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CLERK

NO. 98876-5

WASHINGTON STATE SUPREME COURT

In re the Detention of:

DARREN PERKINS,

Petitioner,

v.

THE STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUE PRESENTED FOR REVIEW1

III. RESTATEMENT OF THE CASE.....2

IV. REASONS WHY THIS COURT SHOULD DENY REVIEW6

 A. The Trial Court Properly Admitted Evidence of Perkins’s Risk
 Relative to Other Sex Offenders as Part of Dr. Goldberg’s
 Comprehensive Risk Assessment.....7

 B. The Admission of Evidence of Relative Risk Was Not Unduly
 Prejudicial15

V. CONCLUSION18

TABLE OF AUTHORITIES

Cases

In re Det. of Thorell,
149 Wn.2d 724, 72 P.3d 708 (2003)..... 8, 15, 18

In re Det. of Brooks,
145 Wn.2d 275, 36 P.3d 1034 (2001)..... 8

In re Detention of Post,
170 Wn.2d 302, 241 P.3d 1234 (2010)..... 14

In re Detention of Taylor,
159 Wn. App. 1007 (2010)..... 7

State v. Maule,
35 Wn. App. 287, 667 P.2d 96 (1983)..... 16, 17

State v. Smith,
31 Wn. App. 226, 640 P.2d 25 (1982)..... 16

State v. Stein,
144 Wn.2d 236, 27 P.3d 184 (2001)..... 17

Statutes

RCW 71.09 1, 2

RCW 71.09.020(8)..... 4

RCW 71.09.020(17)..... 2

RCW 71.09.020(18)..... 3

Rules

ER 401 8

ER 402 4

ER 403	4, 15, 17
RAP 13.4(b)(4)	18

I. INTRODUCTION

In October 2018, a unanimous jury found that Darren Perkins met the statutory criteria for civil commitment as a sexually violent predator under chapter 71.09 RCW. At trial, the State's expert, Harry Goldberg, Ph.D., testified that Perkins was likely to engage in predatory acts of sexual violence if not confined in a secure facility. As a basis for this opinion, Dr. Goldberg relied on his extensive risk assessment of Perkins. Among other factors, his risk assessment included absolute and relative risk data derived from actuarial instruments. Perkins objected to the admission of evidence of his risk relative to other sex offenders, claiming that it was irrelevant to the forensic question involving absolute risk and unduly prejudicial. The trial court admitted this evidence, and the Court of Appeals affirmed this ruling.

Perkins now seeks review by this Court on the basis that his evidentiary challenges are of substantial public interest. This Court should deny Perkins's petition because the admission of relative risk evidence is a routine evidentiary issue that the Court of Appeals has upheld in unpublished opinions.

II. ISSUE PRESENTED FOR REVIEW

Where the State's expert testified about relative risk figures as one of many factors he considered in conducting his comprehensive risk assessment of Perkins, and it is uncontested that experts in the field routinely consider

relative risk when determining whether the person is likely to recidivate, did the trial court correctly admit this evidence?

III. RESTATEMENT OF THE CASE

In January 2014, the State filed a sexually violent predator petition seeking the involuntary civil commitment of Darren Perkins under chapter 71.09 RCW. CP 1-2. Perkins, a child sex abuse victim himself, began acting on his sexual arousal to rape during his adolescence and continued to do so as an adult. CP 46-48; RP (9/24/18) 608-715.

His first documented sex offense occurred in 1985, when he was approximately 18 years old. CP 19; RP (9/24/18) 657-60. He tied up and blindfolded a three-year-old and a four-year-old girl and forced them to orally copulate him. CP 47; RP (9/24/18) 657-60. This resulted in his guilty plea to one count of first degree statutory rape, a “sexually violent offense” under RCW 71.09.020(17). CP 3-7; RP (9/24/18) 659-60. In 1997, when he was 30 years old, he pleaded guilty to rape of a child in the third degree for having sexual intercourse with his 15-year-old girlfriend. RP (9/24/18) 679, 683-84. He committed his most recent offense in 2004 when he was 37 years old. CP 5; (9/24/18) 681. Under the guise of taking her photograph, he lured a sixteen-year-old acquaintance into his workplace where he tied her hands together and her legs to poles, undressed her, put a cloth in her mouth and a cloth bag over her head, and sexually penetrated her while she

cried and screamed. CP 435-37, 447-58. He pleaded guilty to third degree assault with sexual motivation and unlawful imprisonment. CP 5.

