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Supreme Court No. 1037635
COA No. 39861-7-III

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

NATASHA JACKSON,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KLICKITAT COUNTY

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case does not merit this Court's time and attention. In an unpublished opinion Division III applied well-established principles of law in its analysis. The panel's decision broke no new ground, identified no conflict between its opinion and other Court of Appeals decisions, and saw no need to distinguish or fill gaps in this Court's precedents. Division III did nothing more than apply established law. Accordingly, this case does not satisfy RAP 13.4(b)(1)-(3). And while this case is clearly of concern to Petitioner Natasha Jackson, it raises no issue of substantial public interest. Thus, RAP 13.4(b)(4) also counsels against review. The Petition for Review ("Petition") should be denied.

II. STATEMENT OF FACTS

A jury determined Natasha Jackson was guilty of burglary in the first degree and malicious mischief in the second degree after Jackson, along with her co-conspirators,

ransacked a property and stole a vast number of valuable items.

RP 355. The pertinent facts for this appeal are below.

1. The underlying criminal acts leading to Jackson's conviction.

The victim in this case left his home outside of White Salmon, located in Klickitat County, Washington, one evening and upon returning the following morning, found it to be extensively damaged with numerous items missing. See RP 195-205. The victim first became aware something was amiss when he entered the driveway to his property and discovered various personal items, including shotgun shells, ammunition, and knives, lying on the ground. RP 196-205. The property had not been left in such a state when the victim departed his home the night before. RP 196. As the victim approached his garage he could see the garage door was open and broken off at its hinges. RP 196. Fresh footprints were visible in the snow. RP 196. The victim called law enforcement to report the crime. RP 200.

As the victim testified, “the inside of the garage was ransacked,” with items strewn about and broken, including a gun

cabinet which had contained ammunition and knives. RP 197. A broom handle was smashed into one of the windows. RP 197. A four-wheeler had its ignition broken, which the victim believed to be from the insertion of a screwdriver. RP 199-200.

The garage was not the only building broken into and damaged – a glass door into the main home was shattered and the home was ransacked. RP 197-98. All of the alcohol was taken. RP 198. All of the cabinets and refrigerators were left open. RP 198. Clothes from the closets and a wheeled suitcase packed with items for an upcoming trip were missing. RP 195, 198.

At the time of the crime the victim owned numerous guns contained in a safe. RP 197. While the safe was unopened, a working muzzleloader, which had been hanging in the living room for display the evening prior, was missing. RP 204-05. A compound bow was also missing. RP 205.

After responding to the call, Klickitat County Sheriff Deputy Dwayne Matulovich identified footprints alongside tracks consistent with a wheeled suitcase in the ice and snow. RP

224-30. Deputy Matulovich followed the prints and tracks down the victim's driveway to the main highway, across the highway, and down into a tribal in-lieu site located across the highway via another steep driveway. RP 224-30. The tracks were determined to lead to a fifth wheel camper situated within the tribal in-lieu site. RP 226. Given the location of the camper was in a tribal in-lieu site in neighboring Skamania County, Deputy Matulovich contacted the Columbia River Inter-Tribal Police Department to assist him further in the investigation. RP 224-25.

Police Detective Anthony Frasier of Columbia River Inter-Tribal Police Department responded to Deputy Matulovich's request for assistance. RP 233. Upon inspection Detective Frasier could see the tracks in the snow going to the camper. RP 237-38. Detective Frasier was granted permission to enter the camper by the owner who was present at the site. RP 237-38.

Detective Frasier entered the camper and discovered Jackson and another individual inside. RP 238. Jackson appeared to be heavily under the influence – Detective Frasier testified she

was unable to communicate with him, follow his statements, or remain fully awake and was, in his opinion, clearly impaired by drugs or alcohol. RP 243-45. Jackson's physical impairment was included in the underlying investigative report. CP 96.

Detective Frasier worked with the camper owner to identify items that did not belong in the camper, including a rolling suitcase, bottles of alcohol, binoculars, a Garmin navigator, and a camouflage jacket. RP 231. Officer Matulovich was given these items which he then confirmed belonged to the victim. RP 232, 245-47. The muzzleloader was not located.

Beyond Jackson being in possession of stolen items and the suitcase tracks clearly leading from the crime scene to the trailer, Jackson was also identified on the victim's home video surveillance footage. RP 207. Jackson was subsequently charged with the crimes of burglary in the first degree and malicious mischief in the second degree.

2. The initial hearings.

For her first appearance Jackson appeared from the jail in jail attire via video camera. RP 9. While the State's original filing

of the Information cited to the wrong prong of the second degree malicious mischief charge, the error was recognized at the hearing and an Amended Information fixing the error was filed. RP 9; CP 90-91. The crime charged remained malicious mischief in the second degree.

During the first appearance the State discussed Jackson's criminal history in the context of CrR 3.2. The State cited Jackson's prior convictions including robbery in the second degree, theft in the first degree, and assault in the fourth degree. RP 13. The State also noted nine total warrants. RP 14. The State did not represent these were active warrants. RP 14.

