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SUPREME COURT NO. 95880-7
C.O.A. No. 48494-3-II
Cowlitz Co. Cause No. 15-1-01158-5

**SUPREME COURT OF THE STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM TODD HINZMAN,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Eric H. Bentson, Deputy Prosecuting Attorney, Cowlitz County Prosecuting Attorney's Office.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly decided this matter. The Respondent respectfully requests this Court deny review of the April 24, 2018, Court of Appeals' opinion in *State of Washington vs. William Hinzman*, Court of Appeals No. 48949-3-II.

III. ISSUE PRESENTED FOR REVIEW

Does William Hinzman's petition raise a significant question of constitutional law under RAP 13.4(b)(3) when there was sufficient evidence for the jury to find that he intentionally assaulted two police officers?

IV. STATEMENT OF THE CASE

Connie Cothren lived in a house at 905 Oak Street in Kelso. RP at 143. In October 2015, Cothren's sister was living with her. RP at 144. Cothren's sister was Hinzman's wife. RP at 144. Unlike his wife, Hinzman was not living at Cothren's house. RP at 144.

On October 9, 2015, Cothren's sister permitted Hinzman to enter the house. RP at 144. Hinzman and his wife began arguing. RP at 145. Hinzman's wife told him to leave. RP at 147. Cothren then told Hinzman

she was tired of the fighting and told Hinzman to leave. RP at 147-48. Hinzman asked to take a shower first. RP at 148. Cothren agreed to let Hinzman use the shower if he would leave “right after.” RP at 148.

When Hinzman came out of the shower, Hinzman appeared to be intoxicated. RP at 149. He was unorganized, scattered, hyper, and his speech was rapid. RP at 148. Hinzman walked into a wall and was “acting totally different.” RP at 148. Hinzman entered Cothren’s bedroom and refused to leave. RP at 148. Cothren told Hinzman to get dressed and go. RP at 149. Cothren accused Hinzman of being on something. RP at 149. Hinzman “put his chest out” at Cothren, and began talking fast and yelling at her. RP at 149. Cothren became frightened so she fled to the bathroom. RP at 149. From the bathroom, Cothren called the police. RP at 150.

Sergeant (“Sgt.”) Doug Lane and Officer Kirk Wiper of the Kelso Police Department responded to Cothren’s side door, which was under her carport. RP at 150, 200-01, 300. Both officers were in uniform with badges. RP at 151, 201. They could hear yelling and “traumatic type screaming” from inside the house. RP at 204, 314. When the officers knocked on the door, they received no response. RP at 204. However, the officers observed Cothren through the window and entered the house. RP at 204, 315.

Cothren was physically shaking and upset. RP at 315. Cothren told the officers she wanted Hinzman out of her house. RP at 205, 315. Officer

Wiper instructed Hinzman to step outside. RP at 205. Hinzman did not comply and stuck his hands in his pockets. RP at 205. Officer Wiper instructed Hinzman to step outside a second time. RP at 206. Hinzman again did not comply and headed for a backpack. RP at 206. Concerned that Hinzman might access a weapon, Officer Wiper ordered Hinzman not to reach for anything. RP at 206. Hinzman disregarded this order and reached into the backpack. RP at 206. Officer Wiper separated Hinzman from the backpack. RP at 206.

The officers instructed Hinzman to follow them outside. RP at 206. Hinzman appeared intoxicated or under the influence. RP at 207, 317. Hinzman was agitated, sweating, fidgety, his eyes were wide open, and he had excited and erratic speech. RP at 207, 316. Hinzman would not exit the side door of the house as the police instructed, and instead said he wanted to exit the front door. RP at 207. The officers told Hinzman he could not exit the front door, and he must come with them out the side door. RP at 207-08. As the officers exited the house with Hinzman, he clenched his hands into fists. RP at 208.

