man in the predawn hours, Hicks' unavailability did not preclude Stearns from arguing that Williams might have been killed by someone else. The conclusion that Stearns had established actual prejudice conflicts with this Court's decision in Oppelt.

Further, in determining that Stearns demonstrated actual prejudice, the Court of Appeals misperceived the State's strong evidence showing that the person who raped Williams was the same person who killed her. Forensic evidence established that

Williams was killed during a violent sexual assault and Stearns was the sole source of the fresh semen found in Williams' vagina and in a condom located near her body.¹ Evidence that remarkably little semen had leaked from Williams' vagina further showed that Williams most likely never got up from the ground after Stearns ejaculated in her body. RP 2128-30. Her pants were pulled partially up on her legs, meaning it was impossible to walk. She was lying in mud. Her head was crushed in. All this evidence strongly suggests that Williams was killed right after she was sexually assaulted by Stearns.

When assessing the importance of Hicks' testimony, the Court of Appeals also failed to consider evidence indicating that Stearns had used a similar plan to attack and sexually assault other women in the same area; this evidence showed

¹ The evidence showed the presence of a tiny amount of male DNA not belonging to Stearns on some of Williams' clothing. Slip op. at 9 & n.6. That evidence did not establish that any of the male sources of that DNA had intercourse with Williams, let alone within hours of her death.

that Stearns' defense that he had consensual sex with Williams before someone else killed her in the exact same location was simply untenable.²

Through this series of errors, the Court of Appeals rendered a decision that fails to faithfully apply the actual prejudice standard. The decision is contrary to this Court's decisions in Maynard and Oppelt. This Court should accept review to clarify the standard of prejudice and causation necessary to establish a due process violation from a negligent precharging delay.

2. THE DECISION BELOW CONFLICTS WITH CONTROLLING PRECEDENT BY IGNORING MULTIPLE PRE-FILING STEPS TAKEN BY THE PROSECUTION, BY DEVALUING THE PROSECUTOR'S PUBLIC-SAFETY JUDGMENTS, AND BY IMPLYING THAT THE STATE MUST BRING CHARGES SOON AFTER IT HAS PROBABLE CAUSE TO AVOID DISMISSAL ON GROUNDS OF PRE-CHARGING DELAY.

² Stearns challenged the other crimes evidence on appeal but the Court of Appeals did not reach those issues because it reversed and dismissed for pre-accusatorial delay.

Even if Stearns established actual and substantial prejudice from the precharging delay, prejudice alone does not “make[] the claim automatically valid.” Lovasco, 431 U.S. at 789-90. Rather, a court evaluating a due process claim based on precharging delay “must consider the reasons for the delay as well as the prejudice to the accused.” Id. at 790.

Integral to the Court of Appeals’ reasoning in this case was its repeated statements that the State had no legitimate reason to delay the filing of charges after it had developed probable cause. The court noted that the reasons for delay in this case—insufficient prosecutorial resources—“may broadly justify a filing delay, however, 12 years strains the limits of credulity, particularly when ... there was no need for additional evidence for the development of probable cause.” Slip op. at 12. The Court of Appeals’ focus on when the State had probable cause implies that the State has an obligation to bring charges soon after probable cause exists or risk dismissal for precharging delay. The Supreme Court has explained that this

notion is incompatible with due process. “[P]rosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect’s guilt beyond a reasonable doubt.” Lovasco, 431 U.S. at 790-91.

The Supreme Court further rejected the notion that the State is constitutionally required to file charges promptly upon assembling sufficient evidence to prove guilt beyond a reasonable doubt. Id. at 792-94. One reason is that the “determination of when the evidence ... is sufficient to obtain a conviction is seldom clear-cut, and reasonable persons often will reach conflicting conclusions.” Id. at 793. In Lovasco, for example, “the decision whether to prosecute ... required a necessarily subjective evaluation of the strength of the circumstantial evidence available and the credibility of respondent’s denial.” Id. Similarly here, even though DNA evidence and Stearns’ noncredible denial provided probable cause to charge him with Williams’ murder in 2005, the

decision to prosecute required the complex factual investigation and legal evaluation of whether and which of Stearns' multiple prior sexually motivated attacks would be admissible under ER 404(b) to show a common scheme or plan. That evaluation was not complete in this case until 2017. 2RP 348.

