

68606-2

68606-2

NO. 68606-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

YEVGENI OSTROVSKI,

Appellant.

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA GENE MIDDAUGH

---

**BRIEF OF RESPONDENT**

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A. ISSUE PRESENTED

1. A Confrontation Clause error is subject to a constitutional harmless error analysis upon review; the error must be proven harmless beyond a reasonable doubt. Here, the trial court erroneously admitted an unavailable witness' nonverbal gesture to a police officer indicating that a particular knife was the one "used" during an incident leading to Yevgeni Ostrovski's arrest. Where evidence that the knife was the one "used" was properly admitted via the testimony of other witnesses, was the error harmless beyond a reasonable doubt?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Yevgeni Ostrovski was charged in a third amended information with 10 counts of domestic violence crimes: Count I, Assault in the Second Degree with a deadly weapon enhancement (knife); Count II, Felony Harassment against his wife; Count III, Felony Harassment against his daughter; Counts IV-IX, No Contact Order Violations, and Count X, Witness Tampering. CP 62-66. After a jury trial, Ostrovski was convicted of all counts except Count III, the threat against his daughter. CP 130-39, 179-83.

Count II, the conviction for Felony Harassment against the same victim as in Count I, was vacated pursuant to a double jeopardy analysis. CP 176. Ostrovski was sentenced to an exceptional sentence below his standard range of 55-69 months, for a total of 14 months in custody. CP 154-58, 179-83.

## 2. SUBSTANTIVE FACTS.

On August 20, 2011, just before 11:00 PM, Tatiana Brodiski, Ostrovski's wife, placed a frantic call to 911 saying that she believed her husband was going to kill her and her daughter, J.B. App. 1.<sup>1</sup> The call, made in English interspersed with Russian, Brodiski's native language, was played for the jury as State's Exhibit 1. Ex. 1<sup>2</sup>; 2RP 18.<sup>3</sup> Brodiski's Russian was interpreted by a language line interpreter live on the call. App. 1 at 2.

Brodiski began by giving the dispatcher her address, then saying, "my husband wanna kill me... he's take the, uh, knife and...

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<sup>1</sup> The transcript of the 911 call, Pretrial Exhibit #2, has been designated by the State.

<sup>2</sup> While the transcript of the 911 call has also been provided, the increasingly terrified tone of Brodiski's voice and her building, intermittent sobs as she cries for help, need to be heard in order for this Court to appreciate the weight of the "untainted" evidence heard at trial. Exhibit 1, the recording of the 911 call, has been designated for this Court.

<sup>3</sup> This brief will refer to the Verbatim Report of Proceedings as follows: 1RP (12/12-13/2011); 2RP (12/14/2011); 3RP (12/15/2011); 4RP (12/19-21/2011).

he's say he's wanna kill me but I stay in some other house, but my daughter in the house... Uh, please, because I very nervous... Please come." App. 1 at 1-2. During the call, Brodiski became increasingly excited: "Please! Please! Very fast, please! I don't know what he's can do! Please! I don't need the interpreter! My child's in the home! I run from the house because he's say say he's kill me and he's kill..." She was interrupted by a Russian language line interpreter, who interpreted the dispatcher's words into Russian and Brodiski's into English. App. 1 at 2.

In Russian, Brodiski became more descriptive:

Please, come quickly because my child is at the house. I ran away, I'm sitting here at the neighbor's hiding. Please! He said he'd kill me, himself, and our child. (sobbing)... He stayed there but I ran from the house because he wanted to kill me. He said he'd slit my throat, kill me. And his child is still at home... he took a big knife, he said he'd kill me and himself, then I took that knife and threw it under the table and ran away. But my child is there...

App. 1 at 2-5. When asked where she was located, Brodiski told the dispatcher that she was hiding in the bushes in a boat, about a block away from her home. App. 1 at 5, 8. Then the 911 operator asked Brodiski for her husband's name, and she spelled Ostrovski's first and last name before screaming, "Please! He

could kill my child, do you understand?! Please! Please!" App. 1 at 7.

As Brodiski was on the phone, she saw the police arrive, and warned them about which side of the house to approach to ensure that Ostrovski did not "run away"; adding that she was "afraid to get out of this boat." App. 1 at 8. When police arrived at the scene, Brodiski emerged from hiding to meet them, looking "extremely frightened." 2RP 11.

Mercer Island Police Corporal David Herzog was one of the first responders, and spoke to Ostrovski's fourteen-year-old daughter, J.B., who came outside. 1RP 84. Corporal Herzog testified that J.B. was shaking and crying as he tried to speak with her. 1RP 86-87. Ostrovski began telling her something in Russian, but was ordered by Corporal Herzog to not speak to her, to avoid compromising the investigation. 1RP 84.

