

FILED
SUPREME COURT
STATE OF WASHINGTON
6/23/2025 3:55 PM
BY SARAH R. PENDLETON
CLERK

NO. 103960-3

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

DANE MARCUS FORSS,
Petitioner.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION III
Court of Appeals No. 39056-0-III
Walla Walla County Superior Court No. 21-1-00260-36

ANSWER TO PETITION FOR REVIEW

GABRIEL ACOSTA
Prosecuting Attorney

RANDALL SUTTON
Special Deputy Prosecuting Attorney
614 Division Street
Port Orchard, WA 98366

SERVICE

Matthew Buchanan Folensbee
mattfolensbee@washapp.org
wapofficemail@washapp.org

This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED June 23, 2025, Port Orchard, WA _____

Original e-filed at the Supreme Court; Copy as at left.

Office ID #91103 kcpa@kitsap.gov

TABLE OF CONTENTS

I.	IDENTITY OF RESPONDENT	1
II.	COURT OF APPEALS DECISION.....	1
III.	COUNTERSTATEMENT OF THE ISSUES	1
IV.	STATEMENT OF THE CASE.....	2
V.	ARGUMENT	11
	THIS COURT SHOULD DENY REVIEW BECAUSE THE COURT OF APPEALS PROPERLY FOUND THAT THE RECORD FAILED TO SHOW THAT TRIAL COUNSEL HAD ANY ACTUAL CONFLICT OF INTEREST WHERE SHE PREVIOUSLY REPRESENTED A POTENTIAL WITNESS IN UTTERLY UNRELATED MATTERS AND WHERE THERE WAS NO EVIDENCE THAT COUNSEL LEARNED ANY CONFIDENTIAL INFORMATION BEARING ON THE CURRENT CASE DUE TO THE PRIOR REPRESENTATION.....	11
VI.	CONCLUSION.....	23
VII.	CERTIFICATION	23

TABLE OF AUTHORITIES

Cases

<i>Cuyler v. Sullivan</i> , 446 U.S. 335 (1980).....	22, 23
<i>In re K.E.</i> , 172 Wn. App. 1052, 2013 WL 223031 (2013).....	23
<i>Plein v. USAA Cas. Ins. Co.</i> , 195 Wn.2d 677, 463 P.3d 728 (2020).....	14, 15, 22
<i>State v. Beiers</i> , 2 Wn. App. 2d 1030, 2018 WL 776082 (2018).....	23
<i>State v. Cannata</i> , 4 Wn. App. 2d 1045, 2018 WL 3414625 (2018).....	23
<i>State v. Claiborne</i> , 23 Wn. App. 2d 1004, 2022 WL 3152856 (2022).....	22
<i>State v. Crenshaw</i> , 177 Wn. App. 1016, 2013 WL 5761251 (2013).....	23
<i>State v. Dhaliwal</i> , 150 Wn.2d 559, 79 P.3d 432 (2003).....	13, 14, 16, 22
<i>State v. Dufloth</i> , 19 Wn. App. 2d 347, 496 P.3d 317 (2021).....	21, 22
<i>State v. Ferguson</i> , ___ Wn. App. 2d ___, 568 P.3d 314, 2025 WL 1229596.....	23
<i>State v. Gonzalez</i> , 175 Wn. App. 1031, 2013 WL 3475463 (2013).....	23

<i>State v. King</i> , 26 Wn. App. 2d 1042, 2023 WL 3478545 (2023).....	23
<i>State v. Kitt</i> , 9 Wn. App. 2d 235, 442 P.3d 1280 (2019).....	16, 22, 23
<i>State v. Parker</i> , 190 Wn. App. 1037, 2015 WL 6126551 (2015).....	23
<i>State v. Ramos</i> , 83 Wn. App. 622, 922 P.2d 193 (1996).....	15
<i>State v. Reeder</i> , 181 Wn. App. 897, 330 P.3d 786 (2014).....	22
<i>In re Stenson</i> , 142 Wn.2d 710, 16 P.3d 1 (2001).....	23
Rules	
GR 14.1(a).....	22
RAP 13.4(b).....	11
RPC 1.9	14, 15

I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Walla Walla County Special Deputy Prosecuting Attorney Randall Sutton.

II. COURT OF APPEALS DECISION

The State respectfully requests that this Court deny review of the Court of Appeals unpublished decision in *State v. Forss*, No. 39056-0-III (Dec. 5, 2024), a copy of which is attached to the petition for review.