Further, the government is not required to bring charges immediately upon developing probable cause or even evidence sufficient to prove guilt beyond a reasonable doubt because such a rule "would preclude the Government from giving full consideration to the desirability of not prosecuting in particular cases":

The decision to file criminal charges, with the awesome consequences it entails, requires consideration of a wide range of factors in addition to the strength of the Government's case, in order to determine whether prosecution would be in the public interest. Prosecutors often need more information than proof of a suspect's guilt, therefore, before deciding whether to seek an indictment.

Lovasco, 431 U.S. at 794.

Since Stearns was already serving a de facto life sentence, there was a question whether prosecuting Stearns for Williams' murder was in the public interest given other priorities. The record shows that during the charging delay in this case, new homicide cases were flowing into the King County Prosecuting Attorney's Office at "a rate of several a week." RP 344. The prosecutor assigned to the case—the founder and chair of the office's small vertical prosecution unit devoted to homicides—gave sworn testimony that devoting time to Stearns' case would have meant sacrificing cases that presented a clear danger to the public. RP 353-54. The public record bears this out, as the well-respected deputy assigned to this case was responsible for prosecuting some of Washington's most notorious murderers during the 1990s and 2000s.³

³ See Sara Jean Green, "Guru of homicide prosecutors' retires after three decades pursuing King County killers," SEATTLE TIMES (May 4, 2018), <https://www.seattletimes.com/seattle-news/law-justice/guru-of-homicide-prosecutors-retires-after-three-decades-pursuing-king-county-killers/>. This article

The trial court found the prosecutor’s explanation credible and concluded that the delay in charging Stearns was “certainly due to a public safety issue”—the need to prioritize cases against defendants posing “immediate concern versus somebody who was incarcerated.” RP 385. The Court of Appeals reflexively rejected this reason because “incarcerated persons are entitled to due process just as anyone else accused of a crime.” Slip op. at 15. To be perfectly clear, the State has never argued that Stearns had less of a right to due process because of his incarceration. But the fact that Stearns is no longer free to rape and kill is also not irrelevant to a prosecutor’s calculus as to which case to pursue, and when. Stearns being safely incarcerated for decades diminished the penological justifications for his prosecution because it made

mentions some of the cases this deputy prosecuted during the charging delay in this case, including Christopher Monfort, who was finally convicted in 2014 of the ambush killing of a Seattle police officer in 2009. See also 2RP 345.

rehabilitation, incapacitation, and deterrence of lesser importance.⁴

Moreover, the Court of Appeals seemed to diminish the prosecutor's work on the case that occurred after police had developed probable cause. For example, the prosecutor, who was not aware in 2005 of Stearns' involvement in the other attacks on women in the same neighborhood, sifted through the evidence in those cases to determine which were admissible as common scheme or plan evidence. 2RP 347-48. The prosecutor worked to gain a thorough understanding of Stearns' dangerousness by reading through every Seattle incident report mentioning Stearns and looking into Stearns' previous sexually

⁴ The Court of Appeals may have believed that Stearns' continued incarceration on other convictions ameliorated the impact of its decision, regretting the injustice to Williams' family but failing to acknowledge the danger that Stearns, a dangerous repeat sexual predator, would surely pose if released. Slip op. at 15. Indeed, judicial and legislative changes to the law may yet lead to Stearns' release earlier than expected. Such considerations are not a part of the delayed prosecution analysis and should not influence an appellate court.

violent predator evaluation and treatment. 2RP 346, 349. The prosecutor also investigated whether it was possible to link anyone to the prescription glasses that were found at the scene, although this effort was fruitless. 2RP 346, 361. He also had the crime lab update its DNA testing of the vaginal swabs. 2RP 352-54. But the court below focused almost exclusively on police investigation, ignoring the importance and difficulty of presenting a cold case to a jury, and the legal strategizing and work needed to build such a case. This was an important component of the State's explanation for the timing of charges.⁵ It might not alone justify a delay of 12 years, but since an appellate court must balance the State's reasons against prejudice, ignoring key components of the State's justification unfairly tilts the balance.