J.B. was interviewed at the scene by Mercer Island Police Officer John Haraway, who testified that she was "extremely distraught... crying uncontrollably" and "shaking from head to toe." 3RP 67. Officer Haraway testified that J.B. told him that she had witnessed her father holding a knife against her mother's neck in the kitchen, and heard him threaten to murder Brodiski and then kill

himself. 3RP 70. J.B. told Officer Haraway that she believed Ostrovski was going to kill them all. 3RP 70.

After his arrest, Ostrovski made several calls to Brodiski from jail in violation of the domestic violence no contact order imposed at his first court appearance. 2RP 62-63; 4RP 39-65; CP 177-78. Translations of these calls were reenacted before the jury pursuant to a stipulation, resulting in Ostrovski's convictions for counts IV-X. 2RP 62-63; 4RP 39-65; CP 133-39. In some of these calls, he told Brodiski to speak with the prosecutor and "take it all back." This was the basis for the witness tampering conviction in Count X. 4RP 41; CP 139.

### 3. FACTS REGARDING HEARSAY TESTIMONY AND WITNESSES' RECANTATIONS.

During Corporal Herzog's redirect examination, he was asked by the prosecutor if he noted anything in the kitchen area at the scene. 1RP 96-97. The corporal responded:

After... [J.B.] and the witness told us, I asked them where the knife was that we had the information that was used, and the roommate went to the kitchen counter and pointed out where the knife was.

1RP 97. Ostrovski objected to the response as "hearsay," but the trial judge overruled his objection. 1RP 97.

The prosecutor followed up by asking Corporal Herzog where the knife was, and he responded, "on the kitchen counter tucked in the back corner by the sink area." 1RP 97. While not explicitly testified to, the presumption from Corporal Herzog's later testimony revealed that the witness who pointed to the knife was Gennady Belyaev, a man who was living at the home but had, since the incident, departed from the United States to the Ukraine. 2RP 54-55, 57.

The knife itself was admitted at trial without any objection as State's Exhibit 3 via Mercer Island Police Detective Peter Erickson. 2RP 21, 23. Detective Erickson testified that the knife measured five-and-a-half inches. 2RP 24.

When Brodiski testified, she tried to invoke her Fifth Amendment right to silence the moment the prosecutor's questions turned to Ostrovski's actions on the night of the crimes. 3RP 17. Brodiski testified that she "did not want to tell anything about [her] husband," adding that she loved him and wanted him to "come back home." 3RP 18. She told the jury that she did not want to "talk bad" about him, was not "afraid" of him, and did not want to "be bad" by saying "anything bad" about her husband. 3RP 18.

After the trial judge ruled that the Fifth Amendment did not apply and ordered her to answer the questions, Brodiski testified that Ostrovski was cutting salad with a knife and they had “a quarrel.” 3RP 24-25. Because she does not like knives, Brodiski took it away from Ostrovski and threw it under the table. 3RP 36. She testified that she believed that the police had found the knife under the table. 3RP 36. She identified State’s Exhibit 3 as the knife Ostrovski was using:

Prosecutor: I’m holding what’s marked as State’s Exhibit 3. Is this one of your kitchen knives?

Brodiski: I think so, yeah. Yes.

Prosecutor: Was this what your husband was chopping the salad with?

Brodiski: Yes.

3RP 25.

Contrary to her 911 call, at trial, Brodiski denied that Ostrovski had used the knife in a menacing way or otherwise threatened anyone. 3RP 34, 35. The prosecutor played Brodiski’s 911 call and asked her why she expressed concern for J.B.’s safety to the operator. Brodiski replied that J.B. “can be very emotional sometimes and she can lose her temper.” 3RP 27. Brodiski did admit on the stand that she had left the house after their “quarrel” and hidden beneath an overturned boat tucked into some bushes

because she thought Ostrovski "could look for [her] or ...chase [her] or catch [her]." 3RP 38. She claimed that hiding and calling 911 was a mistake and that she should simply have "gone to bed." 3RP 38.

J.B. also recanted her initial statements to police when she took the stand. She testified that having her father come home in time for Christmas was her "Christmas wish." 3RP 79. She explained her statement to Officer Haraway the night her father was arrested by saying that she was responding to being "freaked out" because it was "late at night," she was "under stress," and she generally gets "very mad" when woken up. 3RP 81, 83, 87. J.B. testified that her father was simply cutting salad, and that he was "talking with his hands" while holding the knife. 3RP 80. She explained that the reason for her tears when the police arrived was that she was "still kind of like upset that [her] parents were arguing." 3RP 83.