III. COUNTERSTATEMENT OF THE ISSUES

Whether this Court should deny review where the Court of Appeals properly found that the record failed to show that trial counsel had any actual conflict of interest where she previously represented a potential¹ witness in utterly unrelated matters?

¹ What the witness would have testified to has never been identified.

IV. STATEMENT OF THE CASE

On October 1, 2022, Dane Forss was charged three counts of possession with intent to deliver a controlled substance (one count each for heroin, methamphetamine, and fentanyl), and one count of obstructing a law enforcement officer. CP 3.

On May 26, 2022, counsel filed a motion to withdraw, CP 5. The motion was based on an unspecified conflict of interest, and stated, in its entirety:

COMES NOW RACHEL CORTEZ, attorney at law, and moves the Court for an order allowing withdrawal as appointed attorney in the above-captioned case and to immediately assign a new attorney in accordance with RPC 1.16.

RPC 1.16 under Comments [3], addresses withdrawal of an attorney when that attorney is appointed, as this Honorable Court is aware, the Defendant's attorney is bound by RPC 1.6 and RPC 1.16 Comments [3], Counsel does not intend to disclose any of the Defendant's statements to counsel that lead to the necessity of withdrawal, unless this Honorable Court requires counsel to do so, and limited by RPC 1.16 Comment [3] concludes by saying, "The lawyer's statement that professional consideration require the termination of representation ordinarily should be accepted as

sufficient.”

CP 5. Her attached declaration did not further explain the alleged conflict:

I, Rachel Cortez, hereby state and declare as follows:

1. I am over 18, am competent to testify, and have first-hand knowledge of the facts set forth herein. I am the attorney appointed to represent Mr. Forss in this matter;

2. At this time, there is a conflict of interest between this counsel and Mr. Forss pursuant to RPC 1.16, which governs declining or terminating representation of a client.

CP 7. There is no indication in the record that the motion was noted for hearing. The proposed order granting the motion bears the hand-noted annotation, “Denied.” CP 9.

A CrR 3.5 hearing was held on June 1, 2022. The alleged conflict was not mentioned at the hearing. RP 1-18.

Trial commenced on June 7, 2022, with jury selection. RP 19. During the inquiry as to whether the jurors might know anyone who was involved in the trial, the jury was informed that Skyler Glasby could potentially be a witness. RP 26. No

issue was raised regarding the conflict before, during or after jury selection. RP 19-78.

After opening statements, the State noted that Glasby had been sentenced to a prison term the previous Friday and would be transported from the jail. RP 85. The State noted that if the defense needed him as a witness, the court would need to enter an order keeping Glasby in the jail until he had testified. *Id.* Counsel responded that she would not be calling him. Notably, the alleged conflict was again not mentioned:

MS. CORTEZ: And Your Honor, in further review of the case – and this was also discussed with Mr. Forss before we had actually made the decision – we will not be calling Skyler as a witness in this case.

THE COURT: Okay. So that's a non-issue now?

MS. CORTEZ: Exactly, Your Honor. So he can go out on the chain.

RP 85-86.

Contrary to the assertion below in the Brief of Appellant, at 7, and in the petition, at 5, counsel did not assert that she would have called the fingerprint technician to testify about a

fingerprint that was inconclusive as to Glasby but for her alleged conflict. Instead, she conceded that testimony relating to the inconclusive fingerprint was inadmissible. RP 87-88. Counsel therefore agreed to not calling the technician so long as the evidence that Forss was excluded as the donor came in through another witness. RP 88.²

During that discussion, counsel commented:

Part of the reason we're not calling Skyler as a witness is, as the Court is aware, I represent Mr. Glasby, and I cannot essentially throw somebody else under the bus, and I don't intend to, so there wasn't going to be anything that the Defense was going to bring up that pertained to Mr. Glasby.

RP 87-88. No further mention of any alleged conflict was made during trial.

The jury convicted Forss as charged. CP 37; RP 305.

On appeal, Forss filed three motions for extension of time to file his brief. Then, in lieu of filing the brief, Forss filed a motion to expand the record pursuant to RAP 9.11.

² A detective testified to that effect. RP 255.

The motion was based on a purported conflict of interest created by trial counsel's representation of proposed defense witness Skyler Glasby in two municipal matters, Nos. 1A0193816 and XZ0682435. App. to RAP 9.11 Mot., at 2. However, a review of DISCIS showed that these matters involved unrelated third-degree DWLS charges. *See* App. to Resp. to RAP 9.11 Mot.³

Moreover, both of Glasby's cases were resolved on March 22, 2022, months before trial in the present case. *Id.* Glasby pled guilty in one case and the other case was dismissed. *Id.* Counsel filed her motion to withdraw in the present case over a month later, on May 26, 2022. CP 5.

