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STATE OF WASHINGTON
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**SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

PETITIONER,

v.

CODY RAY FLORES,

RESPONDENT.

**PETITIONER'S REPLY
TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW**

**GARTH DANO
PROSECUTING ATTORNEY**

**By: Kevin J. McCrae, WSBA #43087
Deputy Prosecuting Attorney
Attorney for Petitioner**

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 **ORIGINAL**

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I. REASONS WHY REVIEW SHOULD BE ACCEPTED

Pursuant to RAP 13.4(d) the State limits its reply to the new issue raised in the respondent's answer. However, it is clear from the respondent's answer that he misconstrues part of the State's argument. The State invites the court to request a reply brief pursuant to RAP 13.4(d), or if review is granted, the State will address the issues in its supplemental brief.

Mr. Flores raises the issue of the applicability of cases in which a passenger in a car is stopped to his situation, in which he stopped when his companion was stopped when they were walking down the street. This issue is fairly raised by this case, and the State has no objection to it being considered. However, as revealed by the briefing below in this case, it is a fair analogy and the case law supports the State's position.

Every case cited by both sides to support their substantive positions in the courts below has been a case involving automobiles. From the officer's perspective there is not much difference when approaching a car or a group of people, especially as here when the officer has a clear objective rationale for his safety. *See State v. Mendez*, 137 Wn.2d 208, 970 P.2d 722 (1999), overruled on other grounds by *Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).

Specifically the officers had the information that Powell had pointed a gun at someone's head.

The officers had an articulable reason to believe there was a gun in Powell's vicinity. While this may or may not have risen to the level of reliability necessary for a *Terry* stop, the officers were not required to ignore it at their peril while arresting Powell for his warrant. This situation is more dangerous than in a car. In a car there is a place to put the gun and an ability to separate the people from the firearms. In this case if the arrestee and his companions had a gun, it will be on their persons. The courts have recognized that the ability to separate the persons being controlled by the officer from the potential places to put weapons provides a measure of safety to officers. See e.g. *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). Without a vehicle there are no such options.

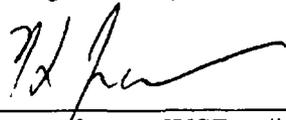
Like all analogies using automobile cases in cases where a pedestrian is stopped may have flaws that would reduce their relevancy depending on the specific fact pattern. Here, however, the automobile cases are on point. The situation faced by the officers in this particular fact pattern is similar. Previous cases have held officers have the right and duty to control the scene of arrest, including moving companions of the

arrestee to where they need them to be.¹ While the presence or absence of an automobile may be relevant to distinguish cases based on their particular fact patterns, here the danger faced by the officers was at least as great as that faced in *Adams*, where the court accepted the officers could remove the passenger from the car and handcuff her, but there was no indication of gun violence. *State v. Adams*, 144 Wn. App. 100, 181 P.3d 37 (2008).

The State agrees with Mr. Flores that applicability of automobile cases to pedestrians is an important issue raised by this case, and has no objection to the court considering it along with the other issues in this case. However, the State does disagree on the outcome of that review. The court should grant review of both the State's and respondent's issues, reverse the trial court and remand for further proceedings.

Dated this 9th day of September 2015.

GARTH DANO
Prosecuting Attorney

By: 
Kevin J. McCrae – WSBA #43087
Deputy Prosecuting Attorney
Attorney for Petitioner

¹ This is an issue explicitly not addressed by a recent automobile case, *State v. Z.U.E.*, ___ Wn.2d ___, 352 P.3d 796, (2015) (Slip op. at 19 n.5)

No. 919861

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Petitioner,)	
)	
v.)	
)	
CODY RAY FLORES,)	DECLARATION OF
)	SERVICE
Respondent.)	
<hr/>		

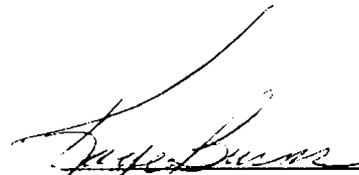
Under penalty of perjury of the laws of the State of Washington,
the undersigned declares:

On this date I e-mailed to David Bustamante, Attorney for
Respondent, and hand delivered to David Bustamante's Office (Grant
County Public Defender's Office), a copy of the Petitioner's Reply to
Respondent's Answer to Petition for Review in this matter.

David Bustamante
Grant County Public Defense
35 C Street NW - 1st Floor Annex
Ephrata WA 98823

David Bustamante
dbustamante@grantcountywa.gov

Dated: September 9, 2015.



Kaye Burns

OFFICE RECEPTIONIST, CLERK

To: Kaye Burns
Cc: David Bustamante
Subject: RE: State of Wahington v. Cody Ray Flores - Supreme Court No. 919861

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Cc: David Bustamante <dbustamante@grantcountywa.gov>
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Attached for filing is Petitioner's Reply to Respondent's Answer to Petition for Review in the above matter. A copy has been emailed and delivered to counsel for Respondent. Thank you.

Kaye Burns

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