

NO. 87472-7

Cowlitz Co. Cause No. 09-1-01167-0

**SUPREME COURT OF STATE OF  
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

**TIMOTHY J. DOBBS,  
AKA: TIMOTHY JOHN ST. LOUIS,**

Petitioner.

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**ANSWER TO PETITION FOR REVIEW**

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**I. IDENTITY OF RESPONDENT**

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the May 1, 2012, published Court of Appeals opinion in State v. Dobbs, No. 405342-II/40636-5-II (2012). This decision upheld the petitioner's convictions for a number of felony domestic violence offenses.

**II. COURT OF APPEALS DECISION**

The Court of Appeals correctly decided this matter, holding (1) the trial court's factual finding the petitioner wrongfully caused the victim of his crimes to absent herself from court was supported by substantial evidence; (2) the trial court correctly held that the petitioner forfeited any objections based on both confrontation and hearsay. As such, this Court should deny review of this matter.

**III. STATEMENT OF THE CASE**

In the summer of 2009, the appellant began dating a woman named Casey Rodriguez. Ms. Rodriguez lived in a garage apartment located at 420 22<sup>nd</sup> Ave in Longview, Washington. RP 217, 66. James Applebury and Sarah Ellis lived in the main home on the property. RP 54-58. Sometime around Halloween, Ms. Rodriguez became angry with the appellant and broke off their relationship. RP 219.

On November 7, 2009, Ms. Rodriguez called 911 to report an incident of domestic violence involving the appellant. Officer Matt Headley with the Longview Police Department went to the residence on 22<sup>nd</sup> Avenue and spoke with her. Ms. Rodriguez appeared nervous, and possibly afraid, during her contact with Ofc. Headley. RP 88-90. Ms. Rodriguez told Ofc. Headley her ex-boyfriend, who she knew as “Tim St. Louis”, had come to her apartment and beat on her door, demanding to come inside to talk about their relationship. She refused to let him in, telling him to leave. Ms. Rodriguez then heard a hissing noise, and when she went outside saw that the tires on her car were flat. RP 92. Ofc. Headley located a photo of the appellant, which Ms. Rodriguez identified as being “Tim St. Louis.” Ms. Rodriguez further stated the appellant had been following her for the past few days, and that he was carrying a black handgun. RP 94. She said the appellant had threatened to shoot her if she did not continue to date him. RP 95.

While Ofc. Headley was at the scene speaking with Ms. Rodriguez, she received a number of text messages from the appellant. She also received a phone call from the appellant, which Ms. Rodriguez allowed Ofc. Headley to listen to using the speaker phone function on her cellular telephone. The appellant confronted Ms. Rodriguez about calling the police, repeatedly demanding to know why she had done this. The

appellant ended the call by saying "I warned you not to call the police" and that Ms. Rodriguez was "going to get it." RP 97.

Ms. Rodriguez told Ofc. Headley she was afraid of the appellant, and thought he would hurt her. She said the appellant had previously threatened to return and shoot up her house and everyone in it. RP 99. Ms. Rodriguez informed Ofc. Headley the appellant was transient, and the police were unable to locate him that night. Ms. Rodriguez made a sworn written statement for Officer Headley, which was admitted into evidence. Ofc. Headley also noted that the tires on her car had been slashed. RP 100-101.

On November 10, 2009, Ms. Rodriguez again called the police to report the appellant was continuing to threaten her. Ofc. Nick Woodard with the Longview Department responded, and found Ms. Rodriguez to be very upset and hysterical. Ms. Rodriguez reported the appellant had been stalking her. However, the appellant had fled the scene and again could not be located by the police. This upset Ms. Rodriguez greatly, as she told Ofc. Woodard that if the appellant wasn't found the police would find her dead. RP 108.