There was no allegation that calling Glasby as even a hostile witness in the present matter would in any way have related to information counsel learned while defending

³ Appellate courts may take judicial notice of information in court system databases. ER 201(b)(2); *State v. Cross*, 156 Wn. App. 568, 589 n.14, 234 P.3d 288 (2010), *review granted on other grounds*, 172 Wn.2d 1009 (2011).

Glasby's driving with a suspended license cases. There was no allegation that these cases were in any way related or involve any of the same evidence.

The Court of Appeals commissioner accordingly denied Forss's RAP 9.11 motion. The Court of Appeals thereafter denied his motion to modify that ruling.

In his brief, Forss cited the above-quoted passage as evidence that there was a conflict. Brief of Appellant, at 6. However, as noted, review of DISCIS showed that the matters counsel represented Glasby in involved unrelated municipal third-degree DWLS charges, and there was no allegation that calling Glasby as even a hostile witness would in any way have related to information counsel learned while defending Glasby's driving with a suspended license case. There was no allegation that these cases are in any way related or involve any of the same evidence. Nor was there any evidence that Glasby would have waived any Fifth Amendment privilege and testified if he had been called as a witness.

The Court of Appeals concluded that on the record before it, “Forss has failed to show that his attorney labored under an actual conflict of interest.” Op., at 5. The court observed that defendants had a right to conflict-free counsel. Op., at 6 (*citing State v. Dhaliwal*, 150 Wn.2d 559, 566, 79 P.3d 432 (2003)). The court further noted that “to show a violation of the right, ‘a defendant must show that (a) defense counsel “actively represented conflicting interests” and (b) the “actual conflict of interest adversely affected” his performance.’” Op., at 6 (*quoting In re Gomez*, 180 Wn.2d 337, 348-49, 325 P.3d 142 (2014) (*quoting Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980))).

The court further observed that under *Dhaliwal*, the defendant bore the burden of showing both the actual conflict and the adverse effect. Op., at 6 (*citing* 150 Wn.2d at 573). It also cited the rule of *Cuyler* that if the defendant showed that a conflict of interest adversely affected his counsel’s performance, he need not demonstrate prejudice. Op., at 6 (*citing* 446 U.S. at 349-50). After citing the above authority the

court then noted that the Rules of Professional Conduct informed a court on whether an actual conflict existed. Op., at 6.

After reviewing the law, the court turned to the facts of the case. Op., at 7. After reviewing the facts, the court rejected the claim:

There is nothing in the record to show that the attorney represented Glasby and Forss in matters that were the same or substantially related. Whether matters are the same or related is a factual determination. *Plein v. USAA Cas. Ins. Co.*, 195 Wn.2d 677, 695, 463 P.3d 728 (2020). The comments to RPC 1.9 provide clarification. Comment 2 states that “a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a *factually* distinct problem of that type even though the subsequent representation involves a position adverse to the prior client.” RPC 1.9 (emphasis added). Comment 3 says matters may be “substantially related” “if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” RPC 1.9.

Here, the record not only fails to identify whether counsel’s motion to withdraw was based

on her representation of Glasby, but the record also fails to establish that the attorney represented Glasby in a matter that could be considered the same or substantially related to Forss's case.

Forss also fails to demonstrate that his trial attorney's representation of Forss was limited by her knowledge of confidential information gained during her representation of Glasby. ... Here, there is nothing in the record to suggest that the attorney's ability to represent Forss was limited by her knowledge of confidential information obtained during her representation of Glasby. "[P]rior representation of a witness does not automatically disqualify counsel from proceeding with representation of a defendant in a trial where that witness will testify." *Vicuna*, 119 Wn. App. at 32. Where the current matter is not substantially related to that of a former client, and examination of the former client does not involve confidential information, there is no actual conflict. *See Id.* at 31-32. In other words, there is no general "duty of loyalty" to former clients that would prevent an attorney from ever taking a position adverse to the former client. *See Plein*, 195 Wn.2d at 696.

Op., 9-11.

Other than as discussed herein, the facts of the offenses are not particularly germane to the issues raised in the petition. The State therefore relies on the facts presented in the opinion of the Court of Appeals, 1-4, and in the State's briefing below.

