

IN THE SUPREME COURT OF
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

OWEN GALE RAY,
Petitioner.

NO. 103509-8

RESPONSE TO MOTION
TO STRIKE UNSPECIFIED
PORTIONS OF THE
STATE’S ANSWER TO
THE PETITION FOR
REVIEW

I. IDENTITY OF RESPONDING PARTY

The Respondent, State of Washington, requests the relief designated in part II.

II. STATEMENT OF RELIEF SOUGHT

The State requests that the Court deny Owen Gale Ray’s motion to strike unspecified portions of the respondent’s answer

that Ray characterizes as “misstate[ments of] several important facts,” “an argument not raised below,” and “any argument that uses these facts for support.” Motion to Strike at 1.

III. FACTS RELEVANT TO MOTION

Owen Gale Ray was convicted of felony harassment, second degree assault, and reckless endangerment arising from a post-Christmas incident in which he threatened to kill his wife and assaulted her with a firearm in the presence of two young children. RP 1530-31. Ray appealed his convictions and his sentence.

Ray, for the first time on appeal, claimed that convictions for both felony harassment and second degree assault violated double jeopardy. Appellant’s Opening Brief at 69-75. The State’s response to this argument, which was one of five and which was necessarily truncated by the appellate court’s denial of Ray’s motion for overlength brief, identified the four-part test for cumulative punishment double jeopardy claims. *See* Brief of Respondent at 56. The State’s argument focused on the

“independent purposes” prong as that was dispositive. *Id.* at 56-60. No where in the State’s brief was there a concession that the two convictions were supported by the same act of pointing the firearm at K.R.

To the contrary, the statement of the case in the State’s brief of respondent¹ identified four separate instances where Ray threatened K.R. with the weapon. *See* Brief of Respondent at 8 (on the staircase), 10 (in the children’s room), 10 (after breaking down the door and reentering the bedroom), and 11 (as K.R. sought to shepherd her younger children to safety).

The court of appeals affirmed Ray’s sentence in an opinion that rejected his double jeopardy claim on the grounds that harassment and assault serve independent purposes. *State v. Ray*, No. 86163-8-I, 2024 WL 4025999 at *13 (Wash. App. Sep. 3, 2024) (unpublished). Ray filed a timely petition for review that

¹ The statement of the case from the State’s brief of respondent may be found at appendix page 3.

raised only two issues. One of which was his cumulative punishment double jeopardy claim.

The State's response, consistent with its brief of respondent, identified four separate and distinct incidents where Ray pointed the gun at K.R. *See Answer at 4-6.* The answer explained that further review of the court of appeals' rejection of Ray's double jeopardy argument was unnecessary because Ray failed two of the four prongs of the cumulative punishment test and the court's unpublished opinion in this case did not conflict with any published opinions. *See Answer at 21-27.*

Eight days after the State filed its answer to Ray's petition for review, Ray filed a "Motion to Strike Respondent's Answer Improperly Characterizing Facts." The relief requested is somewhat ambiguous in that Ray both moves to strike the State's answer in its entirety and/or for this Court to disregard what Ray considers to be "misstate[ments of] several important facts" and the argument predicated on these facts. *Motion to Strike at 1.*

The State files this timely response to Ray's motion.

IV. GROUND FOR RELIEF AND ARGUMENT

Ray requests that this Court strike the State's answer to his petition for review for alleged violations of RAP 10.3(a)(5) and (6), RPC 3.1, and RPC 3.3(a)(1). Motion to Strike at 1-2. Ray's motion must be denied as the State has not violated any of these provisions and the motion is an effort to circumvent RAP 13.4(d)'s prohibition on replies to answers to petitions for review that do not raise a new issue for review.

Ray's real complaint regarding the State's answer to his petition for review is he does not like the State's summary of the facts which conflicts with the version he reconstructed in his mind from the 911 recordings. *See* RP 571 ("Hard to reconstruct this exactly because [Ray's] memory is awfully impaired of this"); RP 1375 (Ray only remembers shards and bits and pieces of the incident and he only "know[s] what was recorded on the 9-1-1 recording"). He claims that "a reading of the record in fact makes it difficult to determine how many times the gun may have been raised and lowered during the course of the evening."

Motion to Strike at 3. Finally, Ray objects to the State indicating that prong one of the double jeopardy test has not been satisfied because it distracts from his prong 4 argument. *See* Motion to Strike at 7 (“This argument also does not respond to Mr. Ray’s petition, which seeks resolution of a split between the divisions regarding whether second degree assault and felony harassment stemming from the same act constitute double jeopardy.”). Ray’s motion to strike should be rejected as an unauthorized reply to the State’s answer. *See* RAP 13.4(d) (reply only authorized when the answer raises a new issue for review).

Ray’s allegation of unethical conduct by undersigned counsel, moreover, is not a basis for striking an answer. “[T]he remedy for a claimed violation of the RPC is a request for discipline by the bar association.” *State v. Lord*, 117 W.2d 829, 887, 822 P.2d 177 (1991), *abrogated on other grounds by State v. Schierman*, 192 Wn.2d 577, 438 P.3d 1063 (2018). In the context of a criminal appeal, Ray’s claim that the State’s answer is “improper,” Motion to Strike at 7, is determined under the identified court rules. *Id.* Ray’s motion to strike must be rejected

because the State's answer complies with both RAP 10.3(a)(5) and (6).

The State's answer fully complies with RAP 10.3(a)(5) and (6). RAP 10.3(a)(5) requires every factual assertion in the statement of the case be supported by a reference to the record. The State complied with this requirement as each of the four incidents of Ray's pointing a firearm at K.R. is supported by a citation to the record:

When K.R. distanced herself from Ray by seeking refuge on the third floor of the house where the children slept, Ray obtained a handgun and then climbed the stairs looking for her. RP 486, 488-89. After Ray ignored K.R.'s plea to put the gun away, K.R. called 9-1-1. RP 491. Ray responded by pointing the gun at K.R. and telling her to hang up. ***RP 493.***

The 9-1-1 system recorded much of the chaos that ensued, including K.R. begging for help because Ray had a gun and was threatening her, was "going to kill us," and "he's going to kill my kids." ***Ex. 33 and 35.*** The 9-1-1 recording also contains both statements of possible self-harm from Ray and the repeated invectives he directed at Kristin. *Id.* Finally, the 9-1-1 call includes children crying out "Dad, Please don't hurt us," "I don't want to die," and "please don't hurt her." Ex. 35. The 9-1-1

recording did not, however, clearly capture everything that was said during the incident. RP 684, 833, 963; Exs. 33, 35 (screaming and inaudible sounds).

