No. 103248-0

SUPREME COURT
OF THE STATE OF WASHINGTON

SHEILA LAROSE,

Petitioner,

v.

KING COUNTY, WASHINGTON,

Respondent,

and

PUBLIC DEFENDER ASSOCIATION
D/B/A THE DEFENDER ASSOCIATION (TDA),

Defendant.

REPLY ON PETITION FOR REVIEW

Mary Ruth Mann
WSBA #9343
James Kytle
WSBA #35048
Mann & Kytle, PLLC
1425 Western Avenue, #104
Seattle, WA 98101
(206) 587-2700

Philip A. Talmadge
WSBA #6973
Gary W. Manca
WSBA #42798
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Susan Mindenbergs
WSBA #20545
Law Office of
Susan Mindenbergs
705 Second Avenue, Suite 1050
Seattle, WA 98104
(206) 447-1560

Attorneys for Petitioner LaRose

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A. INTRODUCTION

King County ("County") offers a hodgepodge of issues on which it seeks review by this Court, necessitating a reply by petitioner Sheila LaRose. RAP 13.4(d). The County has not articulated how the issues it asserts, answer at 26-31, in any way meet the criteria of RAP 13.4(b). This Court should not have to divine why review is merited on these multiple issues.

The issues raised by the County lack merit in any event. The County avoids or misrepresents Sheila's evidence at trial, and the inferences from that evidence. The record from the 22-day trial fully supports the jury's verdict on the County's hostile work environment ("HWE").

This Court should grant review on the critical public policy issues set forth in Sheila's petition or review, and deny the issues the County has raised indiscriminately.

B. RESPONSE TO STATEMENT OF THE CASE

In order to justify its cross-petition argument on error as to the trial court's instructions on an HWE, and the imputation to

the County of Client A's harassment of Sheila, answer at 28, the County mischaracterizes the facts heard by the jury, hoping to persuade the Court that Shiela's months-long stalking/harassment was not as egregious as it was, and that the Conty "valiantly" fought on Sheila's behalf to prevent that stalking/harassment. Answer at 5-12. *The jury* did not buy that false narrative, nor should this Court.

In *LaRose v. King County*, 8 Wn. App. 2d 90, 437 P.3d 701 (2019) ("*LaRose I*"), Division II established that a non-employee's stalking/harassment of an employee can create an HWE under RCW 49.60. The County did not seek review of that decision, nor has it contested that point of law in this case. In arriving at its conclusion, the *LaRose I* court was obviously aware of the fact that Client A's stalking/harassment of Sheila sometimes *occurred outside of the confines of the formal workplace*.

The *LaRose I* court recounted that Client A's sexually-motivated misconduct toward Sheila in connection with her work

– she received thousands of phone calls and letters from him there for months, in the parking garage (again at work), and at her home. *Id.* at 99-100. It never confined Sheila's HWE claim to harassment that occurring only in the physical County public defense office, given the fact that a public defender's work takes her to and from local jails, the courthouse, her car's parking garage, her nearby coffee shop, and many other locales outside an office setting.

As for the County's contention that it did all that it could do to protect Sheila from Client A's stalking/harassment, the record does not support Division II's decision to resolve that issue *as a matter of law*. The adequacy of the County's effort to address Client A's stalking/harassment of Sheila was a fact issue. *LaRose I* at 113; *Matewos v. Nat'l Beverage Corp.*, 24 Wn. App. 2d 1008, 2022 WL 13763262 (2022) at *5 (unpublished). The jury ruled against the County on this point for a myriad of reasons. Pet. at 22-28. Perhaps at its most basic, the County failed from July 2013 until February 2014 to immediately report

Client A's stalking/harassment to law enforcement or to block all contacts from him. *Nothing* prevented Sheila's supervisors from doing so, as the County's own expert testified, RP1_1698-1701, creating a question of fact for the jury. The jury had evidence entitling it to rule against the County.

C. ARGUMENT WHY REVIEW ON THE COUNTY'S ISSUES SHOULD BE DENIED

With regard to the multiple claims of error it now suggests this Court should address, answer at 26-31, the County had an obligation to document precisely how Division II's opinion met the criteria that this Court employs in RAP 13.4(b) to analyze whether review is appropriate. The County fails to mention RAP 13.4(b) *anywhere* in its answer/cross-petition on those issues. Division II did not address error by the trial court on any of the County's issues, perhaps with the exception of points 2a and 2b,[1]

[1] Division II only addressed whether HWE could extend beyond the confines of the employer's physical place of work and whether Client A's harassment was imputable to the County. Op. at 2.

that are essentially before this Court on Sheila's petition for review.