When pressed about her initial statement to police, J.B. admitted telling them that, at the time, she "interpreted" her father's gestures with the knife "as being like intention, like he had a bad intention instead of just like talking with motion." 3RP 101. When asked what she had told police her father had done with the knife,

J.B. responded, "Well, since they were standing by each other, I took it as him having it too close to her neck," adding, "but since I was in my room how would I be able to see where he has it if I'm in the back..." 3RP 101.

J.B. also admitted that her father had said to her mother, "You're going to pay for this," but again said that she was not by him at the time and so she could not possibly reliably "remember." 3RP 101, 102. She ended her testimony on direct examination by claiming that Ostrovski and her mother had not spoken since his arrest. 3RP 104. J.B. testified that Ostrovski did "everything" for her, took her "everywhere," and bought her "everything." 3RP 114.

C. ARGUMENT

1. THE ERRONEOUS ADMISSION OF THE NONVERBAL HEARSAY TESTIMONY WAS HARMLESS BEYOND A REASONABLE DOUBT.

Ostrovski contends that the trial court erred when it permitted Corporal Herzog to testify regarding Belyaev's nonverbal statement concerning the location of the knife. While the State concedes that the objection should have been sustained as hearsay and the testimony stricken given Belyaev's unavailability for cross-examination, his nonverbal statement added nothing to

the record properly established in the rest of the trial, and was therefore harmless.

Under the Confrontation Clause, defendants have the right to cross examine witnesses whose testimonial statements are introduced at trial. Wash. Const. art. I, § 22 (amend. 10); Davis v. Washington, 547 U.S. 813, 821, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006); Crawford v. Washington, 541 U.S. 36, 51, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). A statement made to police officers, where the primary purpose is the investigation of a crime and there is no ongoing emergency, is testimonial. Davis, 547 U.S. at 821.

A Confrontation Clause error is subject to a harmless error analysis, and a constitutional error is harmless if the reviewing court determines, beyond a reasonable doubt, that any reasonable jury would have reached the same result absent the error. State v. Smith, 148 Wn.2d 122, 139, 59 P.3d 24 (2002). When a defendant fails to object to a Confrontation Clause violation during trial, the issue is waived on appeal unless he can show manifest constitutional error resulting in actual prejudice. State v. Fraser, 170 Wn. App. 13, 27, 282 P.3d 152 (2012).

Ostrovski contends that because the two testifying victims contradicted their initial statements by recanting on the witness

stand, the nonverbal statement by Belyaev gesturing toward the knife may have played a role in the jury's verdict. Without its admission, Ostrovski implies, the State may not have been able to establish the foundation for the admission of the knife, show that the knife was a deadly weapon, or prove that an assault with the knife had even occurred.

But Corporal Herzog's single sentence regarding Belyaev's gesture merely duplicated much more compelling admissible testimony, was never relied upon by the State, and did nothing to advance the State's case. Its admission, therefore, was harmless beyond a reasonable doubt. Further, the admission of the knife into evidence was never objected to by Ostrovski's defense attorney, nor did its admission rely upon Belyaev's gesture for its admission, so the issue was neither preserved nor created any actual prejudice.

In Fraser, 170 Wn. App. 13, 282 P.3d 152 (2012), Fraser was charged with the murder of his ex-girlfriend's new boyfriend, Cross. 170 Wn. App. at 13-14. Prior to his death, Cross had provided a statement to police reporting that Fraser had continually threatened and harassed him; this statement was admitted at trial with a jury instruction limiting the evidence to consideration of

Cross' "state of mind." Id. at 19, 20. Other witnesses testified that Fraser had threatened Cross in the past, but no other witness testified that Cross had filed a police report regarding the threats. Id. at 19-20, 25.

Because Cross' statement was testimonial and Fraser did not have an opportunity to cross examine him, this Court held that Cross' statement to police should not have been admitted. Id. at 23. This Court reviewed the remaining untainted evidence to determine whether, "beyond a reasonable doubt... any reasonable jury would have reached the same result in the absence of the error." Id. at 23-24 (citing State v. Jasper, 174 Wn.2d 96, 117, 271 P.3d 876 (2012)). Because Cross' statement to the police was a "minor component of the state's evidence," the remaining evidence of Fraser's "premeditation was compelling," and there was no mention of Cross' state of mind during the State's closing argument, this Court held that there was "no likelihood that the erroneously admitted statement... influenced the jury in any significant way." Fraser, at 25. This Court also relied on the fact that other witnesses who testified provided admissible evidence similar to the erroneously admitted evidence. Id.

