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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

THE STATE OF WASHINGTON	)	No. 82125-3-I
	)	
Respondent,	)	
	)	
v.	)	PUBLISHED OPINION
	)	
JOHN RAY STEARNS,	)	
	)	
Appellant.	)	

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HAZELRIGG, J. — In November 2020, a jury found John Ray Stearns guilty of felony murder in the first degree, with a special allegation of sexual motivation, based on an incident that occurred in 1998. DNA<sup>1</sup> evidence retrieved from the victim and scene connected Stearns to the incident in 2004, and law enforcement interviewed him in 2005. The prosecuting attorney assigned to the case later acknowledged that sufficient probable cause existed to charge Stearns with the murder after the 2005 interview, but he did not file charges until 2017. Multiple eyewitnesses interviewed by police in 1998 passed away during the delay between the State’s development of probable cause and charging, including the half-sister of the victim who was purportedly the last person to see her alive. However, the trial court denied Stearns’s pretrial motion to dismiss based on preaccusatorial delay. Stearns argues this ruling, along with numerous other errors, deprived him

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<sup>1</sup> Deoxyribonucleic acid.

of a fair trial. Because the State's preaccusatorial filing delay violated Stearns's due process rights, we reverse and dismiss with prejudice.

#### FACTS

In January 1998, city park employees discovered Crystal Williams's body outside the bathrooms in Dr. Blanche Lavizzo Park in Seattle's Central District. Seattle Police Department (SPD) officers retrieved a used condom from the ground near Williams's body and the Washington State Patrol Crime Laboratory (WSPCL) later determined it contained semen from the same source as the vaginal swab collected from Williams during her autopsy. At the time the biological samples were gathered and first examined, the DNA profile did not match anyone in the Combined DNA Index System (CODIS) and the police investigation continued. SPD detectives determined that on the morning of the murder, several women saw Williams in the hours before her death. Many of these women, like Williams, engaged in sex work to support their drug use, either trading sex for drugs directly or for cash to purchase them. Williams commonly spent time with this group of women in and around Lavizzo Park, where they often took their "dates" to the bathrooms to conduct their business. From this group, SPD detectives interviewed Lisa Warner, Taffy Gober, Zanette White, Beverley Cooper, and Yvonne Hicks, Williams's half-sister. Several of the women were consistent in their statements that they last saw Williams walking away from where the group congregated near a corner store in the early morning hours and that she was heading toward the park with a man.

Detectives conducted these eyewitness interviews early in the investigation and, based on the resulting information, soon arrested and interviewed Jimmy Horner as a suspect. At the time of Horner's arrest, he matched multiple key aspects of the descriptions given by the women about the man last seen with Williams. Gober also picked Horner out of a police photomontage. However, the police ceased their investigation into Horner after the WSPCL determined his DNA did not match the recovered semen samples. Police also interviewed a number of other suspects but, eventually, the case went cold.

In 2004, the WSPCL notified SPD of a CODIS match to the Williams DNA samples. As a result, detectives interviewed Stearns in prison in March 2005. He was serving a 720-month prison sentence on an unrelated matter. During the interview, Stearns denied having sex with Williams or otherwise knowing her. Jeffery Baird, the deputy prosecuting attorney (DPA) handling the Williams case, later concluded that probable cause existed to charge Stearns for her murder at that time; however, he did not actually file charges until 2017. The record reflects that no meaningful investigation occurred after 2005.<sup>2</sup>

On August 10, 2017, the State charged Stearns with one count of felony murder in the first degree with a special allegation that he committed the crime with

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<sup>2</sup> Detectives conducted another brief interview of Stearns in 2017 after determining that the audio recording of the original 2005 prison interview was missing. There was also an update to general DNA technology, which led to reprocessing the Williams DNA evidence for more specificity. A WSPCL forensic scientist working on the DNA evidence in the case indicated that there had been a request to retest the semen collected from the condom in 2017 and to retest samples from Williams's clothes in 2020. However, she further testified that the technology utilized in the 2020 testing was available as early as 2001 and was certainly available in 2005 when detectives originally interviewed Stearns.

