

Supreme Court No. _____

No. 74103-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER XAVIER BECK,

Petitioner.

PETITION FOR REVIEW

JAN TRASEN
Attorney for Petitioner
WSBA # 41177

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER

Christopher Beck, appellant below, seeks review of the Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Beck appealed his King County Superior Court convictions for two counts of rape in the first degree and one count of rape in the second degree, as well as one count of robbery in the second degree, imposed following a jury trial. The Court of Appeals affirmed these convictions in an unpublished decision on September 5, 2017. Appendix. This motion is based upon RAP 13.3(e) and 13.5A.

C. ISSUES PRESENTED FOR REVIEW

1. In a motion for severance, the defendant must show that the prejudice of trying the matters together would outweigh the judicial economy of doing so. Evidence of other offenses is presumptively inadmissible to show action in conformity, and the State bears a substantial burden to demonstrate admissibility for another purpose. Did the trial court abuse its discretion in denying severance, did it fail to apply the Bluford standard, and was the Court of Appeals decision therefore in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1)?

2. The Sixth Amendment to the United States Constitution guarantees an accused person the right to present a defense and meet the

charges against him. Here, the trial court barred Mr. Beck from introducing evidence relevant to the credibility and motive to lie of an alleged victim.

Did the court deprive Mr. Beck of his right to present a defense, and was the Court of Appeals decision therefore in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1)?

3. The Sixth and Fourteenth Amendments to the United States Constitutions, as well as Article I, §§ 3 and 22 of the Washington Constitution, guarantee a defendant the right to a trial by an impartial jury. These rights require a trial court to excuse a juror who has an actual bias against the defendant. Here, the trial court denied a defense challenge for cause and permitted a juror to sit on the jury, despite the juror's admission that he was concerned about his ability to be fair. Did the trial court deprive Mr. Beck of his right to an impartial jury and was the Court of Appeals affirmance therefore in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1)?

D. STATEMENT OF THE CASE

In the spring of 2015, Christopher Beck paid for consensual sexual relations with a number of prostitutes and so-called erotic massage

therapists in the Seattle area. 9/9/15 RP 1485-86.¹ The facts are described in greater detail in the Opening Brief of Appellant at pages 3-9; a more concise statement appears here.

1. 7th and James Incident

In February 2015, Mr. Beck contacted C.Q., a prostitute giving “happy ending” massages from a business she ran at an apartment at 7th and James. 8/25/15 RP 512, 625-33, 644; 8/26/15 RP 671, 732-42; 9/9/15 RP 1486.² C.Q. advertised her business on a website called classygoddess.com. 9/9/15 RP 1486. The madam who trained C.Q., Rainbow Love, introduced Mr. Beck and C.Q. Id.

Mr. Beck had more than one appointment with C.Q., used his own name, and was described by C.Q. as reserved in demeanor. 8/25/15 RP 634-39. When a problem arose with his debit card, Rainbow Love, the madam, negotiated a settlement between Mr. Beck and C.Q. 9/9/15 RP 1494-95. When Mr. Beck arrived at C.Q.’s apartment to pay what he owed, he and C.Q. had another sexual encounter, which C.Q. later said was non-consensual. Id. at 1497. She also said Mr. Beck choked and threatened her,

¹ The verbatim report of proceedings consists of 19 volumes, the majority of which are consecutively paginated. They are referenced by date and page number, with an (AM) or (PM) designation when necessary.

² At trial, C.Q. described the service she provided to clients as a massage followed by an “energetic release.” 8/25/15 RP 626. She admitted that this meant, “I give hand jobs at the end.” Id.

taking some of her property. 8/25/15 RP 647-53. C.Q. did not report her claim for several days, however, and no forensic evidence of her claimed injuries could be found. Id. at 686-68.

2. Georgetown Incident

In March 2015, Mr. Beck responded to C.F.'s advertisement for a sexual encounter on Craigslist. 9/9/15 RP 1499. C.F. was a heroin addict, eating from dumpsters, turning tricks to get money for drugs and food. 9/1/15 RP 835-37, 925-30. When Mr. Beck responded to her ad, C.F. was on a three-day drug binge, posting Craigslist ads and even selling her soiled underwear for cash. 9/1/15 RP 835-37.

Mr. Beck agreed to pay C.F. \$100 for a hand job in his car. 9/9/15 RP 1501. C.F. agreed, and the two drove to a parking lot, where they engaged in this transaction. Id. at 1503. When C.F. suggested increasing the transaction to oral sex, and then to intercourse, Mr. Beck agreed. Id. at 1503-07. Although the two disagreed about wearing a condom and where ejaculation should occur, the intercourse was consensual Id. C.F., still high and now upset and half-dressed, ran out of Mr. Beck's car, and got a ride back to the Star Motel, where she told her friends she had been assaulted by Mr. Beck. 9/1/15 RP 938.

3. Westin Hotel Incident

A.M. was a high-end dominatrix, with a day-job as a claims adjuster for State Farms. 9/8/15 (AM) RP 1356-81. A.M. also solicited clients on BackPage.com, but only serviced clients when she was not doing State Farm work, booking a room downtown at the Westin. 9/8/15 (AM) RP 1368-69. A.M. testified that she catered to the discerning fetishist, and her clientele generally did not include black men, whom she generally excluded. 9/9/15 RP 1396-98.³

Mr. Beck booked a session with A.M. 9/9/15 RP 1512-15. According to Mr. Beck, he and A.M. engaged in consensual sexual relations, and then became engaged in a fee dispute. Id. at 1520-21. This dispute, which Mr. Beck termed “haggling,” arose from the fact that the sexual experience had expanded past the terms of original agreement, which had not included the use of all of A.M.’s “toys,” nor full intercourse. Id. When A.M. called Mr. Beck a racial epithet, he shook his head and walked out of the hotel room without paying. Id. at 1520-22.⁴

³A.M. testified she was surprised to look out her peephole at Mr. Beck and to see “a young black face.” 9/9/15 RP 1402. When pressed, A.M. acknowledged this was because he wrote articulately, he did not self-identify as black, and because “he was dressed nicely. He wasn’t dressed like a punk or a juvenile delinquent.” Id. at 1402-03.

⁴ Mr. Beck stated that A.M. said, “You know, only a n -- would be the one to stiff somebody on a quick f --.”

A.M. did not call the police or hotel security, for several hours. 9/8/15 (PM) RP 27. Rather, she continued to service the male clients she had previously scheduled for the day. Id. at 27-30. When A.M. finally spoke to police, she told them Mr. Beck had also taken her cash from the room. 9/8/15 RP 26.

4. Trial Procedure and Appeal

Mr. Beck was charged with two counts of rape in the first degree, one each as to C.Q. (7th and James) and C.F. (Georgetown), and one count of rape in the second degree, as to A.M. (Westin). CP 65-66. Mr. Beck was also charged with two counts of robbery in the second degree, for the 7th and James and Westin incidents. CP 65-66.

At trial, Mr. Beck objected to joinder and moved for severance of the counts. 8/12/15 RP (AM) 12-13; 8/12/15 (PM) 3-12. Mr. Beck renewed this motion several times, including at the conclusion of the State's case, and by mistrial motion. 9/9/15 RP 1448-66.