Later this same day, November 10, James Applebury, the resident of the main house at 420 22<sup>nd</sup> Avenue was upstairs using his computer. Through his window, he observed a black male and a black car. He

believed the black male was the appellant, as he had seen the appellant driving this car before. RP 39. Mr. Applebury noticed the car leave, then return after a minute or so. He then observed the car pulling into the alley behind Ms. Rodriguez's apartment and heard gunshots coming from the alley. RP 40-41. Mr. Applebury saw an arm sticking out the car window when the shots were fired, he believed this was the appellant's arm. RP 50, 63. Mr. Applebury stated the shots sounded like a handgun. RP 38.

Sarah Ellis, the other resident of the main house at 420 22<sup>nd</sup> Avenue, testified to knowing the appellant as "St. Louis" and to seeing the appellant in the vicinity of the residence two to three times after Ms. Rodriguez broke up with him. RP 66-67. On the night of November 10, 2009, Ms. Ellis was on the front porch when the appellant walked up. The appellant was angry and was saying Ms. Rodriguez was his girlfriend, he was also demanding some of his property be returned. RP 68. The appellant told Ms. Ellis "I don't have no gun" and "I didn't shoot up the house." Not convinced by these disclaimers, Ms. Ellis went inside the house. She then saw that the appellant had gone to the back of the property, where Ms. Rodriguez lived. Shortly thereafter Ms. Rodriguez ran inside the main house screaming "He has a gun, call the cops." Mr. Applebury looked outside and saw the appellant was outside in Ms. Rodriguez's apartment, and that he was carrying a black handgun. RP 42-

44. Mr. Applebury then called the police. RP 54. After calling the police, Mr. Applebury observed the appellant jump the fence into his neighbor Ken Norton's yard. RP 45-46.

Ofc. Woodard, along with several other officers, responded to Mr. Applebury's 911 call. RP 109. As Ofc. Woodard approached the residence, he saw a male matching the appellant's description walk out from the driveway. He ordered this person to stop, but the appellant instead fled and ran between the residence at 420 22<sup>nd</sup> Avenue and the neighboring house. Ofc. Woodard last saw the appellant running down the alley behind the house. RP 110-113.

Officer Tim Deisher also responded to the scene with his police tracking dog Chase. RP 201-204. Using his dog, Ofc. Deisher tracked the appellant from 420 22<sup>nd</sup> Avenue to a nearby Laundromat. The appellant was found inside the store, attempting to hide behind two young women. The appellant was then arrested and booked into jail. RP 208-209.

After the appellant was apprehended, Ofc. Woodard returned to the house to speak with Ms. Rodriguez, who was extremely upset and hysterical. Ms. Rodriguez was very frightened by the appellant's return, saying the appellant had shot at her house earlier in the day and that she had told the police they would find her dead. RP 116. Ms. Rodriguez said that later in the evening on November 10, there was a knock on her door.

When she opened the door, the appellant forced his way inside. She argued with the appellant, who was armed with a revolver, before fleeing towards the main house. RP 117. Ms. Rodriguez made a sworn written statement regarding this event to Ofc. Woodard. RP 117. Ms. Rodriguez also gave Ofc. Woodard a threatening note the appellant had left for her earlier in the day. RP 118-119. This note had the words “D is on you bitch” on the back, while the front contained this message for Ms. Rodriguez:

Last days. The countdown on your ass. You should know me by now, Casey. You fucked up and tripped with the wrong brother. You will regret what you did and said to me. You never loved me. You never cared about me and now you will reap a world of trouble and pain. Number 1, you can apologize to me and talk with me face-to-face or Number 2, you know you can't and won't be in Longview or Washington. I'm going all out on this with you. You're fucked up bitch.

RP 120.

