NO. 1038356

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

COLE EDWARD KRAUSE,

Respondent.

RESPONDENT'S RESPONSE TO LATE FILED MEMORANDUM OF AMICUS CURIAE

TODD MAYBROWN, WSBA #18557
Allen, Hansen, Maybrown & Offenbecher, P.S.
600 University Street Suite 3020
Seattle, WA 98101
Phone: (206) 447-9681
Fax: (206) 447-0839
Email: todd@ahmlawyers.com
ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

State Statutes

I. INTRODUCTION

RAP 13.4 describes the procedure for seeking discretionary review of a decision terminating review in the Court of Appeals. Under RAP 13.4(b), a petition for review will be granted only in the limited circumstances.

This case involves the Snohomish County Prosecuting Attorney's unique allegations against a single defendant, Cole Krause, and a trial court's failure to grant a severance of unrelated counts under CrR 4.4(b) even when it was clear that Krause would be unfairly prejudiced by a unified trial. The case has no broader public import, and this Court has carefully analyzed the key legal issue in this case – and provided guidance to lower courts – in recent cases. *See, e.g.,* S*tate v. Bluford,* 188 Wn.2d 298 (2017); *State v. Slater*, 197 Wn.2d 660 (2021). Because the Court of Appeals carefully followed *Bluford* and *Slater* when rendering its decision, Petitioner has failed to demonstrate any basis for this Court to accept review.

Likewise, Amicus Curiae Sexual Violence Law Center ("SVLC") has failed to offer any just reason for the Court to accept review of this case. In fact, SVLC's proposed memorandum makes no reference to RAP 13.4(b) or any of the grounds for acceptance of review. Nor does SVLC discuss *Bluford* or *Slater* – or CrR 4.4's mandate that joint trials should not be used to unfairly prejudice a defendant's substantial rights.

While SVLC presents a broad opposition to CrR 4.4(b) in general and the possibility of severance in cases involving claims of sexual assault in particular, those objections are outside the ambit of this Court's review. *See Amicus Memorandum* at 11-15.[1] SVLC's failure to present any legal argument – along with its refusal to discuss the reasoning of the Court of Appeals' majority – is telling. The majority's decision is fact-specific,

[1] At the least, SVLC would seem to be advocating for a rule that CrR 4.4 should have no place in cases involving claims of sexual violence, even though the risk of prejudice is particularly acute in such case. This litigation matter is not the proper vehicle for such a challenge to a court rule.

clearly correct, and it poses no broad legal question likely to recur in future cases.

For all these reasons, there is no basis for further review under RAP 13.4(b).

II. Discussion

A. Standard for Acceptance of Review

A petition for review will be accepted only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

The Court of Appeals' decision does not conflict with a decision of this Court, nor does it raise an issue of substantial public interest meriting this Court's review.

B. The Court of Appeals' Decision Does Not Conflict with this Court's Prior Rulings.

A trial court must grant a motion to sever offenses whenever "severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b). As this Court has often explained, severance is warranted where "the jury may infer guilt on one charge from evidence of another charge," or "the cumulative evidence may lead to a guilty verdict on all charges when, if considered separately, the evidence would not support every charge." *Slater*, 197 Wn.2d at 676-77. Certainly, the trial court must sever joined offenses where the jury might employ a joined charge to "infer a criminal disposition" to commit the other counts. *See Slater*, 197 Wn.2d at 677. *Accord State v. Sutherby*, 165 Wn.2d 870 (2009). "To be sure, if joinder will cause clear, undue prejudice to the defendant's substantial rights, no amount of judicial economy can justify requiring a defendant to endure an unfair trial." *Bluford*, 188 Wn.2d at 311. Here, as the Court of

Appeals explained, due to the prosecution's strategic machinations, Krause was forced to endure an unfair trial.

