

NO. 48541-9

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOSEPH JOHN BAZA,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

Appeal from Superior Court of Kitsap County
Honorable Kevin D. Hull
NO. 15-1-000874-7

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Respondent's brief asserts an (1) incorrect and (2) novel and unsupported interpretation of *State v. Chenoweth*, 185 Wn.2d 218, 370 P.3d 6 (2016). The precedent cited by Appellant is still valid and Defendant's crimes at bar were the 'same criminal conduct' even though their statutory intents differ.

II. ARGUMENT

Respondent's brief appears to assert that the ruling *Chenoweth* overturned the Supreme Court's long-established practice of inquiring, in 'same criminal conduct' analyses, whether crimes furthered each other, were simultaneous, gave pause for reflection, etc. See "Examples" set forth Appellant's brief.¹ Respondent appears to assert that *Chenoweth* now restricts a 'same criminal conduct' finding only in cases where the crimes have the same statutory intent.

A. Respondent's Interpretation of *Chenoweth* is Incorrect.

Respondent's interpretation of *Chenoweth* is incorrect because their interpretation would necessarily lead to the absurd result of a 'same criminal conduct' finding only being available to defendants who have multiple counts of the same crime. In other words, because the Respondent incorrectly interprets *Chenoweth* to mean that the statutory intent of each crime must be the same (i.e., 'the intent to rape is different that the intent to incest, therefore they are not the same criminal conduct'), they are necessarily and incorrectly interpreting that each crime itself must be the

¹ V(A)(4) (p. 6): "Examples of Same Criminal Conduct"

same. If the Court in *Chenoweth* wanted this landmark and sweeping result, they would have said so clearly. As set forth in the multiple “Examples” in Appellants brief, the Supreme Court has on multiple occasions found ‘same criminal conduct’ for multiple *different* crimes so long as the objective intent was the same.

B. Respondent’s Brief Asserts a Novel and Unsupported Interpretation of *Chenoweth*.

Respondent’s brief also asserts a novel and unsupported interpretation of *Chenoweth*. Specifically, Respondent’s brief asserts that the analysis utilized by the dissent is somehow now overturned or not valid simply by virtue of the fact that it was not utilized by the majority. See p. 9, 10 of Respondent’s Brief: “[in *Chenoweth*] the Washington Supreme Court reconciled competing analyses on the same criminal conduct question.” In fact, nowhere did the court in *Chenoweth* say or imply that it was “reconciling” so-called “competing” analyses. Again, if the majority in *Chenoweth* intended or wanted to set forth a new way of approaching ‘same criminal conduct’ analyses, or if it was overturning its long precedent, it would have said so. The analysis utilized by the dissent, which the Respondent correctly points out was long-utilized by the Supreme Court (see again, Appellant’s “Examples”), is not somehow now wrong or invalid simply because the majority did not use it.

Therefore, *Chenoweth* in no way changes how courts should conduct a same criminal conduct analysis. As set forth in Appellant’s “Examples,” a court shall consider whether the crimes were simultaneous,

gave pause for reflection, whether they furthered each other, etc. Here, Defendant's crimes were the same criminal conduct for these very reasons.

III. CONCLUSION

Despite the fact that Defendant Baza's crimes had different statutory intents, long-established precedent supports an analysis which requires this court to find that they were the 'same criminal conduct.'

Respectfully submitted this 14th day of September, 2016.

/s/ Edward Penoyar _____

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