Ofc. Woodard went back to the residence on November 11, 2009, to check in on Ms. Rodriguez. During this visit, Ms. Rodriguez played for Ofc. Woodard two voicemails the appellant had left for her. The first message said “You heard that. That was me and that's what I can do.” Ms. Rodriguez believed this was an allusion to the drive-by shooting of her apartment. The second message had been left after the appellant had been arrested on November 10. In this message the appellant began by

pleading with the victim not to press charges against him, then transitioned to threats of “don’t do this to me or you’ll regret it.” RP 123. Ms. Rodriguez also showed Ofc. Woodard text messages the appellant had sent her. RP 124. These text messages stated:

Next time it is you, bitch. On, Bloods.

Bitch, you move and there will be hell to pay. Plus, my bro lives down there and he’s a known figure. You can’t get away from me. I told you you’re mines.

RP 126-127.

The following day, November 11, the next-door neighbor, Ken Norton, found a fully loaded .22 caliber revolver in his backyard. RP 80-81. Mr. Norton had been in his yard several times on the 10<sup>th</sup>, and the revolver was not there on that day. RP 84. Mr. Norton turned the gun over to the police. RP 84-85.

As part of his investigation, Det. Sgt. Mike Hallowell of the Longview Police Department examined Ms. Rodriguez’s apartment. He found two bullet holes on the outside of her residence, the appearance of which was consistent with a small caliber round such as a .22. RP 170-171. Further investigation indicated the trajectory of the bullets was from the alleyway behind the apartment. RP 172.

Det. Sgt. Hallowell also interviewed the appellant at the Cowlitz County jail. The appellant admitted he had been in an on again/off again

dating relationship with Ms. Rodriguez since July or August of 2009. The appellant stated he lived with his mother, not at 420 22<sup>nd</sup> Ave. The appellant claimed he loved Ms. Rodriguez, and cared for her greatly. RP 217-219. The appellant said that on Halloween Ms. Rodriguez became upset with him, and that she was “tripping” because she believed the appellant had a gun. The appellant denied this, claiming it was a toy gun that Ms. Rodriguez had mistaken for an actual gun. RP 221. The appellant said this toy gun resembled a revolver but had an orange tip, he stated he could not possess actual firearms due to a robbery conviction in Missouri. RP 227-228. The appellant denied leaving the threatening note or slashing Ms. Rodriguez’s tires, ascribing these acts to other “enemies” of hers. RP 222.

The appellant stated that he went to Ms. Rodriguez’s apartment on November 10<sup>th</sup> to visit her and to bring her some money to help out with the damaged tires. Ms. Rodriguez was fearful of the appellant, began yelling at him, and fled. The appellant said he then began to leave, but was confronted by a person he couldn’t see clearly. When he realized this person was a police officer, he supposedly ran because he had been smoking marijuana. RP 223-225.

When confronted by Det. Sgt. Hallowell, the appellant admitted he went to Ms. Rodriguez’s residence on November 7<sup>th</sup>, but denied slashing

her tires. RP 231-232. Det. Sgt. Hallowell began to leave, but the appellant asked if he “wanted the gun.” After hearing a description of the revolver, the appellant admitted to having handled the gun about a week before. RP 236. However, the appellant claimed that other persons had been with him on November 10, and implied these persons had dropped the gun in the neighbor’s yard. RP 237.

Later in November, Det. Sgt. Hallowell attempted to recontact Ms. Rodriguez. However, she never returned his calls or appeared for appointments. RP 241. The evening before trial, Ofc. Headley went to Ms. Rodriguez’s residence and instructed her to appear at court by 9:00. Ms. Rodriguez said she would appear. However, Ms. Rodriguez did not appear the next day, despite having been served with a subpoena by the State. The trial court then issued a material witness warrant for her. RP 77. On the first day of trial, Det. Sgt. Hallowell dispatched officers to Ms. Rodriguez’s apartment to locate her, but she was not there. Officers continued to check her residence throughout the day, and also went to several motels in the area looking for her. Det. Sgt. Hallowell contacted an informant and other persons who knew Ms. Rodriguez, but was unable to locate her. Attempts to find Ms Rodriguez on the second day of trial were also unsuccessful. RP 238-240.