Following a jury trial, the jury convicted Mr. Beck of the three counts of rape, as well as the 7th and James robbery (items in C.Q.'s purse). CP 361-64. Mr. Beck was acquitted of the robbery at the Westin (cash in A.M.'s room). CP 365.

Mr. Beck appealed as to the severance issue, because the trial court seated a biased juror, and because the court limited his right to present a

defense. On September 5, 2017, the Court of Appeals affirmed Mr. Beck's convictions and sentence. Appendix.

Mr. Beck seeks review in this Court. RAP 13.4(b)(1).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW, AS THE COURT OF APPEALS DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT. RAP 13.4(b)(1).

1. **The trial court erroneously denied Mr. Beck's motion for severance, in violation of the Fourteenth Amendment and Article I, Section 3.**

- a. A defendant is entitled to severance of counts where joinder prevents a fair determination of guilt or innocence.

A defendant has the constitutional right to due process and a fair trial. U.S. Const. Amend. XIV; Wash. Const. art. I, sec. 3. To this end, counts must be severed when joinder would prevent a fair trial. CrR 4.4.

Where joinder is technically proper but would result in unfair prejudice, the counts must be severed. State v. Bryant, 89 Wn. App. 857, 864, 950 P.2d 1004 (1998); State v. Bluford, 188 Wn.2d 298, 316, 393 P.3d 1219 (2017) (trial courts must consider undue prejudice to defendant caused by joinder of criminal counts). CrR 4.4 provides, in pertinent part, that the trial court "shall grant a severance of offenses" when the court determines "severance will promote a fair determination." CrR 4.4(b).

CrR 4.4(b) includes the term “shall,” creating a mandatory duty. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). Severance is necessary where it prevents undue prejudice. State v. Bythrow, 114 Wn.2d 713, 717, 790 P.2d 154 (1990). Undue prejudice includes the risk a single trial invites the jury to cumulate evidence or to infer a guilty disposition. State v. Sanders, 66 Wn. App. 878, 885, 833 P.2d 452 (1992); State v. Watkins, 53 Wn. App. 264, 268, 766 P.2d 484 (1989).

To assist courts in weighing the concerns of improper joinder, this Court has set forth the following “prejudice-mitigating” factors that a court must consider when determining whether the potential for prejudice requires severance: 1) the strength of the State’s evidence on each count; 2) the clarity of defenses as to each count; 3) the court’s instructions to the jury to consider each count separately; and 4) the admissibility of evidence of other charges even if not joined for trial. State v. Russell, 125 Wn.2d 24, 63, 882 P.2d 747 (1994); accord State v. Rodriguez, 163 Wn. App. 215, 228, 259 P.3d 1145 (2011).

A trial court’s decision on a motion to sever is reviewed for manifest abuse of discretion. Bryant, 89 Wn. App. at 864.

- b. This Court should grant review because Mr. Beck was entitled to severance of the rape counts.

i. Strength of the evidence.

Severance is warranted where the strength of one count bolsters a weaker count. Russell, 125 Wn.2d at 63-64. Here, the relative strength of certain counts bolstered the weaker accusations.

To establish Counts I and II, those involving the 7th and James prostitution ring, the State was forced to rely on the credibility of C.Q. herself, but also that of the erotic photographer, Carmen Garcia, whose credibility was compromised by this lifestyle. RP 621-30, 1314.

By contrast, to establish Count III, the count involving the Georgetown heroin addict, C.F., the State relied exclusively on the credibility of admitted drug addicts and thieves. 9/1/15 RP 834-37, 925. In the Georgetown case, C.F. and her friend April Bucklin admitted that they were homeless drug users, and that C.F. would regularly lie for drugs and money. 9/1/15 RP 835-37, 925.

Lastly, in Counts IV and V, involving A.M., the dominatrix at the Westin Hotel, there was a several hour delay in reporting the alleged rape. During this delay, A.M. serviced additional clients, which diminished her credibility. 9/8/15 RP 27-30. A.M. also made troubling racist comments. 9/8/15 RP 66-70; 9/9/15 RP 1396-98. A.M.'s testimony corroborated Mr. Beck's claim that A.M. had fabricated the rape allegation following a fee dispute, fueled by a racist comment. 9/10/16 RP 1605-09.

In light of the comparative weakness of the evidence to establish each individual count, joinder invited the jury to cumulate the evidence and to infer criminal disposition, rather than to examine the lack of evidence as to each count and the lack of credibility of each witness.

ii. Clarity of defenses.

A defendant's desire to testify on one count but not on another count requires severance where the defendant has important testimony to give on the one count and a strong need to remain silent on the other count. Russell, 125 Wn.2d at 65 (citing Watkins, 53 Wn. App. at 270). Here, although Mr. Beck asserted a general denial defense for each count, he asserted different theories as to each alleged victim's motive to fabricate the allegations of rape and robbery. For the 7th and James incident, Mr. Beck noted C.Q.'s motive to lie in order to cover losing money to Mr. Beck for nonpayment. Mr. Beck also argued that C.Q. was in a vulnerable position, based on her subservient role in the prostitution ring run by Rainbow Love, the madam. 9/8/15 RP 1432.

For the Georgetown incident, Mr. Beck argued C.F. was simply incredible and a habitual liar, as was her friend April Bucklin, a fellow heroin addict. 9/1/15 RP 835-37, 925. As to the Westin incident, A.M. testified she was unable to pay her hotel bill at this high-end downtown

hotel; as such, she was motivated to add a robbery accusation to her rape allegations. 9/8/15 RP 27-28.⁵

Mr. Beck argued because he needed to testify about certain counts, but not others, the denial of his severance motion violated his right against self-incrimination under the Fifth Amendment and Article I, section 9. U.S. Const. amend. V; Wash. Const. art. I, sec. 9; State v. Hart, 180 Wn. App. 297, 303, 320 P.3d 1109 (2014); 9/9/15 RP 1465-66, 1471-74. Moreover, the jury was prejudicially informed of Mr. Beck's prior criminal history, as to the counts about which he testified.

iii. Instructions.

Although the court instructed the jury to consider each count separately, instructions alone could not overcome the bolstering resulting from improper joinder, the confusion of defenses, the prejudice resulting from Mr. Beck's need to testify to present his defense theory on certain counts and his equally compelling need to remain silent on others, and the admission of evidence that was not otherwise cross-admissible.⁶

iv. Cross-admissibility of evidence.

⁵ Mr. Beck was acquitted of the robbery of A.M (Count V). 9/15/15 RP 1780-92.

⁶ Mr. Beck objected to the court's limited purpose instruction as inadequate, emphasizing that the multiple counts should have been severed. 9/10/15 RP 1624.

Cross-admissibility of evidence is analyzed under ER 404(b).
Bythrow, 114 Wn.2d at 722; York, 50 Wn. App. at 453.

In determining whether evidence is admissible under ER 404(b), courts must “(1) identify the purpose for which the evidence is to be admitted; (2) determine that the evidence is relevant and of consequence to the outcome; and (3) balance the probative value of the evidence against its potential prejudicial effect.” State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995); State v. Smith, 106 Wn.2d 772, 725 P.2d 951 (1986).