While incarcerated, he participated in approximately ten months of sex offender treatment and received favorable reports. RP (9/25/18) 742, 756, 825. When he was released from prison in 2001, he was not cited for any behavioral violations while on probationary status in the community. RP (9/24/18) 679; RP (9/26/18) 930-32. Despite this apparent progress, he raped his 16-year-old acquaintance a few months later. RP (9/25/18) 824-25.

At Perkins's civil commitment trial, the issue tried to the jury was whether Perkins met the statutory definition of a sexually violent predator, meaning a person who "[1] has been convicted of or charged with a crime of sexual violence and [(2)] who suffers from a mental abnormality or personality disorder which [(3)] makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18); CP 796-97. The State called Harry Goldberg, Ph.D., a psychologist with considerable experience in evaluating, diagnosing, and treating sex offenders. RP (9/25/18) 759-66. It was undisputed at trial that Dr. Goldberg was a qualified expert. Dr. Goldberg evaluated Perkins to determine whether Perkins met the second and third elements of the sexually violent predator statutory criteria. RP (9/25/18) 766-69. In

conducting this evaluation, Dr. Goldberg reviewed police reports, witness statements, court documents, Department of Corrections (DOC) records, treatment records, and previous psychological evaluations, as well as conducted a three-hour in-person interview with Perkins in the spring of 2018. RP (9/25/18) 768-72.

Before trial, Perkins moved in limine to exclude any testimony by Dr. Goldberg about relative risk figures, citing ER 402 and ER 403. CP 250. The trial court noted that Perkins was asking it to hold that “a methodology that is used by the experts, [and] is generally accepted by the experts” should be excluded regardless. RP (9/17/18) 101. In denying Perkins’s motion, the court determined that Perkins’s relevancy arguments related to weight, not admissibility. RP (9/17/18) 97, 102. During trial, at the conclusion of the parties’ voir dire of Dr. Goldberg outside of the presence of the jury, the trial court again found Dr. Goldberg’s relative risk testimony admissible on that basis. RP (9/25/18) 892-97.

Dr. Goldberg testified that he had diagnosed Perkins with Sexual Sadism Disorder, Alcohol Use Disorder, and Antisocial Personality Disorder. RP (9/25/18) 788-89. He opined that Sexual Sadism Disorder constitutes a “mental abnormality” under RCW 71.09.020(8), and the other two disorders are “aggravating factors.” RP (9/25/18) 788-89. He stated that Perkins’s Sexual Sadism Disorder causes him to experience recurrent

sexual arousal toward the physical or psychological suffering of others that is manifested by fantasies, urges, or behaviors. RP (9/25/18) 790.

Dr. Goldberg also testified that Perkins's Sexual Sadism Disorder makes him likely to engage in predatory acts of sexual violence if not confined in a secure facility. RP (9/26/18) 935-36. He based this opinion on his extensive risk assessment of Perkins. RP (9/26/18) 935-36. His risk assessment involved the results of four actuarial instruments, the Static-99R, the Static-2002R, the Sex Offender Risk Appraisal Guide (SORAG), and the Violence Risk Assessment Guide Revised (VRAG), which use static factors to provide absolute and relative risk estimates based on group data. RP (9/25/18) 829, 832-34, 843, 847. He also used the Structured Risk Assessment, Forensic Version (SRA-FV), a dynamic risk assessment tool that assigns a category of risk based on "psychological vulnerabilities," and the Psychopathy Checklist-Revised (PCL-R), measuring antisocial personality characteristics relative to other sex offenders. RP (9/25/18) 831-42; RP (9/26/18) 916-21. In addition to using those risk assessment tools, Dr. Goldberg evaluated applicable factors that could potentially decrease Perkins's risk of re-offense and other relevant factors specific to Perkins, including what Dr. Goldberg learned in his interview with Perkins. RP (9/26/18) 916, 926, 930.

