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NO. 102307-3

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent  
v.  
DAVID BOGDANOV, Petitioner

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT  
CAUSE NO. 22-1-02664-06  
COURT OF APPEALS, DIVISION II  
CAUSE NO. 56202-2-II

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ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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## **IDENTITY OF RESPONDENT**

The Respondent, State of Washington, by and through Lauren R. Boyd, Senior Deputy Prosecuting Attorney for Clark County, provides the following answer pursuant to RAP 13.4(d) to David Bogdanov's Petition for Discretionary Review.

## **ANSWER TO PETITION FOR DISCRETIONARY REVIEW**

- I. Bogdanov fails to show “a significant question of law” under either constitution as required by RAP 13.4(b)(3). As the opinion of the Court of Appeals does not raise “a significant question of law,” this Court should deny discretionary review.**

## **STATEMENT OF THE CASE**

### **I. Facts**

N.G.K. went missing on June 6, 2019. RP 674-77, 703, 719, 974, 987, 1271. She was 17 years old, 5 feet and 8 inches tall, and weighed about 110 to 130 pounds. RP 671, 1537. She was designated male at birth, but at a young age identified as female, changed her name, and began her transition in middle school. RP 677. At the time she went missing, she had been

staying with friends. RP 677-78, 955-56, 981. They last saw her in the early morning hours when she left to spend time with a man, she had met the night before. RP 677, 702, 955-58, 962, 969-71, 981-85.

That evening, the petitioner, David Bogdanov, bought a one-way ticket to Ukraine and fled the country. RP 1194-95, 1425-26, 1428. He did not return to the United States until July 15th. RP 1198, 999-1000, 1005, 1429. While in Ukraine, he arranged for someone to “get rid” of his Audi vehicle. RP 1559-60. Bogdanov was 25 years old, 6 feet and 2 inches tall, and weighed about 200 pounds. RP 1412, 1537.

Through searches of social media accounts obtained by warrants, law enforcement determined that the man N.G.K. had met when she disappeared was Bogdanov. RP 698-711. Law enforcement learned that Bogdanov had arranged to pick N.G.K. up and that his geolocation placed him in the area of her residence. RP 707-13. Looking for Bogdanov, they spoke with

two of his brothers who claimed not to know where he was. RP 715, 1417.

Law enforcement conducted a recorded interview with Bogdanov several months later. RP 722, 736-80. In that interview, Bogdanov claimed he had met N.G.K. that night and given her his coat because it was cold. RP 736-37. They later met back up and he drove her to Brush Prairie where they parted ways. RP 738-41. He claimed he did not know whether N.G.K. was alive. RP 775. Bogdanov was given a second opportunity to speak with police and maintained this story. RP 790.

On December 17, 2019, a hiker gathering foliage found N.G.K.'s remains in the remote and heavily-wooded area of Clark County called Larch Mountain, roughly an hour from Vancouver. RP 685, 688, 785, 829, 1071, 1021, 1044, 1070, 1149, 1295. She was in a steep ravine and could not be seen by the road. RP 690, 819, 822, 850, 927. Having been exposed to animals and the elements for six months, her body had become

skeletonized and her remains were scattered. RP 689, 811, 830, 833-34, 847-49, 872, 1297-1301. Among the remains collected from the scene were teeth, numerous bones, her skull, a metal watch and various other jewelry items, a green jacket, and a cell phone charging cord. RP 837-42, 872. A combination of DNA, dental records, and belongings found at the scene were used to positively identify her remains. RP 851-55, 1019-21, 1044, 1121, 1146, 1149, 1344-45, 1360.

Significantly, the cell phone charging cord found at the scene was tied into a loop with hair extensions tangled in the knot. RP 841, 878-79, 1213, 1219-21, 1243, 1403, 1360-61. Further tangled into the hair was a piece of a necklace and a hyoid bone, the bone that sits at the top of the voice box in the neck. RP 1051, 1120-21, 1360-61. Based on the hair inside of the knot of the cord, and the entanglement with a necklace and a hyoid bone, the Medical Examiner determined that N.G.K. died by strangulation and that this cord was the ligature. RP 1052-53, 1405.