With little analysis, the court found the several counts were cross-admissible, over Mr. Beck’s repeated objection. 8/12/15 RP 5-8.⁷ The trial court’s finding is not supported by the record. First, the court erred in its interpretation of what constitutes a common scheme or plan.

The State failed to prove that Mr. Beck devised a plan and used it repeatedly. Lough, 125 Wn.2d at 855. Such a plan is found when a defendant’s scheme creates the opportunity to commit the crimes. In Lough, for example, the defendant created the opportunity to rape his prior and current victims by drugging them and rendering them unconscious. 125 Wn.2d at 850-51. This Court held the prior act evidence “evidences a larger

⁷ Mr. Beck timely objected to joinder and moved for severance, renewing this motion repeatedly throughout the trial. 8/12/15 (AM) RP 12-13; 8/12/15 (PM) RP 5-12, 28-31; 8/13/15 RP 102-05; 8/24/15 RP 363; 9/2/15 RP 1025; 9/8/15 (AM) RP 1294, 1320-21; 9/9/15 RP 1432, 1448-60.

design to use ... special expertise,” calling Mr. Lough a “mastermind.”
Lough, 125 Wn.2d at 861.

Similarly, in State v. Gresham and in State v. DeVincentis, this Court found defendants created unique opportunities to commit crimes against victims. 173 Wn.2d 405, 422, 269 P.3d 207 (2012); DeVincentis, 150 Wn.2d 11, 13, 74 P.3d 119 (2003). As these cases show, a scheme or plan is established by facts showing similarity between how a defendant devised the opportunity to commit the prior acts and the charged crimes.

Here, the trial court misapplied the common scheme or plan test when it held the common scheme or plan here was established by the following: online or email communication in response to an ad, followed by a meeting and a sexual act; and verbal threats, with choking in two cases. 8/12/15 RP 12-17. The court also specifically acknowledged that the ruling on cross-admissibility of multiple counts would be “very prejudicial.” Id. at 16. However, the trial court ruled the probative value of the multiple counts outweighed the risk of prejudice. Id.

This ruling was reversible error, and the Court of Appeals decision is thus in conflict with this Court’s decisions in Lough, Gresham, DeVincentis, and Bluford. Appendix at 13. In fact, for a common scheme or plan to be found in Mr. Beck’s case, in the manner this Court has found to overcome the risk of “undue prejudice,” the trial court would have needed to find Mr.

Beck followed a common plan laying in wait for these women to advertise their prostitution services, so that he could respond, thus planning to passively meet victims and to thus commit his crimes.

There was insufficient evidence shown of a common pattern or plan. Far from establishing Mr. Beck was “the mastermind of an overarching plan”⁸ to troll the internet for vulnerable women who were unlikely to report a crime, as the prosecutor argued, the evidence showed Mr. Beck met and had sex with three different women who initiated the contact, under three distinct sets of circumstances. 8/26/15 RP 704-05; 9/1/15 RP 837-38, 949; 9/8/15 (AM) RP 1376-81.

A common design or plan is found only if “significant” similarities exist between the prior acts and the charged crime indicating “the conduct was directed by design.” Lough, 125 Wn.2d at 860. A mere “similarity in results” is insufficient to prove a common scheme. Gresham, 173 Wn.2d 405, 422. Under ER 404(b), the evidence for the five counts was not cross-admissible under the court’s limited analysis, finding that because each of the counts involved Mr. Beck’s use of electronic communication and threats, the counts were cross-admissible.

c. The Court of Appeals failed to consider *State v. Bluford*.

⁸ Compare Lough, 125 Wn.2d at 861.

In State v. Bluford, this Court reversed where a trial court abused its discretion, joining multiple counts against a defendant without proper consideration of prejudice. 188 Wn.2d at 316. In Bluford, this Court cautioned about “the inherently prejudicial effect of prior sexual offenses” when multiple counts are tried together (quoting Bythrow, 114 Wn.2d at 718-19). This Court held in Bluford that when multiple offenses are charged, the offenses may be joined only if CrR 4.3(a) is satisfied, “and if joinder is not likely to cause undue prejudice to the defendant.” Id.

Although this Court issued its opinion in Bluford on May 4, 2017, the Court of Appeals failed to consider Bluford in its opinion, issued on September 5, 2017, although its attention was drawn to Bluford.⁹

d. This Court should grant review of the Court of Appeals

The denial of the motion to sever was not harmless. Bryant, 89 Wn. App. at 864; State v. Ramirez, 46 Wn. App. 223, 228, 730 P.2d 98 (1986). The Court of Appeals decision was in conflict with this Court’s jurisprudence in Lough, Gresham, DeVincentis, and Bluford. Review should be granted under RAP 13.4(b)(1).

2. The trial court denied Mr. Beck’s federal and state constitutional right to present a defense.

a. Mr. Beck properly attempted to offer evidence establishing the alleged victim’s bias and motive to lie.

⁹ Mr. Beck cited Bluford in a Statement of Additional Authorities two months before the Opinion was issued, on July 3, 2017.

The trial court violated Mr. Beck's Sixth Amendment right to present evidence detailing the ongoing investigation of Rainbow Love, the madam of the prostitution ring for which C.Q. worked, and how this undermined C.Q.'s credibility and provided a motive to fabricate the rape allegation, since C.Q. was an employee facing criminal liability. 8/26/15 RP 724-30. The bad acts of C.Q. and her role in the prostitution ring were relevant to her credibility, but moreover, C.Q.'s vulnerability as a minor player in this organization supported her motive to lie about Mr. Beck, in order to protect Rainbow Love, as well as herself. *Id.* at 732-41. The court excluded evidence concerning the Rainbow Love investigation and limited cross examination of C.Q. *Id.* at 773-75; 9/8/15 (AM) RP 1320.

b. The court's exclusion of relevant evidence and limiting cross-examination denied Mr. Beck his right to present a defense.

The Sixth and Fourteenth Amendments separately and jointly guarantee an accused person the right to a meaningful opportunity to present a defense. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct 1727, 164 L.Ed.2d 503 (2006); U.S. Const. Amends. VI, XIV. Article I, section 22 of the Washington Constitution provides a similar guarantee. *State v. Maupin*, 128 Wn.2d 918, 924, 913 P.2d 808 (1996). A defendant must receive the opportunity to present his version of the facts to the jury so that it may decide "where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19,

87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. 284, 294-95, 302, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). “[A]t a minimum, . . . criminal defendants have . . . the right to put before the jury evidence that might influence the determination of guilt.” Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

C.Q. acknowledged that she had been brought into the prostitution trade by Rainbow Love years before. 8/25/15 RP 623-25, 708-09. C.Q. had been instructed by Ms. Love, had been housed by her, and had finally gone into business for herself. Id. at 623-25. On the day of the incident with Mr. Beck, Rainbow Love was contacted by phone by C.Q.’s friend Carmen Garcia, as well as by C.Q., to resolve Mr. Beck’s payment, so Ms. Love’s involvement with Mr. Beck’s fee dispute was clear. Id. at 639; 8/26/15 RP 686-87, 785; 9/8/15 (AM) RP 1314-17.

