

FILED
SUPREME COURT
STATE OF WASHINGTON
8/18/2025 2:47 PM
BY SARAH R. PENDLETON
CLERK

SUPREME COURT No. 104310-4
COA No. 59378-5-II
Cowlitz Co. Superior Court No. 22-1-00685-08

SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RODNEY JOSEPH YEAGER,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

DEVON WALDMAN, WSBA #51234
Deputy Prosecuting Attorney
Attorneys for Respondent

Cowlitz County Prosecuting Attorney's Office
Hall of Justice
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91166

TABLE OF CONTENTS

PAGE

I.	IDENTITY OF RESPONDENT	1
II.	COURT OF APPEALS' DECISION	1
III.	ISSUES PRESENTED FOR REVIEW	1
IV.	STATEMENT OF THE CASE	2
V.	THIS COURT SHOULD DENY REVIEW BECAUSE THE PETITION FAILS TO RAISE GROUNDS UNDER RAP 13.4(B).	7
A.	THE COURT OF APPEALS' DECISION THAT THERE WAS NO GOVERNMENT BAD FAITH DOES NOT RAISE GROUNDS FOR REVIEW UNDER RAP 13(4)(B)(3)(4).	9
VI.	CONCLUSION	12

TABLE OF AUTHORITIES

PAGE

Cases

<i>State v. Armstrong</i> , 188 Wn.2d 333, 394 P.3d 373 (2017)	9, 10, 11, 12
<i>State v. Gentry</i> , 125 Wn.2d 570, 888 P.2d 1105 (1995)	9
<i>State v. Jackson</i> , 150 Wn.2d 251, 76 P.3d 217 (2003)	12
<i>State v. Kolesnik</i> , 146 Wn. App. 790, 192 P.3d 937, 941 (2008)	10

United States Cases

<i>Arizona v. Youngblood</i> , 488 U.S. 51 (1988)	9, 10, 11
<i>United States v. Zaragoza-Moreira</i> , 780 F.3d 971 (9th Cir. 2015)	9, 12

Rules

RAP 13.4(b)	7, 8, 12
RAP 13.4(b)(3)	7, 9, 11
RAP 13.4(b)(4)	7, 9, 10

I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Devon A. Waldman, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS' DECISION

The Court of Appeals' decision does not conflict with another decision of this Court or a published decision of the Court of Appeals. The Respondent respectfully requests this Court deny review of *State of Washington v. Rodney Yeager*, Court of Appeals No. 59378-5-II.

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals' decision conflict with a prior decision of this Court or a published decision of the Court of Appeals when it found:

- (1) That the trial court did not err in concluding that law enforcement did not act in bad faith when it did not preserve the video recording of the incident at the jail.

IV. STATEMENT OF THE CASE

Yeager was arrested and brought to Cowlitz County Jail on June 18, 2022. Corrections Officers Jeff Bergman and Andrew Caldwell attempted to complete the booking process of Yeager. During the booking process, Yeager was uncooperative and belligerent, so he was placed in a holding cell in the booking area. CP 29. Yeager threatened Officers Bergman and Caldwell. Cowlitz County Sheriff Deputy Ken Rago arrived to investigate these threats on the same day. Yeager made verbal threats to him as well. CP 29.

The Cowlitz County Jail has security cameras in the booking area. The booking cameras only record video. Cowlitz County Department of Corrections Captain Blaine Lux and Officer Caldwell testified it is common knowledge that the security cameras do not record audio. CP 30.

On June 23, 2022, the Cowlitz County Prosecuting Attorney's Office sent an email request to the Cowlitz County Sheriff's Office for "all video from booking." CP 35. On June

24, 2022, the defense filed a notice of appearance and request for discovery. On August 27, 2022, Deputy Rago contacted the Cowlitz County Jail and requested the video footage. On October 20, 2022, defense counsel emailed Captain Lux requesting the video from the booking area be preserved. Captain Lux responded that the video no longer existed, as the jail's retention schedule was for 60 days. CP 30. On September 3, 2022, Deputy Rago recontacted Sergeant David Fundingsland by phone at the Cowlitz County Jail and was made aware that the jail could not provide a copy as the 90-day window for viewing the footage had expired. CP 37.

Captain Lux testified that the booking area was a triangle-shaped area. Along one wall sat three cells, H-1, H-2, H-3. CP 47. Holding cell H-3 was approximately 10 feet by 15 feet. There was a steel door. There was a small window in the cell door. There were three security cameras in the booking area that only record video. RP 48. There is one camera in H-3 itself. RP 57.