K.R.'s attempt to get away from Ray resulted in her stumbling and falling to the floor of her middle child's room. RP 493. Ray followed, firearm in hand, stood over her and kicked and stomped her in the head, face, and chest. RP 493, 510, 640-41, 947, 960. Following the assault, Ray left the bedroom only to return and point the gun at K.R. a second time. **RP 493, 839, 841, 955.** When Ray broke down the door and returned to the room a third time, he pointed the gun at the children on the bed. **RP 497, 843, 955.** K.R. placed herself between the gun and her children. **RP 497, 844.** Ray kept the gun pointed at K.R., and after turning off the lights pointed the gun again at K.R. and the children. **RP 497-98, 944, 946.**

When Ray left the bedroom to yell at the police officers who surrounded the home, K.R. and the children made their escape. **RP 499.** As K.R. fled, Ray pointed the gun at K.R. a fourth time but did not shoot. **Id.**

Answer at 4-6 (footnotes omitted and emphasis added).

Ray claims that the State's citations do not support its summary. Motion to Strike at 6. He is wrong. The cited portions of the verbatim report of proceedings fully support that Ray

pointed the firearm at K.R. on four separate occasions during the incident and the 911 recordings coupled with K.R.'s testimony supports verbal threats of death, albeit not stated as "I'm going to kill you." *See* Excerpt of Transcripts at appendix pages 26-56.

RAP 10.3(a)(5) requires that the arguments in the brief be supported with citations to legal authority and references to the record. The portion of the State's answer that addresses Ray's double jeopardy claim contains citations to one court rule, two constitutional provisions, nine statutes, and seven cases. Answer at 21-27. And the facts referenced in this section of the answer are those contained in the statement of the case which are supported by the record.

V. CONCLUSION

The State respectfully requests that this Court deny Ray's motion to strike.

This document is in 14 point type and contains 1,524 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 8th day of November, 2024.

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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record for the appellant true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11-8-24
Date

s/Therese Nicholson
Signature

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DECLARATION OF
PAMELA B. LOGINSKY

The undersigned declares as follows:

1. I am an attorney licensed to practice in the State of Washington. I am currently employed by the Pierce County Prosecuting Attorney's Office as a Deputy Prosecuting Attorney (DPA). I am assigned to the Appellate Unit. I have been assigned to represent the State of Washington in this appeal.

2. Attached hereto in the appendix is a true and correct copy of pages 2-24 of the Brief of Respondent filed in *State v.*

Owen Gale Ray, Court of Appeals Cause No. 57517-5-II on August 29, 2023.

3. Attached hereto in the appendix are true and correct copies of pages from the verbatim report of proceedings from *State v. Owen Gale Ray*, Pierce County Superior Court Cause No. 20-1-03059-9, that were filed in *State v. Owen Gale Ray*, Court of Appeals Cause No. 57517-5-II.

This document is in 14-point type and contains 226 words.

Signed under the penalty of perjury this 7th day of November, 2024, at Port Orchard, Washington.

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II. RESTATEMENT OF THE ISSUES

- A. Did the trial court abuse its discretion by admitting the video of the children's nontestimonial excited utterances that were captured by a camera mounted in the patrol car?
- B. Did Ray, who elected not to call Dr. Chang to the stand, waive any challenge to the "functional exclusion" of this witness?
- C. Did Ray fail to establish prosecutorial error where the prosecutor's statements during closing argument and rebuttal were neither improper nor prejudicial?
- D. Did the legislature authorize separate punishments for convictions of second-degree assault and felony harassment where the two crimes deal with different harms, and are found in different chapters of the Revised Code of Washington?
- E. Did the trial court abuse its discretion by admitting first person testimony of a prior assault to show the reasonableness of that person's fear during the instant incident?

III. STATEMENT OF THE CASE

Owen Ray and Kristin Ray¹ married in 1997. RP 466. The marriage was good prior to 2017, with Kristin moving frequently in support of Ray's Army career and managing the household

¹ The victim and many of the witnesses share the same last name as the defendant. Once introduced, these individuals will be referred to by their first names. No disrespect is intended.

during Ray's frequent deployments. RP 466-71, 647-50, 941, 1311, 1364. The marriage began to deteriorate around 2017, when Kristin, who, with the support of Ray had returned to school to get a master's degree and principal certification, decided to return to work full time. RP 467, 1336. Ray was unhappy with Kristin's decision to return to work as he had decided to accept a new position at Joint Base Lewis McChord (JBLM), rather than retiring. RP 468, 1338. Ray wanted Kristin to delay reentering the work force so she would be available to perform the social and volunteer activities expected of a colonel's wife and perform all household duties. RP 468-70, 1363-64. Ray's brother, Jacob "Jake" Ray, believed that some of the marital problems were the result of Kristin becoming more assertive. RP 1194, 1996.

Ray's positions at JBLM were stressful, requiring long hours. RP 651, 1115, 1126, 1245-46, 1337, 1345. His appointment as chief of staff in June of 2020 was a culmination of a career during which Ray progressively assumed command

over larger and larger groups of soldiers. RP 1073, 1085, 1112-14, 1231-34, 1250, 1285, 1328, 1336, 1344, 1362. Although Ray's subordinates were concerned in later years that his alcohol consumption needed to be watched, Ray's performance of his duties was always exemplary, resulting in a promotion in June 2020 to JBLM Chief of Staff. RP 731, 1085-88, 1094-97, 1099, 1118-20, 1254. Those who worked closest with Ray described him as an excellent commander, strong-willed, self-centered, and with a high ego. RP 1102-03.

While Ray's increased alcohol consumption did not impact his work life, it did impact his home life. As Ray turned to hard alcohol, he would get angry and yell and cuss and call Kristin a bitch. RP 471-72. As the drinking increased in frequency, Kristin engaged in strategies to shield her children from Ray's outbursts. RP 473. These strategies were not always effective. RP 474.

In June 2020, Ray was yelling and cussing while facing Kristin in the front entry, when he grabbed her and pushed her

into the wall by the front door. RP 474. Kristin quickly got away and put a table between them, but not before her head hit the wall. *Id.* Kristin never reported this incident to police. RP 475.

On December 26, 2020, Ray, who usually spent fifteen hours in the office on workdays and some weekends, took his two oldest children skiing. RP 476, 1115, 1126, 1245, 1345. The trip did not begin auspiciously as Ray, felt that Kristin was undermining his authority with the children and that she did not trust him to take the children skiing. RP 466, 1347.² The trip did not go well due to bad weather, COVID shutdowns, and one of the children falling and injuring herself. RP 476, 1347.

The disappointing skiing trip led to a stressful evening, with Ray drinking a significant amount of alcohol. RP 480, 734, 746. As Ray drank, he got louder and became increasingly testy. *Id.* Ray became angry when Kristin agreed to take her oldest to

² Ray contrasted the trust placed in him by the Army with that displayed by Kristin by stating “I’m responsible for thousands of people in combat and good, bad, or indifferent, like I’m not even trusted to take my kids skiing.” RP 1347.

the base the next morning after Ray had stated he would. RP 480-82. Ray continued the argument via text after Kristin went upstairs to shower and put the younger children to bed. RP 484, 637-38, 657; Ex. 82.

When Kristin exited the shower on the second floor, she could hear Ray downstairs yelling at the TV. RP 484. Kristin went downstairs to tend to the family dog, Moose, who was recovering from surgery. *Id.* After Kristin got Moose settled, she closed the double doors that separated the living room from the stairwell so that Ray's unintelligible yelling would not carry up to the children. *Id.*; RP 658. Kristin turned on her phone's recording feature at this point because Ray was being very loud and yelling. RP 658. The recording captured angry words and "reciprocal conversation." RP 748; Ex. 102.