Due to the trial court’s exclusion of the Rainbow Love evidence, however, the jury was left with the inaccurate impression that C.Q. was just a small-time working girl, posting ads on BackPage and Craigslist, rather than part of a massive network of prostitutes, reaching its tentacles from Seattle to Marysville. 8/26/15 RP 776-77. The jury did not hear an accurate rendition of C.Q.’s lifestyle, as the trial court was well aware, but due to the court’s erroneous ruling, the jury was left with a false impression of C.Q.’s

business, her credibility, as well as her criminal liability, and therefore the context in which she made her accusations.

The fact that C.Q. had a motive to lie, when Mr. Beck refused to pay for her sexual services, as well as a bias against the accused, was a fact that made her credibility questionable. “Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.” United States v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984).

Because the proffered evidence about the Rainbow Love investigation tended to establish the alleged victim's bias and her motive to fabricate the rape and robbery allegations, it was highly relevant and should have been admitted. State v. Jones, 168 Wn.2d at 721, Sixth Amendment; Fourteenth Amendment; Const. art. 1, § 22. The Court of Appeals decision, therefore, is in conflict with this Court's jurisprudence, requiring review. RAP 13.4(b)(1).

3. The trial court denied Mr. Beck's federal and state constitutional right to an unbiased jury.

- a. The state and federal constitutions guarantee a criminal defendant a trial before an impartial jury.

The Sixth and Fourteenth Amendments to the United States Constitution, as well as article I, sections 3 and 22 of the Washington

Constitution guarantee a defendant the right to a trial by an impartial jury. Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975); Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961); State v. Rupe, 108 Wn.2d 734, 748, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061 (1988). A defendant is entitled to fair jury, free of bias. State v. Parnell, 77 Wn.2d 503, 508, 463 P.2d 134 (1969), overruled on other grounds, State v. Fire, 142 Wn.2d 152, 165, 34 P.3d 1218 (2001).

b. Because Juror 106 demonstrated actual bias, the trial court erred in denying Mr. Beck's for-cause challenge.

While the denial of a challenge for cause is within the trial court's discretion, State v. Witherspoon, 82 Wn. App. 634, 637, 919 P.2d 99 (1996), if a potential juror demonstrates actual bias, the court must excuse the juror for cause. Otis v. Stevenson-Carson School Dist. No. 303, 61 Wn. App. 747, 754, 812 P.2d 133 (1991). Actual bias is "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2). A challenge for cause should be granted where a prospective juror's views "prevent or substantially impair the performance of [her] duties as a juror in accordance with [her] instructions or oath." Id.

The questioning of Juror 106 revealed a strongly-held bias, and the court wrongly denied the challenge. 8/24/15 RP 493-95. Juror 106 stated the multiple counts were “shocking” to him, and repeated questioning did not change this belief. Id. (Juror 106: “What I believe I’m hearing is based on the accusations coming from the government or State that with the preponderance of that evidence, that those charges must be true in order for them to make an accusation”).


Where a biased juror sits on the jury, the defendant is denied his Sixth Amendment and Article I, sections 3 and 22 rights to a jury trial, and the remedy should have been to remand the matter for a new trial. United States v. Martinez-Salazar, 528 U.S. 304, 316, 120 S.Ct. 774, 145 L.Ed.2d 792 (2000); Fire, 142 Wn.2d at 158. Because the Court of Appeals failed to do so, this Court should grant review. RAP 13.4(b)(1).

F. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed, as it is in conflict with decisions of this Court. RAP 13.4(b)(1).

DATED this 4th day of October, 2017.

Respectfully submitted,



JAN TRASEN (WSBA 41177)
Washington Appellate Project
Attorneys for Petitioner

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 CHRISTOPHER XAVIER BECK,)
)
 Appellant.)

No. 74103-9-I
 DIVISION ONE
 UNPUBLISHED OPINION
 FILED: September 5, 2017

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TRICKEY, A.C.J. — Christopher Beck appeals his convictions of three counts of first degree rape and one count of robbery in the second degree. Beck contends that the trial court abused its discretion when it declined to sever his counts and try them separately; deprived him of his constitutional right to an impartial jury when it denied a defense challenge for cause against a juror; and deprived him of his right to present a defense when it barred him from introducing evidence attacking the credibility and motive to lie of a victim. Finding no error, we affirm.

FACTS

C.Q.

C.Q. was a massage therapist who provided services at her apartment in downtown Seattle. C.Q. placed advertisements on Backpage.com, and would perform erotic massages including “energetic release” at the end.¹ C.Q. did not allow clients to touch her. C.Q. usually accepted cash payment, but sometimes allowed clients to pay with credit cards. When a client paid with a credit card, the payment would go to Rainbow Love, an acquaintance of C.Q., who would give C.Q. cash later.

¹ Report of Proceedings (RP) (Aug. 25, 2015) at 626.

In February 2014, Beck called C.Q. in response to her Backpage.com advertisement. He set up an appointment and asked to pay with a credit card. Although it appeared that the payment had gone through, the card company Beck used notified Love that she should not accept payments from that card because the account was fraudulent.

Beck's appointment with C.Q. went normally. C.Q. learned later that the payment had been rejected. Beck contacted Love because he was "trying to make this right," and Love told C.Q. to contact Beck.² C.Q. and Beck exchanged e-mails and arranged to meet on March 4, 2014, for Beck to pay C.Q. for the past appointment. When Beck arrived, he told C.Q. that he was not going to pay her. Beck physically assaulted C.Q., including choking her, and then forced her to perform oral sex.

C.Q. was expecting her friend Carmen Garcia to arrive shortly after Beck. After knocking on C.Q.'s door, Garcia heard the sounds of a struggle and a female voice that sounded as if it was being choked saying, "Call 911."³ Garcia began to alert tenants in other apartments. Beck, identified by Garcia at trial, came out of C.Q.'s apartment and fled. Garcia went into C.Q.'s apartment and saw that C.Q. had marks on her neck and shoulders and that the contents of a purse had been emptied onto the floor. C.Q. reported the incident a few days later, and pictures were taken of her injuries.

C.F.

In March 2014, C.F. had lost her job and apartment and moved to a motel in the Georgetown area of Seattle. During that time, C.F. began using heroin. C.F. was living with her friend April Bucklin, Bucklin's boyfriend, Bucklin's son, and C.F.'s boyfriend at

² RP (Aug. 25, 2015) at 639.

³ RP (Sept. 8, 2015) at 1302-03.

the motel. C.F. posted advertisements on Craigslist offering to sell her underwear for money or food.

On March 13, 2014, Beck e-mailed C.F. in response to one of her Craigslist advertisements. Beck and C.F. arranged to meet at the motel. Beck asked C.F. to get into his car, but C.F. refused and Beck left. A short time later, Beck e-mailed or texted C.F. to apologize and offer her money again and to take her to the store to get food. C.F. accepted.

C.F. let her friends know she was leaving. C.F. got into Beck's car and he took her to a McDonald's restaurant. After parking, Beck choked C.F. and attempted to force her to perform oral sex. When she resisted, Beck threatened her life, forced her into the back seat, and vaginally raped her. C.F. escaped and fled the car in only her shirt and shoes, and was picked up by a stranger and returned to the hotel.⁴ She left her cell phone and other clothes in Beck's car.