sexual motivation. He proceeded to trial in January 2020. During pretrial motions, Stearns moved to dismiss for improper preaccusatorial delay. The trial court heard testimony from Baird, the prosecutor originally assigned to the case who had retired by the time of the hearing, and considered supplemental briefing by the parties on the issue. The judge denied the defense motion to dismiss. The January 2020 trial ultimately resulted in a hung jury and the court declared a mistrial.

The State retried Stearns in November 2020. The witnesses were largely the same as the first trial and primarily consisted of numerous law enforcement officers who had worked on the case; some had since retired and others were still with SPD. A number of expert witnesses testified about the DNA evidence that officers collected, its processing, the CODIS match, and the significance of the condition and location of the samples. Horner also testified briefly, as did two of the women who had seen Williams on the morning of her murder, Warner and Gober. At the time of trial in 2020, three of the women who told police in 1998 that they were with Williams on the morning of her murder were deceased. Of those three unavailable witnesses, two of them indicated to police in 1998 that they recalled seeing Williams leaving the corner store with a man and provided a description of him. The jury found Stearns guilty as charged and the trial court sentenced him as a persistent offender to life in prison without the possibility of release. He timely appealed.

## ANALYSIS

Stearns assigns error to several aspects of his trial: the court's ruling to admit evidence of two of his prior convictions under ER 404(b), comments by the judge prior to reading the instructions to the jury, prosecutorial misconduct in closing argument, and denial of his pretrial motion to dismiss for preaccusatorial delay. Because the last of those issues is dispositive and we conclude Stearns established reversible error, we need not analyze his other challenges.

Stearns argues the trial court erred in denying his motion to dismiss for preaccusatorial delay based on the State's 12-year filing delay, which resulted in the unavailability of a key eyewitness who died months after the State filed charges. The trial court acknowledged that Hicks, one of the witnesses who had died prior to trial,<sup>3</sup> was critical to the defense theory of the case. However, it then concluded Hicks's impact on the case was too speculative and, on that basis, Stearns could not establish actual prejudice from the 12-year delay. We disagree and conclude that Hicks's absence from trial prejudiced Stearns and violated his right to due process.

"A court will dismiss a prosecution for preaccusatorial delay if the State's intentional or negligent delay violates a defendant's due process rights." State v. Maynard, 183 Wn.2d 253, 259, 351 P.3d 159 (2015). This court reviews de novo

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<sup>3</sup> The parties appear to agree that Hicks and White were deceased by the time of trial. Trial testimony from Warner suggested that Cooper had also passed away. Neither White nor Cooper were included on the State's preliminary witness list.

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the question of whether preaccusatorial delay violated due process rights.<sup>4</sup> State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653 (2011). This standard of review requires that we examine “the entire record to determine prejudice and to balance the delay against the prejudice.” Id. The Washington Supreme Court has provided the following three-step analysis:

To determine if preaccusatorial delay violated a defendant’s due process rights, we apply a three-pronged test: (1) the defendant must show he or she was actually prejudiced by the delay; (2) if the defendant shows actual prejudice, the court must determine the reasons for the delay; and (3) the court must weigh the reasons for delay and the prejudice to determine whether fundamental conceptions of justice would be violated by allowing the prosecution.

Maynard, 183 Wn.2d at 259. “Regardless of the precise label of the items to be balanced, the three-pronged test is best understood as an analytical tool to assist the court in answering the underlying question of whether a delay has resulted in a due process violation by violating fundamental conceptions of justice.” Oppelt, 172 Wn.2d at 295.

