

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 1040091
Respondent,)	
)	
v.)	ANSWER TO
)	CLERK'S MOTION
)	TO STRIKE REPLY
Tommy Darren Tyson,)	
Petitioner.)	
)	

On June 11, 2025, Petitioner Tommy Tyson filed a Reply to Answer. Petitioner specifically citing RAP 13.4(d) in the first line of the Reply, demonstrating that RAP 13.4(d) authorizes a reply to an answer if the State sought review of issues not raised in the petition for review. Reply at 1. In the nine-paged Reply Brief, Tyson only addressed the two issues that the answering party sought

review of and that were not raised in the Petition for Review.

i. In the Answer, the State sought review of an issue not raised in the petition for review, namely the plain view doctrine. Under RAP 13.4(d), a Reply brief was proper in this case, because 1) the Petition for Review never raised or even mentions the plain view doctrine, and 2) the State sought review of the issue in the Answer to the Petition for Review.

On page 20 of the Answer, the State argues that the plain view exception also justified the seizure of Tyson's cellphone. Answer at 20-22. The State lost this issue in the superior court and never cross appealed the issue. Reply at 1-3. The Court of Appeals declined to consider the issue because the State never cross appealed. Reply at 2.

Because RAP 13.4(d) authorizes a Reply to an Answer when the answering party seeks review of an

issue not raised in the Petition for Review, this Court should deny the Motion to Strike.

ii. In the Answer, the State sought review of an issue not raised in the petition for review, namely harmless error. Mr. Tyson did not raise the issue of harmless error in the Petition for Review, as this issue was not briefed by the parties in the Court of Appeals. Reply at 4-6. The Court of Appeals rejected consideration of the issue, as the State had failed to brief the issue. Reply at 5-6.

On page 3 of the Answer, in Section II. “Restatement of the Issues,” the State clearly raised harmless error as an issue it seeks this Court to Review in subsection D:

If review is granted, should this Court determine whether any error is harmless given the irrelevance of the phone seizure to the Children’s disclosures of abuse and Tyson’s possession of depictions of minors engaged in sexually explicit conduct on a device other than his phone.

Answer at 3. The State further elaborated on this issue it raised in the Answer on pages 29 and 30. The motion to strike is meritless in this case, because the State is specifically seeking review of an issue that was not raised in the Petition for Review and not briefed by the parties in the Court of Appeals.

As Mr. Tyson argued in the Reply, the State failed to brief this issue at the Court of Appeals level and the Court of Appeals did not rule on the issue, explaining to the State at oral argument that raising an issue in a Statement of Additional Authorities days before oral argument and not briefed by the parties was inappropriate. Reply at 5, 6. A Reply is appropriate under RAP 13.4(d), because 1) the issue was not raised in the Petition for Review, and 2) the State is specifically seeking review of an issue not raised in the petition and never briefed in the Court of Appeals. Reply 4-6.

This Court should deny the motion to strike and decline review of these two issues the State raised in the Answer that were not mentioned in the Petition for Review.

Counsel certifies the word processing software calculates the number of words in this document, exclusive of words exempted by RAP 18.17, as 586 words.

DATED this 16th day of June, 2025.

s/ Jason Saunder
JASON B. SAUNDERS (WSBA# 24963)
Law Offices of Gordon & Saunders, PLLC
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Ellen Goncher, state that on the 16th Day of June, 2025, I caused the original **Answer to Clerk's Motion to Strike Reply** to be filed in the **Court of Appeals – Division Two** and a true copy of the same to be served on the following in the manner indicated below:

Erica Eggertsen	()	U.S. Mail
Pierce Co. Pros.	()	Hand Delivery
930 Tacoma Ave S Rm 946	()	Email
Tacoma, WA 98402	(X)	COA E-service

I certify under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

Date: 6/16/2025

s/ Ellen Goncher

Ellen Goncher

Legal Assistant

The Law Offices of Gordon & Saunders

LAW OFFICES OF GORDON & SAUNDERS, PLLC

June 16, 2025 - 11:36 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 104,009-1
Appellate Court Case Title: State of Washington v. Tommy Darren Tyson
Superior Court Case Number: 20-1-02781-4

The following documents have been uploaded:

- 1040091_Answer_Reply_20250616113434SC927652_0559.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was Tyson Answer to Motion to Strike.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- erica.eggertsen@piercecountywa.gov
- pcpatcecf@piercecountywa.gov

Comments:

Sender Name: Ellen Goncher - Email: ellen@gordonsaunderslaw.com

Filing on Behalf of: Jason Brett Saunders - Email: jason@gordonsaunderslaw.com (Alternate Email: ellen@gordonsaunderslaw.com)

Address:
1000 Second Avenue
Suite 2530
Seattle, WA, 98104
Phone: (206) 682-3222

Note: The Filing Id is 20250616113434SC927652