Here, Ostrovski makes much of Belyaev's nonverbal gesture toward the kitchen knife, but its actual evidentiary weight is insignificant. While Ostrovski argues that by gesturing toward the knife, Belyaev was essentially providing evidence as to the assault itself, his gesture was in response to a vague question by Corporal Herzog about "where the knife was that [Corporal Herzog] had the information that was used," and not in response to a question about a particular assault or even a threat. 1RP 97.

While Corporal Herzog did testify that his query occurred after Belyaev had spoken with police, there was never any testimony about what Belyaev had said to police, or what the corporal meant by the term "used." 1RP 97. Neither the corporal nor any other witness testified that Belyaev was asked where the knife was that was "used in an *assault*" or "used *to threaten* the victims" or even "used *by Ostrovski*"; the only reasonable inference a juror could draw from the brief testimony regarding Belyaev's gesture was that the knife was "used" in some capacity during the incident.

That a knife was "used" during Ostrovski's assault and threats toward his wife was admitted via the 911 call and through J.B.'s excited utterances. But the mere general "use" of a knife as

hinted at by Belyaev's gesture was also admitted during the trial testimony of the recanting witnesses, J.B. and Brodiski. Both witnesses, even in their efforts to exculpate Ostrovski, still admitted on the stand that he was holding the knife during the "quarrel." 3RP 24-25, 36, 80, 101.

Brodiski also testified that the salad knife in evidence was the same knife that Ostrovski was holding, and J.B. described the knife her father was using as a knife always used to chop salad. 3RP 83. Because the use of a knife in *some* capacity was a common feature in all of the pertinent evidence, Belyaev's gesture toward the knife added nothing to the remaining evidence against Ostrovski.

Corporal Herzog's transitory testimony about Belyaev's silent gesture added even less to the State's case than the evidence in Fraser about prior reported threats by the victim. Moreover, the testimony was mirrored by all of the other evidence admitted at trial, whether it was evidence of statements made at the scene or the modified version of events provided by Ostrovski's victims at trial. Fraser, 170 Wn. App. at 19, 20. Like in Fraser, the prosecutor here did not rely on the flawed evidence in her closing argument. The fact that the evidence was properly before the jury via other

testimony, in a much more compelling manner, rendered its erroneous admissibility altogether harmless.

Ostrovski further argues that Belyaev's gesture somehow contributed to the admission of the knife into evidence, facilitating the requisite "deadly weapon" finding for his Assault 2 conviction and furthering the deadly weapon enhancement. Appellant's Brief, 22-23. But Ostrovski's attorney did not object to the admission of the knife into evidence via Officer Erickson, so the objection was not preserved for appeal under RAP 2.5(a). 2RP 21, 23. Thus, to be reviewable on appeal, Ostrovski must show a "manifest error affecting a constitutional right." 2RP 21, 23. State v. Scott, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988). The only constitutional error here was the admission of Belyaev's gesture to Corporal Herzog, but that played no role in the admission of the knife. The knife was admitted through the separate foundation laid by Officer Erickson. 2RP 24. No constitutional issue, therefore, was triggered by the admission of the knife into evidence, and this issue is waived for purposes of appeal.

But even if this Court agrees with Ostrovski that Belyaev's gesture somehow played a role in the foundation for the knife's admissibility and created a constitutional error, that error remains

harmless (and therefore not a *manifest* error, which requires actual prejudice that could not have been corrected at trial). See State v. O'Hara, 167 Wn.2d 91, 99-100, 217 P.3d 756 (2009). After all, the knife could just as easily have been admitted via Brodiski, who identified it as the salad knife Ostrovski was holding during their "quarrel."<sup>4</sup> Because the knife would have been properly admitted into evidence regardless of Belyaev's gesture, Ostrovski cannot reasonably argue that its admission into evidence was somehow manifest constitutional error.

The evidence against Ostrovski, even once Corporal Herzog's single erroneous phrase is removed, remains just as compelling. The 911 call, played for the jury and designated as State's Exhibit 1, captured Brodiski's fear and her frantic pleas for help just moments after Ostrovski threatened the family and himself with the kitchen knife. App. 1. Her panicked statements on that

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<sup>4</sup> Ostrovski argues that Brodiski's identification of the knife as the one used was "equivocal." Appellant's Brief at 23. He justifies this by citing the fact that Brodiski initially hesitated to admit that the knife in evidence was one of her kitchen knives. Appellant's Brief at 23. But Brodiski's testimony as quoted in the Appellant's Brief is incomplete, omitting Brodiski's follow up to her initial response of, "I think so, yeah," which effectively erases any question of equivocality:

Prosecutor: I'm holding what's marked as State's Exhibit 3. Is this one of your kitchen knives?

