Supreme Court No. 103908-5
(Court of Appeals No. 82125-3-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

JOHN STEARNS,

Respondent.

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

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT AND DECISION BELOW

Respondent John Stearns requests this Court deny review of the Court of Appeals' unpublished decision in *State v. Stearns*, No. 82125-3-I (February 3, 2025).

B. COUNTERSTATEMENT OF THE ISSUES

ER 404(b) prohibits courts from admitting propensity evidence. Although prior bad acts may be admissible to establish a common scheme or plan, the State bears the substantial burden of showing the defendant committed **markedly similar** acts of misconduct against **similar victims** under **similar circumstances**.

The Court of Appeals rightly reversed Mr. Stearns' conviction, finding the trial court abused its discretion when it admitted evidence of fundamentally different prior bad acts and misapplied the balancing test under ER 404(b). In so doing, the Court of Appeals did not make "false assumptions" about sexual assault victims, but rather relied on the cases that were most factually analogous to Mr. Stearns' case, and applied the correct standard of review. This Court should deny review because the

Court of Appeals' decision is wholly consistent with this Court's precedent.

C. STATEMENT OF THE CASE

1. Procedural history

Mr. Stearns raised several assignments of error in the Court of Appeals, including whether preaccusatorial delay violated his right to due process and whether the trial court erred in admitting severely prejudicial propensity evidence. Br. of Appellant at 2. The Court of Appeals reversed based on preaccusatorial delay only. *State v. Stearns*, 23 Wn. App. 2d 580, 595, 517 P.3d 467 (2022) (*Stearns I*). Because the issue was dispositive, the Court of Appeals did not address the evidentiary error. *Id.* at 585.

This Court accepted review to address the singular issue of whether the preaccusatorial delay warranted dismissal. *State v. Stearns*, 2 Wn.3d 869, 872, 545 P.3d 320 (2024) (*Stearns II*). This Court reversed, finding that, although the State was negligent and Mr. Stearns suffered actual prejudice, the prosecution did not offend the fundamental concepts of justice.

Id. at 885. Because the holding was limited to preaccusatorial delay, this Court remanded the case to the Court of Appeals to address Mr. Stearns' remaining arguments. *Id*.

On remand, the Court of Appeals again reversed Mr. Stearns' conviction, finding the trial court erroneously introduced propensity evidence requiring a retrial. Slip Op. at 1.

The State seeks review under RAP 13.4(b)(1) only.[1]

2. Relevant facts

The State moved to admit evidence of three prior bad acts by Mr. Stearns as proof that he killed Ms. Williams, including a 1981 incident in which he was convicted of raping B.G. inside her home and a 1989 incident in which he pled guilty to

[1] Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court 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 a published 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.

attempted rape and robbery for attempting to digitally penetrate D.H. in the middle of the street.[2]

In its motion, the State acknowledged ER 404(b) prohibits the admission of propensity evidence, but argued the court should admit the prior bad acts to show a common scheme or plan. 1/15/20RP 116. The State insisted that, because each of the incidents involved sudden attacks, injuries to the victims' heads, and asphyxiation, the acts revealed a plan to unexpectedly force women into sex by striking them in the head and strangling them. *See* 1/15/20RP 116-17. The State also emphasized the proximity of the offenses, all occurring in the Central District, evidenced a common scheme or plan. CP 126. The trial court, however, rejected this last argument, finding location was more an indication of opportunity or access. 1/15/20RP 146.

Defense counsel strenuously objected, pointing out that the incidents were vastly different. 1/15/19RP 129-41. The

[2] The court denied the State's request to admit evidence of a 1999 incident in which Mr. Stearns pled guilty to various offenses after he assaulted a convenience store clerk and stole money and lottery tickets. CP 110-11. Mr. Stearns is currently serving a 720-month sentence for the 1999 incident. CP 92.

relationships with the women, manner of initiating contact, age of the women, location of the incidents, times of day, and use of a condom varied between each of these incidents and the charged crime. Counsel argued that regardless of the defense of consent, evidence of the prior rapes would lead to the forbidden inference that, because Mr. Stearns previously committed a rape, he must have raped Ms. Williams. 1/15/20RP 137-38.

