

*In re Detention of Coe*

No. 85965-5

CHAMBERS, J. (concurring) — I concur with the majority in result. I write separately because, in general, I believe allegations of uncharged crimes should not be admitted into evidence. Trial judges should start from the position that such evidence is inadmissible and require the proponent of the evidence to establish both a proper purpose for admission and that the probative value of the evidence outweighs its prejudicial effect. I fear that does not always happen. Specifically, when the State seeks to admit uncharged crimes to show that the perpetrator had a “signature,” that signature should be truly unique, and in doubtful cases, the evidence should be excluded. *State v. Vy Thang*, 145 Wn.2d 630, 642-43, 41 P.3d 1159 (2002).

Experts should not act as funnels to allow lawyers to get into evidence through their expert opinion what is otherwise inadmissible. Some of the elements used by the expert here are too common to meaningfully form part of a “signature.” Prior bad acts are admissible only under the “signature” exception if the “shared features, when combined, are so unusual and distinctive as to be signature-like” and only if the probative value outweighs the prejudicial effect. *Id.* at 645. In my view, some of the elements cited by the expert are simply too common to qualify as a meaningful part of a signature. It is hardly uncommon for a rapist to intimidate his victim, undo his own clothing, penetrate his victim, and ejaculate during the

commission of the crime. Were I in the trial court's position, I would not have allowed the uncharged crimes that did not have highly unusual elements to be admitted through the auspices of expert testimony.

That said, I concur because many of the uncharged crimes did have the sort of unusual elements that characterize a signature. In many, though not all, of the uncharged crimes, the perpetrator put fingers into victims' mouths; attempted to induce the victim to urinate or defecate upon him; and asked personal and offensive questions. The overwhelming untainted evidence supports the jury's verdict. I respectfully concur.

AUTHOR:

Justice Tom Chambers

---

WE CONCUR:

---

---

Justice Charles K. Wiggins

---

---

---