

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 97616-3
Petitioner,)	
)	
v.)	MOTION TO STRIKE
)	PORTION OF
WILLIAM PHILLIP, JR.,)	REPLY TO CROSS-
Respondent.)	PETITION
)	
)	

A. IDENTITY OF MOVING PARTY AND RELIEF REQUESTED

Respondent William Phillip, Jr. moves this Court, pursuant to RAP 13.4, to strike and disregard the last paragraph of the State’s “Reply to Cross-Petition,” because it contains improper argument that responds to Mr. Phillip’s arguments against acceptance of review of the issues raised in the State’s petition, in violation of RAP 13.4(d).

B. GROUNDS FOR RELIEF AND ARGUMENT

Under RAP 13.4(d), party “may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.”

This rule was revised in 2006 for the purpose of “clearly prohibiting a reply to an answer that is not strictly limited to responding to an answering party’s request that the Court review an issue that was not raised in the initial petition for review.” 3 Wash. Prac., Rules Practice RAP 13.4 (8th ed.) (quoting Drafter’s Comment, 2006 Amendment to RAP 13.4).

This Court will strike portions of a reply that address issues that do not directly reply to the new issue raised in a cross-petition. *See Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 140, 124 P.3d 640 (2005) (“To the extent that Chevron's reply brief addresses the [new] issue of attorney fees, the reply brief is accepted. The remaining portions of the reply are stricken.”).

Mr. Phillip’s answer that included a request that, should this Court grant review, it should also address a related issue raised in this

case pertaining to the operation of the independent source doctrine following an illegal search. The prosecution filed a reply.

But in this reply, the prosecution offers new argument related to its petition for review and, in this reargument of issues raised in the petition, misrepresents the record. The final paragraph, on pages 3-4, addresses this Court's recent decision in *State v. Muhammad*, No. 96090-0, 2019 WL 5798575 (Nov. 7, 2019). It also miscasts the contested issues on appeal as discussed in the answer. Thus, it uses its reply to reargue issues in the petition and to argue against Mr. Phillip's opposition to review.

In *Muhammad*, this Court emphasized the necessity of having a valid warrant when tracking a person's cell phone location. The analysis in *Muhammad* appears to directly undercut the claims raised in the petition for review. It is understandable why the State urges this Court to disregard *Muhammad* to advance its desire to have review granted. But *Muhammad* has no bearing on the additional issue raised in the answer involving the application of the independent source doctrine.

This final paragraph of the State's reply should be stricken as an effort to re-raise issues in the petition for review and improperly respond to the arguments against acceptance of review, contrary to RAP 13.4(d).

D. CONCLUSION

Mr. Phillip respectfully requests this Court strike the prosecution's final paragraph of its reply to the cross-petition.

DATED this 21st day of November 2019.

Respectfully submitted,



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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 97616-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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King County Prosecutor's Office-Appellate Unit
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: November 21, 2019

WASHINGTON APPELLATE PROJECT

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