⁵ Because the trial court found that the delay had not caused actual prejudice, it did not explicitly weigh the reasons for the delay against the purported prejudice.

Given the significant investment of public resources and the possibility of retraumatizing the victims of Stearns' prior attacks by asking them to testify, the difficulty of presenting a cold murder case to a jury, the fact that Stearns was incarcerated, and the fact that it did not appear that he would be deprived of a defense by delay, the State's reasons outweigh Stearns' speculative prejudice. The Court of Appeals failed to fully consider these competing interests and essentially substituted its own judgment as to whether devoting scarce resources to achieve arguably redundant punishment was in the public interest.

This Court should accept review because the Court of Appeals' refusal to consider the public safety implications of Stearns' incarceration when balancing the reasons for the charging delay against prejudice is unreasonable and inconsistent with the law.

E. CONCLUSION

This was a horrendous crime with no witnesses that would not have been solved but for the efforts of police and prosecutors. Building that case took time. The State recognizes that it took longer than it would have with infinite prosecutorial and investigative resources. However, in the absence of any actual, non-speculative damage to Stearns' defense, the delay does not warrant reversal even if it was negligent.

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DATED this 30th day of November, 2022.

Respectfully submitted,

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Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON)	No. 82125-3-I
)	
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
JOHN RAY STEARNS,)	
)	
Appellant.)	

HAZELRIGG, J. — In November 2020, a jury found John Ray Stearns guilty of felony murder in the first degree, with a special allegation of sexual motivation, based on an incident that occurred in 1998. DNA¹ evidence retrieved from the victim and scene connected Stearns to the incident in 2004, and law enforcement interviewed him in 2005. The prosecuting attorney assigned to the case later acknowledged that sufficient probable cause existed to charge Stearns with the murder after the 2005 interview, but he did not file charges until 2017. Multiple eyewitnesses interviewed by police in 1998 passed away during the delay between the State’s development of probable cause and charging, including the half-sister of the victim who was purportedly the last person to see her alive. However, the trial court denied Stearns’s pretrial motion to dismiss based on preaccusatorial delay. Stearns argues this ruling, along with numerous other errors, deprived him

¹ Deoxyribonucleic acid.

of a fair trial. Because the State's preaccusatorial filing delay violated Stearns's due process rights, we reverse and dismiss with prejudice.

FACTS

In January 1998, city park employees discovered Crystal Williams's body outside the bathrooms in Dr. Blanche Lavizzo Park in Seattle's Central District. Seattle Police Department (SPD) officers retrieved a used condom from the ground near Williams's body and the Washington State Patrol Crime Laboratory (WSPCL) later determined it contained semen from the same source as the vaginal swab collected from Williams during her autopsy. At the time the biological samples were gathered and first examined, the DNA profile did not match anyone in the Combined DNA Index System (CODIS) and the police investigation continued. SPD detectives determined that on the morning of the murder, several women saw Williams in the hours before her death. Many of these women, like Williams, engaged in sex work to support their drug use, either trading sex for drugs directly or for cash to purchase them. Williams commonly spent time with this group of women in and around Lavizzo Park, where they often took their "dates" to the bathrooms to conduct their business. From this group, SPD detectives interviewed Lisa Warner, Taffy Gober, Zanette White, Beverley Cooper, and Yvonne Hicks, Williams's half-sister. Several of the women were consistent in their statements that they last saw Williams walking away from where the group congregated near a corner store in the early morning hours and that she was heading toward the park with a man.