As part of his case, Perkins called Paul Spizman, Ph.D., who worked for the Department of Social and Health Services performing annual review evaluations of committed sexually violent predators for 11 years before entering private practice. RP (10/1/18) 1309. Dr. Spizman disagreed with Dr. Goldberg's diagnosis of Sexual Sadism Disorder. RP (10/1/18) 1348-49. He also testified that he believed relative risk statistics were irrelevant to Perkins's case and were "noise." RP (10/2/18) 1551. He opined that Perkins did not meet criteria as a sexually violent predator. RP (10/1/18) 1378.

The jury found that Perkins was a sexually violent predator. CP 796-97. The Court of Appeals affirmed. Petition for Review Appendix A.

IV. REASONS WHY THIS COURT SHOULD DENY REVIEW

Perkins seeks review under RAP 13.4(b)(4). This rule allows review if the petition "involves an issue of substantial public interest that should be determined by the Supreme Court." This case does not meet that standard because it involves a routine evidentiary issue that the Court of Appeals has resolved in the State's favor in unpublished cases.

Contrary to Perkins's assertion, the State's motion to publish the Court of Appeals' decision in this case, attached as Appendix A, does not show that the issue merits this Court's review. As the State explained in its

motion, it requested publication, despite the case involving application of established law, because there exist only unpublished appellate cases on the issue. *See e.g., In re Detention of Taylor*, 159 Wn. App. 1007 (2010) (holding, in part, that the trial court did not abuse its discretion by admitting evidence of Taylor's relative risk in his initial commitment trial). The State believed it would be helpful to have clarification in the form of a published Court of Appeals opinion because, despite the Court's unpublished opinions, the argument continues to be made in the trial courts. The State's motion does not signify the State's agreement that this routine evidentiary issue warrants yet another review, this time by our Supreme Court.

A. The Trial Court Properly Admitted Evidence of Perkins's Risk Relative to Other Sex Offenders as Part of Dr. Goldberg's Comprehensive Risk Assessment

This petition fails to present an issue of substantial public interest because Perkins raises a routine evidentiary issue. Perkins challenges the relevance of Dr. Goldberg's relative risk testimony despite Dr. Goldberg's testimony that this evidence contributed to his extensive risk assessment on which he based his opinion that Perkins was likely to recidivate. In addition, Perkins does not challenge Dr. Goldberg's testimony that experts in the field commonly rely on relative risk estimates in forming their opinions on the issue. For these reasons, Perkins's relevancy challenge fails, and further guidance from this court is unnecessary.

Whether a person is likely to engage in predatory acts of sexual violence if not confined in a secure facility is a “more likely than not” standard. *In re Det. of Brooks*, 145 Wn.2d 275, 293, 36 P.3d 1034 (2001), *overruled on other grounds by In re Det. of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003). “[T]he fact to be determined is not whether the defendant will reoffend, but whether the probability of the defendant’s reoffending exceeds 50 percent.” *Id.* at 298. Evidence is relevant to this determination if it has “any tendency” to prove or disprove a fact of consequence. ER 401.

At an initial commitment trial, the State typically presents a qualified forensic expert to provide an opinion on whether the person is more likely than not to recidivate based on an assessment of the person’s risk. The components of this risk assessment are not delineated in statute or otherwise strictly defined. This Court has explained,

In greatly simplified terms, there are two broad approaches to conducting risk assessment: clinical judgment or actuarial assessment. . . . The clinical approach requires evaluators to consider a wide range of risk factors and then form an overall opinion concerning future dangerousness. The actuarial approach evaluates a limited set of predictors and then combines these variables using a predetermined, numerical weighting system to determine future risk of reoffense which may be adjusted (or not) by expert evaluators considering potentially important factors not included in the actuarial measure.

Thorell, 148 Wn.2d at 753.

Here, Dr. Goldberg used both actuarial instruments and clinical judgment in conducting his risk assessment of Perkins. He testified that to determine whether a person is likely to reoffend,

[Y]ou look at all of the numbers. You look at the relative risk numbers. You look at the absolute risk numbers. You look at the dynamic factors, protective factors, and then you also look at the idiosyncratic aspects of each case, and then you come up with an estimate as to whether that person would be more likely than not.

