

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

KENDRA LYNN WATT

Defendant.

NO. 77281-9

RESPONSE TO OBJECTION TO
MOTION TO SUPPLEMENT

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BY CLERK
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There are several statements and arguments in the defendant's objection to the motion to supplement, which the State must comment.

1. The defendant exercised her marital privilege and prevented Mr. Watt from testifying.

While the State could not have called Mr. Watt, the State could not have prevented the defendant from having Mr. Watt testify. A review of the record clearly indicates this. See RP at 235-236 where the defendant's attorney states:

Judge, if they think it should be admissible, they should have brought [Mr. Watt] in here to testify to it. He had an opportunity to bring him. And then I would have had the right to confrontation. We would have had the opportunity to confront him. **We would have the intent to**

assert the marital privilege. We would have the opportunity to address him about his beating his wife. We would have had the opportunity to address him about the many other things that went on that we would have liked to address.

We didn't call him primarily because we didn't plan on getting into this area. And if the State intended to get into this area, they should have brought him in so that we would have the right of confrontation. **We would have the right to assert the spousal privilege. I think that we can still assert the spousal privilege.** Additionally, Your Honor, he is not introducing this as to Mr. Watt because Mr. Watt has already pled guilty. And the Court has already admitted the document where he plead [sic] guilty. He is trying to use this in this case to implicate Mrs. Watt. They have--the Court has allowed them or indicated it is going [to] allow them to enter his plea--parts of it redacted. Now, counsel, is once again attempting to introduce the thing that has been redacted and circumvent **my client's right to spousal privilege and we were asserting that in any event.** (Emphasis added).

The defendant's claim that she was somehow prevented from exploring a defense by the State's failure to call Mr. Watt is nonsense. If the defendant thought Mr. Watt would have helped her cause or helped establish a defense, she could have called him. She did not call him because she did not want the jury to know he admitted having a methamphetamine lab in their garage and admitted the product from that lab was for her use.

This Court should not blind itself to the fact that Mr. Watt's statement on plea of guilty, and other statements to the police, will be admissible in a retrial.

- 2. The State correctly and ethically made no effort to call Mr. Watt.**

The defendant, in her objection to the motion to supplement, repeatedly refers to the State's decision not to call Mr. Watt. This, too, is a fallacious argument.

As noted above, the power to call or not call Mr. Watt was in the defendant's hands. She exercised the privilege against a spouse testifying. The State had no authority to call Mr. Watt.

For the State to call Mr. Watt would have been similar to calling a witness who will claim a privilege against self-incrimination. It would have been unfair to the defendant for the State to parade Mr. Watt in front of a jury, and then force the defendant to object to his testimony on the basis of the marital privilege. Once the defendant claimed the marital privilege, the State acted ethically and with a desire to uphold the defendant's right to a fair trial by not calling Mr. Watt.

The defendant's criticism of the State on this point is unfair. It also hides the truth: the defendant could have called Mr. Watt if she so desired.

3. The defendant had every right to present any defense.

The defendant's argument that the State limited the possible defense is nonsense. The State admitted the redacted plea statement of Mr. Watt in order to help prove the existence of a methamphetamine lab on the premises. The defendant had every right and opportunity to argue there was not such a lab and she could have called Mr. Watt on that point if she desired.

4. What "new and improved" defense is the defendant talking about?

The defendant has not previously claimed that she had an alternative defense in which she could have explored if Mr. Watt had testified. Nevertheless, in answer, first, the defendant could have called Mr. Watt as a witness. She could have presented any defense dreamed of. Second, what is that defense? The defendant has not outlined any different defense. Third, the basis of an appeal is the claim of some error in the trial proceedings. It is not that the defendant now wishes to pursue a different defense.

5. The claimed error was in admitting the redacted plea statement. The fact that the plea statement will be admissible should be considered by this Court.

Throughout these proceedings the defendant has claimed that the error was in admitting the redacted plea statement of Mr. Watt. The purpose of this motion is to request the Court note that since the dissolution, the State will now be allowed to call Mr. Watt. His plea statement will be admissible in a retrial. This Court should consider this fact in making a decision.

CONCLUSION

This motion demonstrates why admission of Mr. Watt's plea statement was harmless error. The defense was that Mrs. Watt knew nothing of his methamphetamine lab and did not participate in any way in that lab. The fact that Mr. Watt plead guilty did not interfere with that defense.

The "icing on the cake" is that the parties are now divorced. Mr. Watt can directly testify that he plead guilty.

This Court should consider that fact. The motion to supplement should be granted.

Dated this 26th day of September, 2006.

Respectfully Submitted,

ANDY MILLER
Prosecuting Attorney



Terry J. Bloor
Deputy Prosecuting Attorney
Bar #: 9044
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*MEGAN A. BREDEWEG
*Rule 9

September 26, 2006

Ronald R. Carpenter
Supreme Court of the State of Washington
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: The State of Washington v. Kendra L. Watt
Case No. 772819

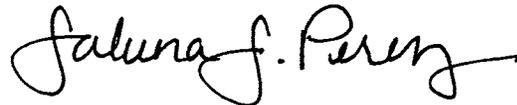
Dear Mr. Carpenter:

Enclosed for filing please find the original and one copy
of the Response to Objection to Motion to Supplement and a
Declaration of Service.

Thank you for your assistance.

Very Truly Yours,

ANDY MILLER
Prosecuting Attorney



SALUNA S. PEREZ
Legal Assistant

SSP
Enclosures
cc: Douglas Phelps
Kendra Watt

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

KENDRA L. WATT,

Appellant.

No. 772819

DECLARATION OF SERVICE

I, SALUNA S. PEREZ, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein. That I, as a legal assistant in the office of the Benton County Prosecuting Attorney, served in the manner indicated below, a true and correct copy of the Response to Objection to Motion to Supplement the 26th day of September, 2006.

Douglas D. Phelps
Phelps & Associates
2903 N. Stout Rd
Spokane, WA 99206-4373

- U.S. Regular Mail, Postage Prepaid
- Legal Messenger
- Overnight Express
- Facsimile
- Hand Delivery By _____

1 Kendra Watt, # 838999
2 Pine Lodge Pre-Release
3 PO Box 300
4 Medical Lake, WA 99022

- U.S. Regular Mail, Postage Prepaid
- Legal Messenger
- Overnight Express
- Facsimile
- Hand Delivery By _____

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

7 EXECUTED at Kennewick, Washington, on the 26th day of
8 September, 2006.

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10 SALUNA S. PEREZ