Detectives conducted these eyewitness interviews early in the investigation and, based on the resulting information, soon arrested and interviewed Jimmy Horner as a suspect. At the time of Horner's arrest, he matched multiple key aspects of the descriptions given by the women about the man last seen with Williams. Gober also picked Horner out of a police photomontage. However, the police ceased their investigation into Horner after the WSPCL determined his DNA did not match the recovered semen samples. Police also interviewed a number of other suspects but, eventually, the case went cold.

In 2004, the WSPCL notified SPD of a CODIS match to the Williams DNA samples. As a result, detectives interviewed Stearns in prison in March 2005. He was serving a 720-month prison sentence on an unrelated matter. During the interview, Stearns denied having sex with Williams or otherwise knowing her. Jeffery Baird, the deputy prosecuting attorney (DPA) handling the Williams case, later concluded that probable cause existed to charge Stearns for her murder at that time; however, he did not actually file charges until 2017. The record reflects that no meaningful investigation occurred after 2005.²

On August 10, 2017, the State charged Stearns with one count of felony murder in the first degree with a special allegation that he committed the crime with

² Detectives conducted another brief interview of Stearns in 2017 after determining that the audio recording of the original 2005 prison interview was missing. There was also an update to general DNA technology, which led to reprocessing the Williams DNA evidence for more specificity. A WSPCL forensic scientist working on the DNA evidence in the case indicated that there had been a request to retest the semen collected from the condom in 2017 and to retest samples from Williams's clothes in 2020. However, she further testified that the technology utilized in the 2020 testing was available as early as 2001 and was certainly available in 2005 when detectives originally interviewed Stearns.

sexual motivation. He proceeded to trial in January 2020. During pretrial motions, Stearns moved to dismiss for improper preaccusatorial delay. The trial court heard testimony from Baird, the prosecutor originally assigned to the case who had retired by the time of the hearing, and considered supplemental briefing by the parties on the issue. The judge denied the defense motion to dismiss. The January 2020 trial ultimately resulted in a hung jury and the court declared a mistrial.

The State retried Stearns in November 2020. The witnesses were largely the same as the first trial and primarily consisted of numerous law enforcement officers who had worked on the case; some had since retired and others were still with SPD. A number of expert witnesses testified about the DNA evidence that officers collected, its processing, the CODIS match, and the significance of the condition and location of the samples. Horner also testified briefly, as did two of the women who had seen Williams on the morning of her murder, Warner and Gober. At the time of trial in 2020, three of the women who told police in 1998 that they were with Williams on the morning of her murder were deceased. Of those three unavailable witnesses, two of them indicated to police in 1998 that they recalled seeing Williams leaving the corner store with a man and provided a description of him. The jury found Stearns guilty as charged and the trial court sentenced him as a persistent offender to life in prison without the possibility of release. He timely appealed.

ANALYSIS

Stearns assigns error to several aspects of his trial: the court's ruling to admit evidence of two of his prior convictions under ER 404(b), comments by the judge prior to reading the instructions to the jury, prosecutorial misconduct in closing argument, and denial of his pretrial motion to dismiss for preaccusatorial delay. Because the last of those issues is dispositive and we conclude Stearns established reversible error, we need not analyze his other challenges.

Stearns argues the trial court erred in denying his motion to dismiss for preaccusatorial delay based on the State's 12-year filing delay, which resulted in the unavailability of a key eyewitness who died months after the State filed charges. The trial court acknowledged that Hicks, one of the witnesses who had died prior to trial,³ was critical to the defense theory of the case. However, it then concluded Hicks's impact on the case was too speculative and, on that basis, Stearns could not establish actual prejudice from the 12-year delay. We disagree and conclude that Hicks's absence from trial prejudiced Stearns and violated his right to due process.