Ray confronted Kristin about closing the doors. RP 485, 1349. Despite Kristin asking Ray to be quiet so as not to wake the children, Ray got in Kristin's face and started cussing at her

and calling her names. RP 485. Ray did, however, walk away when Kristin returned to the second floor. *Id.*

From the second floor, Kristin heard Ray saying things like “You want to do this?” “Lets do this.” RP 486. Believing that Ray was preparing to come upstairs to pick a fight, Kristin retreated to the third floor in the hope that Ray would refrain from fighting around the children. *Id.*

From the third-floor landing, Kristin observed Ray putting on shoes, she heard him go into the garage, and then watched Ray ascend to the second floor to conduct a room-by-room search. RP 488. As Ray slammed doors aggressively, Kristin dialed 9-1-1 on her phone but did not hit send. RP 489. Kristin did not immediately hit send because she hoped Ray would remain on the second floor. *Id.*

Contrary to her hopes, Ray quickly ascended the stairs to the third floor. RP 490. As he neared, Kristin saw that he was holding a handgun down at his side by his leg. *Id.* Ray then went into their oldest child’s room, inquired about her skiing injury,

said good night, and closed the door to the oldest child's room.

Id. Kristin ended her recording at this time. RP 682.

Ray then turned on Kristin and advanced on her while yelling. RP 491. Kristin told Ray to put the gun away or she would call 9-1-1. *Id.* Ray responded, "Go ahead. Call 9-1-1. I don't care." RP 492. But once Kristin gave her name to the 9-1-1 operator, Ray who had started going downstairs, came back and pointed the gun at Kristin and told her to hang up. RP 493.

The 9-1-1 system recorded much of the chaos that ensued, including Kristin begging for help because Ray had a gun and was threatening her, was "going to kill us," and "he's going to kill my kids." Ex. 34 and 35.³ The 9-1-1 recording also contains both statements of possible self-harm from Ray and the repeated invectives he directed at Kristin. *Id.* Finally, the 9-1-1 call includes children crying out "Dad, Please don't hurt us," and "I

³ Transcripts of the 9-1-1 recordings, Exs. 34 and 36, were admitted as illustrative exhibits. RP 423, 424.

don't want to die.” Ex. 35. The 9-1-1 recording did not, however, clearly capture everything that was said during the incident. RP 684, 833, 963; Exs. 34-35 (screaming and inaudible sounds).⁴ And Kristin's intent in calling 9-1-1 was to obtain help, not to create a detailed account of everything that was occurring. RP 954.

Kristin did not hang up, instead retreating into her middle daughter's room. RP 493. While doing so, she stumbled and ended up on the floor. *Id.* Kristin, who did not want the children to see her being shot, crammed herself into a narrow space between the end of M.R.'s bed and the wall. RP 509-10, 640, 947; Ex. 83. While so constrained, Ray stood over her with the firearm and kicked and stomped her in the head, face, and chest. RP 493, 510, 640-41, 947, 960.

⁴ The screaming and yelling can also be heard in the background of L.R.'s separate 9-1-1 call. *See* RP 1008-09; Ex. 37.

Ray then left the children's room before returning and pointing the gun at Kristin a second time. RP 493, 839, 841, 955. When Ray left the room a second time, Kristin closed the door, locked it, and pulled a bookcase in front of the door. RP 494. Ray, finding the door locked, began yelling and kicked at the door until it broke open sending Kristin and the bookcase to the floor. RP 497, 506-08; Ex. 16-18.

Ray, upon reentering the room a third time, pointed the gun at the children on the bed. RP 497, 843, 955. Kristin jumping up from the floor placed herself between the gun and the children. RP 497, 844. Ray kept the gun pointed at Kristin and after he tripped over the bookcase, turned the lights off and pointed the gun again at Kristin and the children. RP 497-98, 944, 946.

When Ray left the bedroom to yell at the police officers, Kristin grabbed the children and started for the door. RP 498. When Ray returned and blocked it with his body, Kristin yelled at him to "Let them go. Be a Dad." RP 499. Eventually Ray

stepped back, and Kristin shoved the children out the door. *Id.* Ray raised the gun at Kristin one more time but did not shoot. *Id.* Kristin yelled for her older daughter to leave, as she and the younger children ran down the stairs and out of the house. RP 500.

Meanwhile, police officers from multiple jurisdictions converged on the Ray home, with the first units arriving shortly after midnight. RP 173, 175, 281, 307, 352. The officers established containment and arranged for a negotiator in the hopes of ending the incident without bloodshed. RP 175-76, 283, 334-35, 370-71. They did not immediately enter the house because of reports of possible guns in the house and the high risk of the incident escalating. RP 177, 283, 308. And at least one officer heard the distinct sound of a firearm being racked while Kristin and the children were still inside the home. RP 309.

Approximately 18 minutes after the first officers arrived at the Ray home, Kristin followed the younger children out of the home. RP 230-31, 499; Ex. 42. The running trio were directed

toward a waiting police car. RP 500, 1024; Ex. 42. This police car was equipped with video and audio recording devices. RP 1019. The devices had been turned on prior to Kristin and her children entering the vehicle. RP 1021.

Once Kristin's oldest daughter also made her escape from the house and was seated in the patrol car, the vehicle was driven a few blocks away to where a make-shift command center was being set up. RP 500-01, 1024; Ex. 42. Immediately upon arrival at the command post, Kristin was questioned regarding Ray's access to weapons in the home, phone numbers at which Ray may be reached, and other information necessary to evaluate the threat Ray posed to the officers surrounding the home. RP 235, 501, 1025-26.

The preliminary questioning of Kristin began while she was in the back of the patrol car prior to her being told that a recording was being made. Ex. 40(b). The preliminary questioning continued outside the patrol car and was captured on Officer Campbell's body worn camera and some on the patrol

car's video and audio system. RP 183; Ex.44. Kristin, clad in a bathrobe, was visibly distraught during the interviews. RP 179-80; Exs. 44 and 40(b). Kristin explained that Ray, who had been drinking and threatening, kicked her in the head, chest and face, had pointed a gun at her, had threatened to shoot himself in front of the children, threatened to shoot her, and had broken down the door to the children's room. Ex. 44.

While Kristin was being questioned outside the patrol car, the three children remained seated in the patrol car. RP 180; Ex. 40(b). The patrol car's video and audio system captured an unscripted discussion of the incident between the three children. RP 1021, 1026; Ex. 40(b). The children expressed the fear they felt, which had not been totally alleviated by their distance from the house. Ex. 40(b) at 00:47:13-1:01:10. During their emotional discussion of the incident, the youngest child, C.R., stated that he had been so "terrified" that Ray would shoot his mother that he wetted himself during the incident. The middle child, M.R., described her mother being backed into a corner and kicked, Ray

pointing the gun at both Kristin and the children, and her fear that Ray was going to shoot Kristin. *Id.* During these disclosures, the oldest child, L.R., attempted to relieve the younger children's fears by discussing the patrol cars safety equipment, that their mother was with police officers and thereby safe now, and telling them it would be okay. *Id.*

Approximately 16 minutes after the patrol car had come to a stop and while officers were obtaining preliminary information from Kristin necessary for threat assessment and successful negotiation, the officer whose patrol car the children were seated in, advised the children that they were being recorded. *Compare* Ex. 44 at 48:32 *with* Ex. 44 at 1:05:06.