Brodiski: I think so, yeah. Yes.

3RP 25 (emphasis added). The *entire* response reveals that Brodiski was unequivocal in her identification of the knife as the one used by Ostrovski that night.

call were far more credible than her testimony at trial, particularly for a jury that also heard jail calls from Ostrovski to Brodiski, ordering her to “take it all back” (for which he was also convicted of no contact order violations and witness tampering). CP 169, 134-39.

Brodiski’s recantation on the stand was not only discredited factually in its stark contrast to the 911 call, but also by testimony from police regarding her frightened appearance when they first arrived, and the fact that she was so afraid of Ostrovski that she hid herself in an overturned boat in the bushes until help arrived. Further, her acknowledged bias in favor of Ostrovski and her declaration that she did not want to “be bad” by testifying against him rendered her recantation utterly unbelievable. If anything, Brodiski’s recantation served to confirm the success of Ostrovski’s efforts to tamper with her, as captured in the jail calls, and not to cast reasonable doubt on the charges themselves.

But the evidence against Ostrovski was not limited to Brodiski’s 911 call or her initial frightened demeanor when police arrived. The jury also heard testimony about J.B.’s excited utterances at the scene. These provided an even stronger factual basis for the jury’s verdict. Officer Haraway testified how fourteen-

year-old J.B., through her tears, described her father pressing a knife against her mother's neck and threatening to kill her mother and then commit suicide. 3RP 70. J.B.'s demeanor and statements to Officer Haraway were consistent with the 911 call.

Ostrovski counters that J.B., like her mother, presented a very different version of events at trial, casting doubt on their initial declarations. But J.B.'s feeble recantation, claiming from the stand that her father was merely "talking with his hands" while he gripped the salad knife, and that she could not have witnessed what she described so powerfully to Officer Haraway, was made even more implausible by her proclaimed but understandable bias in favor of her father. 3RP 80, 114.

It was the mounting evidence against Ostrovski, from the 911 call, to the demeanor of his victims and their initial statements as described by police, to his own successful but exposed efforts to influence Brodiski's testimony and violate the no contact order, that formed the basis for the jury's convictions. Corporal Herzog's brief statement regarding Belyaev's gesture was insignificant, particularly when juxtaposed against the overwhelming evidence against Ostrovski. Because the admission of Balyaev's nonverbal

statement was harmless beyond a reasonable doubt, Ostrovski's convictions should be affirmed.

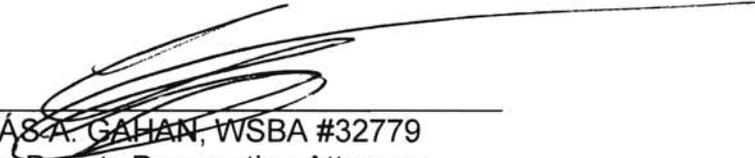
D. CONCLUSION

For the foregoing reasons, the defendant's convictions should be affirmed.

DATED this 23 day of January, 2013.

Respectfully submitted,

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**APPENDIX 1**

Transcript of 911 Call



*PRETRIAL*

State/Defendant EX#  
11-1-07511-3 SEA *pt 2*  
The State of Wa. vs  
Yevgeni Ostrovski

**FILED**  
KING COUNTY WASHINGTON

DEC 12 2011

SUPERIOR COURT CLERK  
BY Susan Bone  
DEPUTY

911 call  
Start: 0:00 End: 15:04

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
1:11	<p>NORCOM 911</p> <p>Ma'am Ma'am I'm having a tough time understanding you. Do you need police, fire or medical?</p> <p>Ma'am Ma'am Ma'am</p> <p>What is your language of choice?</p> <p>Okay, I'm gonna get an interpreter on the phone, okay?</p> <p>Okay. Russian? Just a moment.</p> <p>Yes, it is 9-4-3-1-0-5</p> <p>Okay.</p>	<p>A, hello, my house: 3434 97 avenue southeast. A, my husband wanna kill me. And he stay-- Yeah He really --</p> <p>Aa...nobody... he wanna... he's take the, uh, knife and he's w— he's say he's wanna kill me but I stay in some other house, but my daughter in the house. Yes</p> <p>Russian</p> <p>Uh, please, because I very nervous.</p> <p><i>I don't--</i></p>	<p>[Telephone interpreter operator:] Thank you for calling, may I have your client ID please.</p> <p>Okay, so I'm hearing you very, very poor</p> <p>And, what's the name of your organization,</p>