SVLC fails to discuss CrR 4.4(b) or these case authorities. Instead, SVLC broadly claims that severing trials may be detrimental to victims and suggests that CrR 4.4(b) prioritizes "defendant protections absent analysis and in violation of legislative intent." *Amicus Memorandum* at 14. Other than a citation to RCW 7.69.010 – the preamble to Washington's Crime Victims, Survivors, and Witnesses code – SVLC provides no legal support for this argument.

In pressing this claim, SVLC fails to acknowledge the core due process rights of Cole Krause (or, for that matter, any defendant who is charged with a criminal offense). As this Court has explained:

> Washington ensures that crime victims and survivors of victims have a significant role in the criminal justice system through statutes and our state constitution. *See, e.g.*, ch. 7.69 RCW; CONST. ART. I, § 35 (AMEND. 84). The courts have an obligation to vigorously protect these rights. RCW 7.69.010. However, these rights are not considered

> in a vacuum; they must be considered together with a defendant's due process rights. In the event that the crime victims' rights impede the defendant's due process rights, the court must make every reasonable effort to harmonize these distinct rights and to give meaning to all parts of the Washington State Constitution. *State v. Gentry*, 125 Wn.2d 570, 625 (1995). To the extent that these rights are irreconcilable, federal due process rights supersede rights arising under Washington's statutes or constitution.

State v. MacDonald, 183 Wn.2d 1, 16 (2015).

Arguing in the abstract (without reference to these proceedings), SVLC complains that severance could lead to a delay in court proceedings. *See Amicus Memorandum* at 14. Here, however, the litigation was delayed on account of circumstances outside Krause's control – including COVID-19 restrictions and the prosecution's decision to join these unrelated offenses in a single proceeding. *See, e.g.,* S*tate v. Krause,* No. 84599-3-I, 2024 Wash. App. LEXIS 2573, at *49 (Wash. Ct. App. Dec. 30, 2024) (The granting of a severance would not have "marginally added significant additional delay where it had already taken from 2017 until 2022 to bring the case to trial.").

But for the prosecution's legal maneuverings, the allegations against Krause could have been efficiently addressed and resolved in separate proceedings and in the ordinary course.[2]

In reference to the State's allegations against Krause, SVLP mentions (again without citation) "the potential testimonial roles of the victims in each trial." *Amicus Memorandum* at 12. In reality, and as the Court of Appeals correctly concluded, the evidence from these three witnesses was not cross-admissible and the witnesses will have no significant

[2] SVLC complains against the "procedural demands of litigation" and argues (again without citation) that "severance prevents victims from communicating about the case." *Amicus Memorandum* at 13. This is untrue, as there is no support for the contention that a ruling on severance would somehow limit the ability of witnesses to communicate in any respect. In fact, the underlying court proceedings – whether presented as a unified trial or separate trials – imposed no such limitations upon these witnesses. The witnesses in this case were always free to communicate whether the case was severed or unified; and they remain free to communicate after the case is remanded to the Snohomish County Superior Court.

"testimonial role" in each other's trial. This Court should reject SVLC's attempt to resuscitate these unsupportable claims.[3]

Given the nature of the charged offenses in the underlying case – and the undisputed conclusion that the prosecution's other crimes evidence was not admissible under ER 404(b) – the majority correctly concluded the jury would be unfairly inclined to convict Krause on all charges based upon the accumulation of claims during a unified trial. Neither Petitioner nor SVLC has presented any persuasive response to the majority's conclusion. To the contrary, the majority's decision correctly stated and applied the law.

---

[3] In response to Krause's severance motions, the prosecutor repeatedly claimed a unified trial was appropriate – if not mandated – due to the cross-admissibility of the evidence. For example, in one hearing the prosecutor broadly contended: "There is so much cross-admissible evidence that there's no way to coherently tell the story of each of these victims without them being joined." 2RP(02.10.22)_25. As the majority recognized, the trial judge accepted these claims without critical analysis and denied Krause's motion based on the supposed "interrelations between the allegations and all of the individuals." *See id.* at 33. Petitioner has not sought to advance these same arguments in its petition to this Court.