Bucklin called 911 when C.F. returned to the motel. Seattle Police Department (SPD) Officer Stephen Smith responded to the call. Officer Smith saw that C.F. was visibly upset. A deoxyribonucleic acid (DNA) analysis and comparison was performed using a sexual assault kit, and the male component matched Beck.

A.M.

A.M. is an independent insurance claims adjuster and corporate trainer who lived in Florida but frequently traveled for work. While traveling, A.M. worked "in the adult industry doing erotic massage work."⁵ A.M. placed advertisements on Backpage.com in cities where she would be working.

⁴ RP (Sept. 1, 2015) at 938-39.

⁵ RP (Sept. 8, 2015) at 1361.

A.M. traveled to Seattle in March 2014. She booked a room at the Westin Hotel in downtown Seattle and placed several advertisements. Beck responded to one of the advertisements by e-mail. They arranged to meet on March 19. When Beck arrived, A.M. gave him a standard description of what he could expect, which implied that that she did not permit mutual contact.

Beck repeatedly tried to confirm A.M.'s rate, which was unusual for a client and made A.M. uncomfortable. When A.M. would not confirm the rate, Beck began to move toward her and A.M. attempted to cancel the appointment. Beck responded that he was going to "get what [he] came for" and began to choke A.M.⁶ A.M. blacked out. When A.M. regained consciousness, Beck forced A.M. to perform oral sex and vaginally raped her. Beck took the money that A.M. had made from earlier appointments and left.

A.M. tried but was unable to continue with the other appointments she had scheduled for that day. A.M. contacted hotel security and met with SPD officers. The officers observed that A.M. was "very upset."⁷

A.M. went to Harborview Medical Center. A DNA analysis of samples collected with a sexual assault kit matched DNA from Beck.

Criminal Proceedings

The State charged Beck by second amended information with rape and robbery for his assaults on the three women: rape in the first degree and robbery in the second degree of C.Q. on March 4, 2014; rape in the first degree of C.F. on March 13, 2014; and rape in the first degree and robbery in the second degree of A.M. on March 19, 2014.

At pretrial, Beck moved to sever the counts for each alleged victim. The trial court

⁶ RP (Sept. 8, 2015) at 21.

⁷ RP (Sept. 8, 2015) at 1132.

denied the motion to sever, stating that there was enough indication of a common scheme or plan under ER 404(b) and that the prejudicial effect did not substantially outweigh the probative value of the evidence under ER 403. Beck renewed his motion to sever during trial.

The jury convicted Beck on all three counts of rape and one count of robbery. It found him not guilty of his charge of robbery in the second degree against A.M.

Beck appeals.

ANALYSIS

Motion to Sever

Beck argues that the trial court abused its discretion when it denied his motion to sever his counts related to each victim from one another. He argues that the trial court's erroneous denial of his motion to sever allowed the admission of unduly prejudicial evidence, and thus, violated his constitutional right to a fair trial and CrR 4.4(b). Because the evidence of Beck's charges would have been cross-admissible in separate trials since Beck acted pursuant to a common plan or scheme, we disagree.

A defendant has a constitutional right to due process and a fair trial. U.S. CONST. amend. XIV, § 1; WASH. CONST. art. I, § 3. When a defendant faces multiple charges, the trial court shall grant a motion to sever if it determines "that severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b).

CrR 4.3 provides:

(a) Joinder of Offenses. Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

(1) Are of the same or similar character, even if not part of a single scheme or plan; or

(2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

A defendant seeking severance has the burden of demonstrating that trying the counts together would be manifestly prejudicial and outweigh any concern for judicial economy. State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990). Joinder of offenses may prejudice a defendant because

“(1) he may become embarrassed or confounded in presenting separate defenses; (2) the jury may use the evidence of one of the crimes charged to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charged; or (3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find.”

State v. Smith, 74 Wn.2d 744, 755, 446 P.2d 571 (1968) (quoting Drew v. United States, 331 F.2d 85, 88 (D.C. Cir. 1964)), vacated in part, 408 U.S. 934, 92 S. Ct. 2852, 33 L. Ed. 2d 747 (1972), overruled on other grounds by, State v. Gosby, 85 Wn.2d 758, 539 P.2d 680 (1975). Also, a defendant may be prejudiced by “a latent feeling of hostility engendered by the charging of several crimes as distinct from only one.” Smith, 74 Wn.2d at 755 (quoting Drew, 331 F.2d at 88).

A reviewing court uses several factors to determine whether a trial court’s denial of a severance motion was unduly prejudicial to the defendant:

(1) the strength of the State’s evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.

State v. Russell, 125 Wn.2d 24, 63, 882 P.2d 747 (1994).

“A trial court’s refusal to sever counts under CrR 4.4(b) is reviewed for manifest abuse of discretion, and the defendant has the burden of demonstrating that abuse on appeal.” State v. Cotten, 75 Wn. App. 669, 686-687, 879 P.2d 971 (1994).

Strength of the Evidence

Beck argues that the strength of the State's evidence for certain counts bolstered its case against him for counts where its evidence was weaker. Beck also argues that joinder invited the jury to cumulate the evidence and to infer criminal disposition, rather than relying on the evidence presented for each count. Because there was no clear difference in the strength of the State's case for each rape and each was supported by strong evidence, we disagree.

The court considers the strength of the State's evidence on each count to ensure that weaker counts are not unduly benefitted by stronger counts. Russell, 125 Wn.2d at 63-64.

Beck argues that the State did not have strong evidence on any of the counts against him and, therefore, the trial court's failure to sever his counts invited the jury to infer a criminal disposition from the accumulated evidence. But Beck's arguments primarily focus on the credibility of the State's witnesses.⁸ Beck raised a consent defense against the rape allegations at trial and did not dispute identity. He denied taking property from C.Q. or A.M.

Beck's defense was that the victims consented to sexual activity and intercourse. The evidence that each victim did not consent was strong. The State offered substantial testimony from the victims themselves, police testimony corroborating the victims' demeanors following their encounters with Beck, and forensic evidence supporting their allegations. Their testimony directly contradicted Beck's consent defense.

⁸ Beck focuses on C.Q.'s and Garcia's involvement with prostitution, C.F.'s drug use and homelessness, and A.M.'s delayed reporting of the rape to law enforcement and use of racially derogatory terms.

Each rape count against Beck largely depended on the jury's determination of the credibility of Beck and the victims. Beck's credibility arguments focused on the background of the victims and their alleged motivations to fabricate their allegations. His arguments did not show that the strength of the State's cases varied by victim. We conclude that the State presented strong evidence supporting each count.

Clarity of Defenses

Beck argues that he was prejudiced by the trial court's denial of his motion to sever because he needed to testify about certain counts but not others. Specifically, he argues that he asserted a general denial defense for each count but presented different theories as to each victim's motive to fabricate their allegations against him.⁹ We disagree because Beck presented general denial or consent defenses to each charge and, therefore, trying the counts together did not infringe on the clarity of his defenses.

In State v. York, the trial court denied York's pretrial motion to sever counts of rape of female students at the school where York was an instructor. 50 Wn. App. 446, 447, 749 P.2d 683 (1987). The Court of Appeals affirmed the trial court's denial, holding that York was not embarrassed or confounded in presenting his defenses because his defense to one charge was a denial and his defense to the others was consent. York, 50 Wn. App. 451.