"A court will dismiss a prosecution for preaccusatorial delay if the State's intentional or negligent delay violates a defendant's due process rights." State v. Maynard, 183 Wn.2d 253, 259, 351 P.3d 159 (2015). This court reviews de novo

³ The parties appear to agree that Hicks and White were deceased by the time of trial. Trial testimony from Warner suggested that Cooper had also passed away. Neither White nor Cooper were included on the State's preliminary witness list.

the question of whether preaccusatorial delay violated due process rights.⁴ State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653 (2011). This standard of review requires that we examine “the entire record to determine prejudice and to balance the delay against the prejudice.” Id. The Washington Supreme Court has provided the following three-step analysis:

To determine if preaccusatorial delay violated a defendant’s due process rights, we apply a three-pronged test: (1) the defendant must show he or she was actually prejudiced by the delay; (2) if the defendant shows actual prejudice, the court must determine the reasons for the delay; and (3) the court must weigh the reasons for delay and the prejudice to determine whether fundamental conceptions of justice would be violated by allowing the prosecution.

Maynard, 183 Wn.2d at 259. “Regardless of the precise label of the items to be balanced, the three-pronged test is best understood as an analytical tool to assist the court in answering the underlying question of whether a delay has resulted in a due process violation by violating fundamental conceptions of justice.” Oppelt, 172 Wn.2d at 295.

I. Prejudice to the Defense

We disagree with the trial court’s ruling that any prejudice based on Hicks’s death was speculative and conclude that Stearns has sufficiently established prejudice. His appellate briefing summarizes the impact of Hicks’s death on his defense theory as follows:

[T]he delay prevented Mr. Stearns from arguing that Ms. Williams walked towards the park between 6:00 a.m. and 7:00 a.m. It

⁴ The State claims that we must defer to the trial court’s analysis regarding prejudice, citing State v. McConville, 122 Wn. App. 640, 646, 94 P.3d 401 (2004). However, we follow more recent guidance from our state’s highest court, which clearly directs that we engage in a de novo review as to our consideration of each step of this test. State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653 (2011); Maynard, 183 Wn.2d at 259.

prevented him from arguing she did so with a man who did not match Mr. Stearns's description. And it prevented him from corroborating, or addressing discrepancies, in Ms. Gober's testimony.

Stearns reiterated these points at oral argument before this court. He focused on the fact that Hicks was the last to see Williams alive based on her police interview only hours after the murder occurred. Stearns emphasized that Hicks expressly noted it was between 6:00 a.m. and 7:00 a.m. when she saw Williams walking away from the corner store toward Lavizzo Park with a man. The State argued that testimony from Hicks and Gober would have contradicted one another and, therefore, it was not helpful to the defense. However, Stearns explained that any purported discrepancy between their respective descriptions as to both the timing of Williams's departure toward the park and the man they saw her with could be understood as a "string of customers," given it was known that Williams engaged in sex work and drug use in and around Lavizzo Park. Stearns points out that ultimately, neither Hicks's nor Gober's description of the man seen with Williams matched Stearns, which supports his defense.

Despite the State's arguments to the contrary, the number of ways in which Hicks's testimony played into the defense theory only reinforces actual prejudice to Stearns based on the information contained in her initial police interviews and Baird's acknowledgement that he did not recall any credibility concerns about Hicks. If the State timely brought its case against Stearns, Hicks would have been available to testify. The record demonstrates that she would have provided testimony that was the closest in time to Williams's death, that she saw Williams walk away with a man who did not match Stearns's physical description, and that

the pair departed in the direction of the park where city employees found Williams's body several hours later. Hicks was Williams's half-sister and identified her body to the medical examiner and SPD. She was one of a number of women who were with Williams near 20th Avenue South and East Yesler Way looking for "dates" in exchange for drugs in the early morning hours shortly before Williams was killed. Hicks further provided a higher degree of certainty as to the timeframe than other witnesses did, tying her memory to facts subject to verification by police. Hicks noted in her interview with SPD that she was sure it was not earlier than 6:00 in the morning when she last saw Williams because she had a beer at the time and the store the group frequented did not sell beer until after 6:00 a.m. Hicks's testimony as to all of these facts was critical to the defense and her unavailability due to her death constitutes actual prejudice.

