No. 1039701

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

E.A.T,

Petitioner.

ANSWER TO PETITION FOR REVIEW

Douglas County Superior Court Cause No. 22-8-00065-09
Court of Appeals, No. 39662-2-III

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case and plaintiff below.

B. COURT OF APPEALS' DECISION

The State of Washington asks the Court to deny review of the Court of Appeals decision in this case, attached to Petitioner's brief.

C. ISSUES PRESENTED FOR REVIEW

1. The petition for review claims that the Court of Appeals' opinion conflicts with multiple published opinions from the Court of Appeals including *State v. Rocha*, 21 Wash. App. 2d 26, 504 P.3d 233 (2022), asking this Court to accept review to endorse *Rocha* and provide decisive guidance to trial courts which "too often" usher in prejudicial hearsay evidence for an irrelevant purpose. Should review be denied when E.A.T. has failed to identify the conflicting opinions applicable to the instant matter?

2. The petition for review argues that the admission of relevant and nonhearsay evidence is a reversible error as an evidentiary issue because the properly admitted evidence was in fact hearsay, and that the evidence was irrelevant and prejudicial. Should review be denied when E.A.T. has failed to identify any reversible error by the trial court, when the trial court considered relevant, nonhearsay, and not prejudicial evidence properly admitted not for the truth of the matter asserted?

D. STATEMENT OF THE CASE

On May 30, 2022, sixteen-year-old E.A.T and fifteen-year old N.J.S. were dating each other. RP at 32-3. The two teens were at E.A.T.'s house in East Wenatchee, Washington, with one other teen friend and with E.A.T.'s three younger siblings, ages five, four, and three. RP 33-5. The group was gathered in E.A.T.'s living room hanging out. RP 35.

N.J.S. saw E.A.T. take a boot off of his little brother's foot and throw the boot at his younger sibling. RP 38. N.J.S. verbally scolded E.A.T., saying, "Don't hit your little brother." RP 38, 40. E.A.T. jumped up from the couch in a threatening manner in front of N.J.S. RP 38. N.J.S. testified that E.A.T. raised his shoulders and puffed out his chest like things were about to become physical. RP 42-3. N.J.S. then stood up defensively because she was scared and thought they might argue. RP 43.

For several moments, there was a mutual fight between E.A.T and N.J.S., where they were pushing and shoving and "wrestling." *See* e.g. RP 38, 44, 45.

After the mutual combat ended and the two parties had been separated by their friend, E.A.T. swung and landed a closed-fist punch, hitting N.J.S. in the face on her cheek. RP 46. N.J.S. did not see the punch coming, but remembers being struck and surprised. RP 101. E.A.T. called N.J.S. a "bitch" and then he went to his room. RP

47-8. N.J.S. stayed in the living room, cried on the couch, and was consoled by E.A.T.' s younger brother. RP 48. The other teen went to the room with E.A.T. and a short time later, E.A.T. came back out to the living room and apologized for hitting N.J.S. and said he would not do that again. RP 48-9.

The investigating officer testified at trial that the report of the incident was delayed, but that in her training and experience, there is nothing unusual about delayed reporting of domestic violence incidents; and this can be for numerous reasons, usually fact specific to the victim. RP 123. The State asked N.J.S. why she did not want to report the incident initially after it happened, and she explained her reasons for choosing to not initially report. RP 49-50, 52. The State also asked this witness what, if anything, was the catalyst for her decision to speak to police about the incident. RP 52-3. The Court allowed her to testify as to hearsay, because the Court did not admit

the hearsay for the truth of the matter asserted, but rather, to show the witness' motivation for deciding to report the incident when she did. RP 53.

The Court also admitted two screen shots from the victim's phone that showed a texting conversation with E.A.T.'s mother. RP 60. The exchange showed "Heather G. [heat emojis]/ Mother In Law." E.A.T.'s mom is named Heather Goodman, and N.J.S. testified that Heather began calling herself N.J.S. 's her "mother-in-law" when E.AT. and N.J.S. were dating, so N.J.S. reciprocated the 'pet name' by calling E.A.T.'s mom her mother in law. RP 105-6. The texts were N.J.S. telling E.A.T.'s mom what happened the date of the assault allegations. R.P. 60-3. E.A.T.'s mother acknowledged the incident, and the two parties agreed no more contact between E.A.T. and N.J.S. was for the best.

N.J.S. also testified that after this incident in December, E.A.T. called her a "rat" and "snitch" for telling the police the story of the incident. RP 74-81.