Here, Beck contended at trial that each victim had consented. Beck argues on appeal that, although he asserted a general denial defense for each count, he offered different theories as to each victim's motive to fabricate their allegations against him. This does not change the nature of his legal defenses against each count, only their underlying

⁹ Beck characterizes his defense as a general denial, but at trial he characterized his defense as consent with each victim having a different motivation to fabricate their rape allegation.

facts. We conclude that Beck was not embarrassed or confounded in presenting his defenses.

Beck also argues that the trial court's denial of his severance motion violated his right against self-incrimination because he had to testify about certain counts but not others. Because Beck has not shown that he had important testimony to offer on one count and a strong need to refrain from testifying about another, we disagree.

A defendant has a right against self-incrimination. U.S. CONST. amend. V; WASH. CONST. art. 1, § 9.

"A defendant's desire to testify only on one count requires severance only if a defendant makes a 'convincing showing that she has important testimony to give concerning one count and a strong need to refrain from testifying about another.'" Russell, 125 Wn.2d at 65 (quoting State v. Watkins, 53 Wn. App 264, 270, 766 P.2d 484 (1989)).

Beck has not made this showing. Beck has not identified, here or at the trial court, which counts he wished to testify to or which counts to which he had a strong need to refrain from testifying. He has not carried his burden of showing that he had important testimony to offer on one count and a strong need to refrain from testifying to another, and was unable to do so because of the trial court's ruling.

In support of his position, Beck cites his argument at trial that the court should limit the scope of cross-examination if he testified about some counts but not others. Beck cited below to State v. Hart, which held that the trial court infringed the defendant's constitutional right against self-incrimination when it allowed the State to cross-examine him about the facts underlying a charge that he did not testify to on direct examination.

180 Wn. App. 297, 304-05, 320 P.3d 1109 (2014). Hart does not apply here, because Beck testified to all of his charges on direct examination. Further, it is not relevant to Beck's claim that he would have testified to only some of his charges if the court had severed the counts.

Beck also asserts that the jury was prejudiced against him after being informed of his prior criminal history. Beck does not offer significant analysis or citation to the record in support of this argument. At trial, on direct examination, Beck's attorney asked him about his guilty plea to a charge for robbery in the first degree based on an incident in Pierce County in 2010. Assuming that this is the prior criminal history Beck is referring to, Beck has not shown that he would not have testified to any charge to which his prior criminal conviction was relevant or that his prior criminal history would not have been admissible at each trial. In addition, this is insufficient to show prejudice standing alone.

In sum, Beck has not offered persuasive argument showing an issue with the clarity of his defenses. He was not embarrassed or confounded in presenting his defenses. He did not make a convincing showing that he had important testimony to give on one count and a strong need to refrain from testifying about another. Beck has not shown that he would have only testified to some counts and not to others or that the court would have excluded his prior criminal conviction in a trial on some counts if they had been tried separately.¹⁰ We conclude that Beck has not shown that there was an issue with the clarity of his defenses.

¹⁰ Beck states that he did make this showing in his brief, but does not cite to the record in support of this assertion.

Court Instructions

Beck argues that the court's instructions, although proper,¹¹ could not overcome the improper joinder of his counts. The jury was instructed to consider and decide each count separately, and to only consider evidence related to other counts for the limited purpose of determining whether a common scheme or plan existed. We conclude that the jury was properly instructed.

Admissibility of Other Charges If Not Joined

Beck argues that the trial court erred when it found that evidence supporting each of Beck's rape charges would be cross-admissible because they constituted a common scheme or plan. Because evidence of the rapes would have been cross-admissible at separate trials, we disagree.

Cross-admissibility of evidence is analyzed under ER 404(b). Bythrow, 114 Wn.2d at 722; State v. Gatalski, 40 Wn. App. 601, 607, 699 P.2d 804 (1985) (analyzing whether evidence in each count would be admissible in a trial on a separate count). ER 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan; knowledge, identity, or absence of mistake or accident.

Evidence of prior misconduct may be admissible to prove "a scheme or plan of which the offense charged is a manifestation." State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). One type of plan "arises when an individual devises a plan and uses it repeatedly to perpetrate separate but very similar crimes." Lough, 125 Wn.2d at 855. If

¹¹ Beck objected to the trial court's limited purpose instruction as inadequate, relying on his severance arguments.

similar acts have been performed over a period of time, this may strengthen the possibility of a common plan or scheme. Lough, 125 Wn.2d at 860 (citing State v. McKinney, 110 N.C. App. 365, 372, 430 S.E.2d 300 (1993)).

“Proof of such a plan is admissible if the prior acts are (1) proved by a preponderance of the evidence, (2) admitted for the purpose of proving a common plan or scheme, (3) relevant to prove an element of the crime charged or to rebut a defense, and (4) more probative than prejudicial.” Lough, 125 Wn.2d at 852.

“[A]dmission of evidence of a common scheme or plan requires substantial similarity between the prior bad acts and the charged crime.” State v. DeVicentis, 150 Wn.2d 11, 21, 74 P.3d 119 (2003). “Sufficient similarity is reached only when the trial court determines that the ‘various acts are naturally to be explained as caused by a general plan’” DeVicentis, 150 Wn.2d at 21 (quoting Lough, 125 Wn.2d at 860). This standard does not require uniqueness, which applies to identifying the defendant through a unique modus operandi. DeVicentis, 150 Wn.2d at 21; State v. Vy Thang, 145 Wn.2d 630, 643, 41 P.3d 1159 (2002).¹²

In State v. Gresham, the Supreme Court affirmed the trial court’s finding of a common scheme or plan when the defendant created opportunities to fondle child victims using the same pattern, such that instances were “naturally to be explained as ‘individual manifestations’ of the same plan,” despite differences in location and the sexual acts performed. 173 Wn.2d 405, 423, 269 P.3d 207 (2012). In DeVicentis, the Supreme Court held that the “existence of a design to fulfill sexual compulsions evidenced by a pattern of past behavior is probative.” 150 Wn.2d at 17-18. The court affirmed the trial court’s

¹² Beck conceded below that identity was not at issue.

admission of the defendant's prior convictions involving sexual misconduct with young adolescent girls based in part on the defendant's building of relations with his victims through "a safe channel, such as a friend of his daughter," and wearing revealing clothing around his victims in order to make nudity normal. Devicentis, 150 Wn.2d at 22.

Here, the rape allegations against Beck bore sufficient similarity to one another to have occurred under a common scheme or plan. In each instance, Beck responded to online advertisements offering money in exchange for sexual services or favors. The victims were unlikely to avail themselves of help from law enforcement due to being vulnerable or marginalized. After meeting the victims in isolated locations, Beck refused to pay them, choked them, and forced them to engage in sexual activities. These acts occurred over the course of 15 days. Because of the similarities between the incidents and their occurrence over a period of time, we conclude that trial court did not abuse its discretion in finding that the three rape charges would be cross-admissible in separate trials as part of a common scheme or plan.¹³

In sum, any prejudice suffered by Beck from trying the counts together did not outweigh the concern for judicial economy. The State presented comparatively strong evidence supporting each count against Beck. Beck raised consent defenses to each count, and the clarity of his defenses were not infringed by the denial of his severance motion. The trial court properly instructed the jury to determine each count separately. The evidence of each count would have been admissible in separate trials because they

¹³ The trial court excluded a separate rape allegation against Beck filed in Kitsap County from the common scheme or plan because it involved multiple rapes over a span of five hours and a child was present.

were part of a common scheme or plan. The trial court did not abuse its discretion when it denied Beck's motion to sever.

