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STATE OF WASHINGTON
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No. 103835-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

COLE EDWARD KRAUSE,

Respondent.

STATE'S RESPONSE TO MEMORANDUM OF AMICUS
CURIAE SEXUAL VIOLENT LAW CENTER

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I. IDENTITY OF PETITIONER

The State of Washington, petitioner, submits this response to the Memorandum of Amicus Curiae Sexual Violence Law Center.

II. RESPONSE TO AMICUS

Petitioner State of Washington has reviewed the amicus curiae memorandum filed by the Sexual Violence Law Center. Their memorandum raises important considerations regarding victim interaction with the criminal justice system that this Court should take into consideration in determining whether to grant review.

As detailed in the Petition for Review, the Court of Appeals holding in this case conflicts with prior decisions of this Court by overemphasizing cross-admissibility and failing to give weight to other factors that mitigate potential prejudice to the defendant. The memorandum by amicus explains the significant public policy harm that results from the Court of Appeals decision.

In February 2024, Judge Cooney from Division III discussed the public policy considerations regarding impacts that trial and retrial have on victims, jurors, witnesses, and all other participants in the criminal justice system. Matter of Skone, 30 Wn. App. 2d 1, 84-94, 543 P.3d 842 (2024). “Trial and retrial come with a human toll that courts have ignored for too long.” Id. at 84 (Cooney dissenting). Judge Cooney provided examples of specific harmful consequences to a defense investigator, a prosecution witness, a criminal defendant, a juror, and a superior court judge. Id. at 84-85.

In 1989 Washington adopted a Constitutional Amendment enshrining victim rights. WASH. CONST. art. 1, § 35. The United States Supreme Court also has recognized that victims have rights that courts should protect no less vigorously than the rights of criminal defendants. E.g. Morris v. Slappy, 461 U.S. 1, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983). In Morris the court

recognized that in the administration of criminal justice courts may not ignore the concerns of victims.

Apart from all other factors, such a course would hardly encourage victims to report violations to the proper authorities; this is especially so when the crime is one calling for public testimony about a humiliating and degrading experience such as was involved here.

Id. at 14.

There is real world evidence of that impact in this record. After the rape charge went unresolved for about ten months, A.C.S. declined to further participate in the process. CP 420, 437. Only after charges were filed in the case regarding A.L. did A.C.S. agree to participate in the criminal justice system again. CP 437.

A.L. did not initially report that she was raped because she saw how badly others treated A.C.S. for reporting that the defendant raped her. RP 875. Only because her father found messages on her phone about the rape did A.L. go to police. RP 709, 883. A.C. did not

report initially because she did not want to have years of her life entangled with the court system. RP 1055. Unfortunately, that is exactly what happened. The charge filed in 2018 did not go to trial until 2022. CP 331. If even more months or years are required for a retrial, and she must testify again in her trial and likely the trials of the other victims, when the defendant already received a fair trial, it is unlikely to persuade her that reporting the rape was worth the personal cost to her.

At issue in the present case is not a constitutional right, but rather interpretation of a rule regarding severance promulgated by this Court. CrR 4.4(b). "The law does not favor separate trials." State v. McCabe, 26 Wn. App. 2d 86, 94, 526 P.3d 891 (2023). The community generally and the court benefit when offenses are tried together. State v. Bythrow, 114 Wn.2d 713, 723, 790 P.2d 154 (1990).

The Court of Appeals tipped the scale too far out of balance in favor of retrial in this case by failing to give

adequate consideration to the factors that favor joining charges. The trial court reasonably exercised its discretion by denying severance and should have been affirmed. Instead, all participants will have to endure reliving very painful experiences again and potentially several more times. “Revictimization by the court system is not a rhetorical exaggeration.” Matter of Skone, at 87 (Cooney dissenting).

As described by amicus and by the dissent in Skone, retrials have significant negative impacts on jurors and other participants in the criminal justice system that courts must take into consideration.

This case provides the Court with opportunity to provide much needed guidance about how to weigh these important systemic impacts on all those who participate in the criminal justice system. Properly balancing these considerations in applying the severance court rule should


result in overruling the Court of Appeals and affirming the defendant's convictions.

Review should be accepted pursuant to RAP 13.4(b)(1) & (4).

This brief contains 784 words (exclusive of appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and pictorial images).

Respectfully submitted on May 6, 2025.

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IN THE SUPREME COURT
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STATE OF WASHINGTON,

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DECLARATION OF
FILING AND E-SERVICE

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I, DIANE K. KREMENICH, STATE THAT ON THE 6th DAY OF MAY, 2025, I CAUSED THE ORIGINAL: STATE'S RESPONSE TO MEMORANDUM OF AMICUS CURIAE SEXUAL VIOLENT LAW CENTER TO BE FILED IN THE SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED IN THE FOLLOWING MANNER INDICATED BELOW:

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A handwritten signature in blue ink, appearing to read 'DK Kremenich', is written over a horizontal line.

DIANE K. KREMENICH
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SNOHOMISH COUNTY PROSECUTOR'S OFFICE

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