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SUPREME COURT

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Court of Appeals
Division I
State of Washington

SUPREME COURT NO. _____
COURT OF APPEALS NO. 74256-6-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KEBEDE ABAWAJI,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. Abawaji, No. 74256-6-I, filed March 6, 2017 (unpublished).

C. STATEMENT OF THE CASE

The relevant facts are set forth in the briefing before the Court of Appeals.

D. ARGUMENT

THE COURT SHOULD DENY THE PETITION FOR REVIEW.

The Court should deny Abawaji's petition for review because his argument does not qualify for review under RAP 13.4. The State submits this brief answer to point out that Abawaji has recast his argument in his petition for review in a way that creates a new issue that was not argued or presented to the court of appeals.

In Abawaji's opening brief to the court of appeals, he argued that his felony harassment charge in King County Superior Court violated mandatory joinder under CrR 4.3.1 because he was previously charged with city-ordinance misdemeanors in Seattle Municipal Court arising from the same incident. Brief of Appellant

(BOA) 5-12. In making that argument, he incorrectly asserted that at the time the charges were filed in municipal court, “*the State* had all the facts it needed to charge assault, harassment, and unlawful display of a weapon, but chose not to charge the harassment, despite the requirement of mandatory joinder.” *Id.* at 8 (emphasis added). Abawaji contended that mandatory joinder was violated because “the State” had charged him both in the municipal and superior courts. *Id.* His argument was entirely dependent on the assertion that municipal court and superior court are “the same jurisdiction.” *Id.* at 11.

The State responded that the State was not the prosecutor in Seattle Municipal Court, and Abawaji was plainly confusing and conflating the distinct prosecuting authorities and separate jurisdictions of city municipal courts and state superior courts. Brief of Respondent 4-9. The State also noted that Abawaji had misread State v. Dixon,¹ and was confusing Seattle *District Court*, a state court, with Seattle Municipal Court, a city court. *Abawaji did not file a reply brief.*

The court of appeals affirmed Abawaji’s conviction, agreeing with the State that “the charges at issue in this case are not related

¹ 42 Wn. App. 315, 711 P.2d 1046 (1985).

because Seattle Municipal Court and King County Superior Court do not share the same jurisdiction.” Abawaji, No. 74256-6-1 at 5. The court of appeals emphasized that municipal courts handle violations of city ordinances, not state criminal statutes. Id. at 6 (citing RCW 3.5.020).

In Abawaji’s petition for review to this Court, he repeats the incorrect assertion that Dixon “ends the discussion that municipal court and superior court cannot be the same jurisdiction.” Petition for Review at 9. But he has reframed his argument to assert that distinct jurisdictions and separate prosecuting authorities are, or should be, irrelevant. That is an entirely new argument that was not made at the court of appeals.

Abawaji now contends, for the first time, that because “[h]arassment is an offense that could be adjudicated in either a courts [sic] of limited jurisdiction or superior court,” and “misdemeanor harassment was available to the prosecutor in the municipal court action but chose not to file and prosecute it,” then the State was precluded from filing a state felony harassment charge in superior court. Id. at 9-10. Thus, he asks this Court to grant review to answer an entirely new (and fallacious) question: “whether the fact the harassment count could properly be charged

in municipal or superior court rendered the conviction for harassment a violation of mandatory joinder.” Id. at 10. In other words, he is now arguing for the first time that jurisdiction and prosecutorial authority do not matter for mandatory joinder, but only whether charges with the same name could be prosecuted in each court.

This Court should deny review of this new issue. First, it is based on the entirely false “fact” that a “harassment count” can be interchangeably filed in a state superior court or a city municipal court. While the titles of the offenses might be the same, the offenses themselves are different. As the court of appeals pointed out in its decision here, the municipal court’s jurisdiction is limited to city-code misdemeanors. That means a “harassment count” there would be prosecuted as a violation of Seattle Municipal Code (SMC) 12A.06.040. In superior court, a “harassment count” would be prosecuted as a violation of RCW 9A.46.020. Those are not the same offenses, and they are not interchangeable from one court to the other. The “fact” that Abawaji presents as the basis for review is false.

Secondly, “[a]n issue not raised or briefed in the Court of Appeals will not be considered by this court.” State v. Halstien, 122

Wn.2d 109, 130, 857 P.2d 270 (1993); see also Fisher v. Allstate Ins. Co., 136 Wn.2d 240, 252, 961 P.2d 350 (1998) (“This court does not generally consider issues raised for the first time in a petition for review.”). Abawaji could have raised this issue at the court of appeals in a reply brief after the State correctly pointed out that Abawaji’s opening arguments were premised upon basic misunderstandings of our courts and a misreading of Dixon. That would have given the court of appeals the opportunity to address this new contention in its opinion. But Abawaji did not do so. This Court should reject his attempt to raise a new issue for the first time in his petition for review. This Court should deny his petition.

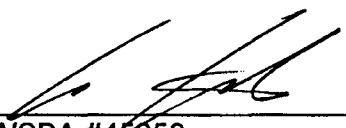
E. CONCLUSION

The Court should deny Abawaji’s petition.

DATED this 24th day of March, 2017.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Thomas Kummerow, the attorney for the petitioner, at Tom@washapp.org, containing a copy of the ANSWER TO PETITION FOR REVIEW, in State v. Kebede B Abawaji, Supreme Court No. _____; Court of Appeals No. 74256-6, in the Supreme Court, for the State of Washington.

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

Dated this 24th day of March, 2017.

U Brame
Name:
Done in Seattle, Washington