Captain Lux believed that the 60-day retention window provided for in the 2022 records retention schedule under section 4.5 applied because the surveillance footage only recorded video. Because the surveillance footage did not record any sound the verbal threats would not have been captured by the surveillance footage. RP 49-50. During his cross-examination of Captain Lux, Yeager's attorney stated: "we don't know if it was or was not exculpatory, because it was destroyed." RP 60-61.

Officer Caldwell testified that: Yeager was brought into Cowlitz County Jail and was in-processed in the booking area. Yeager was difficult and argumentative, so he was placed in a holding cell. The holding cell was approximately 10x15 feet with two bunks and a toilet. RP 189-191. "Yeager threatened to find where I live and threatened to shoot me." RP 191. Officer Caldwell wrote in his report that Yeager said: "wait till I find where you live, I'll fucking shoot you." RP 191. Officer Caldwell testified that he was "absolutely" in reasonable fear that Yeager

would carry out that threat, in his current state of intoxication and anger. RP 191.

Officer Caldwell further testified that the security cameras did not record sound. RP 193. The security cameras were running all the time. If jail staff does not physically go back and save the video, the video will automatically be deleted. RP 193-194. On cross-examination, Officer Caldwell testified that, at the time, he was not aware of the jail policy requiring video retention regarding criminal charges. RP 194.

Deputy Rago testified that: Yeager threatened to, "I will beat your ass even with your badge on." RP 202. Rago was wearing his badge and uniform while conducting his investigation at the jail. Yeager asked Rago if he lived near North 50th. Rago did live near North 50th. Yeager then threatened, "that he would find me." Yeager said he would find where he, Rago, lived and beat his ass.

Officer Bergman testified that: "Yeager was not being cooperative or nice. We placed him, Yeager, in a holding cell.

Yeager threatened to go to Officer Caldwell's house and do him harm." RP 214-215.

Officer Bergman attempted to deescalate the situation. Officer Bergman informed Yeager that he did not want him to pick up new charges. RP 215. Yeager told Officer Bergman that he knew where he lived. That he lived out by 50th Avenue. Yeager said that: "I'll get some druggies, and I'll get some people, we'll go to your house, and then we'll see how tough you really are." RP 214-215. Yeager made that threat multiple times. Then, Yeager "stuck his finger and did the slashing motion, like your dead." RP 216. Officer Bergman was in reasonable fear that Yeager would carry out the threat after he repeated the threat so many times. Officer Bergman testified that video surveillance was not within the scope of his duties, and he did not know what happened to the surveillance footage on the server. RP 218.

Officer Bergman believed there was no camera in the holding cell because inmates kept destroying the camera. In response, the jail removed the camera 16-17 years ago. RP 220.

Officer Bergman was not familiar with the records retention policy. RP 220-221.

Yeager testified he did not recall any of the events from being arrested until he woke up that morning in the holding cell in the jail. RP 223. In closing, defense counsel argued, “I think what happened was it wasn’t that big of a deal to them, and they didn’t think to preserve the video.” RP 273.

The jury found Yeager guilty of four counts of harassment because the jury was not properly instructed on the subjective intent of the defendant and whether it was a “true threat”. RP 283. The Court of Appeals reversed Yeager’s convictions. Slip opinion at 14. Yeager now petitions for review.

V. THIS COURT SHOULD DENY REVIEW BECAUSE THE PETITION FAILS TO RAISE GROUNDS UNDER RAP 13.4(B).

Yeager seeks review under RAP 13.4(b)(3) and (4), arguing the Court of Appeals erred in affirming the trial court’s determination that neither the Cowlitz County Jail nor the prosecuting authority acted in bad faith in failing to preserve jail

video footage. The petition does not present a question of substantial public interest, a significant question of law under the Constitution, or any other circumstance warranting this Court's review. Instead, it asks this Court to reweigh settled law and fact-specific credibility determinations made by the trial court and affirmed by the Court of Appeals. This is precisely the type of case RAP 13.4(b) is designed to screen out.

Under RAP 13.4(b), review is discretionary and will be granted only if the petition clearly demonstrates:

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.

A petition that merely disputes application of settled law to the specific facts of the case does not satisfy RAP 13.4(b). *See* RAP

13.4(b)(3)-(4); *State v. Gentry*, 125 Wn.2d 570, 888 P.2d 1105 (1995).

A. THE COURT OF APPEALS' DECISION THAT THERE WAS NO GOVERNMENT BAD FAITH DOES NOT RAISE GROUNDS FOR REVIEW UNDER RAP 13.4(B)(3) AND (4).