After hearing this testimony, the trial court found that the appellant had forfeited his constitutional right to confront Ms. Rodriguez by intentionally causing her nonappearance at trial. RP 254-256. The trial court ruled this had been established by clear, cogent, and convincing evidence. RP 254. The trial court further found the appellant had also forfeited the protections against hearsay afforded by the evidentiary rules. RP 282-283. The trial court then admitted all the testimony described above, and after deliberating, found the appellant guilty of stalking with a firearm enhancement (count I), felony harassment (count II), intimidating a witness (count III), drive-by shooting (count IV), unlawful possession of a firearm in the first degree (count VII), and obstructing a law enforcement officer (count VIII). RP 306-307, CP 1-4. The trial court found the petitioner not guilty of burglary in the first degree and assault in the second degree. *Id.*

#### **IV. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION**

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 decision of another Court of Appeals; or
- (3) if a significant question of law under the Constitution of the State of Washington or 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.

This Court should deny review because the issues raised in the instant petition do not implicate any of the grounds for review mandated by RAP 13.4(b).

**a. The Court of Appeals Decision Merely Applied Prior Precedents by this Court and the United States Supreme Court, and Did Not “Expand” the Forfeiture by Wrongdoing Exception.**

This Court has previously adopted the doctrine of forfeiture of by wrong doing in State v. Mason, 160 Wn.2d 910, 162 P.3d 396 (2007), holding that a criminal defendant who, by his own misdeeds, renders the witnesses against him unavailable forfeits the usual protections against the witnesses’ testimony being offered by third parties. In Giles v. California, 544 U.S. 353, 128 S.Ct. 2678 (2008), the United State Supreme Court noted the continued validity and application of this doctrine, but required proof by clear, cogent, and convincing evidence that the defendant intended to render the witnesses unavailable. This additional requirement

has been integrated into Washington's forfeiture doctrine. See State v. Fallentine, 149 Wn.App. 614, 620-621, 215 P.3d 945 (2009).

Lacking any reasoned legal objection to the application of the doctrine, the petitioner raises a factual argument related to the findings of the trial court, as upheld by the Court of Appeals. However, it is a long standing and uncontested rule that an appellate court reviews a trial court's findings of fact under a substantial evidence standard. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Substantial evidence" is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. Hill, 123 Wn.2d at 644. The question for an appellate court is not whether it would make the same finding, or necessarily agrees with the trial court's rationale, but simply whether the lower court's finding is supported by substantial evidence. See Fallentine, 149 Wn.App. at 620-21.

The factual dispute raised by the petitioner in this case does not implicate any of the grounds by review identified in RAP 13.4(b). It is not for this Court to reweigh the evidence, draw its own conclusions, or reach factual findings. Hill, 123 Wn.2d at 647. Factual disputes and determinations are properly resolved at trial, and the petitioner's dissatisfaction with the trial court's resolution of this issue does not qualify for discretionary review under RAP 13.4(b). Whether the

particular facts presented in a case qualify as “clear, cogent, and convincing” proof is inevitably a highly specific, case-by-case determination.

The petitioner argues that the fact there may have been alternative explanations for the victim’s failure to appear at trial undermines the trial court’s ruling and the analysis of the Court of Appeals. Petition at 16. The petitioner is of course correct that there are other *possible* explanations, but the law does not require the elimination of any other *possible* explanations even for proof beyond a reasonable doubt. See State v. Gosby, 85 Wn.2d 758, 765-766, 539 P.2d 680 (1975) (overruling prior requirement of elimination of alternative possibilities for conviction). Thus, this observation, while correct, is wholly irrelevant and does not require review by this Court.

Finally, the petitioner argues that the decision of the Court of Appeals will “discourage the [S]tate from making efforts to procure reluctant witnesses for trial.” The claim is wholly speculative, and without any basis in the actual record of the case, as the State made extensive and repeated efforts to secure the victim’s attendance at trial. Discretionary review should be based on the actual record and legal issues decided by the lower courts, not a parade of horrors.