At the command center, medical assistance was called for Kristin, who had obvious facial injuries. RP 180-83, 419, 641-43, 986, 1028; Ex. 23-29. Kristin, wishing to remain with her children, refused, despite hurting all over, to go to the hospital for treatment. RP 260, 501-02, 639, 643. The ice pack Kristin accepted from the EMT's did not, however, alleviate the impact

of Ray repeatedly kicking her. RP 501. Kristin subsequently obtained treatment for pain in her back, neck, ribs and shoulder, and headaches, disturbed sleep and vision problems. RP 618-634, 643-646, 930, 940.

Using the phone number obtained from Kristin, Sergeant Catlett, a trained negotiator, attempted to reach Ray by phone. RP 368, 375. Following three unsuccessful calls and the PA system to urge Ray to call him back, Catlett first spoke to Ray at 12:49 a.m. RP 377. This first call lasted between 5 and 10 minutes and was followed by up to nine more conversations. RP 378.

During the first call, Ray very calmly told Sergeant Catlett that he had been drinking and that Kristin should not have called the police. RP 379. Ray further stated that he was going to kill every single officer that came into his house: repeating the phrases “I will fucking kill every single one of you; it will be a fucking blood bath,” multiple times. RP 379. Catlett believed Ray’s threats to kill. RP 397-98.

Ray instructed Sergeant Catlett to make some phone calls to learn about Ray's background. RP 380. The information obtained both from Ray and others included that Ray was in Special Forces for several years, that he had killed a lot of people, and that Ray had no problem killing the police officers if they went into the house. *Id.* Ray's significant combat experience and the tactical advantage he had in the tall house was of great concern to Catlett and the other officers. RP 289, 348, 381. These concerns were increased, rather than allayed, when Ray retreated into the house, turned off the lights, and racked a shotgun. RP 289-90, 293, 345, 347-49, *see also* RP 315-16.

Ray was observed carrying what was believed to be the buttstock of a rifle while he paced inside the home after his family had exited. RP 300, 312. He was also observed walking around the house, looking out windows, including windows from rooms in which firearms were later found. RP 318, 341-42. These observations were made while announcements were directed over a PA system telling Ray that "This is Lakewood

Police Department, DuPont Police Department; Mr. Ray, come outside and surrender.” RP 312-13, *see also* RP 347.

During the ensuing hours long standoff, Ray appeared on the third-floor balcony holding a firearm. RP 341-344. No officer saw Ray point the firearm at them, but Ray was observed placing the firearm against his temple on several occasions. RP 287, 291-92, 302, 341-44, 345-47, 355, 364, 399. Throughout the standoff, Ray indicated that Kristin was the person to blame for the situation. RP 287 (Ray yelled something to the effect of “Kristin, look what you did.”); RP 382-83 (Ray telling negotiator that Kristin should not have called the police and that she involved the police to obtain leverage in a divorce); RP 639 (text message sent by Ray to Kristin at 1:57 a.m. stating, “Thanks for this. Best wife ever.”).

Ray slowly calmed down, with fewer threats directed at law enforcement and more statements about the impact the incident would have on Ray’s life and career. RP 382. Over time, Ray would alternate between conditional threats to kill law

enforcement if they were to enter his home, threats to kill himself, and a stated intention to not hurt anybody. RP 384-87, 393-94. Eventually, Ray agreed to come out of the residence. RP 387. Ray exited the home with his hands up and was taken into custody without incident at 2:22 a.m. RP 187, 388.

Following Ray's surrender, a sweep was performed of the house to make sure no other person remained who was either hurt or who could cause harm to anybody else. RP 188. During the sweep and follow up searches, handguns, a shotgun, magazines, and rounds were collected from various locations in the home. RP 188-90, 197-210, 318, 991-995; Exs. 1-22, 46, 47, 48, 50.

A few days after his arrest, Ray spoke by phone with his brother Jake, his mother, and his father. RP 1010. During these conversations, Ray expressed remorse, and stated that the incident was all his fault and he "just lost it" when 9-1-1 was called. Exs. 106-109. While Ray stated that he never threatened the kids, he did not make the same assertion as to Kristin. *Id.*

Ray was charged with seven offenses arising from the events on December 27th. *See* CP 453. Ray asserted a diminished capacity defense to all but one count. CP 975.⁵ Ray contended that a combination of his untreated Post Traumatic Stress Disorder (PTSD), multiple head injuries sustained in the army, and his alcohol consumption rendered him unable to act intentionally or knowingly. CP 984-988.

Dr. Mark Koenen, an expert retained by Ray, reported that he diagnosed Ray as having PTSD, traumatic brain injury (TBI), depressive disorder and alcohol use disorder and that the VA had found Ray disabled based, in part, due to PTSD and TBI. RP 542-44, 559. Dr. Koenen opined that to a reasonable medical certainty that the symptomology and existence of Ray's various diagnoses affected Ray's ability to act intentionally or knowingly during portions of the early morning of December 27, 2020. RP 565-66.

⁵ Ray conceded his guilt as to reckless endangerment during his closing argument. RP 1491.

Dr. Koenen's opinion that Ray was "emotionally dysregulated," and that rage was accompanied by "some symptoms of disassociation", RP 566, was based largely on Ray's self-report of the incident and an idiosyncratic definition that is not found in DSM-5 or DSM 5-R or relied on by psychologists. RP 546, 568-570, 571, 575, 584, 604-05, 608, 751-53. Dr. Koenen conceded that Ray was oriented as to place, was not experiencing hallucinations, a flashback or psychosis, knew that he was speaking with Kristin and the children, and knew that the police had arrived. RP 593-98. Dr. Koenen also conceded that Ray's work performance was not affected by the PTSD and that Ray knew he had a handgun when he went upstairs. RP 589-90, 606. *Accord* RP 1104-05, 1120, 1126, 1254, 1265, 1269.

Ray was also evaluated by Dr. Judd. RP 709-15. Dr. Judd, who was retained by the State, reviewed thousands of pages of records related to the incident, including transcripts of the 9-1-1 calls, the jail phone calls, Kristin's recordings from the 26th and

27th, and defense interviews of the three children. RP 706-07. Dr. Judd ruled out PTSD as a substantive contributor to the incident, largely because there was no indication in the months leading up to the incident that Ray's self-reported PTSD symptoms⁶ interfered with his social, occupational, or other important areas of functioning. RP 763-64. *See also* RP 786, 807, 818. Dr. Judd disagreed with the other experts as to the onset of Ray's PTSD or that PTSD "caused" the events. Dr. Judd's disagreement largely arises from Ray's statements that "he snapped" when 9-1-1 was called as PTSD is not a sudden emergency condition. RP 761, 820-21.⁷

⁶Kristin reported that Ray did not complain of PTSD symptoms or display symptoms at home prior to the December 26, 2020, incident. RP 474, 651-52, 780, 957.