### I. Prejudice to the Defense

We disagree with the trial court’s ruling that any prejudice based on Hicks’s death was speculative and conclude that Stearns has sufficiently established prejudice. His appellate briefing summarizes the impact of Hicks’s death on his defense theory as follows:

[T]he delay prevented Mr. Stearns from arguing that Ms. Williams walked towards the park between 6:00 a.m. and 7:00 a.m. It

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<sup>4</sup> The State claims that we must defer to the trial court’s analysis regarding prejudice, citing State v. McConville, 122 Wn. App. 640, 646, 94 P.3d 401 (2004). However, we follow more recent guidance from our state’s highest court, which clearly directs that we engage in a de novo review as to our consideration of each step of this test. State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653 (2011); Maynard, 183 Wn.2d at 259.

prevented him from arguing she did so with a man who did not match Mr. Stearns's description. And it prevented him from corroborating, or addressing discrepancies, in Ms. Gober's testimony.

Stearns reiterated these points at oral argument before this court. He focused on the fact that Hicks was the last to see Williams alive based on her police interview only hours after the murder occurred. Stearns emphasized that Hicks expressly noted it was between 6:00 a.m. and 7:00 a.m. when she saw Williams walking away from the corner store toward Lavizzo Park with a man. The State argued that testimony from Hicks and Gober would have contradicted one another and, therefore, it was not helpful to the defense. However, Stearns explained that any purported discrepancy between their respective descriptions as to both the timing of Williams's departure toward the park and the man they saw her with could be understood as a "string of customers," given it was known that Williams engaged in sex work and drug use in and around Lavizzo Park. Stearns points out that ultimately, neither Hicks's nor Gober's description of the man seen with Williams matched Stearns, which supports his defense.

Despite the State's arguments to the contrary, the number of ways in which Hicks's testimony played into the defense theory only reinforces actual prejudice to Stearns based on the information contained in her initial police interviews and Baird's acknowledgement that he did not recall any credibility concerns about Hicks. If the State timely brought its case against Stearns, Hicks would have been available to testify. The record demonstrates that she would have provided testimony that was the closest in time to Williams's death, that she saw Williams walk away with a man who did not match Stearns's physical description, and that



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the pair departed in the direction of the park where city employees found Williams's body several hours later. Hicks was Williams's half-sister and identified her body to the medical examiner and SPD. She was one of a number of women who were with Williams near 20th Avenue South and East Yesler Way looking for "dates" in exchange for drugs in the early morning hours shortly before Williams was killed. Hicks further provided a higher degree of certainty as to the timeframe than other witnesses did, tying her memory to facts subject to verification by police. Hicks noted in her interview with SPD that she was sure it was not earlier than 6:00 in the morning when she last saw Williams because she had a beer at the time and the store the group frequented did not sell beer until after 6:00 a.m. Hicks's testimony as to all of these facts was critical to the defense and her unavailability due to her death constitutes actual prejudice.

The relevant portion of Hicks's interview as summarized<sup>5</sup> by the detective who spoke with her provides the following description of events:

According to Hicks, Williams was last seen at [6:30 a.m.], walking with a male, [southbound] on 21st Ave towards Lavizzo Park. Hicks kept calling him "that son of a bitch" and described him as follows: Black male, 40's, 6 [feet]-0 [inches], skinny like a crack cocaine user, dark complexioned, remembering only that he wore jeans. Hicks had been standing in front of the grocery, on the corner of 20th and Yesler, with some local street people. Hicks stated that Beverly Cooper, Lisa Warner, and her roommate Zanette White were on the corner. Hicks remembered the time because they were allowed to buy beer at [6:00 a.m.]. Hicks was standing away from Williams when the black male walked up to Williams. It appeared that Williams knew the male or had some "business" with him. Williams and the male walked [eastbound] on E Yesler, then made a right turn onto 21st Ave [southbound].

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<sup>5</sup> The record from the trial court also contains a full transcript of the recorded interview of Hicks.

