

NO. 53080-5-II

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

Daniel Bray, individually, and

Joey Tracy, individually,

Respondents,

vs.

Pierce County, a subdivision of the State of Washington,

Appellant.

**BRIEF OF *AMICUS CURIAE*
NORTHWEST JUSTICE PROJECT**

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I. INTRODUCTION

This appeal involves several different issues. Brief of Amicus, Northwest Justice Project, is limited to the issue of domestic violence prevention and victim protection. As part of Washington State's clear public policy of protecting domestic violence survivors and preventing further harm, the Legislature intended the Domestic Violence Prevention Act ("DVPA") to require law enforcement officers play a fundamental role in prevention and enforcement. When a police department deliberately abdicates that role, victims are harmed.

II. IDENTITY AND INTEREST OF *AMICUS*

For the identity and interest of *Amicus*, please refer to the Motion for Leave to File Brief of Amicus Curiae Northwest Justice Project.

III. ISSUE ADDRESSED BY *AMICUS*

Does Washington State have a clear public policy of preventing domestic violence and protecting victims?

IV. STATEMENT OF THE FACTS

We adopt the statement of facts set forth in the Court of Appeals Ruling Granting Review, dated April 8, 2019.

V. ARGUMENT

Washington's strong commitment of protecting domestic violence victims and preventing further abuse arose out of increasing awareness of

the grave individual and societal consequences of domestic violence. More than a third of all women in the United States have experienced rape, physical violence and/or stalking by an intimate partner in their lifetime, and nearly one quarter have experienced severe physical violence by an intimate partner.¹ The lethality of domestic violence often increases when the perpetrator believes that the abused party is leaving or has left the relationship.² In nearly half of the domestic violence homicides in Washington State between 1997 and 2010, the victim had left or was in the process of leaving the abuser.³ Female victims made up 75% of the 1,496 murder cases that were attributed to intimate partners in 2010.⁴ Those who are not killed often fail to make headlines, reports, and studies. But many domestic violence survivors are left with immeasurable impacts on their physical health: from paralysis to blindness and brain damage.⁵

¹Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey 2010 Summary Report*, (November 2011), Executive Summary at 2.

²J. Campbell, "If I Can't Have You No One Can: Power and Control in Homicide of Female Partners," *Femicide: The Politics of Women Killing*, ed. J. Radford and D. Russell (1992).

³Jake Fawcett, "Up to Us: Lessons Learned and Goals for Change After Thirteen Years of the Washington State Domestic Violence Fatality Review," *Washington State Coalition Against Domestic Violence*, (2010) at 17.

⁴Mathew R. Durose, et. al., *Family Violence Statistics Including Statistics on Strangers and Acquaintances*, Bureau of Justice Statistics, (2005).

⁵See, e.g., Anne L. Ganley, *Domestic Violence: The What, Why, & Who, as Relevant to Criminal & Civil Court Domestic Violence Cases*, in *Washington State Domestic Violence Manual for Judges*, at 2-24 (2015), available at <https://www.courts.wa.gov/content/manuals/domViol/chapter2.pdf>

Further, the psychological and financial impacts of domestic violence on victims and children can be devastating.

1. Washington State’s clear public policy of protecting domestic violence survivors requires the participation of community partners, including law enforcement, for its ongoing success.

a. Washington State’s public policy of preventing domestic violence and protecting victims clearly incorporates community members in prevention and protection.

Washington State’s commitment preventing domestic violence protecting victims is espoused in the seminal case *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 193 P.3d 128 (2008). In *Danny*, the court emphasized not only the importance of domestic violence prevention generally, but the significant role played by the community.

The legislature has created means for domestic violence victims to obtain civil and criminal protection from abuse, established shelters and funded social and legal services aimed at helping victims leave their abusers, established treatment programs for batterers, created an address confidentiality system to ensure the safety of victims, and guaranteed protection to victims exercising their duty to cooperate with law enforcement. The legislature’s creation of means to prevent, escape, and end abuse is indicative of its overall policy of preventing domestic violence.

Danny, 165 Wn.2d at 213. The legislature’s repeated commitment to tackling domestic violence as a community effort is unequivocal. E.g., Laws of 1992, ch. 111, § 1 (declaring that “[d]omestic violence is a problem of immense proportions affecting individuals as well as communities”); Laws of 2004, ch. 17 § 1(1) (“Domestic violence,

sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities.”); RCW 10.99.010 (noting the “serious consequences of domestic violence to society and to the victims”); Laws of 1991, ch. 301, § 1 (“[T]he community has a vested interest in the methods used to stop and prevent future violence.”). *Danny*, 165 Wn.2d at 214-215.