⁷ Dr. Judd, as do other experts in North America, relied upon the objective criteria contained in the DSM-5 to diagnose PTSD. *See* RP 722-27, 818. Ray's treatment providers did not. *See* RP 544-45 (diagnosed with "complex PTSD" which is "not something that's in the DSM-4 or -5"), 805.

Dr. Judd did not agree that Ray was experiencing disassociation during the incident or that Ray could not formulate intent or knowledge. RP 762. Dr. Judd explained that “disassociation” as defined by the DSM requires some impairment in contact with reality and that dissociative features cannot be applied to someone who is acutely intoxicated. RP 714, 754, 764-65. The 9-1-1 recording, the text messages Ray sent to Kristin during the incident, and Ray’s statements to the responding police officers all established that Ray knew who he was dealing with. RP 754. Ray engaged in reciprocal interactions and conversations with Kristin, and there is no indication during the 9-1-1 call or in his contacts with Sergeant Catlett that Ray was unaware of his surrounding, who he was, who he was speaking with, or who the people around him were. RP 762, *see also* RP 754-762.

Dr. Judd further opined that there was no evidence that Ray was unable to formulate the intent necessary for the charged crimes. RP 766. Dr. Judd reached the same conclusion as to

Ray's ability to act knowingly. RP 767. Ray engaged in goal-oriented behavior during the incident and Ray had mixed motives during the incident. RP 766, 768.

Ray, who was able to recall in detail the military experiences that contributed to his PTSD, claimed an inability to recall the events of December 26th or 27th. RP 763, 1351. While Ray claimed that he never pointed a gun at Kristin or the children, he based his denial on the absence from the 9-1-1 recording of a statement from Kristin that he was pointing a gun at her. RP 1375. Ray did recall that the incident occurred on the third floor of the house in a child's bedroom, that police responded and surrounded the house, and that he was armed. RP 1351-52, 1355. Finally, Ray conceded that he was angry at Kristin. RP 1366, 1370, 1373.

Ray's matter proceeded to jury trial.⁸ The court dismissed count 3, the assault predicated on Ray kicking Kristin, after the

⁸ Additional facts related to the denial or admission of evidence will appear in the argument section for those claims.

State rested due to insufficient evidence of substantial bodily harm. RP 1043. The jury returned verdicts on all remaining counts, finding Ray guilty of both second-degree assault with a deadly weapon and harassment with respect to Kristin, while acquitting Ray of the harassment counts related to the police negotiator. RP 1529-32. The jury also found Ray guilty of reckless endangerment. RP 1531. The jury further found that both Kristin and Ray had an intimate relationship, that Ray and the victims of the reckless endangerment were family and household members, that the offenses occurred in the presence of the couple's children. RP 1529-32.

Ray filed a timely notice of appeal. CP 559. He is prosecuting this appeal pursuant to an order of indigency. CP 560. Ray, however, is not indigent. *See* RAP 15.2(h) motion (Aug. 10, 2023).

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**Court of Appeals
Division II
State of Washington
2/10/2023 12:23 PM**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
THE HONORABLE TIMOTHY L. ASHCRAFT - DEPARTMENT 2

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA NO. 57517-5-II
)	
vs.)	NO. 20-1-03059-9
)	
OWEN GALE RAY,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME V
PAGES 323 - 514

September 13, 2022

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1 Call 9-1-1," and so I did.

2 Q And could Owen see that you called 9-1-1?

3 A Yes. I was holding my phone. I hit send; he stood
4 there looking at me with the gun and --

5 Q Where was the gun pointed at this point?

6 A He was talking and gesturing, so he wasn't
7 necessarily pointing it at me, but he was moving it around like
8 this (indicating), "Go ahead. Call 9-1-1. I don't care."

9 Q What hand did he have the gun in? His right or his
10 left?

11 A I think his right.

12 Q And tell me about Owen Ray's reaction when he sees
13 that you called 9-1-1.

14 A He didn't have a reaction until I gave the operator
15 my name, and then he started yelling. And, initially, he
16 walked away; he started to go downstairs, so I thought, "Good,
17 he'll go put it away."

18 And the operator asked me why I was calling, and I
19 said my husband has a gun and gave his name, and about that
20 time, he came back, and he points the gun at me.

21 Q When he came back, how close was he to you?

22 A Very. He stepped into the kids' room, and that's
23 when they woke up because he was yelling.

24 Q You said he pointed the gun at you. Can you describe
25 that?

1 A I can't exactly. I would say once he raised his arm
2 and pointed the gun at me.

3 Q What was he saying at this point?

4 A I don't remember exactly. I think he was telling me
5 to hang up, but I wasn't taking him on with a gun, by myself.
6 But he was yelling at me to hang up. That's what I remember.

7 Q Do you have a recollection of whether you hung up or
8 not?

9 A I don't really remember because it escalated very
10 quickly. My children were screaming. I backed up, and I
11 stumbled, and the next thing I knew, I was on the floor. I
12 don't know if I fell or if he pushed me -- I was on the floor,
13 and he was kicking me in the chest and the stomach and ribs.

14 Q Is he continuing to scream while he was kicking you?

15 A I really don't remember what he said because I was
16 just focused on the gun and the fact that it was still aimed at
17 me while he was kicking at me.

18 Because I was used to him being angry; I was used to
19 him yelling. I was even used to him throwing things, but I was
20 not used to having a gun pointed at me. And all I could
21 think --

22 Q Do you believe he was going to shoot you at that
23 point?

24 A All I could think was if he was going to shoot me, I
25 didn't want the kids to see it. So I got away -- I don't know

1 if I crawled or if I got up -- and I wedged myself between the
2 end of their bed and the closet, which is a space about this
3 big (indicating), and I crouched down. So if he shot me, at
4 least they wouldn't see it.

5 Then he followed me and held the end of the bed with
6 one hand, pointed the gun at me with the other hand, and
7 continued to kick me. But the space wasn't that big so he
8 could only get in there so far.

9 So at that point, he was kicking me in the face, and
10 my head hit the wall because I was up against the wall.

11 Q Where were your two younger children at that point?

12 A They were both on the bed screaming, "Don't kill Mom.
13 Don't kill us. Go away." They were just screaming.

14 Q Do you recall anything else that Owen was telling you
15 while you were couched at the end of the bed?

16 A No. I was too busy getting kicked in the face.

17 Q How many times do you think you were kicked in the
18 face?

19 A I don't know.

20 Q What happened next, Kristin?

21 A He stopped, and he went over to my children, who were
22 screaming at him, and I don't know what was said because, at
23 that point, I was pretty dazed. But they were screaming, and
24 then he left the room, and then he came back and was yelling at
25 me again and pointing the gun at me again.