Sgt. Lane instructed Hinzman to sit on the step to the door under the carport. RP at 208, 323, 325. Hinzman replied, "I'm not your f***ing dog, Lane." RP at 209. Hinzman was focused on Sgt. Lane and continued to clench his fists. RP at 209, 326. Sgt. Lane instructed Hinzman to sit for a

second time. RP at 209, 326. Hinzman replied, “F*** you, Lane.” RP at 209. Sgt. Lane then told Hinzman he was under arrest and to place his hands behind his back. RP at 210, 330. The officers attempted to arrest Hinzman. RP at 210.

Sgt. Lane was on Hinzman’s left side and took his left wrist into cuffing position. RP at 211, 330. Officer Wiper took Hinzman’s right wrist into cuffing position. RP at 330. Hinzman pulled his arms away and spun to the right. RP at 211, 330, 334. Hinzman was very strong and the officers had difficulty controlling him. RP at 335. Cothren yelled at the officers not to hurt her car. RP at 337. Officer Wiper attempted to push Hinzman away from the car into the wall. RP at 212. Hinzman struggled violently. RP at 212. Hinzman pulled his arm away from Officer Wiper, causing him to lose control of his handcuffs. RP at 212. Officer Wiper exclaimed, “G**d***it!” RP at 336.

Hinzman kicked Sgt. Lane multiple times in the right knee and shin. RP at 337-38. Realizing that the officers were disadvantaged by having Hinzman in an upright position, Sgt. Lane attempted to collapse Hinzman. RP at 339. Hinzman went to his knees. RP at 213, 340. Hinzman broke free of Sgt. Lane’s grasp. RP at 340. As the officers attempted to take Hinzman down, he was twisting and kicking. RP at 213. Hinzman kicked his leg backwards toward his left at the lower part of Sgt. Lane’s body. RP

at 213. While the officers tried to push Hinzman to the ground, Hinzman pulled his right arm in front of his body. RP at 214. Officer Wiper attempted to control Hinzman's right arm. RP at 214. Hinzman grabbed Officer Wiper's wrist and pulled it in front of him. RP at 214.

Because Hinzman had taken control of Officer Wiper's arm, Officer Wiper was concerned he would not be able to protect his firearm. RP at 215. Officer Wiper was able to get his wrist out of Hinzman's grasp. RP at 215. Hinzman was on his knees. RP at 215. Officer Wiper decided to deploy his taser. RP at 215. Because Officer Wiper was in close proximity to Hinzman, he removed his taser cartridge prior to deployment and used the taser in "drive stun mode." RP at 216. Without the cartridge, a taser cannot achieve neuromuscular interruption but can cause pain. RP at 220.

Although Hinzman was taken to the ground, the use of the taser angered him even more. RP at 216. Hinzman "fought more violently" against the officers. RP at 217. On the ground, Hinzman attempted to kick Sgt. Lane off of him. RP at 342. Hinzman kicked Sgt. Lane in the shin, knee, fold of his pelvis, vest, and collarbone. RP at 342.

Officer Wiper used the taser again to try and subdue Hinzman, but he did not stop fighting. RP at 218. Officer Wiper made a second attempt to use the taser. RP at 218. Hinzman grabbed the taser from Officer Wiper and ripped it from his grip. RP at 219. Sgt. Lane screamed: "He's got your

[t]aser.” RP at 344. After Hinzman took the taser from Officer Wiper, he pointed the weapon at Officer Wiper. RP at 219.

Although his training permitted the use of deadly force at this point, Officer Wiper realized that without the cartridge, Hinzman could not incapacitate him with the taser. RP at 219-220. Officer Wiper reached for the taser and ripped it from Hinzman’s grip. RP at 220. Because the taser was activated at the time, Officer Wiper suffered a shock from the taser. RP at 220. At this time, Sgt. Lane heard the crackle of the taser followed by a yelp from Officer Wiper. RP at 347.