RP (9/25/18) 855.

Dr. Goldberg testified about these factors in detail. He stated that the four static instruments he utilized provided estimates of absolute and relative risk. RP (9/26/18) 909-25. The static instruments measure absolute risk by providing a raw score that corresponds to five and ten or 12-year recidivism rates for similarly-scored sex offenders studied in meta-analysis. RP (9/26/18) 909-11, 915, 922. The raw score also enables him to determine a person's risk relative to other sex offenders. RP (9/26/18) 912. He offered the following absolute and relative risk estimates at trial:

Instrument	Raw Score	5 year (%)	12 year (%)	Relative Risk (%)
Static-99R	8	35.1		99.1
Static-2002R	9	43.7		98
SORAG	28	56	84	88
VRAG	24	58	78	87

RP (9/26/18) 909-25.

He testified that relative risk is a measure reasonably relied upon by experts in the field in forming opinions or inferences on whether a person is likely to recidivate. RP (9/25/18) 892. He made clear, however, that relative risk is distinct from absolute risk, emphasizing that Perkins's relative risk measure of 99.1 percent on the Static-99R "doesn't mean that he has a 99 percent [likelihood] of reoffending. That does not mean that." RP (9/26/18) 13. Instead, the relative risk data informed Dr. Goldberg's holistic risk assessment of Perkins by serving as a comparison point to allow Dr. Goldberg to determine where Perkins fell on the risk spectrum in relation to other sex offenders. RP (9/25/18) 883-84.

Next, Dr. Goldberg discussed his use of the SRA-FV and explained that it is comprised of three domains: sexual interest, relationship style, and self-management. RP (9/25/18) 834-25. Each domain is composed of subparts; for example, the sexual interest domain includes interest in children, interest in violence, and sexual preoccupation. RP (9/25/18) 834-25. He used a manual to score the various items or "psychological vulnerabilities" in the three domains and determined that Perkins was in the high risk/ high need category (9/25/18) 835-36; RP (9/26/18) 919-21. Dr. Goldberg also testified that based on Perkins's scores and corresponding percentile rankings on the PCL-R, "I don't conclude that he is a psychopath.

He didn't score in the very high range, but I know that he has significant antisocial personality traits." RP (9/26/18) 929.

In addition, Dr. Goldberg evaluated the following potentially mitigatory protective factors: whether Perkins was offense-free in the community, his age, and whether he completed treatment. RP (9/26/18) 927-28. Dr. Goldberg testified that only the treatment-related factor was a semi-protective factor for Perkins because though Perkins did well in DOC's sex offender treatment program, he reoffended when released to the community. RP (9/26/18) 928-30. Last, Dr. Goldberg noted that some of Perkins's documented behavior in the community was of "serious concern" and reflected a level of irresponsibility. RP (9/26/18) 928-30. For example, there were incidents where Perkins allegedly vandalized a vehicle, damaged an apartment he had lived in to the extent that the landlord wanted to file a civil suit, and two women accused him of inappropriate behavior related to stalking and threatening. RP (9/26/18) 931-32. Dr. Goldberg stated that he took note of behaviors that appeared antisocial, irresponsible, or aggressive. RP (9/26/18) 932.

He testified that assessing risk is a "complicated process" and no mathematical formula exists in which he can input all of these factors to receive an ultimate risk estimate. RP (9/26/18) 933-34. In opining on Perkins's risk of re-offense, he noted that all the instruments place Perkins

in the “high-risk category.” RP (9/26/18) 934. He concluded that based on his comprehensive risk assessment, including the use of both actuarial instruments and clinical judgment, Perkins’s Sexual Sadism Disorder makes him likely to engage in predatory acts of sexual violence if not confined in a secure facility. RP (9/26/18) 933-36.