But the County's issues are *spurious*. Rather than articulating a focused, coherent appeal, the County threw a veritable plate of spaghetti of issues against the wall in the hope that something might stick. This Court should not condone such an approach to review.

(1) The County's Instructional Issues Do Not Merit Review

With regard to items 2c and 2d, answer at 28, the County never explicitly raised those issues among the assignments of error in its revised brief of appellant. Br. of Appellant ("BA") 3-5. It cannot raise them now at this late date. RAP 2.5(a).

As for the remainder of the instructional error and verdict form claims by the County, they are baseless for the reasons presented in Sheila's Division II brief. Br. of Resp't ("BR") 62-76.

Specifically, the trial court's Instruction 9 that the County

alleges did not reference "in the workplace" or contain an explicit connection to the County's physical workplace, actually referenced that nexus when it specifically required the jury to find that the HWE occurred "in the locations where she worked." CP 10275. The jury determined that Sheila satisfied that nexus by its verdict.

Even so, the County's effort to restrict HWE claims temporally and physically is contrary to Washington law, as Sheila has contended in her petition.[2] Moreover, it is contrary to Ninth Circuit Title VII precedent. *Christian v. Umpqua Bank*, 984 F.3d 801 (9th Cir. 2020); *Fuller v. Idaho Dep't of Corrections*, 865 F.3d 1154 (9th Cir. 2017). In fact, the Ninth Circuit recently made that clear in *Okonowsky v. Garland*, 109

[2] The County's argument is not only contrary to law, it is contrary to reality. There is a reason that federal judges, for example, are afforded protection at their homes. Congress in 2022 passed the Daniel Anderl Judicial Security and Privacy Act after the son of a federal judge was killed by a gunmen at the judge's home. There is a nexus between judicial service and the risk of physical harm or harassment. It is no less true for a King County public defender.

F.4th 1166 (9th Cir. 2024), reaffirming that Title VII HWE claims are evaluated under the totality of the circumstances of the plaintiff's harassment, and rejecting any notion that HWE claims are confined to the employer's physical workplace in light of the ubiquitous nature of social media.

Simply put, Division II erred in deciding the HWE question as a matter of law; review is needed on that issue. RAP 13.4(b). The trial court correctly instructed the jury on an HWE claim in Instruction 9 where Client A's stalking/harassment at Sheila's parking garage, her customary lunch locale, and her home, and in her work mail, her office phone, and calls to reception altered the conditions of her employment. The jury found under Instruction 9 that Client A's stalking/harassment had the requisite nexus to her employment.

The County's second claimed instructional error on whether Client A's harassment is attributable to it is flatly *frivolous*. RAP 18.9(a). Washington law after this Court's decision in *Robel v. Roundup Corp.*, 148 Wn.2d 35, 48 n.5, 59

P.3d 611 (2002) does not require that "upper level management," as opposed to an employee's supervisor, be apprised of the HWE. *Accord*, *Alonso v. Qwest Commc'n Co.*, 178 Wn. App. 734, 752-53, 315 P.3d 610 (2013); *Calcote v. City of Seattle*, 7 Wn. App. 2d 1019, 2019 WL 296026 (2019) at *14 (unpublished), *review denied*, 193 Wn.2d 1025 (2019); WPI 330.24.[3] Instruction 9 required the jury to find that County "management knew through complaints or other circumstances, of this conduct or language and failed to take reasonably prompt and adequate correction action reasonably designed to end it." CP 10275. The jury did so.

The County's continued insistence that "upper level management" must be notified, as its proposed instruction required, is not only wrong, but frivolous in light of these

[3] Even if the County were correct on this notice issue, (and it is not), Director Mikkelsen and Deputy Director Morris *admitted* they spoke with Sheila about Client A. RP1_1806-10; CP 12982-83. Plainly, County "upper level" management was on notice about Client A's harassment of Sheila.

contrary authorities. Review is not merited.

(2) The County's Evidentiary Issues Do Not Merit Review

The County argues that an evidentiary issue merits review in item 3. Answer at 29. It does not, particularly where appellate courts review such issues for a trial court's abuse of discretion, as Sheila advised Division II. BR 26-33. The trial court concluded that the Robinson testimony was cumulative. RP2_27-32, 1500-07. The trial court did not err in its discretionary decision, and this Court's review is not merited under any criterion of RAP 13.4(b).

