

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/15/2024  
BY ERIN L. LENNON  
CLERK  
NO. 103509-8

IN THE WASHINGTON STATE SUPREME COURT

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State of Washington, Plaintiff/Respondent

v.

Owen Gale Ray, Defendant/Appellant

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Timothy Ashcraft, Judge

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PETITIONER'S REPLY REGARDING MOTION TO  
STRIKE RESPONDENT'S ANSWER

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## I. INTRODUCTION

Petitioner Owen Ray submits the following reply to the State's Answer to Mr. Ray's Motion to Strike the State's Answer to his Petition for Discretionary Review.

## II. SUPPLEMENTAL FACTS

In his initial motion, Mr. Ray presented several citations to the record that specifically contradicted the State's assertion that Mr. Ray made verbal threats to kill K.R. at the time of the alleged assault, thus providing the State with additional actions to defend against Mr. Ray's double jeopardy claims. Mr. Ray has since found additional citations to the record that establish that no verbal threats were in fact made. These facts are incorporated into the argument below as applicable.

## III. GROUND FOR RELIEF AND ARGUMENT

The State attacked Mr. Ray's Motion to Strike as "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.”

Nothing could be further from the truth. Mr. Ray’s motion, which is just over 1200 words, does not begin to answer the arguments promoted by the State in its answer. Mr. Ray solely sought to present this Court with an accurate portrayal of the underlying facts in this case, including those arguments raised below.

In addition to its arguments in response to Mr. Ray’s Petition, the State’s Answer seeks to put forth an entirely new argument, not addressed below, in which it now claims that separate actions provided the basis for Mr. Ray’s convictions for felony harassment and second-degree assault. The State knew that Mr. Ray was prohibited from filing a Reply to its Answer when it made this novel argument, as the State had not alleged additional grounds for review, but rather a new argument on a ground raised by Mr. Ray, one to which Mr. Ray was prohibited from replying.

In support of this argument, however, the State, both in its Answer to the Petition for Review and its Answer to the Motion to Strike, alleges that Mr. Ray could have been found guilty of felony harassment based on verbal threats. While the State now admits that there is no evidence Mr. Ray ever specifically told K.R. he was going to kill her, *State's Answer to Motion to Strike*, at 9, unlike in its Answer to the Petition for Review, the State in this pleading points to a 30-page swath of testimony that it claims supports “verbal threats of death.” *Id.*

In fact, K.R. testifies only to the following within the 30 pages the State claims include “verbal threats of death”:

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

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

RP 493 [Emphasis supplied].

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

A No.

RP 494

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

A I don't remember.

RP 497

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

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

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

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

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

A What point? When he went downstairs?

Q Mm-hmm.

A I don't think he said those words.

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

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

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

A Probably.

RP 840

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

A As he's walking towards me, yes.

RP 841.

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

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

RP 954-5

While swearing and telling your spouse you hate them is certainly hurtful, it is clearly not a verbal threat of death; K.R. believed that Mr. Ray was going to kill her *only* because she alleged he was pointing a gun at her. In fact, the only time Mr. Ray even discussed death was in conjunction to killing himself, as he had intended to do all evening.

That Mr. Ray did not verbally threaten to kill K.R., or the child is supported by additional statements K.R. made on cross-examination,

Q Okay. But my question was: There is nothing documenting any threat from Owen Ray saying, "I'm going to kill you," either on the 9-1-1 or the transcript. Do you agree?

A He pointed a gun directly at me as he kicked me in the face and in the ribs. That said, he was wanting

to kill me. He may not have said it with words; he definitely said it with actions.

Q All right. That's my question. He never said, "I'm going to kill you" or "shoot you," did he?

A With his actions, yes, he did.

Q He never verbalized and said, "I'm going to kill you" or "shoot you" at any point during the interaction, did he?

A I don't remember.

RP 847-8.

That there were no verbal threats of death was also confirmed in the testimony of the lead detective, who interviewed K.R. and reviewed the 911 tapes of the incident during his investigation:

Q She never says he's pointing the gun at us, threatening to kill us, right?

A She did not use those exact words, no.

Q Well, she never uses the words that he threatened to kill them, does she?

A No.

Q Did you review the 9-1-1 tapes associated with her call to the police?

A I did.

Q And is that consistent with what she described?

A I believe so.

Q No threats to kill, right?

A No threats to kill.

Q It's the same terminology on 9-1-1 as she used with you, meaning waving the gun around, right?

A The words waving was how she described it.

Q In fact, to you, she indicated that her fear was that he was drunk, stumbling around with a gun, and might accidentally shoot somebody, right?

A That is a statement that she made, correct.

RP 988

This witness, too, describes Mr. Ray trying to kill himself, not anyone else:

Q What she did say during the interview was that repeatedly he put the gun to his own head in front of the kids and threatened to kill himself, right?

A Yes, he did.

RP 989

The State did not, either during trial or in closing arguments, even suggest that Mr. Ray made verbal threats indicating he would kill K.R. (*See*, RP 1448, “He doesn’t have to say the words ‘I’m going to kill you’ for him to be guilty of harassment.”)

As demonstrated *supra*, there were no “verbal threats of death” made in this incident. The State has not alleged in the past that anything other than Mr. Ray’s actions supported both the

felony harassment and second-degree assault charges, and it should not be allowed to do so now, particularly when such arguments are wholly unsupported by the record. The State's Answer should be stricken.

#### IV. CONCLUSION

The State's actions in this case threaten to undermine the entire appellate process. First, the State brings into its Answer to Mr. Ray's Petition for Review an argument not made in trial or in the appeal. That the State makes this argument at the only time that Mr. Ray is barred from responding to it, is telling.

Then, to support its claims, the State brings facts into this case that appear nowhere in any testimony provided to the trial court. In attempting to impute facts into the trial record that simply do not exist, the State oversteps, violating its duty of candor toward the tribunal and court rules requiring factual statements to be supported by the record. The State's actions threaten to undermine Mr. Ray's right to a fair appeal, as no

conviction that relies even in part on actions that never occurred and words that were never said can be found to be just. The State's Answer should be stricken.

I certify that this motion contains 1488 words in compliance with RAP 18.17

Respectfully presented this 6<sup>th</sup> Day of November 2024.

/s/ Michael Austin Stewart

Michael Austin Stewart, Attorney for Petitioner  
WSBA No. 23981

/s/Dena Alo-Colbeck

Dena Alo-Colbeck, Attorney for Petitioner  
WSBA No. 26158

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In conformance with the schedule articulated above, Petitioner files the attached reply to the State's response. Petitioner is filing this document via email due to the ongoing AOC website outage.

Thank you,

**Dena Alo-Colbeck**  
(she/her/hers)  
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On Thu, Nov 7, 2024 at 8:25 AM OFFICE RECEPTIONIST, CLERK

<[SUPREME@courts.wa.gov](mailto:SUPREME@courts.wa.gov)> wrote:

Any answer to the motion should be served and filed by November 14, 2024. Any reply to answer should be served and filed by November 18, 2024.

Sincerely,  
Sarah R. Pendleton  
Acting Supreme Court Clerk

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Attached please find Petitioner's Motion to Strike for filing via e-mail in light of the current AOC website outage.

Thank you,

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