Perkins repeatedly claims that Dr. Goldberg “misunderstood the law,” because in explaining why relative risk was relevant to his determination that Perkins was likely to recidivate, Dr. Goldberg stated, “my understanding of the law was that the intent was to segregate those offenders who are the most risky. That’s what the percentile rank does.” Pet. Rev. 5-6, 11-13; RP (9/25/18) 883-84. Perkins takes this statement out of context.

Immediately before making that statement, Dr. Goldberg reiterated that the forensic question related to risk that he was tasked with answering concerned absolute risk and was whether Perkins is more than 50 percent likely to recidivate. RP (9/25/18) 882-83. Dr. Goldberg then proceeded to explain that a measure of relative risk is additional information that allows him to differentiate offenders with the same or similar raw score. RP (9/25/18) 883. He stated, for example, that he is not going to determine that every person with a raw score of three is likely to reoffend, and a measure of relative risk helps him differentiate among offenders to

determine which offenders are more risky. RP (9/25/18) 883. Moreover, relative risk “is the most stable statistic since the Static-99 has been developed,” and “because it is more stable, it does inform [him], to help [him] make [his] decision.” RP (9/25/18) 884. Dr. Goldberg’s testimony makes clear that he understood that the ultimate question he was asked to opine on concerned absolute risk.

Perkins also relies on a height analogy that his trial counsel used in support of the argument that relative risk does not bear on risk assessment. His trial counsel proffered that if the question for the jury were whether someone was a certain minimum height, then a person’s height relative to others in a group would be meaningless. RP (9/17/18) 85, 88-89. He stated, for example, if the question were whether someone was six-foot, seven-inches tall, then evidence that the person was the tallest among a group of five would not be relevant. RP (9/17/18) 85, 88-89. This analogy misunderstands the nature of risk assessment. Dr. Goldberg reiterated that relative risk is not synonymous with absolute risk. Relative risk is merely a consideration that is relevant to the ultimate determination of absolute risk. If the issue were whether a person is more than 50 percent likely to be six-foot, seven-inches tall, the fact that the person is in the top 20 percent of height relative to a group of people in a room would be relevant evidence, particularly in conjunction with other information that indicated the person

was tall. Evidence of relative risk was relevant to Dr. Goldberg's evaluation and helped the jury understand how Dr. Goldberg came to the conclusion that Perkins was likely to reoffend.

Last, Perkins cites *In re Detention of Post*, 170 Wn.2d 302, 241 P.3d 1234 (2010), to support his claim that relative risk evidence is irrelevant. This reliance is misplaced. In *Post*, the State introduced evidence of the treatment that would be available to Post at the SCC if he were committed and compared the recidivism rates of those who did and did not complete treatment in a secure facility. *Post*, 170 Wn.2d at 306-07. On appeal, the court held that treatment in which Post had not yet participated was inadmissible. *Id.* at 310. This Court agreed, noting that whether commitment would be more likely to prevent Post from committing another predatory act of sexual violence was not related to either question tried to the jury. *Id.* at 313-14. By contrast, here, the challenged evidence directly relates to one of the two questions tried to the jury. Dr. Goldberg testified that the relative risk figures contributed to his current risk assessment, which served as the basis of his opinion that Perkins was likely to reoffend at that time.

In short, the trial court properly resolved the routine evidentiary issue of whether testimony about relative risk is relevant, admissible evidence; Dr. Goldberg testified that Perkins's risk relative to other sex

offenders was part of his comprehensive risk assessment that helped inform his opinion that Perkins was likely to engage in predatory acts of sexual violence if not confined in a secure facility. And Dr. Goldberg stated that it is the type of evidence experts in the field rely on in forming their opinions in these cases. RP (9/25/18) 892. Consequently, the trial court correctly determined that this evidence was relevant and admissible.

B. The Admission of Evidence of Relative Risk Was Not Unduly Prejudicial

This petition also fails to present an issue of substantial public interest because Dr. Goldberg’s testimony about relative risk was not more prejudicial than probative, and accordingly, this Court need not review whether the trial court properly declined to exclude this evidence under ER 403.