The trial court granted the State's motion, admitting evidence relating to the 1981 and 1989 incidents to show a common scheme and plan, to establish forcible compulsion, and to rebut the defense of consent. 1/15/20RP 149-50. The court disagreed with defense counsel that a limiting instruction could not cure the prejudice under the fourth prong of ER 404(b). The court explained that, as compared to other counties, jurors in King County are particularly careful, skeptical of police and prosecutors, and would follow the instructions. 1/15/20RP 152.

In reversing Mr. Stearns' conviction, the Court of Appeals extensively detailed the pretrial litigation and trial court's findings regarding the prior bad acts. Slip. Op. at 7-10. The

Court of Appeals also considered cases involving adult victims because those were the most analogous to Mr. Stearns' case. Slip Op. at 12-21. Based on this analysis, the court concluded the trial court abused its discretion because the prior bad acts were "simply too tenuous to constitute a common scheme or plan." Slip Op. at 20. Additionally, the trial court abused its discretion by relying on anecdotal experiences regarding King County jurors when balancing the probative value against the prejudice effect under the fourth prong of ER 404(b).[3] Slip Op. at 21-22.

D. REASONS THIS COURT SHOULD DENY REVIEW

1. The Court of Appeals rightly relied on cases that are factually analogous to Mr. Stearns' case.

The State utterly misrepresents the Court of Appeals' opinion as creating a separate evidentiary rule for cases

[3] Before admitting prior bad acts under ER 404(b), the trial court must: (1) find by a preponderance of the evidence that the prior act occurred, (2) identify the purpose for which the evidence is offered, (3) decide whether the evidence is relevant to prove an element of the crime charged, and (4) determine whether the evidence would be substantially more prejudicial than probative. *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2014).

involving children. Pet. at 14-15. Contrary to the State's argument, the Court of Appeals did not "expressly state[] that it [was] purposely disregarding decisions of this Court about ER 404(b) where the victims were children[.]" Pet. at 14. Nor did the Court of Appeals suggest that different standards of admissibility apply based on a victim's age. Pet. at 14.

Rather, the Court of Appeals laid out the correct ER 404(b) analysis and then identified that there were two general categories of cases "relied upon by the parties." Slip Op. at 12. The court explained that the cases "offered in briefing" involving child sex offenses "are sufficiently **factually distinct** as to be inapposite here." Slip Op. at 12 (emphasis added). In a lengthy footnote, the court clearly identified the factual differences: unlike the facts in Mr. Stearns' case, the child sex offense cases cited by the parties involved a close relationship between the perpetrator and the victim, such as family members or neighbors, and involved grooming inasmuch as the plans were effectuated over months or years. Slip Op. at 12-13 n. 4. The Court of Appeals reiterated that cases involving sexual

violence against adults "are more **factually similar** to Stearns' past activities and those alleged in this case." Slip Op. at 13 (emphasis added).[4]

The Court of Appeals opinion is not "in conflict with a decision by the Supreme Court." RAP 13.4(b)(1). Indeed, the Court of Appeals adopted the exact approach used by this Court in reviewing ER 404(b) rulings. *See State v. Lough*, 125 Wn.2d 847, 856, 889 P.2d 487 (1995) ("Since the result in these kinds of cases will be largely dependent on the facts of each case, it is helpful to look at some of the cases where evidence of prior misconduct to prove a plan has been held admissible."); *see also State v. Thang*, 145 Wn.2d 630, 643-44, 41 P.3d 1159 (2002) (analyzing admission of prior bad acts by looking to facts of other cases).

[4] The State wrongly argues that age is "an irrelevant demographic distinction" when considering whether the defendant acted according to a common scheme or plan. Pet. at 19. For example, in *State v. Williams*, the court concluded prior bad acts were admissible as part of a common scheme or plan due to, *inter alia*, the similar age of the victims. 156 Wn. App. at 491.