The other evidence introduced at trial also broadly colors how Hicks's unavailability prejudiced Stearns. The defense theory of the case essentially conceded that Stearns had consensual sex with Williams within the 24-hour period prior to her death, which was consistent with the forensic evidence regarding the DNA match, but posited that another individual killed her at some point after their sexual encounter. Stearns grounded this theory in part on the assertion that Williams was known to engage in sex work in the area where park employees found her body as well as the fact that, besides Stearns's DNA, forensic scientists collected and identified at least one other partial and two other complete DNA profiles from her clothing.<sup>6</sup>

In closing, Hicks's unavailability left Stearns with the only position he could take—to reiterate the importance of Gober, a key eyewitness whose testimony included a description of the man who walked away with Williams.<sup>7</sup> However, the State challenged Gober's credibility on direct examination, and because of Hicks's unavailability due to the filing delay, Stearns was unable to attempt to rehabilitate Gober with Hicks's testimony. On appeal, the State seems to focus on the purportedly contradictory defense position that Hicks would corroborate Gober's

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<sup>6</sup> When officers recovered Williams's body, she was wearing shorts underneath pants without underwear. She was identified as one of the contributors of a mixed DNA sample located on the inside of her shorts. All of the other partial and complete profiles that the WSPCL found on Williams's pants and inner shorts were determined to be from male contributors. In the mixed sample retrieved from the crotch of her shorts, four profiles were identified: Stearns's, a complete profile identified through a CODIS match, a second complete profile that was not identified through CODIS or any other means, and a partial male profile that could not be compared. Another mixed DNA sample was retrieved from the inside of the crotch of her pants and also found to consist of four contributors, but forensic analysis determined that Stearns was not one of them.

<sup>7</sup> Warner also testified at trial but did not independently recall the description of the man she provided to the police in 1998. Warner additionally struggled to remember identifying anyone from a photomontage over two decades earlier, though evidence demonstrated that she had in 1998.

testimony as to Williams being with Horner, the original suspect in the case. The State's stance appears to be rooted in the variance of a few hours between the timeframe of events that Hicks and Gober provided to law enforcement since each asserted that their recollection described the last time anyone saw Williams alive. However, in light of the defense theory and the evidence ultimately put on by the State, these points are not necessarily in conflict. The DNA evidence proved only that Stearns's semen was left within 24 hours of Williams's death. The mere presence of semen does not prove whether the sex act that produced it was consensual or not, nor whether the depositor was the same person who killed Williams. There is no inherent conflict with Hicks and Gober both asserting that they last saw Williams with a man not matching Stearns's description.

Stearns has established actual prejudice and the State largely bases its insistence that any prejudice is speculative on the 12-year delay the State itself caused. Hicks was Williams's half-sister and therefore very familiar with her. She was one of the only eyewitnesses able to testify with precision about the time she last saw Williams alive and she provided details supporting her timeframe. Further, Baird did not identify any particular credibility issues with regard to Hicks's anticipated testimony. All of these factors support our conclusion of actual prejudice.

## II. Reasons for the State's Filing Delay

Since Stearns has made an initial showing of actual prejudice, the second step is to identify the reasons for delay by the State. Maynard, 183 Wn.2d at 259. "Ultimately, the test suggested by the U.S. Supreme Court is 'whether the action

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complained of . . . violates those fundamental conceptions of justice which lie at the base of our civil and political institutions.” State v. Calderon, 102 Wn.2d 348, 353, 684 P.2d 1293 (1984) (alteration in original) (internal quotation marks omitted) (quoting United States v. Lovasco, 431 U.S. 783, 790, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)). “[I]f mere negligent conduct is asserted, the . . . prejudice suffered by the defendant will have to be greater than where intentional or deliberate government conduct is alleged.” State v. Schifferl, 51 Wn. App. 268, 273, 753 P.2d 549 (1988). The trial court does not appear to have comprehensively engaged in this aspect of the analysis in light of its determination that Stearns had not established prejudice. However, it did comment that “[a]t most the Court can find that it’s negligent,” noting the State offered lessened public safety concerns as part of its justification for the 12-year filing delay based on the fact of Stearns’s lengthy incarceration.