In upholding the use of actuarial assessments to determine future dangerousness, this Court has recognized that “[t]estimony regarding the future dangerousness of SVPs, by its nature, is prejudicial. [However, t]he probative value of this testimony is high and directly relevant to whether an individual should be committed as a sexually violent predator.” *Thorell*, 149 Wn.2d at 758. Perkins asserts two grounds to support his claim that evidence of relative risk is distinct from other types of evidence concerning future dangerousness that this Court has held satisfies ER 403. He claims that evidence of relative risk (1) would cause “any juror [to] do

nothing other than vote to commit” as the result of jurors’ preconceived notions about sex offenders’ dangerousness; and it (2) is similar to profile testimony the Court of Appeals deemed inadmissible in *State v. Maule*, 35 Wn. App. 287, 667 P.2d 96 (1983). Pet. Rev. at 18-19. These arguments fail because the jury’s role is to judge the credibility and weight of the evidence, the trial court instructed the jury to decide the facts based on the evidence, and *Maule* is distinguishable.

“Judgment as to the credibility of witnesses and the weight of evidence is the exclusive function of the jury.” *State v. Smith*, 31 Wn. App. 226, 228, 640 P.2d 25 (1982). A distinction exists between evidence that is unduly prejudicial and evidence the jury must weigh against other evidence. As the trial court stated, evidence of relative risk on which Dr. Goldberg relied in assessing Perkins’s risk “is really more of a weight-versus-admissibility kind of thing.” RP (9/17/18) 97. The jury heard ample evidence about the various components of Dr. Goldberg’s risk assessment, a small portion of that being evidence of Perkins’s relative risk. And Dr. Goldberg made clear that the relative risk percentiles were not a measure of absolute risk. The jury also heard Dr. Spizman’s testimony that he believed evidence of relative risk was irrelevant in evaluating Perkins’s absolute risk and considered it “noise.” RP (10/2/18) 1550-51. As part of the deliberative process, the jury had the opportunity to weigh

Dr. Goldberg's relevant testimony about relative risk with Dr. Spizman's testimony that he believed evidence of relative risk was unrelated to the forensic questions at issue. In addition, the trial court instructed the jury to decide the facts based on the evidence presented at trial, not based on any personal beliefs, and instructed that the jury was not required to accept testifying experts' opinions. CP 773, 777. Courts presume that juries follow all instructions given. *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d 184 (2001).

Next, Perkins's reliance on *Maule* is misplaced. There, the jury found Maule guilty of statutory rape of his daughter and stepdaughter. *Maule*, 35 Wn. App. at 288, 291. On appeal, Maule challenged the admission of the State's expert's testimony that a majority of child abuse cases involved a male parent figure, with biological parents in the majority. *Id.* at 289-90, 292. The Court of Appeals held that admission of this testimony was reversible under ER 403 and its relevancy was "not discernible." *Id.* at 293. It explained that the evidence invited the jury to conclude that it was more likely Maule committed the crime because an expert with experience in child abuse cases identified Maule as belonging to a certain group that has committed a higher incidence of child sexual abuse. *Id.* Unlike in *Maule*, where the contested testimony was not discernably relevant to whether he committed the crimes charged and the

prejudice was significant, here, evidence of relative risk informed Dr. Goldberg's risk assessment of Perkins's future conduct. And whether Perkins was likely to reoffend was one of the forensic questions Dr. Goldberg was tasked with answering and one of the issues tried to the jury. While Dr. Goldberg's testimony about Perkins's relative risk was prejudicial, consistent with *Thorell*, it was not so highly prejudicial as to require exclusion.

V. CONCLUSION

For the foregoing reasons, the State asks that this Court deny review under RAP 13.4(b)(4).

RESPECTFULLY SUBMITTED this 14th day of October, 2020.

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Appendix A

NO. 81367-6

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the Detention of:

DARREN THOMAS PERKINS,

Appellant.

STATE'S MOTION
TO PUBLISH

I. IDENTITY OF MOVING PARTY

Respondent, State of Washington, by and through counsel of record, Joshua Choate, requests the relief stated in Part II.

II. STATEMENT OF RELIEF SOUGHT

The State of Washington, through the Office of the Washington State Attorney General, hereby moves this Court for an order publishing this Court's June 15, 2020 decision in this sexually violent predator (SVP) matter. Publication of the opinion is appropriate because it clarifies an established principle of law and is of general public interest and importance. Publication of the decision will guide both lower courts and other divisions of this Court in resolving this issue in SVP cases.