The relevant portion of Hicks's interview as summarized⁵ by the detective who spoke with her provides the following description of events:

According to Hicks, Williams was last seen at [6:30 a.m.], walking with a male, [southbound] on 21st Ave towards Lavizzo Park. Hicks kept calling him "that son of a bitch" and described him as follows: Black male, 40's, 6 [feet]-0 [inches], skinny like a crack cocaine user, dark complexioned, remembering only that he wore jeans. Hicks had been standing in front of the grocery, on the corner of 20th and Yesler, with some local street people. Hicks stated that Beverly Cooper, Lisa Warner, and her roommate Zanette White were on the corner. Hicks remembered the time because they were allowed to buy beer at [6:00 a.m.]. Hicks was standing away from Williams when the black male walked up to Williams. It appeared that Williams knew the male or had some "business" with him. Williams and the male walked [eastbound] on E Yesler, then made a right turn onto 21st Ave [southbound].

⁵ The record from the trial court also contains a full transcript of the recorded interview of Hicks.

The other evidence introduced at trial also broadly colors how Hicks's unavailability prejudiced Stearns. The defense theory of the case essentially conceded that Stearns had consensual sex with Williams within the 24-hour period prior to her death, which was consistent with the forensic evidence regarding the DNA match, but posited that another individual killed her at some point after their sexual encounter. Stearns grounded this theory in part on the assertion that Williams was known to engage in sex work in the area where park employees found her body as well as the fact that, besides Stearns's DNA, forensic scientists collected and identified at least one other partial and two other complete DNA profiles from her clothing.⁶

In closing, Hicks's unavailability left Stearns with the only position he could take—to reiterate the importance of Gober, a key eyewitness whose testimony included a description of the man who walked away with Williams.⁷ However, the State challenged Gober's credibility on direct examination, and because of Hicks's unavailability due to the filing delay, Stearns was unable to attempt to rehabilitate Gober with Hicks's testimony. On appeal, the State seems to focus on the purportedly contradictory defense position that Hicks would corroborate Gober's

⁶ When officers recovered Williams's body, she was wearing shorts underneath pants without underwear. She was identified as one of the contributors of a mixed DNA sample located on the inside of her shorts. All of the other partial and complete profiles that the WSPCL found on Williams's pants and inner shorts were determined to be from male contributors. In the mixed sample retrieved from the crotch of her shorts, four profiles were identified: Stearns's, a complete profile identified through a CODIS match, a second complete profile that was not identified through CODIS or any other means, and a partial male profile that could not be compared. Another mixed DNA sample was retrieved from the inside of the crotch of her pants and also found to consist of four contributors, but forensic analysis determined that Stearns was not one of them.

⁷ Warner also testified at trial but did not independently recall the description of the man she provided to the police in 1998. Warner additionally struggled to remember identifying anyone from a photomontage over two decades earlier, though evidence demonstrated that she had in 1998.

testimony as to Williams being with Horner, the original suspect in the case. The State's stance appears to be rooted in the variance of a few hours between the timeframe of events that Hicks and Gober provided to law enforcement since each asserted that their recollection described the last time anyone saw Williams alive. However, in light of the defense theory and the evidence ultimately put on by the State, these points are not necessarily in conflict. The DNA evidence proved only that Stearns's semen was left within 24 hours of Williams's death. The mere presence of semen does not prove whether the sex act that produced it was consensual or not, nor whether the depositor was the same person who killed Williams. There is no inherent conflict with Hicks and Gober both asserting that they last saw Williams with a man not matching Stearns's description.

Stearns has established actual prejudice and the State largely bases its insistence that any prejudice is speculative on the 12-year delay the State itself caused. Hicks was Williams's half-sister and therefore very familiar with her. She was one of the only eyewitnesses able to testify with precision about the time she last saw Williams alive and she provided details supporting her timeframe. Further, Baird did not identify any particular credibility issues with regard to Hicks's anticipated testimony. All of these factors support our conclusion of actual prejudice.