Five months later, N.J.S reported the incident to the school police resource officer. The school police resource officer referred the incident for prosecution, and the State charged E.A.T. with fourth degree assault.

The fact-finder found N.J.S. to be credible and her story to be consistent. Court's Memorandum Decision at 6. The Court found that the credible testimony of N.J.S. coupled with E.A.T.'s statement against interest and the corroborating text messages where E.A.T.'s mom acknowledged his inappropriate behavior. Court's Memorandum Decision at 5.

The Court of Appeals disagreed with E.A.T. that the trial court abused its discretion. Court of Appeals Decision at 1. The photograph was properly admitted as an exhibit after N.J.S. described it as a true and accurate representation of a message she had received on her cell phone. Additionally, the message N.J.S. received on her cell phone was not hearsay. The message was introduced

to explain why N.J.S. came forward and reported the assault, and was not used to prove the truth of the matter asserted, i.e., whether the underlying message itself was true. Court of Appeals Decision at 2.

E. ARGUMENT WHY REVIEW SHOULD BE DECLINED.

1. After review of Petitioner's cornerstone case *Rocha*, the Court of Appeals applied the proper legal analysis when it determined the trial court did not err in considering nonhearsay evidence admitted not for the truth of the matter asserted, but rather for a temporal purpose to explain the timing of the victim N.S.'s reporting. This instant matter is distinguished from *Rocha*.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). Hearsay evidence is generally inadmissible. ER 802. "However, out-of-court statements may be admissible

if they satisfy a hearsay exception or if offered for a purpose other than the truth of the matter asserted." ER 803(a); ER 801(d); *State v. City of Sunnyside*, 3 Wn.3d 279, 296 n.9, 550 P.3d 31 (2024).

"'Whether a statement is hearsay depends upon the purpose for which the statement is offered.'" *State v. Gonzalez-Gonzalez*, 193 Wn. App. 683, 689, 370 P.3d 989 (2016) (quoting *State v. Crowder*, 103 Wn. App. 20, 26, 11 P.3d 828 (2000)). If a statement is "offered for the truth of what someone told a witness, the statement is hearsay." *State v. Rocha*, 21 Wn. App. 2d 26, 31, 504 P.3d 233 (2022). However, if a statement is used only to show the effect on the listener, without regard to the truth of the statement, then it is not hearsay. *Gonzalez-Gonzalez*, 193 Wn. App. at 690.

When a party argues the statement was offered for another purpose other than to prove its truth, the court

considers whether the other purpose was relevant. *Rocha*, 21 Wn. App. 2d at 31.

Here, E.A.T. argues that N.J.S.'s motivation for reporting the incident was not relevant. However, evidence will be considered relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. The threshold is very low, and even "minimally relevant evidence is admissible." *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

E.A.T. relies on *Rocha*. In *Rocha*, the officers testified as to their reason for responding to the gas station. The State argued to the trial court that the hearsay statement from dispatch was relevant to explain why the officers went to the gas station.

The court found that the "why" was of no consequence. The proffered testimony from the two

officers went to Rocha having acted, with an element of the arson. And in order to prove the assertion that Rocha acted with malice, the hearsay evidence was elicited to prove motive of the arson.

Thus, the hearsay evidence in *Rocha* was relevant and prejudicial, thus improperly admitted. Because the error was not harmless, the conviction in Rocha was overturned.

In the instant matter, the State asked N.J.S. what made her "come forward and talk to somebody about what happened." RP at 52-53. She responded that she came forward after receiving a message suggesting that E.A.T. was telling another person he would hit N.J.S. again.

Unlike *Rocha*, the evidence here – the existence of message containing what N.J.S. perceived as a threat – was relevant to show the reason N.J.S. delayed in reporting the assault, whether or not the threats contained in the message were true or false. N.J.S. showed what she

considered a threatening message to E.A.T.'s mother in hopes that E.A.T.'s mother would provide guidance or discipline to E.A.T. The fact that N.S. showed the text message to E.A.T.'s mother had a valid, nonhearsy purpose to show the effect upon the listener. The introduction of the message and whether or not the message was true or false did not impact any element required of the State to prove the allegation beyond a reasonable doubt.

Unlike *Rocha*, the error if any in this matter was harmless. To find an error harmless beyond a reasonable doubt, from the record, an appellate court must find that the alleged error did not contribute to the verdict. *State v. Brown,* 147 Wn.2d 330, 344, 58 P.3d 889 (2002).