At the hearing on the defense motion to dismiss, Baird was asked about his thought process underlying the charging decision in the Williams case. Baird explained:

One of the primary ways in which we have to prioritize our limited resources and limited time is with the interest of protecting the community. Because I knew that Mr. Stearns was no danger to anyone, and because I thought that he would be in custody for the rest of his life, and if not for the rest of his life, at least until at an advanced age. I did not assign this case a great priority against the cases that came tumbling into our office at the rate of several a week.

Though the State claims in briefing it “established that the precharging delay here was not due to negligence, but to a reasonable and pragmatic decision by King County prosecutors to prioritize cases posing a greater danger to the community,”

the record does not support that position. While we recognize the need for pragmatic decision-making and efficient use of resources within the prosecutor's office, the delay here went well beyond such.

Baird testified that his decision not to file charges earlier than 2017 was due to his caseload but otherwise struggled to justify the 12-year delay. Baird offered little specificity as to the calculus underlying his decision regarding filing beyond Stearns's incarceration and his own assessment that he had other more pressing cases. These considerations may broadly justify a filing delay, however, 12 years strains the limits of credulity, particularly when as Baird expressly acknowledged, there was no need for additional evidence for the development of probable cause. Baird admitted that he had probable cause to charge Stearns by March of 2005 based on the DNA match and SPD interview. He did not indicate the need for more evidence or that detectives undertook any other substantial investigation after that point.

Particularly illuminating to our review is that the record demonstrates numerous colleagues contacted Baird over the intervening years to inquire about the status of the case generally or to specifically ask when he would file charges. Detective Steven Kilburg, who worked with Baird in the King County Prosecuting Attorney's Office Most Dangerous Offender Project (MDOP)<sup>8</sup> on this case from "start to finish," testified that after the DNA match came back in 2004 and the interview was conducted in 2005, he twice urged Baird that they should get working

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<sup>8</sup> The prosecutor's office formed MDOP in 1995 to take a more proactive approach to homicide prosecution. The unit assigned deputy prosecutors to particular homicides early in the development of the case to ensure the same prosecutor handled it from crime scene investigation to trial.

on the case as they were working on other homicides together in the MDOP unit. Kilburg further testified that he saw no reason for a delay and “thought [the case against Stearns] was as strong as it was going to get.” Kilburg asserted that when he inquired about filing the case, Baird’s response was that “he would get to it when he would get to it, and that’s just the way he did business,” which further supports the conclusion that the filing delay was negligent.

A WSPCL forensic scientist testified that after conducting the initial DNA analysis that resulted in the match to Stearns in February 2004, they contacted Baird twice to inquire whether he needed additional testing. The first inquiry was in January 2005 before detectives interviewed Stearns in prison, and the second follow up from the crime lab was in August of that same year. However, the forensic scientist noted they did not receive a response to either phone call. In the absence of any reply from the prosecutor’s office, the scientist did not conduct further testing.

The record also establishes that Detective Rolf Norton came across the Williams case filed away in an SPD storage room when he began to work on unsolved homicides in 2016. Norton was familiar with the case as he was present for the 2005 interview with Stearns in prison and realized only when he found the file that the State never filed charges after all those years. Within a week of that discovery, Norton hand-delivered the case to Baird personally at the prosecutor’s office. Norton’s testimony reflects that he then took proactive steps to locate witnesses to determine who was still available to testify and to confirm whether the

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State had good contact information and whether individuals were still alive.<sup>9</sup> It was only after these efforts by Norton that the State eventually charged Stearns in August 2017. Failure to file a murder charge with well-developed probable cause for 12 years after repeated status inquiries from other government actors involved in its investigation and preparation for prosecution, resulting in its filing away in storage as a cold case, constitutes a negligent delay by the State.