Washington courts and the legislature have reiterated numerous times the necessity of community efforts to protect victims of domestic violence through the Domestic Violence Prevention Act (“DVPA”) and associated policies. The DVPA’s success relies on collaboration with service providers and law enforcement. Were it to apply only to victims, it would function more as a proclamation than an act. If the DVPA is to fulfill its mission, it must be applicable to the community at large, with the opportunity to hold accountable entities that are failing to meet the standards set by the legislature. A member of that community charged with enforcing the DVPA cannot shirk its duties, as appellants suggest, simply because those demanding accountability were not victims of domestic violence themselves. When any component of this safety net becomes derelict in its duties and commitments, we put victims at risk.

Without accountability, the DVPA will erode and victims it seeks to protect will be harmed.

b. Exempting law enforcement from Washington policy regarding domestic violence is dangerous and contrary to the intent of such policy.

Respondents' brief outlines the myriad state statutes and department policies regarding law enforcement's responsibilities when firearms are present at a domestic violence call. The mandate is clear that officers must not provide firearms to suspected abusers. Rather, they should document and offer to take them for safekeeping. *See* Respondent Br. at 22-30.

While the DVPA was created to protect victims, it necessarily encompasses the work of many others. Law enforcement plays a unique and critical role in domestic violence prevention. The DVPA could not be effective without the investment and partnership of law enforcement.

According to the Washington State Uniform Crime Report, there were 45,944 domestic violence offenses reported to law enforcement agencies in 2012, which makes these offenses 49.6% of all crimes against persons in Washington State.⁶ Law enforcement officers' frequent contact with domestic violence perpetrators and the officers' broad authority to intervene gives them substantially more reach and power in protecting

⁶ Kellie Lapczynski, et. al., *Crime in Washington 2012 Annual Report*, Washington Association of Sheriffs and Police Chiefs, (2012).

victims than any other members of the domestic violence safety net. The legislature has directed law enforcement to use this opportunity and power to enforce “the laws to protect the victim and...communicate the attitude that violent behavior is not excused or tolerated,” in order to, “provide victims the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010.

Appellant’s argument that law enforcement does not have to adhere to this public policy of protecting domestic violence victims because they are not domestic violence survivors is tantamount to immunity for domestic violence abusers. *See* Appellant Reply Br. 27. Appellant’s argument requests this Court nullify the public policy of protecting domestic violence victims and forces domestic violence victims to fend for themselves as law enforcement provides firearms to their abusers. This is not the law nor sensible. Indeed, the reason there is no domestic violence survivor in this case is because Pierce County armed Regina Annas’s abuser at the point of separation. Officer Bray and Tracy’s actions were in service of protecting domestic violence victims—including preventing law enforcement from arming more abusers at the point of separation, or anytime.

Providing a gun to a domestic violence perpetrator at the crucial juncture where the victim is leaving the relationship is not just a lapse in

judgment; it is an abdication of clear responsibilities required by the DVPA and sheriff's department policies that carries grave consequences. In this case, it cost Regina Annas her life. For officers Bray and Tracy—who attempted to shed light on this failure, and bring a sense of justice to Regina's family—it cost them their careers. The prevention requirements of the DVPA were enacted to prevent these tragedies from happening. To prevent further harm to victims and survivor, the DVPA also requires the commitment of law enforcement. If law enforcement officers cannot use the DVPA to hold their peers and departments accountable, the burden of domestic violence prevention and protection rests squarely on the shoulders of victims.

Tragically, there is no remedy that will bring back Regina Annas or any of the victims of domestic violence who have been murdered by an intimate partner. The remedy before this court is that of prevention. To affirm the trial court's ruling is to affirm that domestic violence prevention is a community effort; and law enforcement has a unique and crucial role in that effort.

VI. CONCLUSION

For the foregoing reasons, the Northwest Justice Project respectfully requests that the trial court's decision be affirmed, finding that

domestic violence prevention is a clear public policy in Washington state,
for which law enforcement should be held accountable.

RESPECTFULLY SUBMITTED this 30th day of October, 2019.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 30th day of October, 2019, I caused the foregoing documents to be filed with the Court of Appeals, Division II, and to be served on the Attorneys of Record, via the Washington State Appellate Courts' Portal.

DATED this 30th day of October, 2019, at Everett, WA.

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