**b. The Court of Appeals Did Not Create a “Domestic Violence” Exception.**

The petitioner contends that the Court of Appeals created a “domestic violence” exception that “swallows the Crawford rule” requiring confrontation. Petition at 19. However, the Court of Appeals explicitly rejected the idea that simply being charged with domestic violence would lead to forfeiture. See Dobbs, 40534-2-II at 9. Thus, the specter raised by the petitioner is without any basis in the actual ruling by the Court of Appeals or the trial court.<sup>1</sup>

The Court of Appeals did properly include in its analysis the fact that domestic violence cases may tend involve forfeiture by wrongdoing. This observation is borne out by the factual record of this case, and is in accord with the holding of the United State Supreme Court. In Giles, the Supreme Court noted that:

Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. Where such an abusive relationship culminates in murder, the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution-rendering her prior statements admissible under the forfeiture doctrine. Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly

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<sup>1</sup> Notably, the trial court carefully weighed the evidence at trial and acquitted the petitioner of the most serious charges against him. This outcome rules out the claim that the trial court, and by extension the Court of Appeals, reflexively violated the petitioner’s rights due to the mere allegation of domestic violence.

relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.

554 U.S. at 377. In light of this, the dynamics and facts of domestic violence are probably considered, not for a separate “domestic violence” exception, but simply in determining the existence of forfeiture in a given case. As noted previously, this factual determination is entrusted to the trial court.

**c. The Court of Appeals Correctly Followed Prior Precedent That Forfeiture Applies to Both Confrontation and Hearsay.**

Petitioner requests review of the Court of Appeals decision upholding the trial court’s ruling that the petitioner’s wrongdoing led to the forfeiture of both confrontation and hearsay. However, this claim again fails to implicate the concerns of RAP 13.4(b). The petitioner fails to identify any conflicting authority from courts of this State or conflicting federal authority. Instead, the decision was in accord with prior decisions by other divisions of the Court of Appeals. See Fallentine, 149 Wn.App. at 623. The decision was also in accord with the decisions of the United States Supreme Court. See Giles, 554 U.S. at 365. Finally, the decision is in accord with the principles set forth by this Court in Mason, 160 Wn.2d 910, holding that forfeiture is a principle grounded in equity. If wrongdoing may lead to the forfeiture of a *constitutional* right to confront

witnesses, there is no principle or rationale why evidentiary rules against hearsay would not also be forfeited.

Whether or not there are some statements so lacking in reliability that their admission would offend due process, forfeiture notwithstanding, was an issue not reached by the Court of Appeals. Dobbs, at 13. Indeed, this issue was not raised at the trial level or on appeal. As such, this Court should not accept review to decide an issue and objection not previously raised or briefed.

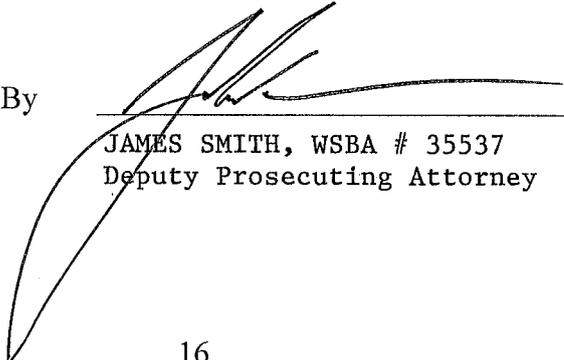
**V. CONCLUSION**

Based on the preceding argument, the State respectfully requests the Court to deny review in this matter. The petitioner has failed to show that review is appropriate under RAP 13.4(b), and the record and applicable law shows that the Court of Appeals correctly decided all the issues presented. As such, this Court should deny any further review of this case.

Respectfully submitted this 13<sup>th</sup> day of August, 2012.

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