### III. Violation of the Fundamental Conceptions of Justice

The final step in the analysis of a claim of preaccusatorial delay is to weigh “the reasons for the delay and the prejudice to the defendant caused by the delay.” Oppelt, 172 Wn.2d at 294. Case law calls for utilization of the three prongs as an “analytical tool to assist the court in answering the underlying question of whether a delay has resulted in a due process violation by violating the fundamental conceptions of justice,” rather than application of a rigid legal test. Id. at 295, 292. The facts of Stearns’s case demonstrate a violation of the fundamental conceptions of justice.<sup>10</sup>

The State’s decision to delay filing for 12 years, which led to a more than 22-year delay between Williams’s death and trial, caused an injustice to Stearns

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<sup>9</sup> The record suggests that Hicks passed away approximately four months after the State finally charged Stearns in 2017.

<sup>10</sup> Compare Oppelt, 172 Wn.2d at 296 (no actual prejudice from six-year delay, which led to faded witness memory as to specific detail regarding evidence, where defense was still able to argue its theory), and McConville, 122 Wn. App. at 644, 646-47 (no prejudice from two-year delay when a deceased witness would have only partially relevant testimony in a prosecution for theft in the first degree), with State v. Keen, No. 53308-1-II, slip op. at 1, 6-7 (Wash. Ct. App. Oct. 27, 2020) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2053308-1-II%20Unpublished%20Opinion.pdf> (upholding dismissal after findings of fact determined an eight-year delay resulting in unavailability of multiple witnesses due to death or inability to locate them caused actual prejudice such that the due process rights of the accused were violated).

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with regard to his due process rights. The State attempts to justify its delay rather offhandedly as the unfortunate result of the best efforts of a DPA who primarily worked in a special unit, also carried a regular caseload, and was simply too busy to “get to it” even though the evidence at the time established probable cause. Such a position is even more offensive to conceptions of justice because others involved in the case repeatedly asked the DPA when the State would file charges. There was no concern about whether officers could apprehend Stearns or that he might flee as he was serving a sentence of 720 months on another matter. However, to be explicitly clear, that fact alone cannot justify an unduly long filing delay as incarcerated persons are entitled to due process just as anyone else accused of a crime.

Though the State’s decision not to prosecute timely does not appear to be malicious, the significant delay resulted in the unavailability of a deceased key witness (and others) in a cold case murder. It directly and tangibly impacted Stearns’s ability to fully defend himself against the charges brought by the State. This actual prejudice to Stearns significantly outweighs the reasons for the negligent delay by the State; the State violated the fundamental conceptions of justice by preventing Stearns from using the evidence collected in January 1998 to thoroughly present his defense to a jury in November 2020. Further, while the test necessarily focuses our analysis on the rights of the accused, it is not lost on this panel that the delay also caused an injustice to Williams’s family and others impacted by the crime. We are applying a severe remedy in a very serious case. However, it is precisely in cases where the stakes are highest that the State should

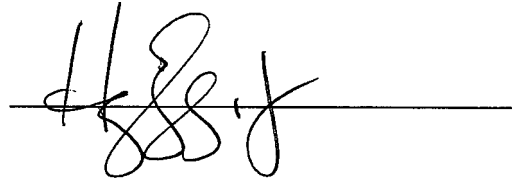
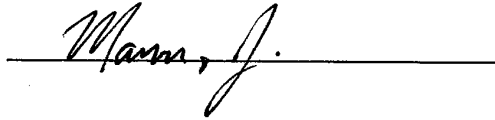


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exercise the most care in ensuring that negligence does not violate the rights of the accused.

Reversed and remanded for dismissal with prejudice.<sup>11</sup>

WE CONCUR:

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<sup>11</sup> Because the government's filing delay caused the due process violation at issue here, there is no cure. Accordingly, it stands to reason that dismissal with prejudice is the only proper remedy.