V. ARGUMENT

THIS COURT SHOULD DENY REVIEW BECAUSE THE COURT OF APPEALS PROPERLY FOUND THAT THE RECORD FAILED TO SHOW THAT TRIAL COUNSEL HAD ANY ACTUAL CONFLICT OF INTEREST WHERE SHE PREVIOUSLY REPRESENTED A POTENTIAL WITNESS IN UTTERLY UNRELATED MATTERS AND WHERE THERE WAS NO EVIDENCE THAT COUNSEL LEARNED ANY CONFIDENTIAL INFORMATION BEARING ON THE CURRENT CASE DUE TO THE PRIOR REPRESENTATION.

RAP 13.4(b) sets forth the considerations governing this

Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Forss argues that factors two and four support his petition for review. However, this Court should decline to accept review because the unpublished opinion of the Court of Appeals does

neither conflicts with existing precedent nor expands into uncharted waters.

As he did below, Forss relies for his argument on the counterfactual that trial counsel had an actual conflict of interest. But the record fails to show any conflict of interest beyond counsel's conclusory assertion. What record there is shows that counsel had no conflict as a matter of actual fact. Under such circumstances it is well-settled that a trial court is under no duty to excuse counsel.

There are limited factual circumstances where an attorney may have to withdraw from representing a current client because of a conflict of interest with a witness who might be called to testify. The circumstances may arise when the witness was a former client of defense counsel. The possibility of a conflict leads to a duty of investigation by defense counsel and the trial court, but a mere possibility of conflict is, by itself, insufficient to warrant a withdrawal.

State v. Dhaliwal, 150 Wn.2d 559, 79 P.3d 432 (2003),

addressed the burden of showing the existence of a conflict. There, the defendant argued that counsel had a conflict of interest because counsel represented some of the trial witnesses in other matters. *Dhaliwal*, 150 Wn.2d at 566–67. This Court rejected this claim.

The Court ruled that the defendant bears the burden of proving that there was an actual conflict that adversely affected his or her lawyer’s performance. *Dhaliwal*, 150 Wn.2d at 573. The “*possibility* of a conflict [is] not enough to warrant reversal of a conviction.” *Id.* (emphasis the Court’s). ““Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.”” *Id.* (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980)). Notably in *Dhaliwal* this Court also declined to remand for an evidentiary hearing because there was “insufficient evidence of an actual conflict to justify remand.” *Dhaliwal*, 150 Wn.2d at 574.

Under RPC 1.9 a lawyer may not represent a defendant in

“the *same or a substantially related* matter in which that person’s interests are materially adverse to the interests of the former client,” or the where the current representation would require the attorney to “use *confidences or secrets* relating to the representation to the disadvantage of the former client.” RPC 1.9(a) (emphasis added).

The court must determine whether the former and current representation are factually related. If not, then they are not “substantially related” within the meaning of the rule. *Plein v. USAA Cas. Ins. Co.*, 195 Wn.2d 677, 695, 463 P.3d 728 (2020).

Here, there was no allegation that Glasby’s traffic cases were in any way factually related to Forss’s drug case. Indeed, there is no allegation that calling Glasby would have required counsel to reveal any client secrets. Where a defendant fails to present any evidence that examination of a witness counsel previously represented would involve inquiry into confidences or secrets acquired in the prior representation, there is no basis for disqualification. *State v. Ramos*, 83 Wn. App. 622, 632, 922

P.2d 193 (1996).

Nothing in counsel's motion, declaration, or otherwise in the record in any way met these standards. Counsel only alleged she owed an "ethical duty" to Glasby. However no such inchoate duty exists. *Plein*, 195 Wn.2d at 696 ("there is no separate "duty of loyalty" under RPC 1.9 beyond the test outlined in RPC 1.9."). Moreover, the court records show, contrary to Forss's claim of simultaneous representation, Glasby's cases were resolved months before the trial of Forss's case.

Because the matters were clearly unrelated and counsel failed to identify or even allege any confidence learned in the traffic matters had any bearing on Forss's case, counsel failed to preserve the issue by not providing this information to the trial court before trial. Counsel would not have had to reveal any client confidences to comply with this burden. She merely would have had to comply with her and Forss's well-established burden of showing that an actual conflict likely

existed. *Dhaliwal*, 150 Wn.2d at 573.