Yeager claims this Court has never explicitly decided whether “bad faith” for purposes of *Arizona v. Youngblood*, 488 U.S. 51 (1988), should be measured subjectively or objectively. But this Court has already held—consistent with Ninth Circuit precedent—that “the presence or absence of bad faith... turns on the police’s knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.” *State v. Armstrong*, 188 Wn.2d 333, 345–46, 394 P.3d 373 (2017) (citing *United States v. Zaragoza-Moreira*, 780 F.3d 971 (9th Cir. 2015)).

The Court of Appeals faithfully applied this principle to the record here, concluding that—based on the jail captain’s testimony and the circumstances, there was no showing of bad

faith. This is not a legal conflict; it is a straightforward application of settled law to the facts of this case.

Yeager argues that this court's decision in *Armstrong* is flawed. That that flawed decision creates ambiguity or unfairness to the defendant that violates the Constitution or involves a substantial public interest. Yeager's argument depends entirely on his characterization of the factual record—specifically, what the jail captain, investigating deputy, and prosecutor's office “should have known” about the video's value. The trial court heard live testimony, made findings, and concluded the evidence was only “potentially useful” and that no bad faith existed. The Court of Appeals affirmed under the correct standard. This Court does not grant review to second-guess fact-specific credibility determinations absent a clear misapplication of law. *State v. Kolesnik*, 146 Wn. App. 790, 797, 192 P.3d 937, 941 (2008).

There is no split of authority in Washington on the *Youngblood* bad faith standard. Nor does this case present an “issue of substantial public interest” within RAP 13.4(b)(4). The

retention of a short-duration, video-only jail surveillance clip in the context of a specific, local criminal prosecution is not a systemic or recurring problem requiring statewide clarification.

Any guidance about subjective vs. objective knowledge in the destruction-of-evidence context would be best developed in a case where the outcome turns on that precise legal question—not where the trial court’s fact findings independently resolve the issue under either standard.

Finally, Yeager argues that under RAP 13.4(b)(3) there is a significant question of constitutional law. Again, Yeager points to this Court’s decision in *Armstrong* being flawed. How are courts to interpret the meaning of *Armstrong*. Yet the standard is clear: When evidence is merely potentially exculpatory and is destroyed by the government, due process only requires dismissal when the government acts in bad faith. *Arizona v. Youngblood* 488, U.S. 51, 57, (1988). “This court has held that the meaning of bad faith in this context turns on the government’s knowledge of the apparent exculpatory value of

the evidence at the time it was lost or destroyed”. *State v. Armstrong*, 188 Wn.2d 333, 345-46, 394 P.3d 373 (2017). See *United States v. Zaragoza-Moreira*, 780 F.3d 971,977 (9th Cir, 2015)(same). Yeager raises no significant question of constitutional law because the standard, that has no conflicting cases, is clear and yet flexible enough for trial courts to make case by case determinations.

Yeager essentially asks this Court to adopt his preferred view of the evidence, draw different inferences, and reverse based on an alternative reading of the record. RAP 13.4(b) is not designed for mere error correction. See *State v. Jackson*, 150 Wn.2d 251, 259, 76 P.3d 217 (2003).

VI. CONCLUSION

Because the petition identifies no conflict, no unsettled question of law, and no issue of broad public significance, and instead challenges only the Court of Appeals’ fact-specific application of established precedent, review should be denied under RAP 13.4(b).

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 2,000 words, as calculated by the word processing software used. Font is 14 pt.

Respectfully submitted this 18th day of August, 2025.



Devon A. Waldman, WSBA #51234
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the RESPONSE TO PETITION FOR REVIEW was filed electronically through the Supreme Court Portal to:

Maya Ramakrishnan
Nielsen Koch & Grannis, PLLC
The Denny Building
2200 Sixth Ave, Ste 1250
Seattle, WA 98121
ramakrishnanm@nwattorney.net
sloanej@nwattorney.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on August 18th, 2025.



JACQUELINE RENNY

COWLITZ COUNTY PROSECUTORS OFFICE

August 18, 2025 - 2:47 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 104,310-4
Appellate Court Case Title: State of Washington v. Rodney Joseph Yeager
Superior Court Case Number: 22-1-00685-1

The following documents have been uploaded:

- 1043104_Answer_Reply_20250818144655SC469608_7330.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 20250818144056427.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- appeals@co.cowlitz.wa.us
- ramakrishnanm@nwattorney.net

Comments:

Sender Name: Jacqueline Renny - Email: rennyj@cowlitzwa.gov

Filing on Behalf of: Devon Alan Waldman - Email: WaldmanD@cowlitzwa.gov (Alternate Email: appeals@cowlitzwa.gov)

Address:
312 SW 1st Avenue
Kelso, WA, 98626
Phone: (360) 577-3080 EXT 6618

Note: The Filing Id is 20250818144655SC469608