

NO. 77281-9  
SUPREME COURT  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON, Respondent

v.

KENDRA LYNN WATT, Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

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SUPPLEMENTAL BRIEF OF RESPONDENT

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**SUPPLEMENTAL FACT**

The marriage between the defendant and James Watt was dissolved on June 22, 2006, when a divorce decree was entered in the Spokane County Superior Court. See Spokane County Cause Number 2006-03-00167-1.

**ISSUES PRESENTED**

1. Would James Watt now be available for the State to call as a witness?
2. Would he be allowed to testify that he plead guilty to the charge of Manufacture of a Controlled Substance?
3. If so, would he also be allowed to testify that he manufactured the controlled substance for his then wife's use?
4. Does this fact further support the State's position that entering Mr. Watt's plea of guilty, in redacted form, was harmless error?

## ARGUMENT

**1. James Watt, the defendant's ex-husband, is now available to testify.**

The marital privilege extends to confidential communications between a husband and wife made while married, RCW 5.60.060 (1) and *State v. Slater*, 36 Wn.2d 357, 218 P.2d 329 (1950). It also prohibits testimony of one spouse against another if they are presently married. However, the general privilege ends if the parties divorce. *State v. Slater*, 36 Wn.2d 357, 218 P.2d 329 (1950), *State v. Thomas*, 150 Wn.2d 821, 83 P.3d 970 (2004). Since the parties are divorced, the defendant could only prohibit her ex-husband from testifying about confidential communications made during their marriage.

**2. Mr. Watt would testify that he plead guilty to Manufacture of Methamphetamine.**

The mere fact that Mr. Watt plead guilty to the charge of Manufacture of Methamphetamine is not in any way a "confidential communication."

Indeed, it does not involve any communication between the defendant and her ex-husband. It is important to note that the essence of the alleged error was introduction of the defendant's now ex-husband's redacted guilty plea. The subsequent divorce renders the alleged error not only harmless. At this point, the trial court would be correct to allow the testimony from Mr. Watt.

**3. Mr. Watt would also testify that he produced methamphetamine to feed the defendant's (his ex-wife's) habit.**

This fact was redacted from Mr. Watt's guilty plea and was not known to the defendant's jury. Mr. Watt's claim is not a communication between husband and wife.

The State will be able to not only present the same facts to a jury as were presented in the first trial. The State would now have additional, powerful and compelling evidence about the defendant's knowledge and participation in the methamphetamine lab.

**4. It is certain that any error was harmless.**

As noted in the brief filed by the State, the alleged error had nothing to do with the defense. The defendant's theory of the case was that she had no knowledge of the activities in a garage and had no knowledge of a meth lab on her property. The evidence of a meth lab was overwhelming. Introduction of the guilty plea of James Watt was gilding the lily.

Indeed, the defendant was smart to argue that she had no knowledge of the methamphetamine production. To argue that she was aware of the contents of the garage and that it did not constitute a methamphetamine lab would have been ludicrous.

In any event, at this point a trial court would be correct to admit the guilty plea of the defendant's ex-husband. In addition, the ex-husband's statement that he was producing

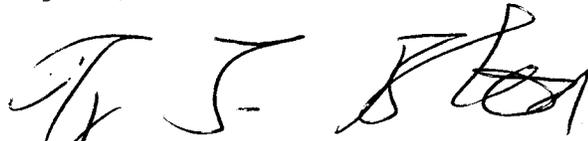
methamphetamine to feed her habit would be devastating.

**CONCLUSION**

For the reasons cited in the original brief, any error was harmless. For the reasons cited in this supplemental brief, there was no error and the State's case would be significantly stronger.

The conviction should be affirmed.

Respectfully submitted this 18<sup>th</sup> day of August, 2006.



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