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
	Norcom	[...] Uh, I speak Russian. <i>Please come--</i>	please? [...]
	[...]		Okay, just a minute, okay, just a minute, ma'am. May I have your operator number?
	It's T—	My house number--	Just a minute, ma'am! Just a minute! Just a minute, please! What's your number?
	T91		E as in Edward, 911?
	T as in Tom, 91.		T91. Okay. Please wait for your Russian interpreter. Did she hung up?
1:56 2:07	We're getting help started, ma'am. We're just waiting for a Russian interpreter, okay?	<i>Please! Please! Very fast, please! I don't know what he's can do!</i>	
	[...] address	Please! I don't need the interpreter! My child's in the home! I run from the house because he's say he's kill me and he's kill	I have your Russian interpreter 5264. Please proceed, interpreter. [Interpreter:] <i>Hello, good-day, this is the interpreter. I will be helping you today.</i>
		<i>Please, come quickly because my child is at the house. I ran away, I'm sitting here at the</i>	

Translator's notations:

Italics: all phrases originally uttered in Russian, translated into English  
[...] – unintelligible: (overlapping, inaudible or poorly articulated speech)

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
	<p>What is the address?</p> <p>Ma'am, would you ask her to calm down</p> <p>[...]</p> <p>I need the number of the</p>	<p><i>neighbor's [hysterical] hiding. Please! He said he'd kill me, himself and our child. And there's another guy at our house who has MS, who needs help, understand, please, he can run away</i></p> <p>[continues to speak hysterically] <i>child!!</i></p> <p>[sobbing]</p> <p><i>Please!! Quick!! He's crazy!!</i> [sobbing]</p> <p>3434 [sobbing hysterically]</p> <p>3434 97 avenue southeast <i>quick! There's a road in back where he can get away! Please, from two sides! Please, catch him!</i></p> <p><i>Yes, yes, yes! Southeast. [...] cul de sac, he can run into the bushes, then no one will find him. You have to catch him!</i></p> <p>[...]</p> <p><i>with my child at home. Please! Come quickly! I don't know what's there</i></p> <p>[...]</p> <p>[...]</p> <p>[wailing]</p>	<p><i>Just a minute. Just a minute [...]</i></p> <p>Please come quick. My child is at home. I ran off and I'm over at the neighbor's house. But he said that he's going to kill himself, myself and the child and we also have a person at home who has MS</p> <p>He's crazy.</p> <p>[...] <i>address</i></p> <p><i>Did you say 3434 97th Avenue?</i></p> <p>[...]</p> <p><i>One minute! Just a minute, please!</i></p> <p>3434 97<sup>th</sup> avenue southeast [...]</p>

Translator's notations:

Italics: all phrases originally uttered in Russian, translated into English

[...] – unintelligible: (overlapping, inaudible or poorly articulated speech)

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
4:36	<p>street. What is the [...]</p> <p>What is going on there? 3434 97<sup>th</sup> Avenue</p> <p>[...] there any [...]</p> <p>Is there any [...]</p> <p>Who is at home?</p> <p>Who is "he" at the home?</p>	<p><i>[...] I can't! [...] I don't know where he [...]</i></p> <p><i>He stayed there but I ran from the house because he wanted to kill me. He said he'd slit my throat, kill me. And his child is still at home. Please, [...] child [...] I don't know [...]</i> <i>[...]</i> <i>[...]</i> <i>[...]</i> <i>[...] catches here he'll kill [...]</i> <i>he said [...]</i></p> <p><i>Please!</i></p> <p><i>Yes, yes, yes, yes.</i></p>	<p>[...] I can't hear you.</p> <p><i>Just a minute; I can't hear what 911 is saying! Just a minute! Hello, this is your interpreter. Could you repeat one more time please?</i></p> <p><i>What's going on?</i></p> <p><i>Just a minute! I can't interpret if you're screaming. I can't interpret if you're screaming.</i> [...]</p> <p>calm down so I can interpret. He's at home with the child. He said that he's going to kill me, to stab me, and I ran away, but he's at home with the child</p> <p><i>I can't hear what he's saying! Just a minute! This is your interpreter. I'm sorry, go ahead.</i></p> <p><i>Who is "he"—your husband? Who?</i></p> <p>Husband.</p>
5:37	<p>Okay, does he have a weapon?</p>		