Hinzman continued to struggle with the officers. RP at 221. Sgt. Lane deployed his taser using the cartridge. RP at 221. Sgt. Lane’s attempted use of the taser did not achieve neuromuscular interruption. RP at 222. Hinzman rolled to his back and reached for Sgt. Lane’s holster. RP at 222-23. Hinzman pulled down the lower half of Sgt. Lane’s holster, which housed his firearm. RP at 348. Sgt. Lane could feel his holster being pulled downward. RP at 349. Part of Hinzman’s body dislodged the taser out of Sgt. Lane’s hand. RP at 349. Hinzman continued to fight and yell expletives at the officers. RP at 223. Realizing the officers were losing control of the situation, Officer Wiper employed three knee strikes to Hinzman. RP at 223-24. Finally, Hinzman was able to be handcuffed. RP at 225.

Additional police officers from the Kelso Police Department responded to the scene. RP at 255, 258. After Hinzman was secured, Captain (“Capt.”) Darr Kirk walked him over to a patrol car and had him sit on a seat with the door open. RP at 271. Capt. Kirk called for medical aid for Hinzman to ensure he did not have any medical conditions or injuries. RP at 271. While Capt. Kirk was with him, Hinzman said: “[Y]ou’re lucky you came, Captain, or I would have kicked their asses.” RP at 272.

As a result of the incident, Sgt. Lane suffered a torn medial meniscus of his right knee. RP at 361. Because of this injury, Sgt. Lane had limited mobility, was unable to work patrol, and was placed on light duty. RP at 361-62. Repair of this injury required surgery. RP at 362.

The jury found Hinzman guilty of assault in the second degree against Sgt. Lane for intentionally assaulting him and recklessly inflicting substantial bodily harm. RP at 506. The jury found Hinzman guilty of assault in the second degree against Officer Wiper for intentionally assaulting him while intending to commit the felony of disarming a law enforcement officer. RP at 506. The jury also found Hinzman guilty of two counts of assault in the third degree for assaulting each of the officers while performing their official duties and one count of resisting arrest. RP at 506-07. The Court found that the assault in the second degree against Sgt. Lane was the same criminal conduct as the assault in the third degree against Sgt.

Lane, and that the assault in the second degree against Officer Wiper was the same criminal conduct as the assault in the third degree against Officer Wiper. RP at 531.

Hinzman appealed, arguing there was insufficient evidence to support his assault convictions. Slip Opion at 1. The Court of Appeals affirmed Hinzman's convictions. Slip Opinion at 9. Hinzman now petitions for review.

V. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS' DECISION

Because Hinzman's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

- (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 another 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.

Hinzman's sole claim is that his petition involves a significant question of law under the Constitution of the State of Washington or of the United States under RAP 13.4(b)(3). He maintains that there was insufficient evidence of intentional assault to support his convictions for

assaulting the police officers. However, a review of the entire record reveals there was sufficient evidence for the jury to find he intentionally assaulted the police officers. Hinzman's petition ignores many consequential facts in the record that the Court of Appeals relied on in reaching its decision. When all facts in the record are considered, there was sufficient evidence to support his convictions. Therefore, Hinzman's insufficiency claim fails, and his petition does not raise a significant question of constitutional law. Accordingly, his petition does not meet any of the criteria required for review under RAP 13.4(b).

**A. TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE,
THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO
FIND HINZMAN INTENTIONALLY ASSAULTED THE
POLICE OFFICERS.**

Taken in the light most favorable to the State, there was sufficient evidence for the jury to find Hinzman guilty of intentionally assaulting the police officers. The Washington Supreme Court has stated:

When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)); *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240

824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *Jones*, 63 Wn. App. at 707-08. "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). "Nothing forbids a jury, or a judge, from logically inferring intent from proven facts, so long as it is satisfied the state has proved that intent beyond a reasonable doubt." *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993).