1 Q When he came -- how long was he outside of the
2 bedroom at this time?

3 A The first time it felt very quick. He walked out and
4 I thought, well, maybe he's done, and then he immediately came
5 back in and kept yelling.

6 And then the second time he walked out, I got up out
7 of that space, and I closed the door and locked it and pulled
8 my daughter's bookcase in front of the door and --

9 Q Where were your kids at?

10 A They stayed on the bed, and I was --

11 Q What was their state at that point?

12 A They were hysterical. They were screaming, crying,
13 yelling.

14 Q Were you on the phone with 9-1-1 for this?

15 A At some point I was, because I remember her saying,
16 like, "Tell me where he is." One of the times he was out of
17 the room. I think all I told her was that "I can't talk to
18 you; he's going to kill me if I talk to you." I was really
19 trying to figure out what to do next -- or I think I asked her
20 to send help.

21 At some point I know I asked her "Are the police
22 coming?" Because it felt like it had been forever. It felt
23 like I had dialed 9-1-1 a long time ago. I'm sure it wasn't
24 that long.

25 And I remember telling her that I couldn't talk to

1 her or he would hear, but I wasn't talking to her when I was
2 moving the bookcase; I was too busy trying to block the door.

3 Q Why didn't you leave the residence rather than lock
4 the door?

5 A He didn't walk very far away. He just walked out of
6 the bedroom, and he was in the loft area right outside the door
7 with the gun. So he didn't go very far. At that point I
8 didn't -- I thought we were safer if I could keep him from
9 coming into the room.

10 He was, you know, still standing there swinging the
11 gun around right outside the door.

12 Q Did you see him at all go out on the balcony or hear
13 the doors opening and closing?

14 A At one point, he did. The first time he just walked
15 out and then walked back. I don't know if he looked out the
16 window. He didn't go out on the balcony the first time.

17 I think he went out the second time, which is why I
18 had time to close the door, lock the door, and pull the
19 bookcase in front of it.

20 Q And so the door -- the bedroom door has a lock on it?

21 A Yes.

22 Q And you pushed a bookcase in front of it? What did
23 you do after you did that?

24 A The moment I got the bookcase in front of it, he came
25 back. And at first, he tried the doorknob and started yelling,

1 and then he started just kicking at the door.

2 Q Do you recall what he was yelling at that point?

3 A I don't remember.

4 Q Where were you standing in the bedroom when he
5 started kicking the door in?

6 A I was trying to hold the bookcase up against the door
7 so the door wouldn't open, but he just kept kicking at it until
8 it broke open, and the bookcase kind of pushed me backwards,
9 and I ended up on the floor again.

10 And he came -- he walked in, and he pointed the gun
11 at the children on the bed, to which they screamed, and my son
12 tried to like jam himself into the space next to the bed, which
13 didn't work, and I jumped up from the floor and got between the
14 gun and the kids giving them something to hide behind.

15 And they both jammed themselves behind me, and I just
16 sat up really tall on the bed so they would have somewhere to
17 hide, and he kept the gun pointed at me at first, and then he
18 walked over to the bookcase and kicked apart the top of it.
19 Because it was shaped like a dollhouse, and so the top was not
20 a sturdy part, and he kicked it all to pieces and then was
21 tripping over it and waving the gun around.

22 And he -- at one point, he backed up to the door, and
23 he turned the lights off on us, and then he raised the gun at
24 us again.

25 Q How could you see him if the lights were off?

1 A He was standing in the doorway, and the loft lights
2 were all on, so he was backlit. So we were sitting in the
3 dark, except the door was open, and the light was coming in,
4 and he was pointing the gun at us. Like he didn't want to see
5 what would happen when -- I don't know why else he would have
6 turned off the lights on us.

7 Q At that point did you believe he was going to shoot
8 you?

9 A Yes. At that point, I thought he was going to shoot
10 all of us. When he first started, I thought he was just after
11 me. But then he -- by then, he had pointed the gun at the
12 kids, and at that point, he was pointing it at all three of us
13 and blocking the doorway.

14 And at that point, I knew we weren't safe in that
15 room anymore. So when he went back -- he eventually turned
16 around and went back out.

17 He was yelling about the police. He could see the
18 police from the loft, and I told the kids, when he turned
19 around, that we were leaving no matter what, and I grabbed them
20 and started for the door, but he turned around and blocked the
21 door.

22 Q How did you grab them?

23 A I took their hands. They were right behind me; they
24 were trying to hide. Both of them trying to fit behind me.

25 Q And when you got to the bedroom door, tell me what

1 happened.

2 A He came back and blocked it, and I took steps back,
3 and the kids let go and flew all the way back to the bed. And
4 I backed up initially, but I just thought I had to get them out
5 of there, so I started yelling at him about "Let them go. Be a
6 Dad," and I went back and I grabbed them again, and I just
7 thought I had to get them out of the there.

8 So I started advancing on him, pulling them. They
9 were still screaming, and he eventually took a step back, and I
10 shoved them out the bedroom door, thinking that at least they
11 would make it, but they grabbed onto me and just drug me with
12 them out the door, and he raised the gun at me and kept it
13 raised at me, but he didn't shoot.

14 And so we just kept going, and in a few steps we made
15 it to the stairs, and so I started screaming for my oldest, and
16 I don't remember exactly what I was saying, but I was just
17 yelling for her.

18 And when I started yelling for her, he took his focus
19 off me, and he turned towards her bedroom door and walked to
20 her bedroom door. And at that point, my younger two were
21 pulling me down the stairs, and I thought I heard her footsteps
22 behind us.

23 We were just running, and we kept running, but when
24 we made it out the front door, I realized she wasn't right
25 behind us. So I started yelling to the cops that were out

Court of Appeals
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2/10/2023 12:23 PM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
THE HONORABLE TIMOTHY L. ASHCRAFT - DEPARTMENT 2

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA NO. 57517-5-II
)	
vs.)	NO. 20-1-03059-9
)	
OWEN GALE RAY,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME VII
PAGES 693 - 904

September 15, 2022

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Owen Ray

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1 not for you." Isn't that what he says?

2 A I don't remember him saying that. And since he was
3 advancing me with a gun, if he did say that, his actions did
4 not say that.

5 Q You heard the 9-1-1 recording, correct?

6 A Yes. A long time ago. About a year ago.

7 Q And he said, "It's not for you," right?

8 A I don't remember.

9 Q You would agree if he said it's not for you; that's
10 indicative of it's for him and for self-harm purposes, right?

11 A You mean like when he's coming around advancing on me
12 with the gun looking for me through the house? How would I
13 think it's for him? He never held it to him; he held it up at
14 me.

15 Q And my question was: His response of "It's not for
16 you," meaning the gun, is indicative of it's for self-harm
17 purposes, you would agree?

18 MS. SCHNEPF: Objection. Asked and answered.

19 THE COURT: Sustained.

20 BY MR. AUSSERER:

21 Q And then, after Owen says, "It's not for you," he
22 actually leaves, doesn't he?

23 A Like I said before, what I remember is he -- I told
24 him I was going to call 9-1-1 if he didn't put the gun away.
25 He said, "Fine, go ahead and do it." I called 9-1-1. I

1 remember talking to them and telling them my address, and at
2 that point, he walked away and started to go downstairs. Then
3 he came back and attacked me.