Jackson appeared with her attorney at arraignment several days later. During that hearing her attorney requested the court reconsider the bail amount. In doing so, Jackson's attorney made no allegation that the State improperly alleged active warrants or miscalculated her warrant history at the first appearance. Rather, Jackson's attorney argued that she had no recent warrants, stating: "the State, I believe, in its motion concerning obtaining

a warrant for Ms. Jackson's arrest, had stated her warrant history, I would just point out that there appears to be no warrants in the past four years." RP 21. Jackson's bail was reduced at arraignment. RP 49-50.

3. The voicemail regarding alleged juror misconduct.

Approximately an hour after the jury verdict was rendered an attorney practicing in Klickitat County with a similar sounding name to Jackson's attorney received a voicemail regarding the case. RP 332-33. The attorney who received the call forwarded it to Jackson's attorney. RP 333. The call was then brought to the trial court's attention by Jackson's attorney. RP 333.

At the hearing to address the voicemail, the voicemail was played for the court and the attorneys. RP 333-342. In the message an anonymous caller states:

there is something that I have to tell you. There were two jurors on the Natasha Jackson case today who did not disclose that they knew the victim of the burglary. I don't know who else to turn to, but I want you to know. RP 334.

To address this anonymous allegation, Jackson's attorney

requested the court provide him with the contact information for the two individual jurors he believed to be the jurors referenced in the voicemail. RP 332-33. After a lengthy discussion with the attorneys, the court determined that to ensure Jackson “had a fair and impartial trial,” Jackson’s attorney should be provided with the requested contact information. RP 342-43. The State requested to be present when Jackson’s attorney contacted the jurors. RP 344. Phone calls were arranged at the direction of the court. RP 344-48. In a later proceeding unrelated to the juror issue, Jackson’s attorney acknowledged voicemails had been left but the calls had not been returned. RP 355. Jackson’s attorney requested nothing further from the court.

III. ARGUMENT

- 1. Because Washington law is clear that the trial court has no independent duty to investigate anonymous and unsubstantiated claims of juror misconduct, review is not warranted under RAP 13.4(b).**

Jackson argues the court had a duty to investigate the alleged juror misconduct. Petition at 14. In making this argument, Jackson’s Petition asserts “[a]fter the verdict, it

became apparent that at least two jurors knew the alleged victim personally but hid that relevant fact from the court and the parties.” Petition at 14. This is inaccurate. As the Court of Appeals correctly identified:

Jackson’s argument rests on the flawed assertion that the trial court “knew” at least two jurors knew the alleged victim personally but hid that relevant fact from the court and the parties.” Br. of Appellant at 24. Contrary to Ms. Jackson’s assertion, there is no competent evidence in the record that any of the jurors knew the victim, let alone evidence that the jurors hid this information from the court. The only information regarding bias was an anonymous phone call. Outside of corroborating circumstances, this type of information is not considered reliable.

COA Opinion at 6. In its ruling the Court of Appeals cites to *State v. Lesnick*, 84 Wn.2d 940, 943, 530 P.2d 243 (1975). In *Lesnick* this Court contemplated the reliability of an anonymous call in the context of an investigative detention, with this Court stating “it is difficult to conceive of a tip more ‘completely lacking in indicia of reliability’ than one provided by a completely anonymous and unidentifiable informer, containing no more than a conclusionary assertion.” *Id.* Citing *Lesnick*, the Court of

Appeals determined that “[g]iven the lack of reliable evidence, it was not an abuse of discretion for the trial court to refrain from conducting an independent and unrequested investigation into possible juror bias.” COA Opinion at 6-7. Jackson’s argument that the Court of Appeals erred in this decision is not supported by authority.

A trial court “has significant discretion to determine what investigation is necessary on a claim of juror misconduct.” *State v. Berhe*, 193 Wn.2d 647, 661, 444 P.3d 1172 (2019); *see also State v. Elmore*, 155 Wn.2d 758, 773-74, 123 P.3d 72 (2005); *Turner v. Stime*, 153 Wn. App. 581, 587, 222 P.3d 1243 (2009). In cases where there is no allegation of racial bias, the trial court’s discretion includes determining whether the scope and manner of investigation requested by the parties is appropriate in a particular case. *Elmore*, 155 Wn.2d at 773-75. There is no “mandatory format.” *State v. Jorden*, 103 Wn. App. 221, 229, 11 P.3d 866 (2000). The trial court is “uniquely situated” to make credibility determinations that arise in investigating juror issues.

Elmore, 155 Wn.2d at 778.

The trial court properly utilized its discretion consistent with this caselaw when, after lengthy discussions as to the allegation and how to proceed, it delegated the inquiry to Jackson's attorney, as Jackson's attorney specifically requested. RP 332-48. With the allegation "completely lacking in indicia of reliability" and "provided by a completely anonymous and unidentifiable informer, containing no more than a conclusionary assertion," such a decision cannot be considered erroneous. *Lesnick*, 84 Wn.2d at 943.