If anything, the Court of Appeals honored precedent by basing its analysis on only those cases it deemed factually analogous. *See State v. Mecham*, 186 Wn.2d 128, 141, 380 P.3d 414 (2016) (when considering privacy interest, court should consider analogous case law). This Court should deny review.

2. The Court of Appeals applied the correct standard of review to conclude the trial court erred in admitting prior bad acts under ER 404(b).

The State concedes that the Court of Appeals correctly identified the applicable standards of review. *See* Pet. at 20-21. Yet the State now claims the court did not apply those standards. Pet. at 2. The State's petition, however, simply regurgitates old arguments about why the evidence was admissible. Pet. at 23-27. While the State may disagree with the Court of Appeals' conclusion, there is no basis to believe the court applied the wrong legal standard. The State is simply grasping at straws in an effort to paint the court's decision as "conflicting" with decisions by this Court.

First, the State faults the Court of Appeals for "painstakingly" going through the record to explain how the trial

court erred. *See* Pet. at 23. But, if anything, the court's detailed summary of the trial court's findings shows the requisite deference. Slip Op. at 4-10. A *de novo* review of admissibility would not require the court to consider the trial court's opinion at all.

Second, the Court of Appeals did not simply "mention[] the abuse-of-discretion standard in passing." Pet. at 22. The court expressly relied on this Court's holdings in *State v. Foxhoven*, 161 Wn.2d 168, 163 P.3d 786 (2007) and *State v. Hudson*, 150 Wn. App. 646, 208 P.3d 1236 (2009)) to lay out the applicable standards of review.[5] The Court of Appeals then concluded the trial court "abused its discretion" when it improperly considered personal experience as a visiting judge in other counties as part of its ER 404(b) analysis. Slip Op. at 21.

[5] Namely, a trial court's interpretation of an evidentiary rule is reviewed *de novo*. Slip Op. at 5 (citing *Foxhoven*, 161 Wn.2d at 174). Where a trial court correctly interprets the rule, the court's evidentiary ruling is reviewed for an abuse of discretion. Slip Op. at 5 (citing *Foxhoven*, 161 Wn.2d at 174). A trial court abuses its discretion where its decision "is manifestly unreasonable or exercised on untenable grounds or for untenable reasons." Slip Op. at 5 (quoting *Hudson*, 150 Wn. App. at 652).

Specifically, the trial court made an "untenable ruling that rested on untenable grounds" when it determined jurors in King County are more likely to listen to jury instructions because–as compared to jurors "in other counties,"–King County jurors are "exceptionally careful," "a very fair population," "are not big fans of the police," "are not big fans of the prosecutor's office," and are "quick to hold the State accountable." Slip Op. at 21.

The trial court's reliance on the disposition of King County jurors were not offhand, but in direct response to defense counsel's arguments that, even with a limiting instruction, the evidence was more prejudicial than probative. 1/15/19RP 139. As the Court of Appeals explained, "[t]here is nothing in our state's evidence rules or jurisprudence that allows the application of a county-by-county standard with regard to the admission of prejudicial evidence." Slip Op. at 22.

Third, after extensively cataloguing the trial court's reasoning, the Court of Appeals correctly considered whether the trial court abused its discretion by admitting prior bad acts. Slip Op. at 6, 13 (citing *State v. DeVincentis*, 150 Wn.2d 11, 19,

74 P.3d 119 (2003)). The Court of Appeals directly compared the facts in Mr. Stearns' case with the facts in *Lough*,[6] *Yates*,[7] *Williams*,[8] and *Brown*[9]:

> The B.G. and D.H. cases are sufficiently distinct from each other, and from the facts of the case involving Williams, such that they exceed the scope of common scheme or plan as established by case law. In *Lough, Yates,* and *Williams*, each defendant's initial contact with the various victims showed much greater consistency. Lough's victims had all been involved in dating relationships with him when he drugged and raped them. *Lough*, 125 Wn.2d at 849-52. Yates' victims were all White or light-skinned sex workers who he lured into his vehicle. *Yates*, 161 Wn.2d at 753. Finally, Division Three of this court described Williams' victims as "women of a similar age, involved with drugs" who were attacked from behind after Williams promised them drugs. *Williams*, 156 Wn. App. at 491.
>
> The victims associated with Stearns are of different ages and races with lifestyles significantly dissimilar from each other. B.G. was 20 years old, White, and unemployed. D.H. was 41 years old, White, and worked downtown at an insurance company. Williams was Black, 33 years old, and a sex worker. Further, none of the women associated with Stearns in these cases were approached in the

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[6] *State v. Lough*, 125 Wn.2d 847, 889 P.2d 487 (1995).
[7] *State v. Yates*, 161 Wn.2d 714, 168 P.3d 359 (2007), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018).
[8] *State v. Williams*, 156 Wn. App. 482, 234 P.3d (2010)
[9] *State v. Brown*, 132 Wn.2d 529, 940 P.2d546 (1997).

> same way as any other and their respective relationships with Stearns were markedly distinct. B.G. knew Stearns, who was 19 years old at the time of the attack, through her brother and testified that she had rejected Stearns' advances in the past. D.H. was a stranger and over a decade older than Stearns when he assaulted her. The record is silent on any possible prior relationship between Stearns and Williams other than a sexual encounter shortly before her death.

Slip Op. at 17.[10]

While an abuse of discretion standard "provides great deference to the trial court's evidentiary rulings, it does not immunize them." *State v. Broussard*, 25 Wn. App. 2d 781, 789, 55 P.3d 615 (2023). The Court of Appeals did exactly what a reviewing court should do: lay out the facts in front of the trial court and the applicable law, and then look at analogous cases to determine whether the trial court erred. After this careful analysis, the Court of Appeals concluded the trial court "abused its discretion" because the acts "exceeded the scope of common scheme or plan as established by case law." Slip Op. at 17. In other words, the trial court's ruling was unreasonable because

[10] This Court need only look at the attached Appendix to see how vastly different the offenses are.

the bad acts were "simply too tenuous constitute a common scheme or plan." Slip Op. at 20.

The Court of Appeals' decision is consistent with the decisions of this Court and does not warrant review under RAP 13.4(b)(1).

3. The Court of Appeals did not make a "false assumption" in noting that many sexual assaults involve violence.

The State asks this Court to accept review because sexual assaults involving striking or strangulation are not as common the Court of Appeals would assume. *See* Pet. at 28. To show the Court of Appeals relied upon "false assumptions," the State cites to 2023 statistics from the FBI's National Incident-Based Reporting System (NIBRS). Pet. at 29. It is unclear what search function the State used and the numbers vary greatly.[11] For

[11] The database can be searched via dropdown menu by crime, state, local jurisdiction, and timeframe. Undersigned counsel was not able to replicate the numbers included in the State's petition. There is no general "sex offense" category of crime. However, when counsel selected "rape," for the year 2023, it reveals that 52% of rapes nation-wide included use of a "personal weapon," and 53% of rapes in Washington State in 2023 included the use of a "personal weapon."

2023–the year cited by the State–a "**personal weapon**" was used in **53% of all rapes**."[12] FBI Crime Data Explorer, https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend (last visited 3/17/25). Many of the offenses are "linked" to other violent crimes, including aggravated assault, sexual assault with an object, burglary, criminal sexual contact, and sodomy. *Id.*

The State's argument that the overwhelming majority of rapes are "**committed with no weapons or force at all**" is deeply disturbing. Pet. at 29 (emphasis added). It not only misrepresents the data but erases the trauma experienced by sexual assault victims.

Regardless, the Court of Appeals did not err in its observation that many sexual assaults involve striking or

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https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend.