In the Court of Appeals, Forss relied on *State v. Kitt*, 9 Wn. App. 2d 235, 246, 442 P.3d 1280 (2019), which, as the Court of Appeals noted, was misplaced. Op., at 10. Notably, Forss cited the rule from that case that the “matters alleged to be in conflict must be ‘substantially related.’” *Kitt*, 9 Wn. App. 2d at 244; Brief of Appellant, at 9. He nonetheless ignored that rule.

Moreover, the Court in *Kitt* found an *actual* conflict existed where counsel informed the trial court that he learned confidential information in his representation of his former client that he could use to defend his current client and raised issues that could have been helpful to his current client that he could not explore due to his ongoing duty his former client.

Here there was no such claim made to the trial court. Contrary to Forss’s implication below, Brief of Appellant, at 11, 12, counsel never claimed that she would have to “use ‘information relating to the representation [of Glasby] to [his]

disadvantage.”” Instead, she consistently claimed that her former representation created an inchoate duty of loyalty to Glasby. As discussed above, no such duty exists, and does not establish any actual conflict.

Forss also misperceives the record. He asserts:

Neither could Ms. Cortez call the fingerprint examiner as a defense witness, although she knew this witness would present exculpatory testimony as to Mr. Forss, her client currently on trial. ... To call the fingerprint examiner would have put Ms. Cortez’s other client in jeopardy, since the fingerprints were “*inclusive* as to Mr. Glasby.” RP 88.

Brief of Appellant, at 12-13 (emphasis supplied). To the contrary, the fingerprints were *inconclusive* as to Glasby, which counsel conceded rendered them not relevant. RP 88. As discussed in the statement of the case, counsel’s concern was ensuring that the evidence of *Forss*’s exclusion as the donor of the fingerprints would come in without the testimony of the examiner. RP 87-88. That evidence was admitted without objection during Forss’s cross examination of the lead detective. RP 255.

Forss further misrepresented the record of the discussion about the fingerprint expert, asserting that counsel's "statement on the record about the conflict and her concern about throwing one client 'under the bus' for the benefit of the other was met with indifference from the court. RP 87-88 (COURT: 'That wouldn't come in, then.')." Brief of Appellant, at 14. In context the trial court was merely agreeing with the parties' conclusion that evidence that the fingerprint analysis was "inconclusive" as to Glasby was not admissible:

MS CORTEZ: ... But it is relevant information. It's not inconclusive as to Dane. It's inconclusive as to Skyler. Skyler's not the one on trial here, so --

THE COURT: That wouldn't come in, then.

MS. CORTEZ: Exactly, but as long as it comes in that – or that the State can get it in that the fingerprints were sent in, came back, and did not – or was excluded – or Mr. Forss was excluded as the person who had left the fingerprint, then Defense will be satisfied, but it's very relevant information. It was not inconclusive as to Mr. Forss. It was inconclusive as to Mr. Glasby.

RP 88.

Forss also complained that "there [was] no indication the

trial court addressed this conflict of interest with the rigorous review required.” Brief of Appellant, at 14. But counsel never noted the matter for hearing, never arranged for the matter to be heard on the record, and never sought a clarification of the court’s ruling. So the basis for the trial court’s ruling cannot be known. Forss, having failed to make a record of the basis for the trial court’s ruling would now suppose that that basis was inadequate.

Forss also asserted that there was an actual conflict because “counsel could not call either the fingerprint expert or Glasby, both of whom could exonerate her client on trial, Mr. Forss.” Brief of Appellant, at 17. This contention was made up from thin air. First, as already discussed, counsel conceded that the inconclusive fingerprint was not admissible. Further, and more importantly, the record is nearly silent as what Glasby’s purported involvement in the case was.

The only evidence appears in the statement of probable cause, which notes that Glasby was the driver of the Nissan

Forss fled from. CP 1. The statement further notes that the number Forss gave Pisani for his “homie” was Glasby’s. CP 2. What is utterly lacking is any evidence that Glasby would have testified to anything of consequence. The apparent notion is that purportedly non-conflicted counsel could have called Glasby, who would have then incriminated himself and confessed that the drugs that Forss ditched were in fact his. In addition to being highly improbable, this supposition is utter speculation. Forss failed to establish any conflict and this claim was properly rejected.