"During the process of a lawful arrest, an arrestee or an interested third party may not use force against the arresting officer unless the arrestee can show he or she was in actual danger of serious injury." *State v. Valentine*, 75 Wn. App. 611, 616, 879 P.2d 313 (1994), *affirmed*, 132 Wn.2d 1, 935 P.2d 1294 (1997). Moreover, "[t]he use of force to prevent even an unlawful arrest which threatens only a loss of freedom is not reasonable." *State v. Goree*, 36 Wn. App. 205, 209, 673, P.2d 194 (1983), *review denied*, 101 Wn.2d 1003 (1984). With regard to an assault of a law enforcement officer, "RCW 9A.36.031(1)(g) includes assaults upon law enforcement officers in the course of performing their official duties, even

if making an illegal arrest.” *State v. Mierz*, 127 Wn.2d 460, 479, 901 P.2d 286 (1995). The Supreme Court has explained:

Finally, we also associate ourselves with Judge Learned Hand, who said, ‘The idea that you may resist peaceful arrest—and mind you, that is all it is—because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine, seems to me not a blow for liberty but, on the contrary, a blow for attempted anarchy.’

State v. Valentine, 132 Wn.2d 1, 20, 935 P.2d 1294 (1997) (quoting 35 A.L.I.PROC. 254 (1958)). “To endorse resistance by persons who are being arrested by an officer of the law, based simply on the arrested person’s belief that the arrest is unlawful, is to encourage violence that could, and most likely would, result in harm to the arresting officer, the defendant, or both.” *Id.* at 21.

Numerous cases have addressed the issue of sufficiency of the evidence for assaults of police officers. In *State v. Craven*, 67 Wn. App. 921, 928, 841 P.2d 774 (1992), Craven challenged the sufficiency of the evidence supporting his assault conviction for kicking a police officer who was arresting him. After Craven was informed by police he was under arrest, two officers struggled to place Craven in handcuffs and all three of them fell to the ground. *Id.* at 923. As the officers struggled on the ground with Craven, a third officer observed that Craven’s legs were “flopping around and kicking.” *Id.* at 923-24. The officer knelt down on Craven’s

legs to restrain him. *Id.* at 924. The officer “caught one of Craven’s feet on the right side of [his] head[,]” causing an abrasion behind his ear and nearly knocking his glasses off. *Id.* The officer also testified he had “no idea” whether Craven had seen him at that point. *Id.* at 929. Taken in the light most favorable to the State, the Court of Appeals found this evidence was sufficient to support an assault of the officer, stating: “A reasonable fact-finder could conclude that Craven knew someone was trying to restrain his legs, and that he kicked with the intent to evade arrest and also to touch or strike that person.” *Id.*

In *State v. Baker*, 136 Wn. App. 878, 882, 151 P.3d 237 (2007), Baker argued that when he drove a vehicle at officers he was trying to escape rather than assault the officers; therefore, there was insufficient evidence to support his assault convictions. *Id.* The Court of Appeals noted the issue on review was “whether a reasonable trier of fact could have inferred from Mr. Baker’s conduct that he intended to strike these officers or the vehicles they were in or near.” *Id.* The Court of Appeals found that because Baker saw the police in uniform, appeared to deliberately strike their vehicles, and “flipped off” an officer and laughed, this “easily support[ed] a factual inference that Mr. Baker intended to strike these officers.” *Id.* at 883.

In *State v. Godsey*, 131 Wn. App. 278, 282, 127 P.3d 11 (2006), when a police officer ordered Godsey to stop so he could arrest him on a warrant, Godsey turned and faced the officer with his fists up, took a step toward the officer, and said “Come on[.]” After officers wrestled Godsey to the ground, he struggled against attempts to be handcuffed. *Id.* The Court of Appeals held it did not violate double jeopardy for Godsey to be convicted of both assault and resisting arrest arising out of the same incident. *Id.* at 288-89. In *State v. Brown*, 140 Wn.2d 456, 462, 998 P.2d 321 (2000), Brown pointed a cigarette lighter designed to look like a handgun at a police officer. Because this act placed the officer in apprehension and imminent fear of bodily injury and the victim was a police officer performing his official duties, the evidence supported Brown’s conviction for assaulting an officer. *Id.* at 470.