Right to an Impartial Jury

Beck argues that he was denied his constitutional right to an impartial jury when the trial court denied a defense for-cause challenge against Juror 106 for exhibiting actual bias. Because Beck failed to show actual bias on the part of the juror, we disagree.

A defendant is entitled to an impartial jury. State v. Brett, 126 Wn.2d 136, 157, 892 P.2d 29 (1995). The court must excuse a juror for cause if the juror demonstrates actual bias. Ottis v. Stevenson-Carson Sch. Dist. No. 303, 61 Wn. App. 747, 754, 812 P.2d 133 (1991). Actual bias is "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2).

Actual bias may exist when a juror admits to a bias and indicates that it is likely to persist throughout the trial. State v. Gonzalez, 111 Wn. App. 276, 281, 45 P.3d 205 (2002), review denied, 148 Wn.2d 1012 (2003).¹⁴ "[E]quivocal answers alone do not require a juror to be removed when challenged for cause, rather, the question is whether

¹⁴ Beck also offers Mach v. Stewart for the proposition that the trial court should have begun anew with a fresh jury pool after Juror 106's comments. 137 F.3d 630 (9th Cir. 1997). In Mach, the Ninth Circuit concluded that the trial court erred when it struck a prospective juror for comments about her bias but denied a motion for a new panel. 137 F.3d at 632-33. The Ninth Circuit stated that the trial court should have conducted additional voir dire to determine whether other jurors had been influenced by the comments, and remanded for new voir dire with a fresh jury pool. 137 F.3d at 633. Mach is not persuasive here. Beck challenged the entire panel for cause after approximately two-thirds of the jurors, including Juror 106, raised their hands when asked whether they would be biased by the number of counts against him. The court denied this "group challenge for cause" and instructed Beck to make individual cause challenges. RP (Aug. 24, 2015) at 505. Beck was allowed to proceed with further voir dire to ensure that the jurors were not actually biased against Beck, as evidenced by his questioning of Juror 106. The trial court did not err in denying Beck's "group challenge for cause" and not starting anew with a fresh jury pool.

a juror with preconceived ideas can set them aside.” State v. Noltie, 116 Wn.2d 831, 839, 809 P.2d 190 (1991).

A trial court’s ruling on a challenge for cause is reviewed for manifest abuse of discretion. State v. Gregory, 158 Wn.2d 759, 814, 147 P.2d 1201 (2006).

Here, Juror 106 did not exhibit actual bias. Juror No. 106 was one of many jurors who indicated that they were concerned that they were more likely to find Beck guilty because there were several charges against him. When questioned by Beck’s attorney, Juror 106 said, “So with the culmination of the amount of accusations, for me, it was shocking. So it’s overwhelming for me to be unbiased as to how I feel whether or not Mr. Beck is guilty or not but persuaded to be more so than if he is guilty based on those type of accusations.”¹⁵ In response to further defense questions, however, Juror 106 said, “But I would still want to hear the proof that has to be given in order for me to say that [Beck] is guilty.”¹⁶ After a defense for-cause challenge against Juror 106, the trial court allowed additional questioning by the prosecution. In response to the prosecutor’s questions, Juror 106 stated that he would be able to “make an unbiased decision based on the evidence.”¹⁷ The trial court then denied the defense for-cause challenge, and the defense did not use a preemptory strike against Juror 106.

Beck has not shown actual bias on the part of Juror 106. Juror 106 repeatedly stated that, although he may be more inclined to feel that Beck was guilty, he was capable of making an unbiased decision of guilt based on the evidence presented at trial. The trial court allowed for additional questioning of Juror No. 106, and was satisfied that Juror

¹⁵ RP (Aug. 24, 2015) at 493-94.

¹⁶ RP (Aug. 24, 2015) at 494.

¹⁷ RP (Aug. 24, 2015) at 497.

106 could try the issue impartially and without prejudice. We conclude that the trial court did not err when it denied Beck's for-cause challenge against Juror 106.

Right to Present a Defense

Beck argues that the trial court denied him his right to present a defense when it excluded evidence of a criminal investigation into Love that Beck offered to establish C.Q.'s bias and motive to lie. Because the State's need to exclude the evidence of the criminal investigation into Love outweighed Beck's need to present it at trial, we conclude that the trial court did not infringe Beck's constitutional right to present a defense.

An accused person has a right to a meaningful opportunity to present a defense. WASH. CONST. art. I, § 22; State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). But this right is not absolute. Jones, 168 Wn.2d at 720. The evidence offered by a defendant must be at least minimally relevant. Jones, 168 Wn.2d at 720. If the evidence is relevant, the court balances the State's interest in excluding the evidence against the defendant's need for the evidence. Jones, 168 Wn.2d at 720.

A claim of denial of constitutional rights is reviewed de novo. State v. Iniguez, 167 Wn.2d 273, 280-81, 217 P.3d 768 (2009).

Relevancy of Evidence

Beck argues that evidence of the investigation into Love was relevant to C.Q.'s credibility and C.Q.'s "vulnerability as a minor player in [the prostitution ring being investigated] supported her motive to lie about Mr. Beck, in order to protect Rainbow Love, as well as herself."¹⁸ Beck contends that the evidence was necessary to show the jury an accurate portrayal of C.Q.'s lifestyle, and that the criminal investigation of Love

¹⁸ Opening Br. of Appellant at 31.

motivated C.Q. to lie and biased her against Beck. The State argues that C.Q. had already admitted to her prostitution activities, and thus, cross-examination into the investigation of Love for prostitution-related activities would produce testimony that was not relevant.

“Evidence that a defendant seeks to introduce ‘must be of at least minimal relevance.’” Jones, 168 Wn.2d at 720 (quoting State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002)). “Defendants have a right to present only relevant evidence, with no constitutional right to present *irrelevant* evidence.” Jones, 168 Wn.2d at 720 (citing Gregory, 158 Wn.2d at 786 n.6). Relevant evidence is that which tends to make the existence of any material fact more or less probable. ER 401. Evidence of bias, which “describe[s] the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party[,]” is almost always relevant. United States v. Abel, 469 U.S. 45, 52, 105 S. Ct. 465, 83 L. Ed. 2d 450 (1984).

Beck argues that the evidence would have been at least minimally relevant to the questions of C.Q.’s credibility, motive to lie, or bias. He offers the conclusory argument that C.Q. was biased against him because of the investigation into Love.¹⁹ Assuming that C.Q. knew of the investigation, this would likely meet the low threshold of establishing that the evidence would have been relevant to the material facts of C.Q.’s credibility and

¹⁹ Whether C.Q. was aware of the investigation into Love is unclear from the record. Beck attempted to ask questions about the investigation during cross-examination, and the court sustained the State’s objection. During recess, the trial court ruled that it was going to exclude the evidence about the Love investigation. C.Q. was not asked further questions about the investigation.

motive to lie. Therefore, the evidence would have been at least minimally relevant to the question of C.Q.'s credibility or bias against Beck.