The erroneous admission of evidence in violation of an evidentiary rule is analyzed under the nonconstitutional harmless error standard. *State v. Gower*, 179 Wn.2d 851, 854, 321 P.3d 1178 (2014). Nonconstitutional error is

harmless if "there is a reasonable probability that, without the error, 'the outcome of the trial would have been materially affected.'" Id. at 854 (internal quotation marks omitted) (quoting *State v. Gresham*, 173 Wn.2d 405, 433, 269 P.3d 207 (2012)). To determine whether the erroneously admitted evidence was material, it is helpful to understand how the jury would have used the evidence and the properly admitted evidence to arrive at its verdict.

Additionally, because this was a bench trial, we presume the juvenile court did not consider inadmissible evidence in reaching its verdict. *State v. Read*, 147 Wn.2d 238, 244, 53 P.3d 26 (2002) (citing *State v. Miles*, 77 Wn.2d 593, 464 P.2d 723 (1970)). A respondent on appeal could rebut this presumption by showing that there is insufficient admissible evidence to support the verdict or that "the trial court relied on the inadmissible evidence to make essential findings that it otherwise would not have made." *Read*, 147 Wn.2d at 245-46.

Here, E.A.T. does not argue that the admissible evidence is insufficient to support the verdict; nor does the record show that is the case. And the juvenile court's findings of fact or conclusions of law do not suggest that the juvenile court considered these testimonies in the context of proving the truth of the matter asserted, or to support an element of the offense. The juvenile court's guilty finding was supported independently and any error is therefore harmless beyond a reasonable doubt. *See State v. We*, 138 Wn. App. 716, 158 P.3d 1238 (2007), *review denied*, 163 Wn.2d 1008 (2008).

This is analogous to the instant matter. E.A.T.'s conviction was the result of a bench trial and not based upon the statements contained within the text messages. Thus, if error is found, the admission of the evidence was harmless error.

2. None of E.A.T.'s alleged consideration for review meet the criteria set forth in RAP 13.4(b) and this Court should deny review.

A grant of discretionary review is governed by the considerations in RAP 13.4(b). E.A.T. has not demonstrated that the Court of Appeals decision in this case is in conflict with any other case of the Court of Appeals or Supreme Court. RAP 13.4(b) is cited three times in E.A.T.'s brief: Identity of Petitioner, Issue Presented for Review, and contained in the summation paragraph of Argument. *See* Petition. E.A.T. does not apply the consideration for review to his argument.

The State's best interpretation of E.A.T.'s argument is he believes the Court of Appeals wrongly applied the facts. There is no conflict with the Court of Appeals' decision in E.A.T.'s case and the other appellate case heavily relied upon in his petition. The State posits that the opinion in *State v. Rocha*, 21 Wash. App. 2d 26, 504 P.3d

233 (2022), is not on point to the instant matter, and therefore does not conflict.

E.A.T.'s contention that this Court of Appeals opinion directly conflicts with its opinion in *Rocha* does not rise to consideration required to accept review by this court pursuant to RAP 13.4(b)(2).

E.A.T. does not assert the Court of Appeals misapplied or incorrectly interpreted *Rocha*. E.A.T. argues anew that the trial court committed reversible error when it considered relevant, nonprejudicial, nonhearsay evidence.

Further, there is not a significant question of law that needs to be decided, nor is there an issue of substantial public interest. The petition for review should be denied.

F. CONCLUSION

The trial court did not commit an error by considering nonhearsay evidence that was properly admitted. Even if the trial court considered nonhearsy evidence that was

properly admitted but irrelevant, the error was harmless as to the verdict and was not prejudicial.

This Answer is 2,316 words long and complies with RAP 18.7.

DATED this 13th day of April, 2025.

Respectfully submitted,

VALERIE V. FLORES, WSBA No. 62624
Deputy Prosecuting Attorney

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent ,	)	NO. 39662-2-III
vs.	)	
E.A.T, Petitioner.	)	AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
: ss.
COUNTY OF DOUGLAS)

The undersigned, being first duly sworn on oath, deposes and says: That on the 14TH day of April 2025, affiant deposited in the United States Mail at Waterville, Washington, postage prepaid thereon, an envelope containing a copy of this Affidavit and the Answer to Petition for Review addressed to:

Willa Dorothy Osborn
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Kaser

SUBSCRIBED AND SWORN to before me this 14th day of April, 2025.

Jenny Schulz

NOTARY PUBLIC in and for the State of Washington, residing at East Wenatchee. My commission expires 02/26/27.

DOUGLAS COUNTY PROSECUTING ATTORNEY

April 14, 2025 - 10:25 AM

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