

SUPREME COURT OF THE STATE OF WASHINGTON

Case #: 1035101

STATE OF WASHINGTON,)	No.
Respondent,)	COA No. 84950-6-I
)	
v.)	CORRECTED
)	MOTION TO
)	CONSOLIDATE
JOEL ZWALD,)	WITH PENDING
Petitioner.)	PETITIONS FOR
)	REVIEW

I. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT.

Petitioner Joel Zwald moves this Court to consolidate the petition for review in this case with the pending petitions for review in *State v. Rohleder*, S.Ct. No. 103265-0, and *State v. Kovalenko*, S.Ct. No. 103024-0, which involve the same significant constitutional question within different factual contexts, to promote the orderly administration of justice and in the interest of judicial economy.

III. GROUND FOR RELIEF AND ARGUMENT.

Mr. Zwald seeks review of a published Court of Appeals decision regarding the issuance of a court instruction that told jurors they may not require corroboration of the complainant's testimony to convict Mr. Zwald of two of the three charged offenses. Mr. Zwald objected to this instruction as unconstitutional, prejudicial, and undermining the State's burden of proof.

The trial court gave this instruction because it believed appellate courts require this instruction. The Court of Appeals affirmed based on this Court's prior decision in *State v. Clayton*, 32 Wn.2d 571, 202 P.2d 922 (1949). It refused to condemn, differentiate, or depart from *Clayton*. Slip op. at 7-10.

In *State v. Rohleder*, _Wn. App. 2d _, 550 P.3d 1042, 1044 (2024) (*petition for review pending*, S.Ct. No. 103265-0), the Court of Appeals said, "Rohleder's argument that the no corroboration instruction constitutes a comment on the evidence

has merit and the better practice is not to give the instruction.”

But *Rohleder* also said “we are constrained by the Supreme Court’s opinion in” *Clayton* “to conclude that giving such an instruction was not a comment on the evidence.” *Id.*

In *State v. Kovalenko*, 30 Wn. App. 2d 729, 746, 546 P.3d 514 (2024) (*pet. pending*, S.Ct. No. 103024-0), the Court of Appeals similarly said, “we are still bound by *Clayton* to hold that this no-corroboration instruction is constitutional.” *Kovalenko* ruled the instruction cannot be impermissible because it is an accurate statement of the law. *Id.* at 745.

The three different panels of appellate judges issuing the published decisions in *Rohleder*, *Kovalenko*, and *Zwald* use different analysis to reach the same result.

In the interest of judicial economy and to serve the orderly administration of justice, the petitions for review should be consolidated and review should be granted.

IV. CONCLUSION.

Joel Zwald respectfully requests this Court to consolidate his petition for review with other pending petitions involving the same legal issue.

Counsel certifies this brief complies with RAP 18.7 and contains approximately 390 words.

DATED this 27th day of September 2024.

Respectfully submitted,



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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Corrected Motion to Consolidate with Pending Petitions for Review** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 84950-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: September 30, 2024

WASHINGTON APPELLATE PROJECT

September 30, 2024 - 11:20 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 84950-6
Appellate Court Case Title: State of Washington, Respondent v. Joel Duane Zwald, Appellant
Superior Court Case Number: 19-1-01394-2

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