III. GROUNDS FOR RELIEF AND ARGUMENT

A party may move to publish an opinion if the decision (1) determines an unsettled or new question of law or constitutional

principle; (2) modifies, clarifies, or reverses an established principle of law; (3) is of general public interest or importance; or (4) is in conflict with a prior opinion of the Court of Appeals. RAP 12.3(e). Publication of this Court's June 15, 2020 decision is warranted because the opinion clarifies an established principle of law and is of general public interest and importance.

Specifically, this case clarifies an important principle of law regarding the relevance and admission of risk assessment testimony in SVP trials. Although existing case law addresses various types of evidence considered by courts to assess the person's risk and likelihood of reoffending, this Court's opinion in *Perkins* makes it clear that relative risk testimony is relevant and admissible to assist in this determination.

The issue of whether testimony concerning how the Respondent in an SVP case compares to other studied sex offenders is often litigated at trial and on appeal. *See e.g. In re Detention of Taylor*, 159 Wn. App. 1007 (2010) ("Taylor argues the trial court erred in denying his motion in limine to exclude expert testimony regarding actuarial rankings of Taylor's relative risk of reoffense as compared to other sex offenders."). Nonetheless, there is currently no published opinion that directly addresses commonly made objections to relative risk and actuarial percentile testimony. Here, this Court put it plainly: "[Perkins'] risk of reoffending compared to other sex

offenders is clearly relevant to assessing whether he is more likely than not to engage in predatory acts of sexual violence if released.” Opinion at 9. Publication of this decision will finally clarify that such testimony is admissible during SVP proceedings.

In addition, this Court explicitly rejected Perkins’ attempts to overstate the holding of *In re Detention of Post*, 170 Wn.2d 302, 241 P.3d 1234 (2010). *Id.* at 8-9. *Post* is often discussed and applied during SVP proceedings when addressing questions of evidence admissibility. *See e.g. In re Detention of West*, 171 Wn. 2d 383, 397-399, 256 P.3d 302 (2011); *In re Detention of Taylor-Rose*, 199 Wash. App. 866, 885, 401 P.3d 357 (2017). Here, this Court rejected Harell’s reliance on *Post* as supportive of his claim that relative risk information is inadmissible. This Court explained that the relative risk information was used as a “starting point” for further analysis and relevant to Perkins’ risk.

To the State’s knowledge, there is no published opinion addressing this specific issues raised by Perkins. Publication of this case would provide useful guidance to lower courts and other divisions of this Court regarding risk assessment testimony in SVP trials. Consequently, publication is appropriate.

IV. CONCLUSION

For the reasons outlined above, this Court should publish its June 15, 2020 opinion in this matter.

RESPECTFULLY SUBMITTED this 1st day of July, 2020.

ROBERT W. FERGUSON
Attorney General



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DECLARATION OF SERVICE

On the 1st day of July, 2020, pursuant to the Electronic Service Agreement between the parties, I sent via electronic transmission a true and correct copy of State's Motion to Publish, addressed as follows:

Lila Silverstein
Washington Appellate Project
lila@washapp.org
wapofficemail@washapp.org

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of July, 2020, at Seattle, Washington.



MALIA ANFINSON

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

July 01, 2020 - 7:49 AM

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NO. 98876-5

WASHINGTON STATE SUPREME COURT

In re the Detention of:

DARREN THOMAS PERKINS,

Petitioner.

DECLARATION OF
SERVICE

I, Sarah Shaw, declare as follows:

On October 14, 2020, I sent via electronic mail, per service agreement, a true and correct copy of Answer to Petition for Review and Declaration of Service, addressed as follows:

Lila Silverstein
WAPOFFICEMAIL@WASHAPP.ORG

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of October, 2020, at Seattle, Washington.



SARAH SHAW

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

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Appellate Court Case Title: In the Matter of the Detention of Darren Thomas Perkins
Superior Court Case Number: 14-2-05127-7

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