Despite the clear and correct disposition of this issue by the Court of Appeals, Forss argues that the trial court erred in not accepting counsel’s conclusory claim of conflict because that was enough to raise the claim. Forss cites to *State v. Dufloth*, 19 Wn. App. 2d 347, 496 P.3d 317 (2021). But *Dufloth* is completely off point. That case involved whether the Court had a duty to order a competency evaluation despite “defense counsel [declining] to make such a motion.” 19 Wn. App. 2d at

354. The court in *Dufloth*, following well-settled precedent ruled that the trial court had a duty to inquire sua sponte if there was any basis to doubt the defendant's competency. *Id.* (citing *State v. Woods*, 143 Wn.2d 561, 604-05, 23 P.3d 1046 (2021)).

Here, on the other hand, the Court of Appeals followed equally well-established precedent that is directly on point regarding the trial court's duty where there is a potential conflict of interest. No jurisprudential conflict exists requiring review.

Forss also faults the Court of Appeals for allegedly deciding the case based on the Rules of Professional Conduct rather than the Sixth Amendment. This contention is also without basis. The court clearly applied *Dhaliwal* and *Cuyler*, the leading state and federal cases on the question. While the court did discuss the RPC in evaluating whether a conflict existed, that approach is completely in accord with the approach in *Plein*, 195 Wn.2d at 684-97, and in cases applying *Dhaliwal*

in the criminal context. *See Kitt*, 9 Wn. App. 2d at 244; *State v. Wood*, 19 Wn. App. 2d 743, 759, 498 P.3d 968 (2021); *State v. Reeder*, 181 Wn. App. 897, 908, 330 P.3d 786 (2014), *aff'd*, 184 Wn.2d 805 (2015); *State v. Claiborne*, 23 Wn. App. 2d 1004, 2022 WL 3152856, at *6 (2022) (unpublished; *see* GR 14.1(a)); *State v. Kaestner*, 9 Wn. App. 2d 1010, 2019 WL 2342342, at *3 (2019) (unpublished); *State v. Parker*, 190 Wn. App. 1037, 2015 WL 6126551, at *2 (2015) (unpublished); *State v. Ferguson*, ____ Wn. App. 2d ____, 568 P.3d 314, 2025 WL 1229596 ¶ 65 n.4 & 5 (2025) (unpublished portion); *State v. King*, 26 Wn. App. 2d 1042, 2023 WL 3478545, at *8 (2023) (unpublished); *State v. Cannata*, 4 Wn. App. 2d 1045, 2018 WL 3414625, at *10 (2018) (unpublished); *In re K.E.*, 172 Wn. App. 1052, 2013 WL 223031, at *5 (2013) (unpublished; dependency case where there is also a constitutional right to counsel). A similar approach has been followed in cases applying *Cuyler*. *See In re Stenson*, 142 Wn.2d 710, 722, 16 P.3d 1 (2001); *State v. Beiers*, 2 Wn. App. 2d 1030, 2018 WL

776082, at *6 (2018) (unpublished); *State v. Burkey*, 2 Wn. App. 2d 1023, 2018 WL 655677, at *6 (2018) (unpublished); *State v. Crenshaw*, 177 Wn. App. 1016, 2013 WL 5761251, at *4 (2013) (unpublished); *State v. Gonzalez*, 175 Wn. App. 1031, 2013 WL 3475463, at *4 (2013) (unpublished).

Forss thus fails to show any jurisprudential conflict or any issue of public importance that has not been addressed by existing precedent. Nor has he shown error in the trial court or the Court of Appeals. His petition should be denied.

VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Forss's petition for review.

VII. CERTIFICATION

This document contains 3132 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED June 23, 2025.

Respectfully submitted,

GABRIEL ACOSTA
Prosecuting Attorney

A handwritten signature in black ink, appearing to be 'GACOSTA', with a long horizontal stroke extending to the right.

RANDALL SUTTON
WSBA No. 27858
Special Deputy Prosecuting Attorney
kcpa@kitsap.gov

KITSAP CO PROSECUTOR'S OFFICE

June 23, 2025 - 3:55 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,960-3
Appellate Court Case Title: State of Washington v. Dane Marcus Forss
Superior Court Case Number: 21-1-00260-2

The following documents have been uploaded:

- 1039603_Answer_Reply_20250623155452SC890498_4573.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was forss wsc prv answer.pdf

A copy of the uploaded files will be sent to:

- gacosta@wwcowa.gov
- mattfolensbee@washapp.org
- prosecutor@wwcowa.gov
- wapofficemail@washapp.org

Comments:

Sender Name: Randall Sutton - Email: rsutton@kitsap.gov
Address:
614 DIVISION ST MS-35
PORT ORCHARD, WA, 98366-4681
Phone: 360-337-7157

Note: The Filing Id is 20250623155452SC890498