Cell tower records corroborate the conclusion that Bogdanov killed N.G.K. and disposed of her body. They established that on June 6th, 2019, Bogdanov's phone travelled from downtown Vancouver where he had told police he met N.G.K., to Brush Prairie where he had told police he had left N.G.K., and then to Larch Mountain where N.G.K.'s body was found. RP 785, 1336-42, 1420-24.

## **II. The Trial and Procedural History**

Bogdanov was charged by second amended information with second-degree murder and malicious harassment. CP 183-84. The case proceeded to trial on August 16, 2021. RP 378; CP 345. The State presented testimony from 36 witnesses and admitted 244 exhibits, including physical evidence of items found with N.G.K., the iPhone charging cord used to strangle her, two recordings of Bogdanov's interviews with police, cell site data, calls that Bogdanov made from jail, warrant returns for cell phone and social media records, Bogdanov's travel records, drone footage of the remote area where N.G.K. was

found, and numerous photographs. CP 344-45, 366, 370-79.

Bogdanov testified in his own defense.

Bogdanov claimed, contrary to his original discussions with law enforcement, that he killed N.G.K. accidentally and in self-defense. He testified that he met N.G.K. walking on the street at night when he gave her his jacket, a bottle of vodka, and his Snapchat name before parting ways. RP 1486-90. He had been with two of his brothers that night—both of whom conveniently remembered very little detail during their testimony. RP 909-34, 939-47, 1486. N.G.K. then added him on Snapchat and they arranged for him to pick her up. RP 1490-91. She arrived wearing the jacket later found among her remains on Larch Mountain and did not appear to be sober. RP 1491-92. They drove to his brother's apartment where they had a few beers and then drove out to Brush Prairie to get Bogdanov's Audi. RP 1492-93.

Bogdanov testified that N.G.K. got into the back seat of

the Audi and started smoking meth. RP 1497. He removed his handgun and wedged it between the center console and the driver's seat by "pulling the seat back and just wedg[ing] it in there" and then got into the back seat with N.G.K. RP 1498-1500. They started kissing, he exposed his penis, and she began giving him oral sex. RP 1507-09. He then reached down her pants and at that point learned that N.G.K. was a transgender girl. RP 1509.

Bogdanov claimed that he "freaked out" and pushed her back toward the passenger-side door. RP 1510. He was yelling at her and calling her a "disgusting piece of shit" while trying to pull his pants back up and tell her to get out of his car. RP 1510, 1539-40. Bogdanov said that she lunged at him, so he pushed her again and she hit the door. RP 1510, 1542. He then described a struggle where N.G.K. was apparently both attacking him and reaching for his gun at the same time. RP 1511-14. Bogdanov claimed he was afraid he would be killed, and he could not subdue her, even with their size difference, so

he grabbed his cell phone cord, which had been previously tied into a loop, and put it around her chest to pull her back from reaching for the gun but it slipped around her throat, and she passed out. RP 1511-16, 1541-43. He testified that the cord was never fully tied around N.G.K.'s neck. RP 1543. When he let go, she was not breathing. RP 1516. He was afraid so he disposed of her body on Larch Mountain by pushing her down the hill, throwing the cord out with her, immediately leaving on a one-way ticket for Ukraine, and having someone get rid of his car. RP 1517-19, 1545, 1550, 1559. Bogdanov claims that after the fight, he realized that the gun was no longer wedged between the seats but was lying on top of a seat indicating that N.G.K. had almost had control of the gun at some point during the struggle. RP 1521.

Bogdanov's testimony was refuted by the evidence that the cord was still wrapped around N.G.K.'s neck when he disposed of her body and the testimony by the Medical

Examiner that loss of consciousness precedes death by a minute or two in most people. RP 1054, 1057, 1063.<sup>1</sup>

The State additionally presented evidence of Bogdanov's malicious intent to kill N.G.K. because of her gender or sexual orientation. Evidence included homophobic statements that he had made to his girlfriend and transphobic statements that he made to family members on jail calls. RP 1011-12, 1092-93; 1103-04; 1129-30; 1132.

Bogdanov proposed jury instructions based on WPIC 16.02 and WPIC 16.03, which outline self-defense in relation to a reasonable apprehension of great personal injury and self-defense in the actual resistance to an attempt to commit a felony upon the slayer, respectively. *See* RP 1586-1606. The trial court declined to give an instruction based on WPIC 16.03. RP 1603-

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<sup>1</sup> Not to mention the remainder of the State's evidence, the general inconsistencies in his stories, the size and age difference between himself and N.G.K., and the inconsistencies between the testimony of himself and his brothers.