Prejudice Verses Need for Information

Beck argues that the evidence was properly offered under ER 404(b). He argues that the evidence was of high probative value, and thus, should have been admitted. The State argues that the evidence was not highly probative, and admitting it would have led to confusion of the issues and been a waste of time.

If the evidence at issue is relevant, the State bears the burden to show that the evidence is "so prejudicial as to disrupt the fairness of the fact-finding process at trial." Darden, 145 Wn.2d at 622. The State's interest in excluding prejudicial evidence is weighed against the defendant's need for the information sought. Darden, 145 Wn.2d at 622. Relevant information can only be withheld "if the State's interest outweighs the defendant's need." Darden, 145 Wn.2d at 622. If evidence is highly probative, no State interest is compelling enough to preclude its introduction. State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1984).

Here, the State's interest in excluding the evidence of the investigation into Love outweighed Beck's need for the evidence. The evidence would have been prejudicial to C.Q. by implicating her in organized prostitution. It also may have confused the issues for the jury by raising the question of whether C.Q. would be criminally liable for her involvement in the prostitution ring and would have taken up time.

Moreover, the record shows that the State's interest was not outweighed by Beck's need. The evidence would have been offered to show C.Q.'s possible criminal liability for her activities, her motivation to falsify her allegation of rape to avoid this criminal liability,

and her bias against Beck. Beck already had evidence to support these arguments. C.Q. testified about her prostitution activities, her concern that she would be criminally liable if she reported the rape, and the fact that Beck had refused to pay her.²⁰ She also testified about her connections with Love, including being trained by Love, Love's role in referring clients to C.Q., and Love's handling of credit card transactions for C.Q.

C.Q.'s testimony to these issues significantly reduced the probative value of the evidence offered by Beck. The State's interest in excluding the prejudicial evidence was not outweighed by Beck's need for it. Thus, Beck's right to present a defense was not infringed by the trial court's exclusion of evidence regarding the investigation of Love.

Statement of Additional Grounds

Beck raises a number of issues in his statement for additional grounds for review. None merit reversal or dismissal.

C.Q.

Beck argues that the trial court erred or the State acted wrongfully when evidence showing that C.Q. was dishonest was not admitted or disclosed to the defense. First, Beck's argues that the trial court erroneously excluded evidence that a ledger C.Q. claimed Beck stole was later found in her possession. This appears to refer to the trial court's decision to exclude evidence related to the investigation of Love, as analyzed above. The list of items seized from the apartment does not include a ledger and the ownership of the items was not established in the record. Beck acknowledged that the State presented substantial documentation during discovery. Beck has not shown that the trial court erred or that the State acted wrongly with regard to this evidence.

²⁰ Beck focuses on the disagreement over payment as a reason for her false allegation, along with possible criminal liability.

Second, Beck argues that forensic evidence showed that C.Q. was not truthful when she claimed Beck used a rope to bind her hands. C.Q. testified that Beck attempted to tie her hands and feet with a rope he brought with him. It is unclear from the record what forensic evidence Beck is referring to that contradicts this claim. RAP 10.10(c).

Third, Beck claimed that C.Q. was dishonest about him ejaculating on her clothing. At trial, C.Q. testified that he ejaculated on her, not her clothing. The record does not appear to contain a reference to Beck ejaculating on her clothing.

Fourth, C.Q. testified that Beck took three cell phones from her. The fact that these cell phones were not found in his possession is insufficient to overcome C.Q.'s sworn testimony.

Beck argues that the trial court erred when it excluded evidence of C.Q.'s involvement in Love's prostitution ring because he was denied an opportunity to impeach C.Q. or attack her credibility. As analyzed above, the trial court did not err when it excluded evidence of the criminal investigation into Love's prostitution activities.

Beck argues that the prosecutor improperly asked C.Q. whether she knew of Love's past convictions by leaving the courtroom during cross-examination to ask her. The jury had left the courtroom and the court and counsel were discussing legal questions. The prosecutor left the room and asked C.Q. if she was aware that Love had ever been convicted of any criminal offense after being ordered to do so by the court. The prosecutor stated on the record the language he used to ask the question and C.Q.'s response. Beck has not shown that this was improper or that the trial court erred.

A.M.

Beck argues that photographs of a used condom, which would have undermined A.M.'s testimony that she did not have sexual intercourse with other clients because Beck testified that he did not use a condom, were erroneously excluded. The record does not appear to contain references to a used condom. RAP 10.10(c).

Beck argues that the State and SPD acted improperly during their investigation into his case. Specifically, Beck argues that they failed to investigate whether A.M. had sexual intercourse with other clients, failed to interview those other clients, and failed to preserve or investigate other evidence, such as the used condom or the sexual devices used by A.M. with her clients. The State does not have an obligation to expand the scope of a criminal investigation. State v. Judge, 100 Wn.2d 706, 717, 675 P.2d 219 (1984). "The police are required only to preserve that which comes into their possession either as a tangible object or a sense impression, if it is reasonably apparent the object or sense impression potentially constitute material evidence." State v. Hall, 22 Wn. App. 862, 867, 593 P.2d 554 (1979). SPD did not act improperly when it declined to preserve or investigate the evidence cited by Beck.

C.F.

Beck argues that C.F. and Bucklin were not credible due to their drug use and that there was no forensic evidence showing that he and C.F. did not engage in consensual sexual intercourse. Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Challenges to evidence not based on the relevancy of evidence go toward the weight of the evidence, not its admissibility. Gregory, 158 Wn.2d at 835, overruled on other grounds by State v.

W.R., Jr., 181 Wn.2d 757, 336 P.3d 1134 (2014). Beck's challenges to C.F. and Bucklin's testimony go toward the weight of their testimony rather than its admissibility. The lack of forensic evidence at trial does not overcome C.F.'s testimony. The facts offered by Beck in support of this ground were offered by Beck at trial, and contradict those offered by C.F. The jury was free to believe C.F.'s account over Beck's.

Juror 23

Beck argues that the trial court erred by denying a defense request to remove Juror 23 and by failing to dismiss the jury pool after Juror 23 discussed possible racial bias with defense counsel during voir dire. As discussed above, a trial court errs when it fails to dismiss a juror who exhibits actual bias. Juror 23 did not exhibit actual bias. When questioned about the multiplicity of charges, Juror 23 stated that he would be able to follow the court's instructions. Juror 23 expressed that his upbringing could have influenced his views toward black people, but stated that he did not hold the same prejudices as his peer group and did not think it would be a factor in his decision-making during trial. Moreover, Juror 23 was not empaneled as a jury member, and the record does not show that Juror 23 had any influence over the jury's deliberations. Beck has not shown that Juror 23 was actually biased against him, nor that Juror 23 influenced the jury's ultimate decision.

In sum, Beck has not raised any issue that warrants dismissal or reversal in his statement of additional grounds for review.

No. 74103-9-1 / 23

Affirmed.

Trickey, A&J

WE CONCUR:

Leach, J.

Appelwick, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 74103-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Donald Porter, DPA
[PAOAppellateUnitMail@kingcounty.gov]
[donald.porter@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

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