

No. 43702-3-II

IN THE COURT OF APPEALS OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

MARK FRANCIS OWENS,

Respondent.

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**APPELLANT'S REPLY**

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## ARGUMENT

### “in his place of abode”...

The essential question is “Where is it legal for a private citizen to threaten another with a firearm?” The Legislature answered that question in RCW 9.41.270(3). Unless one is participating in a felony arrest or defending oneself or another, RCW 9.41.270(3)(a) permits one to threaten another with a firearm “[I]n his or her place of abode or fixed place of business.”

Divisions 1 and 3 have both examined this question.

Division 3 held that “with respect to statute prohibiting intimidation with dangerous weapon, exception for acts committed by person while in his “place of abode” was applicable to conduct of defendant while he was standing on deck on rear of family residence.” *State v. Haley*, 35 Wn.App. 96, 665 P.2d 1375 (1983).

Division 1 held that “defendant's display of weapons in his backyard did not fall within the “place of abode” exception to the statute prohibiting unlawful display of a weapon.” *State v. Smith*, 118 Wn.App. 480, 93 P.3d 877 (2003).

The exception does not include [Appellant’s] backyard because it is limited to “a person while in his or her place of abode[.]” The word “in” clearly implies inside, not one's backyard. If the

Legislature wanted to enact a broader exception, it could have used “at” rather than “in.” *Smith* at 484.

Under The Jefferson County Superior Court’s interpretation of the place of abode exception, a person could lawfully display a weapon in an intimidating manner as long as he or she remained on the property upon which his or her dwelling is located. This interpretation contradicts the purpose of RCW 9.41.270(1), which is to promote public safety by protecting people against those who carry weapons in a threatening manner. The place of abode exception comports with this purpose because one has a legitimate privacy right in his or her home, and the exception does not endanger the public by including behavior that occurs in an area exposed to the public. Although a home’s curtilage enjoys heightened protection under the Fourth Amendment, “a person does not have a reasonable expectation of privacy in areas of the curtilage impliedly open to the public.” *State v. Hornback*, 73 Wn.App. 738, 743, 871 P.2d 1075 (1994) (citing *State v. Ridgway*, 57 Wn.App. 915, 918, 790 P.2d 1263 (1990)).

Here, Sheriff’s deputies were responding to a 911 domestic violence call from an isolated home in a rural area. They were legally there to investigate a possible crime and were entering the property

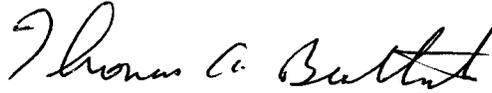
on the driveway when they saw Mr. Owens acting threateningly with a rifle.

### **CONCLUSION**

The State respectfully requests that this Court reverse the Jefferson County Superior Court and reinstate Mr. Owen's conviction.

Respectfully submitted this 1<sup>st</sup> day of May, 2013.

SCOTT ROSEKRANS, Jefferson County  
Prosecuting Attorney



By: Thomas A. Brotherton, WSBA # 37624  
Deputy Prosecuting Attorney

### **PROOF OF SERVICE**

I, Janice N. Chadbourne, certify that on this date:

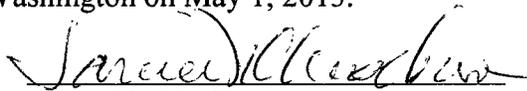
I filed the State's APPELLANT'S REPLY BRIEF electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of same using the Court's filing portal to:

Brett Roberts  
[bretjacpd@gmail.com](mailto:bretjacpd@gmail.com)

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

Signed at Port Townsend, Washington on May 1, 2013.



Janice N. Chadbourne  
Lead Legal Assistant

# JEFFERSON COUNTY PROSECUTOR

**May 01, 2013 - 3:39 PM**

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