4 Q All right. And so in the transcript, Plaintiff 34,
5 that's before you -- right after he says, "It's not for you,"
6 you tell him to "Go away." Do you remember telling him to go
7 away?

8 A Told him to go put it away.

9 Q Well, the transcripts indicate that you told him to
10 go away, right?

11 A I probably did. He had a gun and was walking towards
12 me.

13 Q And he, in fact, did go away, right?

14 A Yes. When I started to give my address, he walked
15 away, started to go downstairs.

16 Q And, in fact, the transcript, Plaintiff's 34, and the
17 recording documents you say, in response to the operator asking
18 you where he's at, "He's back downstairs." Do you remember
19 saying that?

20 A Yes. At that point, I was standing in the kids'
21 room, and I assumed he was going downstairs.

22 Q And that's what you told --

23 A I didn't see him.

24 Q Okay. Sorry. I didn't mean to interrupt you.

25 And that's what you expressed to the 9-1-1 operator

1 as well?

2 A Yes.

3 Q And do you recall, right after telling the operator
4 that he went downstairs, that he took the gun with him, that
5 the gun was on his person, and he has it with him downstairs?

6 A He was holding the gun, yes, when he walked away.

7 Q Okay. At no point during that initial portion of
8 your interaction with 9-1-1 did you indicate that Owen Ray
9 threatened to shoot you, right?

10 A I specifically say, "He's threatening me with it,"
11 because he was coming after me.

12 Q Did you indicate that he had threatened to shoot you?

13 A Not at that point; he hadn't raised it to me yet. He
14 was just waving it around.

15 Q And there is no indication that he threatened to kill
16 you up until this point, correct?

17 A What point? When he went downstairs?

18 Q Mm-hmm.

19 A I don't think he said those words.

20 Q Well, you didn't tell dispatch that he said those
21 words, right?

22 A No. I just said he's threatening me with it.

23 Q And if he had said, "I'm going to kill you," you
24 would have expressed that to 9-1-1?

25 A Probably.

1 Q On page 2 of Exhibit 34, the transcripts and the
2 9-1-1 call that's been admitted, document when Owen Ray
3 actually comes back up to where you are located in the kids'
4 room. Do you remember that?

5 A Yes.

6 Q And what he says to you when he comes back up into
7 the room, which is recorded on the call and in the transcripts,
8 is, quote, "You are going to force me to kill myself," right?

9 A Notice how I say, "Back off with the gun. Back up
10 away from me." So as he's walking at me with the gun, yes, he
11 says that. But that's not what his actions said.

12 Q Well, you actually said that after he said what I
13 just quoted, correct? First thing he said when he came back up
14 was, "You are going to force me to kill myself," right?

15 A As he's walking towards me, yes.

16 Q And you actually responded to Owen when he said, "I'm
17 going to kill myself," and you said -- it was documented on the
18 recording -- "No, you will not, Owen, back off," right?

19 A I don't remember saying that, other than "back off."

20 Q And then you say, "Back off with the gun. Back away
21 from me"?

22 A Yes. Because he's coming at me with the gun.

23 Q You would agree that at that point, he's saying, "I'm
24 going to kill myself." Again, self-harm intended, at least
25 expressed?

1 A No. What he's saying is everything is my fault.
2 "Whatever you make me do" is my fault. That's what he's
3 saying. He liked to blame me for whatever he did.

4 Q And then you told him to go away again after that
5 exchange, correct?

6 A I'm sure I did.

7 Q Do you have 36 in front of you as well, Ms. Ray?

8 A Yes.

9 Q All right. 36 continues with a recording of the
10 interaction between you and Mr. Ray in Madison's room, correct?

11 A Yes.

12 Q Well -- all right. And in the initial exchange on
13 this portion of the 9-1-1 call and the transcripts, you
14 indicate or express to Owen Ray, "We love you. Please go out.
15 Please. We love you. We love you. Go out." Those were your
16 words, right? Do you remember saying that?

17 A So this is after he's kicked at me and after I jammed
18 myself by the bed because I can see that I'm talking to the
19 operator, and I didn't respond to her until I was in that
20 space.

21 Q So my question --

22 A And after he's screaming, "I hate you" at me,
23 somebody says, "I love you." It could have been the kids; it
24 could have been me. I don't know.

25 Q Well, you listened to the 9-1-1, and on 9-1-1, it

1 records you saying, "We love you. Please go out. Please. We
2 love you. We love you. Go out," right?

3 A I don't remember all that I said. Sounds like I said
4 it after he says, "Fuck you and your 9-1-1." Yes, that is what
5 is recorded of what I said.

6 Q Okay. And that's because you're observing him
7 intending to harm himself, and you're telling him "We love you"
8 to prevent him from harming himself, right?

9 A I want him to go out of the room. He's already beat
10 me up at gunpoint, and he's walking around the room waving the
11 gun around. He never ever held it to himself in that room.

12 Q And you respond -- after you have described that he
13 says he hates you -- "Be a dad. Fine. Be a dad." That's what
14 you say to him a couple of times. Do you remember saying that?

15 A I do.

16 Q And that's because you believed that if you can
17 convey to him to be a dad --

18 A He wouldn't shoot the kids.

19 Q Let me finish my question. That he would stop with
20 the gun directed towards himself, right?

21 A No. At that point, he had walked over by the kids,
22 and at one point, he pointed the gun at the kids, and I
23 remember saying that to get him to quit.

24 Q Well, nowhere in the transcripts do you ever say,
25 "Don't shoot the kids," do you?

1 A No. I was too busy jumping in front of the gun.

2 Q At no point in the transcripts do you say, "Don't
3 point the gun at me and the kids," do you?

4 A Sorry. I forgot to say that while I was getting
5 kicked in the face. You're right. I might not have said that.

6 Q Well, there are times -- you just described jumping
7 in front of the kids and describing Owen Ray pointing the gun
8 at you; you don't document that by any statement during the
9 course in your conversation with 9-1-1, do you?

10 A I don't know. I believe I'm documenting -- I'm
11 asking for help. I document asking them to "come faster." I
12 document, "I can't stop him."

13 MR. AUSSERER: I'm sorry, Your Honor. I'm
14 going to ask that she responds to the question.

15 THE COURT: Ask your next question, Counsel.

16 MR. AUSSERER: Thank you.

17 BY MR. AUSSERER:

18 Q You just described that he was pointing the gun at
19 your kids during this exchange that we talked about; is that
20 right?

21 A He pointed the gun at them twice. I'm not sure
22 exactly during what part, in this transcript, it happened.

23 Q Okay. Well, immediately after the portion I just
24 asked you about on page 2 of Exhibit 36, you're on 9-1-1, and
25 the transcripts document that you are telling the kids, "It's

1 okay to go see Dad," right?