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/ Officer
7:12	<p>The knife was thrown under the table?</p> <p>What is the address that she's located at?</p> <p>[...] sending help [...] located at</p> <p>where is she located at?</p> <p>Say that again.</p>	<p><i>No, I don't know, he took a big knife, he said he'd kill me and himself, then I took that knife and threw it under the table and ran away. But my child is there</i></p> <p><i>It's the same address that [...]!!! [...] [screaming, sobbing] [...]</i></p> <p><i>just kill!</i></p> <p><i>[continues to speak and sob]</i></p> <p><i>I don't know, in the bushes here [...] probably one block.</i></p>	<p><i>Does he have a weapon?</i></p> <p>He—</p> <p><i>Just a minute!</i></p> <p>Ah, he, I don't know, he had a large knife, but I grab—he said he was going to kill me and himself, but I grabbed the knife from him, I threw it under the table and I ran away.</p> <p>Yeah.</p> <p><i>And what address is he at?</i></p> <p>Same address that I gave you.</p> <p>I'm hiding the in bushes right now. If he finds me he will kill me.</p> <p><i>I can't hear what he's saying! Just a minute!</i></p> <p>This is your interpreter, I'm sorry, go ahead.</p> <p><i>And where are you located?</i></p> <p>I don't know; I'm hiding in the bushes.</p> <p>I don't know; I'm hiding</p>

Translator's notations:

Italics: all phrases originally uttered in Russian, translated into English

[...] – unintelligible: (overlapping, inaudible or poorly articulated speech)

	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
	<p>[...]</p> <p>[...] address?</p> <p>[...] his name is?</p>	<p><i>Please, to my home quickly, he can do something bad and run away [...] there's another person there who came here and his wife left him. He has an illness—MS. He's there with them, I hope he hasn't started to do something to my child. His name is Gennadiy [...] He's a very good person. I don't think he'll do anything bad to my child.</i></p> <p><i>Please help!</i></p> <p><i>[...] throw out on the freeway... some old car... I don't know where at all</i></p> <p><i>I want them to save my child, quick!</i></p>	<p>in the bushes.</p> <p>[...] come quick. There's also another person there at the house. It's a friend of the family, he has MS and I'm hoping he won't let him do anything bad to my child.</p> <p><i>I can't hear what he's saying. Just a minute! If you want help, please!</i></p> <p>This is your interpreter, go ahead.</p> <p>I don't know if--I'm not sure where, where to run. There's some kind of an old car right here.</p> <p>This is your interpreter; I'm sorry, I can't hear. Could you please repeat that?</p> <p>I'm sorry--</p>

Translator's notations:

Italics: all phrases originally uttered in Russian, translated into English

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	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
8:50	<p>Can you--What is his name? Her husband's name?</p> <p>[...]</p> <p>Can you spell that for me, ma'am?</p> <p>We have help coming, ma'am. My questions are so we send the right amount of help, okay?</p> <p>I know she's in distress; I'm trying to help her out, okay? Can you ask her</p>	<p><i>Yevgeni Ostrovski</i> <i>Yev-gen-I O-strov-ski</i> <i>Ostrovski</i></p> <p><i>O-strov-ski</i> <i>Please save my child!</i></p> <p><b>O-S-T-R-O-V-S-K-I</b> <i>Please! He could kill my child, do you understand?!</i></p> <p><i>Please!!</i></p> <p><i>Please!!</i></p> <p><i>All right, all right... I can't, I don't know where here...</i></p> <p><i>He can run from the</i></p>	<p><i>What's your husband's name?</i></p> <p><i>Last name?</i></p> <p>First name is Yevgeni; last name is Ostrovski</p> <p><i>I can't hear him! I can't hear what the 911 operator is saying! Just a minute!</i></p> <p>This is your interpreter—go ahead.</p> <p><i>Say the letters of the name.</i></p> <p>Please, he's going—he can kill my child.</p> <p><i>You need to answer our questions so we can send help.</i></p> <p>[...]</p>

Translator's notations:

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	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
10:21	That's good	<p><i>house on the other side of the house, understand?</i></p> <p><i>Yes, if you had this stress, I understand.</i></p> <p><i>Oh, I see the police—they went to our house. [...] our house. I see</i></p> <p><i>But they need to come from the other side! From the side of that, because there's a cul de sac there and the exit to the house right there. I think that he'll run away now. Look [...] see the police, he'll right away</i></p> <p><i>Yes. I see now. Yes, I see that he's sitting on the other side of the house. There's an exit there, exit 7. Exit. I don't know [...] I'm afraid to get out of this boat. I [...] into a boat</i></p>	<p><i>Just a minute! If you want help fast you need to listen to the operator and answer the questions.</i></p> <p>This is your interpreter. Did you get the spelling of the last name?</p> <p>I can see the police I see the police—they're coming to our house.</p> <p>They should go to the other side because he will run when he sees the police.</p>
11:02	<p>What's his name?</p> <p>I need the spelling of his last name, please.</p>	<p>[...]</p> <p><i>Yes.</i></p>	<p><i>Just a minute!</i></p> <p>The spelling of the last name is O as in Oscar, S as in Susan, T as in Thomas, R as in Rodger, O as in Oscar, V as in Victor, S as in Susan, K as in Kilo, I as in Irene.</p>