II. Reasons for the State's Filing Delay

Since Stearns has made an initial showing of actual prejudice, the second step is to identify the reasons for delay by the State. Maynard, 183 Wn.2d at 259. "Ultimately, the test suggested by the U.S. Supreme Court is 'whether the action

complained of . . . violates those fundamental conceptions of justice which lie at the base of our civil and political institutions.” State v. Calderon, 102 Wn.2d 348, 353, 684 P.2d 1293 (1984) (alteration in original) (internal quotation marks omitted) (quoting United States v. Lovasco, 431 U.S. 783, 790, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)). “[I]f mere negligent conduct is asserted, the . . . prejudice suffered by the defendant will have to be greater than where intentional or deliberate government conduct is alleged.” State v. Schifferl, 51 Wn. App. 268, 273, 753 P.2d 549 (1988). The trial court does not appear to have comprehensively engaged in this aspect of the analysis in light of its determination that Stearns had not established prejudice. However, it did comment that “[a]t most the Court can find that it’s negligent,” noting the State offered lessened public safety concerns as part of its justification for the 12-year filing delay based on the fact of Stearns’s lengthy incarceration.

At the hearing on the defense motion to dismiss, Baird was asked about his thought process underlying the charging decision in the Williams case. Baird explained:

One of the primary ways in which we have to prioritize our limited resources and limited time is with the interest of protecting the community. Because I knew that Mr. Stearns was no danger to anyone, and because I thought that he would be in custody for the rest of his life, and if not for the rest of his life, at least until at an advanced age. I did not assign this case a great priority against the cases that came tumbling into our office at the rate of several a week.

Though the State claims in briefing it “established that the precharging delay here was not due to negligence, but to a reasonable and pragmatic decision by King County prosecutors to prioritize cases posing a greater danger to the community,”

the record does not support that position. While we recognize the need for pragmatic decision-making and efficient use of resources within the prosecutor's office, the delay here went well beyond such.

Baird testified that his decision not to file charges earlier than 2017 was due to his caseload but otherwise struggled to justify the 12-year delay. Baird offered little specificity as to the calculus underlying his decision regarding filing beyond Stearns's incarceration and his own assessment that he had other more pressing cases. These considerations may broadly justify a filing delay, however, 12 years strains the limits of credulity, particularly when as Baird expressly acknowledged, there was no need for additional evidence for the development of probable cause. Baird admitted that he had probable cause to charge Stearns by March of 2005 based on the DNA match and SPD interview. He did not indicate the need for more evidence or that detectives undertook any other substantial investigation after that point.

Particularly illuminating to our review is that the record demonstrates numerous colleagues contacted Baird over the intervening years to inquire about the status of the case generally or to specifically ask when he would file charges. Detective Steven Kilburg, who worked with Baird in the King County Prosecuting Attorney's Office Most Dangerous Offender Project (MDOP)⁸ on this case from "start to finish," testified that after the DNA match came back in 2004 and the interview was conducted in 2005, he twice urged Baird that they should get working

⁸ The prosecutor's office formed MDOP in 1995 to take a more proactive approach to homicide prosecution. The unit assigned deputy prosecutors to particular homicides early in the development of the case to ensure the same prosecutor handled it from crime scene investigation to trial.

on the case as they were working on other homicides together in the MDOP unit. Kilburg further testified that he saw no reason for a delay and “thought [the case against Stearns] was as strong as it was going to get.” Kilburg asserted that when he inquired about filing the case, Baird’s response was that “he would get to it when he would get to it, and that’s just the way he did business,” which further supports the conclusion that the filing delay was negligent.

A WSPCL forensic scientist testified that after conducting the initial DNA analysis that resulted in the match to Stearns in February 2004, they contacted Baird twice to inquire whether he needed additional testing. The first inquiry was in January 2005 before detectives interviewed Stearns in prison, and the second follow up from the crime lab was in August of that same year. However, the forensic scientist noted they did not receive a response to either phone call. In the absence of any reply from the prosecutor’s office, the scientist did not conduct further testing.