Jackson argues the Court of Appeal's decision conflicts with *State v. Cho* and that under *Cho*, the court had an independent duty to investigate the juror misconduct. 108 Wn. App. 315, 320, 30 P.3d 496 (2001). As the State pointed out in the underlying briefing, Jackson's reliance on *Cho* is misplaced. In *Cho* there was an actual showing of misconduct, in that a juror failed to disclose information in voir dire. 108 Wn. App. at 320. In this case Jackson is unable to demonstrate that any juror failed

to disclose information – there is only an unsubstantiated anonymous allegation. As such, there is no evidence of any juror failing to disclose material information, or that a truthful disclosure would have provided a basis for a challenge for cause.

Jackson's position that the trial court was obligated to do its own investigation has no basis in Washington law. The argument fails to meet the criteria for acceptance of review pursuant to CR 13.4(b).

2. Review should be denied because juror misconduct cannot be raised for the first time on appeal.

Under RAP 2.5, Jackson is prohibited from raising the allegation of juror misconduct for the first time on appeal because he has failed to demonstrate a manifest error affecting a constitutional right.

When the allegation of juror misconduct arose, the trial court did everything that was asked of it by Jackson's attorney. Jackson made no request for further investigation or action by the court. Rather, as discussed above, Jackson's attorney requested the opportunity to contact the alleged jurors

and the request was granted. Therefore, the allegation of juror misconduct may only be raised on appeal if it meets the criteria set forth in RAP 2.5. A trial court is not required to sua sponte hold an evidentiary hearing on juror misconduct. *State v. Cummings*, 31 Wn. App. 427, 429-30, 642 P.2d 415 (1982).

RAP 2.5(a) provides that an issue may not be raised for the first time on appeal unless the issue raised is a manifest error affecting a constitutional right. The purpose behind this rule is to encourage the efficient use of judicial resources by ensuring that the trial court has the opportunity to correct any errors, thereby avoiding unnecessary appeals. *State v. Robinson*, 171 Wn.2d 292, 304–05, 253 P.3d 84 (2011).

The issue of alleged juror misconduct is a constitutional one because a criminal defendant has a constitutional right to a trial by an impartial jury. But the facts in this case fail to meet the “manifest error” threshold. To demonstrate that an error is manifest, Jackson must show the alleged error “actually affected his or her rights.” *State v. McNeal*, 145 Wn.2d 352, 357, 37 P.3d

280 (2002). “If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.” *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). In this case the record does not contain the facts necessary to adjudicate the claimed error – as recognized by the Court of Appeals, Jackson provides no competent evidence of juror misconduct, it is merely speculation based on a single unsubstantiated anonymous claim. Accordingly, Jackson can show no actual prejudice and the error was not manifest. Jackson is barred from raising the juror misconduct claim under RAP 2.5.

3. Because it is settled law that the lack of counsel at the first appearance is not a structural error requiring automatic reversal, review is not warranted under RAP 13.4.

The Court of Appeals determined the first appearance without counsel was a constitutional error. However, the Court of Appeals correctly relied on *State v. Heng*, 2 Wn.3d 384, 388-89, 539 P.3d 13 (2023), in determining that because the first appearance was not a critical stage of the prosecution, the failure

to provide counsel was not a structural error requiring automatic reversal. *Heng* is dispositive and review is not warranted.

A “probable cause determination is not a ‘critical stage’ in the proceedings requiring appointed counsel.” *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54, 19 Fed. R. Serv. 2d 1499, 1975 WL 512047 (1975); *see also United States v. Gouveia*, 467 U.S. 180, 191, 104 S. Ct. 2292, 81 L. Ed. 2d 146 (1984) (explaining “not all pretrial stages are necessarily critical,” and holding that preindictment investigative proceedings are not critical stages); *Garrison v. Rhay*, 75 Wn.2d 98, 102, 449 P.2d 92 (1968) (finding hearing was not a critical stage because “appellant was in no way prejudiced by anything [that] occurred at the hearing ... and he has made no attempt to show that he could have been.”).

As this Court discussed in detail in *Heng*, the question for the court is whether the accused's rights were lost, defenses were waived, privileges were claimed or waived, or the outcome of the case was otherwise substantially affected. 2 Wn. 3d at 394. Like

in the case of *Heng*, Jackson lost no rights, waived no defenses, and neither claimed nor waived privileges. The judge appointed counsel, set bail, and then entered a not guilty plea on Jackson's behalf. And like *Heng*, Jackson did not lose her ability to challenge bail – doing so successfully at the arraignment hearing several days later. 2 Wn. 3d at 394.

While Jackson's petition alleges the trial judge became biased against her as a result of the preliminary appearance without counsel, the Court of Appeals properly found the allegation "meritless," as it "relies entirely on speculation," and thus is "not sufficient to preclude the State from meeting its burden." COA Opinion at 8-9. As the Court of Appeals correctly found, the violation of Jackson's right to counsel at the first appearance was harmless beyond a reasonable doubt consistent with this Court's decision in *Heng*. This issue fails to meet the criteria identified in RAP 13.4(b).

IV. CONCLUSION

The Petition fails to satisfy RAP 13.4(b)(1)-(3) and raises

no issue of substantial public interest. RAP 13.4(b)(4). Review should be denied.

Pursuant to RAP 18.17, word count of 2,853.

Respectfully submitted this 23rd day of January, 2025.

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