Translator's notations:

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	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
12:19	<p>What is the first name?</p> <p>[...] Ma'am, ma'am.</p> <p>We have officers at your address and they're waiting to speak with you, okay?</p> <p>We can't tell her that; we're waiting for her at the address that she gave us.</p> <p>We have officers [...] okay?</p> <p>Do you see the officers?</p> <p>[...]</p> <p>Ma'am... Ma'am... I don't have that information. I need—let her know that the officers are outside her residence</p>	<p><i>Exactly.</i> <i>Uh, uh, eighth, oh wait, hang on...uh, uh, uh... oh wait, hang on. Fourth, third</i></p> <p><i>Uh, March, March, March—</i></p> <p><i>Yes.</i></p> <p><i>Where is he?</i></p> <p><i>Did they find him?</i></p> <p><i>I'm going back, but I think that... he's already run away. Yeah. Did they come in to, to the front—back of the house?</i></p> <p><i>Do they at least see my child?</i></p> <p><i>Can they, that they're in my house? Do they see my child or not?</i></p>	<p>[...]</p> <p>This is your interpreter, did you say “first name” or “birth date”?</p> <p><i>Police officers are at your house, they are waiting to talk to you.</i></p> <p>Did they find him?</p> <p><i>We can't tell you that, we need you to go back so they can talk to you.</i></p> <p>I'm walking back.</p> <p>Did they go in the back of the house?</p> <p>Do they see my child?</p>

Translator's notations:

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	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
12:57	<p>right now. They need to speak with her.</p> <p>Okay. Where is she at right now?</p> <p>Okay. What is her description—her. What is she wearing right now?</p> <p>Do you see lights from the police cars?</p> <p>Does she see all the police [...] Just go to the police officers and they'll be able to assist you, okay?</p>	<p><i>I'm going up there now, I'm going up there now. I'm walking there with my phone.</i></p> <p><i>Huh?</i> <i>I'm walking along the path where the bicyclists ride.</i></p> <p>White shorts. White shorts. <i>I'm going to see them right now... I think that...</i> Yes...</p> <p><i>Yes I [...]</i></p> <p><i>Yes, I see. But where's my child?</i></p> <p><i>All right.</i></p>	<p><i>We don't have that information, but they are waiting for you at your house, to speak with you.</i></p> <p>I'm going to walk over there.</p> <p><i>And where are you now?</i></p> <p>I'm walking on a bike path right now.</p> <p><i>What are you wearing right now?</i></p> <p>I think I'm going to see them right now.</p> <p><i>Do you see?</i></p> <p>Yes I see them. Where's my child?</p> <p><i>Go to the police please and they will help you.</i></p> <p>All right.</p> <p><i>Do you see the police?</i></p>
14:03	Does she see the police officers?	Yes.	

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	911 Dispatcher (male)	Russian-speaking caller (female)	Telephone interpreter operator/Interpreter/Officer
	<p>Okay, I'm gonna stay on the phone until she makes contact with the police officer, okay?</p> <p>Interpreter, I think [...] our officers, okay?</p> <p>We can [...]</p> <p>Yes it is, with a Russian interpreter. Okay.</p> <p>Okay. We'll disconnect. All right. Thank you.</p>	<p><i>Mm-hm.</i></p> <p>'scuse me please. Not this, it's not this house. [...] house on freeway. I'm so sorry. Yes, I see the police. My daughter at home. Please. <i>Yes. Yes.</i></p> <p>A?</p> <p>Can I [...] up the phone?</p> <p>Please. I dunno.</p>	<p><i>All right, we'll wait. We'll stay on the phone until you meet with the police.</i></p> <p>[police officer:] [...] on the phone. [...] on the phone.</p> <p>Who're you on the phone with? Dispatch?</p> <p>[interpreter:] Okay.</p> <p><i>Please hand the phone to the police.</i> [officer:] Who is it?</p> <p>Is this 911?</p> <p>All right. This is [...]</p> <p>137. We got it. All right.</p>

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana Nelson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the RESPONDENT'S BRIEF in STATE V. YEVGENI OSTROVSKI, Cause No. 686206-2 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 23 day of January, 2013

A handwritten signature in black ink, appearing to be 'Dana Nelson', written over a horizontal line.

Name  
Done in Seattle, Washington