06. It reasoned that the instruction would be subsumed by the instruction being given based on WPIC 16.02. RP 1602.

Shortly after jury deliberations began, the trial court was forced to replace a juror due to illness, so the jury was reconstituted and instructed to begin deliberations anew. RP 1805-06; CP 367. Roughly three hours into the deliberations of the newly-constituted jury, the jury indicated that they were concerned about coming to a unanimous decision. CP 367. In response to a question regarding premeditation, the trial court gave the jury an additional instruction and sent the jury back to deliberate. RP 1829, CP 386. An additional three hours later, the jury indicated they had reached a verdict on one count but were unable to agree on the second count “with the current jury” they had. Because they had not filled out the verdict forms, the jury was sent back to process the paperwork. RP 1832-34; CP 368. Shortly after, the jurors submitted two notes to the court indicating a concern that one of the jurors was

refusing to deliberate. CP 281-82, 368.<sup>2</sup> Over the objection of defense counsel, the court reinstructed the jury on their duty to deliberate. RP 1847; CP 368.

After approximately three more hours of deliberation, the jury returned guilty verdicts for both second-degree murder and malicious harassment. RP 1856; CP 310-11. All in all, they deliberated for approximately 10 hours. RP 367-69. Bogdanov was sentenced to 234 months in total confinement. RP 1892; CP 325. Division II of the Court of Appeals affirmed

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<sup>2</sup> These notes read

“We have a concern with a juror; we believe she is unable to make a decision based on the facts. While deliberating, she is unable to express the reasoning for her position and refused to.”

and

“Can we replace a juror and call in an alternate, if the current juror is unable to make decisions on factual evidence and is unwilling to deliberate further. We feel it is a personal bias, with this current juror. She is refusing to continue to discuss her views.”

Bogdanov's convictions in a published opinion. *State v. Bogdanov*, -- Wn. App. 2d ---, 532 P.3d 1035 (2023).

### ARGUMENT

Bogdanov asks this Court to accept discretionary review of two issues decided by the Court of Appeals: the self-defense instruction given to the jury and the trial court's procedure when faced with the possibility that a juror was refusing to deliberate. This Court should decline review as none of the considerations present in RAP 13.4(b) apply here.

RAP 13.4(b) provides

[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 a published 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.

Preliminarily, Bogdanov makes no attempt to argue, or even to identify, the basis under which this Court should accept

review the second issue. He argues only the merits of his claim without attempting to show any conflict with another decision, significant question of law, or substantial public interest. As such, this Court should deny review of Bogdanov's claim that the trial court proceeded incorrectly when faced with the possibility that a juror was refusing to deliberate.

Similarly, Bogdanov fails to adequately address or to show that the self-defense instruction given to the jury in this case deserves review. Regarding this issue, Bogdanov cites to RAP 13.4(b)(3) and claims only that "[t]his matter bears review as it impacts the constitutional right to a fair trial, in which a defendant may bring forth a full defense for the crime of which he has been accused." Br. of Pet. at 21. Bogdanov relies on authority showing that errors in self-defense instructions are constitutional and briefs his objections to the opinion of the Court of Appeals, but he makes no attempt to argue that this issue presents a "significant question of law" as required by RAP 13.4(b)(3). Br. of Pet. at 12-21. Contrary to Bogdanov's

claim, this issue does not present a “significant question of law.” Indeed, the issue has already been settled by this Court in *State v. Brightman* , which the Court of Appeals found controlling. 155 Wn.2d 506, 112 P.3d 150 (2005); *Bogdanov*, 532 P.3d. at 1047. This Court should thus deny Bogdanov’s request for review.

#### **CONCLUSION**

This Court should deny Bogdanov’s petition for discretionary review.

This document contains 2,313 words based on the word count calculation of the word processing software used to prepare this response, excluding the parts of the document exempted from the word count by RAP 18.17(b). Additionally, I certify that all text appears in 14-point serif font equivalent to Times New Roman. RAP 18.17(a)(2).

DATED this 22<sup>nd</sup> day of September, 2023.

Respectfully submitted:

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