(3) The County's Contention That the Experienced Trial Court Judge Commented on the Evidence or Exhibited Bias Toward Its Counsel Does Not Merit Review

The County's baseless contention that the trial court commented on the evidence or exhibited bias is particularly offensive, answer at 30-31, given the County's conduct in this

case. Both are untrue on this record.[4]

Moreover, despite all of its efforts and the extensive record in this case, the County could not prove its contentions regarding Judge Stanley Rumbaugh, an experienced trial judge who has served as a Justice *pro tempore* of this Court. The County justified its unsuccessful detour to this Court in *King County v. Sorensen*, 200 Wn.2d 252, 516 P.3d 388 (2022), as necessary to document Judge Rumbaugh's alleged bias toward the County and its lawyers, or a comment on the evidence.[5] After all of that needless delay, even with the court reporter notes Division II ultimately ordered to be produced to the County, and the overall record, the County failed to prove bias on Judge Rumbaugh's

[4] Division II erroneously excluded consideration of multiple juror declarations indicating that jurors themselves discerned no bias on the part of Judge Rumbaugh. March 1, 2023 Ruling.

[5] Consistent with the County's strategy to delay justice for Sheila for more than a decade, the *Sorensen* case accomplished months of further delay in the appeal at Division II, just as the County hoped.

part or any comment on the evidence by him, as Sheila recounted in detail. BR 13-36. Recognizing the weakness of this issue, the County presented little oral argument on judicial misconduct, to Division II.

The County's bias assertion is particularly meritless. The County *waived* the bias issue. The County *knew* of Judge Rumbaugh's alleged "bias," and yet, it filed no mistrial motion and it allowed this "biased" judge to instruct the jury; it allowed the judge to adjust the jury's award for its tax consequences to Sheila, and to award fees, decisions involving *millions of dollars* without *any* assertion that such a "biased" judge should not make such consequential decisions. The County's argument fails the straight face test, let alone RAP 13.4(b). The argument is frivolous. RAP 18.9(a).

In sum, the County fails to address how the various issues it asserts this Court should address meet the criteria of RAP 13.4(b). This Court should deny review on them.

D. CONCLUSION

Division II's opinion requires this Court's review because it misstates the law by taking a highly restrictive view of HWEs, contrary to RCW 49.60.020 and this Court's precedents. The opinion also usurps the jury's role by substituting its judgment for the jury's on the County's HWE and imputation of Client A's conduct to Sheila.

The cross-petition issues the County now presents are meritless, and this Court should deny their review.

This Court should grant review and reinstate the judgment on the verdict and the trial court's fee award. Costs on appeal, including reasonable attorney fees, should be awarded to Sheila.

This document contains 1,968 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 5th day of September, 2024.

Respectfully submitted,

/s/ Philip A. Talmadge
Philip A. Talmadge, WSBA #6973
Gary W. Manca, WSBA #42798
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Mary Ruth Mann, WSBA #9343
James Kytle, WSBA #35048
Mann & Kytle, PLLC
1425 Western Avenue, #104
Seattle, WA 98101
(206) 587-2700

Susan Mindenbergs, WSBA #20545
Law Office of Susan Mindenbergs
705 Second Avenue, Suite 1050
Seattle, WA 98104
(206) 447-1560

Attorneys for Petitioner
Sheila LaRose

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Reply on Petition for Review*** in Supreme Court Cause No. 103248-0 to the following parties:

Patricia A. Eakes
Damon C. Elder
Morgan, Lewis & Bockius LLP
1301 Second Avenue, Suite 3000
Seattle, WA 98101

Mary Ruth Mann
James Kytle
Mann & Kytle, PLLC
1425 Western Avenue, #104
Seattle, WA 98101

Susan Mindenbergs
Law Office of Susan Mindenbergs
705 Second Avenue, Suite 1050
Seattle, WA 98104

David J. Hackett
Ann M. Summers
Senior Deputy Prosecuting Attorney
701 Fifth Avenue, Suite 600
Seattle, WA 98104

Original electronically filed by appellate portal to:
Supreme Court
Clerk's Office

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

DATED: September 5, 2024 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts. Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

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- ericak@calfoeakes.com
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- matt@tal-fitzlaw.com
- mrmann@mannkytle.com
- patty.eakes@morganlewis.com
- susanmm@msn.com
- trang.la@morganlewis.com

Comments:

Reply on Petition for Review

Sender Name: Brad Roberts - Email: brad@tal-fitzlaw.com
Filing on Behalf of: Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
2775 Harbor Avenue SW
Third Floor Ste C
Seattle, WA, 98126

Phone: (206) 574-6661

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