The record also establishes that Detective Rolf Norton came across the Williams case filed away in an SPD storage room when he began to work on unsolved homicides in 2016. Norton was familiar with the case as he was present for the 2005 interview with Stearns in prison and realized only when he found the file that the State never filed charges after all those years. Within a week of that discovery, Norton hand-delivered the case to Baird personally at the prosecutor’s office. Norton’s testimony reflects that he then took proactive steps to locate witnesses to determine who was still available to testify and to confirm whether the

State had good contact information and whether individuals were still alive.⁹ It was only after these efforts by Norton that the State eventually charged Stearns in August 2017. Failure to file a murder charge with well-developed probable cause for 12 years after repeated status inquiries from other government actors involved in its investigation and preparation for prosecution, resulting in its filing away in storage as a cold case, constitutes a negligent delay by the State.

III. Violation of the Fundamental Conceptions of Justice

The final step in the analysis of a claim of preaccusatorial delay is to weigh “the reasons for the delay and the prejudice to the defendant caused by the delay.” Oppelt, 172 Wn.2d at 294. Case law calls for utilization of the three prongs as an “analytical tool to assist the court in answering the underlying question of whether a delay has resulted in a due process violation by violating the fundamental conceptions of justice,” rather than application of a rigid legal test. Id. at 295, 292. The facts of Stearns’s case demonstrate a violation of the fundamental conceptions of justice.¹⁰

The State’s decision to delay filing for 12 years, which led to a more than 22-year delay between Williams’s death and trial, caused an injustice to Stearns

⁹ The record suggests that Hicks passed away approximately four months after the State finally charged Stearns in 2017.

¹⁰ Compare Oppelt, 172 Wn.2d at 296 (no actual prejudice from six-year delay, which led to faded witness memory as to specific detail regarding evidence, where defense was still able to argue its theory), and McConville, 122 Wn. App. at 644, 646-47 (no prejudice from two-year delay when a deceased witness would have only partially relevant testimony in a prosecution for theft in the first degree), with State v. Keen, No. 53308-1-II, slip op. at 1, 6-7 (Wash. Ct. App. Oct. 27, 2020) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2053308-1-II%20Unpublished%20Opinion.pdf> (upholding dismissal after findings of fact determined an eight-year delay resulting in unavailability of multiple witnesses due to death or inability to locate them caused actual prejudice such that the due process rights of the accused were violated).

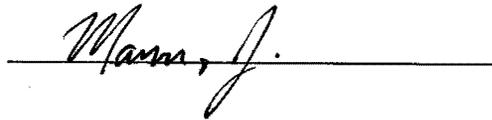
with regard to his due process rights. The State attempts to justify its delay rather offhandedly as the unfortunate result of the best efforts of a DPA who primarily worked in a special unit, also carried a regular caseload, and was simply too busy to “get to it” even though the evidence at the time established probable cause. Such a position is even more offensive to conceptions of justice because others involved in the case repeatedly asked the DPA when the State would file charges. There was no concern about whether officers could apprehend Stearns or that he might flee as he was serving a sentence of 720 months on another matter. However, to be explicitly clear, that fact alone cannot justify an unduly long filing delay as incarcerated persons are entitled to due process just as anyone else accused of a crime.

Though the State’s decision not to prosecute timely does not appear to be malicious, the significant delay resulted in the unavailability of a deceased key witness (and others) in a cold case murder. It directly and tangibly impacted Stearns’s ability to fully defend himself against the charges brought by the State. This actual prejudice to Stearns significantly outweighs the reasons for the negligent delay by the State; the State violated the fundamental conceptions of justice by preventing Stearns from using the evidence collected in January 1998 to thoroughly present his defense to a jury in November 2020. Further, while the test necessarily focuses our analysis on the rights of the accused, it is not lost on this panel that the delay also caused an injustice to Williams’s family and others impacted by the crime. We are applying a severe remedy in a very serious case. However, it is precisely in cases where the stakes are highest that the State should

exercise the most care in ensuring that negligence does not violate the rights of the accused.

Reversed and remanded for dismissal with prejudice.¹¹

WE CONCUR:



¹¹ Because the government's filing delay caused the due process violation at issue here, there is no cure. Accordingly, it stands to reason that dismissal with prejudice is the only proper remedy.

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