[12] The State's petition isolates "blunt object" as the type of weapon used. Yet the objects (or lack thereof) involved in the three offenses at issue were different. B.G. was hit with a whisky bottle. Slip Op. at 11. There is no evidence that any weapon was used in the assault involving D.H. Slip Op. at 12 n. 2. Meanwhile, Ms. Williams was pushed against a concrete wall.

choking the victim. The Court explained that striking or choking were not sufficiently unique because they occurred in "several of the case cited as authority by the parties," including *Williams*, *Yates*, *Brown*, and *Lough*. The Court's assessment was based on case law, common sense, and is not a "demonstrably false assumption." Pet. at 28.

Finally, the State argues that reversal should not be based on the "innocuous" comment by the prosecutor assigned to the case that he consulted his appellate unit to determine whether and how the prior bad acts could be used at trial. Pet. at 29-30. The State goes so far as to claim the Court of Appeals' reliance on Mr. Baird's testimony is "frankly baffling." Pet. at 31. This argument is disingenuous at best.

First, in its petition, the State only quotes one sentence in the opinion while omitting the second sentence where the prosecutor testified he did not think the case should even be filed without considering the admissibility of the other acts evidence. Slip Op. at 23. Second, the State completely omits the context of the Court of Appeals' reliance on the prosecutor's statement.

Specifically, the court referenced the prosecutor's testimony in considering whether the trial court's error was harmless. Slip Op. at 22-24. In addition to pointing out the State's reliance on the prior bad acts at trial, the Court of Appeals was absolutely correct that the prosecutor's consultation with his appellate unit because he was unsure he could secure a conviction without the prior bad acts is relevant to how critical (and thus prejudicial) the evidence was. *See* Slip Op. at 22-24.

Tellingly, the State does not argue any error was harmless. Instead, it resorts to telling only part of the story in an effort to convince this Court the prosecutor's statement was "innocuous."

The Court of Appeals decision does not conflict with this Court's precedent. RAP 13.4(b)(1). This Court should deny review.

E. IF THIS COURT ACCEPTS REVIEW, IT SHOULD ALSO REVIEW THE COURT OF APPEALS' DECISION THAT THE REMAINING TRIAL ERRORS WERE HARMLESS.

After remand by this Court, the Court of Appeals considered not only the trial court's evidentiary ruling, but also

Mr. Stearns' remaining assignments of error. Slip Op. at 24-29. The court found (1) the trial court erred in advising the jurors they could "tune out" during oral jury instructions and (2) the prosecutor committed misconduct by appealing to the passion and prejudice of the jury during closing argument. Slip Op. at 26, 29. However, the Court of Appeals found the errors did not require a new trial. Slip Op. at 26, 29.

If this Court accepts review in Mr. Stearns' case, it should also consider whether the Court of Appeals mistakenly concluded the remaining errors were harmless. *See State v. Magana-Arevalo*, No. 103586-1 (March 17, 2025) (granting review to determine, *inter alia*, whether potential *Miranda* violation was harmless); *State v. Wasuge*, No. 103530-6 (February 7, 2025), (granting review to determine, *inter alia*, whether admission of inadmissible testimony in physical control of a motor vehicle case is subject to constitutional harmless error review).

F. CONCLUSION

The Court of Appeals properly applied this Court's precedent to the facts in Mr. Stearns' case. Review is not warranted under RAP 13.4(b)(1).

DATED this 18rd day of March, 2025.

This motion is proportionately spaced using 14-point font equivalent to Times New Roman and contains 3,877 words (word count by Microsoft Word).

Respectfully submitted,

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APPENDIX

(Table of Facts Distinguishing the Prior Bad Acts)

Victim	Age	Race	Relationship to Mr. Stearns	Method of contact	Location of offense	Timing	Weapon	Condom
B.G.	19	Caucasian	Acquaintance	Asked to enter her apartment because someone was "out to get him"	B.G.'s residence	Approx. 10:00 p.m.	Whisky bottle	No
D.H.	41	Caucasian	Stranger	Laying in street and approached from behind	Street	Approx. 5:00 p.m.	None (hit with fist)	N/A
C.W. (charged offense)	33	Black	Unknown	Transactional (offered to trade money or drugs for sex)	Public park	Early morning	Unknown (potentially concrete wall)	Yes

WASHINGTON APPELLATE PROJECT

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