2 A No. That's a misprint. I never said that.

3 Q You never said, "It's okay to go see Dad," on 9-1-1?

4 A No.

5 Q Because you wouldn't have said that if he's actually
6 pointing the gun at them, would you?

7 A I didn't say that, though. I believe that line is in
8 between "He's going to kill us" and "Help us."

9 MR. AUSSERER: Your Honor, again, I'm going to
10 object --

11 THE COURT: Okay. Just a moment.

12 I'm going to strike the last response.

13 Wait for the next question, please.

14 The jury will disregard the last response of the
15 witness.

16 Ask your next question.

17 MR. AUSSERER: Thank you.

18 BY MR. AUSSERER:

19 Q On page 3 of Plaintiff's 36, is a continuation of the
20 transcript of the recording of the interaction that we have
21 been discussing.

22 And about a third of the way down, Owen Ray is
23 captured on the recording and in the transcript saying, "My
24 time is gone. My time is gone. I have to do it now. Tell
25 your mom." Do you remember him saying that?

Court of Appeals
Division II
State of Washington
2/10/2023 12:23 PM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
THE HONORABLE TIMOTHY L. ASHCRAFT - DEPARTMENT 2

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA NO. 57517-5-II
)	
vs.)	NO. 20-1-03059-9
)	
OWEN GALE RAY,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME VIII
PAGES 905 - 1044

September 19, 2022

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ALSO PRESENT:

Owen Ray

1 Q You specifically testified during the course of this
2 trial that Owen Ray turned off the lights, positioned himself
3 so the lighting behind him made him visible to you, and then he
4 pointed the gun directly at you and the kids. Do you remember
5 testifying to that?

6 A Yes. That's what happened.

7 Q And you never said that sequence of events to any of
8 the individuals that you were interviewed by previously, did
9 you?

10 A I believe I did. But I don't remember if I said that
11 exact sentence, no. But I believe I did.

12 Q Then you testified that you tried to get out of the
13 room with the kids and that Owen Ray physically restrained you
14 and pushed you guys back into the bedroom. Do you remember
15 saying that last week?

16 A No. I said we walked to the door. He came at the
17 door, walked towards us, and stood in the doorway. He came at
18 us with the gun, and we backed up. He blocked the doorway. He
19 didn't hold on to me and restrain me. I never said that.

20 Q And you've never said that to any of the individuals
21 that interviewed you in the days after this incident, did you?

22 A What? That he walked towards us as we tried to exit?
23 Yes, I did say that.

24 Q All right. So what you just described, your
25 testimony is you said that to each of the people that have

1 interviewed you leading you up to -- following the incident?

2 A No. I cannot say that I said that to each of the
3 individuals that you named. I'm not sure I said that to each
4 individual that you named. I'm not sure that after he kicked
5 me in the head, I had the sense to say that exact sentence to
6 each individual that interviewed me.

7 Q Well, the people that interviewed you, interviewed
8 you in days and even weeks after the incident, right? It
9 wasn't just that morning, right?

10 A I'm sure I said it to some of them, yes.

11 Q One of the things that you said is that there was a
12 physical push and that you and the kids fell backwards towards
13 the bed -- do you remember saying that last week? -- as you
14 tried to exit the room.

15 A When I was talking here?

16 Q Mm-hmm.

17 A That's not what I said.

18 Q So you didn't say that last week?

19 A I said he came at us, and the children ran back to
20 the bed.

21 Q Didn't say that to anybody, any of the people that
22 interviewed you in the days after this incident, did you?

23 A You are asking me to remember word for word what I
24 said to multiple people a year and a half ago, so I'm not sure.
25 But what happened was what I told you here last week, where he

1 came into that bedroom multiple times with a gun, pointed the
2 gun at me, kicked me, beat me up at gunpoint, and then turned
3 the gun on the kids where they screamed, said they didn't want
4 to die.

5 I tried blocking the door when he went out. He came
6 back and kicked it open, pointed the gun at the kids and at me
7 again. And eventually, we got out of the room because I was
8 insistent that we were going out of that room.

9 Q And, in fact, last week you said you had to actually
10 physically shove the kids past Owen to get them out of the
11 room?

12 A That's what happened.

13 Q And you never said that to any of the individuals
14 that you were interviewed by following the incident, did you?

15 A I don't remember. Again, a year and a half ago
16 talking to multiple people, you are asking me to remember my
17 conversation word for word, verbatim a year and a half ago with
18 multiple people.

19 Q In fact, the recordings show that at some point, you
20 ask to leave, and Owen's response was, "Go ahead and leave,"
21 right?

22 A I don't think so.

23 Q Finally, the State admitted Plaintiff's 83, and that
24 was the photograph of Maddie's room where it shows the location
25 that you said you went to, between the bed, to get away from

1 never said that, that I didn't believe that.

2 MS. SCHNEPF: May I approach again, Your Honor?

3 THE COURT: You may.

4 BY MS. SCHNEPF:

5 Q I'm going to hand you what's been marked as State's
6 Exhibit 36. And this is the transcript of the 9-1-1 call. Do
7 you recall Defense Counsel asking you about this 9-1-1 call
8 last week?

9 A Yes.

10 Q And when you called 9-1-1, what was the purpose of
11 calling 9-1-1?

12 A He had a gun, and I needed help.

13 Q Were you attempting to give the 9-1-1 operator a
14 detailed account of everything that was occurring?

15 A No.

16 Q Why not?

17 A Because I was busy trying to survive. I thought all
18 I had to do was call 9-1-1 and they would come.

19 Q And I want to point you to page 2 of the 9-1-1 call
20 at the top. Defense Counsel asked you a lot of questions about
21 whether you told the 9-1-1 operator that a gun was pointed at
22 you, and I want to point to a couple of spots here and ask you
23 what was going on at that point.

24 In particular, on page 2, line 2, where you tell the
25 9-1-1 operator, "He's going to kill us," why are you telling

1 the 9-1-1 operator "He's going to kill us"?

2 A Because he had a gun pointed at us, and he already
3 had beat me up at gunpoint, and he was saying things like "I
4 hate you," with a gun pointed at me, "Fuck you. Fuck you. I
5 hate you."

6 Q And at the bottom of that page, third line up, you
7 also indicate, "He's going to kill my kids," to the 9-1-1
8 operator. Why did you tell the 9-1-1 operator that? What was
9 going on at that point?

10 A Because he was waving the gun around first by the
11 kids. And then, eventually, he pointed it right at them. I
12 was separate. He didn't point it at me; he pointed it at the
13 children, and I jumped in front of them.

14 That's when it's very evident that my child says, "I
15 don't want to die," on the recording. Even at seven, he knows
16 that if a gun is pointing at him, there is a chance he's going
17 to die.

18 Q And I know this was a chaotic evening and you don't
19 recall all of the pieces of what was going on exactly during
20 each section of the 9-1-1, but you mentioned that, at some
21 point, your son said, "I don't want to die." Do you recall at
22 all what was happening when your son was making that comment?

23 A It's when he pointed the gun at the kids and I got in
24 front of them and they hid behind me. That's what was going on
25 right there because they were both trying to climb on top of