C. The Court of Appeals' Decision Does Not Threaten the Public Interest.

The criteria generally considered to determine whether an issue is of substantial public interest "are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question." *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558 (1972). As previously discussed, the *Krause* decision involves a fact-intensive analysis of a single prosecution – and the record revealed several irregularities and peculiarities that highlight the unusual and unique nature of the case.

The majority's fact-intensive (and unpublished) decision has yet to be cited by any other court. Indeed, the fact-specific nature of the Court of Appeals' holding would limit its effect even if it were published. While SVLC may be disappointed by the Court of Appeals' ruling, it fails to demonstrate these same facts are present in its other cases.

Rather than address the appropriate legal standard, SVLC broadly claims that severing trials is "to the determinant of everyone, including the public and the justice system." *Amicus Memorandum* at 13. This contention is untethered to the facts of the *Krause* case. Nor does SVLC suggest how the decision in Krause's case would have any impact – no less a significant impact – on future cases.

To the contrary, the *Krause* decision does not address any matter of substantial public interest.

III. CONCLUSION

The Court of Appeals' decision correctly applies this Court's settled precedent and does not involve issues of substantial public interest meriting review. For all these reasons, there is no basis for further review under RAP 13.4(b).

Respondent certifies this document contains 2,000 words, excluding those portions exempt under RAP 18.17.

Respectfully submitted this 6th day of May, 2025.

/s/ Todd Maybrown
TODD MAYBROWN, WSBA #18557
OID #91110/OC #031465
Attorney for Respondent
Allen, Hansen, Maybrown & Offenbecher, P.S.
600 University Street Suite 3020
Seattle, WA 98101
Phone: (206) 447-9681
Fax: (206) 447-0839
Email: todd@ahmlawyers.com

PROOF OF SERVICE

Alexandra Rosenthal swears the following is true under penalty of perjury under the laws of the State of Washington:

On the 6th day of May, 2025, I filed the above Respondent's response to late filed memorandum of amicus curiae via the Appellate Court E-File Portal through which Petitioner's counsel listed below will be served:

Edward E. Stemler
Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, MS 504
Everett, WA 98201
Ed.Stemler@co.snohomish.wa.us

And our law firm also served the document on Respondent.

/s/ Alexandra Rosenthal
Alexandra Rosenthal, Legal Assistant
OID #91110/OC #031465
ALLEN, HANSEN, MAYBROWN & OFFENBECHER, P.S.
600 University Street, Suite 3020
Seattle, WA 98101
206-447-9681
Fax: 206-447-0839
alex@ahmlawyers.com

ALLEN, HANSEN, MAYBROWN, OFFENBECHER

May 06, 2025 - 1:41 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,835-6
Appellate Court Case Title:	State of Washington v. Cole Edward Krause
Superior Court Case Number:	17-1-00811-1

The following documents have been uploaded:

- 1038356_Answer_Reply_20250506133819SC991689_4139.pdf
  This File Contains:
  Answer/Reply - Other
  The Original File Name was RESPONDENTS RESPONSE TO AMICUS BRIEF.pdf

A copy of the uploaded files will be sent to:

- Diane.Kremenich@co.snohomish.wa.us
- Ed.Stemler@co.snohomish.wa.us
- alex@ahmlawyers.com
- diane.kremenich@snoco.org
- riddhi@svlawcenter.org
- sara@svlawcenter.org
- yvonne@svlawcenter.org

Comments:

Response to Amicus Curiae

Sender Name: Alexandra Rosenthal - Email: alex@ahmlawyers.com
Filing on Behalf of: Todd Maybrown - Email: todd@ahmlawyers.com (Alternate Email: sarah@ahmlawyers.com)

Address:
600 University Street
Suite 3020
Seattle, WA, 98101
Phone: (206) 447-9681

Note: The Filing Id is 20250506133819SC991689