Here, taken in the light most favorable to the State, there was sufficient evidence for the jury to find Hinzman intentionally assaulted both police officers. First, as in *Craven*, there was sufficient evidence to support the factual inference that Hinzman intentionally assaulted Sgt. Lane. While Officer Wiper and Sgt. Lane struggled with Hinzman in the carport, Sgt. Lane felt several blows to his right knee and shin. RP at 337-38. From the position they were in, these blows could not have come from Officer Wiper. RP at 338. The only person who was in position to kick Sgt. Lane was

Hinzman. RP at 338. Although Sgt. Lane was unable to see Hinzman's foot, it was reasonable for the jury to infer that Hinzman was kicking him in the right knee and shin. Hinzman's assault of Sgt. Lane continued as he resisted Sgt. Lane's attempt to take him to the ground. On the ground, Hinzman attempted to kick Sgt. Lane off of him. RP at 342. Hinzman kicked Sgt. Lane in the shin, knee, the fold of his pelvis, his vest, and collarbone. RP at 342. After he was detained, Hinzman told Capt. Kirk: "[Y]ou're lucky you came, Captain, or I would have kicked their asses." RP at 272. This statement provided further evidence that Hinzman intentionally assaulted the officers. As in *Baker*, this was deliberate conduct, and it easily meets the definition of an intentional touching or striking that was harmful or offensive.

The jury also found Hinzman recklessly inflicted substantial bodily harm on Sgt. Lane.¹ Sgt. Lane suffered a torn meniscus to his right knee, providing sufficient evidence for the jury to find that he suffered substantial bodily harm. It was also reasonable for the jury to find that Hinzman recklessly inflicted this injury. Hinzman intentionally kicked Sgt. Lane's right knee multiple times while they were standing. RP at 338. He intentionally kicked his knee again while they were on the ground. RP at

¹ It should be noted that Hinzman's only argument is that there was insufficient evidence for the jury to find he intentionally assaulted the officers; he does not argue that there was insufficient evidence that he recklessly inflicted substantial bodily harm.

342. From this evidence, the jury could have reasonably inferred the injury resulted from Hinzman repeatedly kicking Sgt. Lane's right knee. And, by kicking Sgt. Lane's knee multiple times, Hinzman was reckless to the possibility that Sgt. Lane would suffer substantial bodily injury, either directly or indirectly as a result of Hinzman's assault.²

Thus, it was reasonable for the jury to draw the inference that Hinzman intentionally assaulted Sgt. Lane by kicking him in the right knee and shin and recklessly inflicted substantial bodily harm when Sgt. Lane suffered a torn meniscus in the knee Hinzman was kicking. For these reasons, when the evidence is taken in the light most favorable to the State, there was sufficient evidence for the jury to find Hinzman guilty of assault in the second degree against Sgt. Lane. And, because these acts occurred while Sgt. Lane was performing his official duties as a police officer, there was also sufficient evidence to support his conviction of assault in the third degree against Sgt. Lane.

Second, there was also sufficient evidence for the jury to find Hinzman guilty of assaulting Officer Wiper. The jury was properly instructed that an assault was "an intentional touching or striking of another

² For example, the jury also could have reasonably inferred that Sgt. Lane suffered the knee injury when he attempted to collapse Hinzman, but that Sgt. Lane took this action in response to being assaulted, and Hinzman was reckless to the fact Sgt. Lane would take such action to avoid further assault. *See also State v. Dennison*, 115 Wn.2d 609, 624, 801 P.2d 193 (1990) ("Cause in fact is generally left to the jury.")

person that is harmful or offensive,” and was “also an act done with the intent to create in another apprehension and fear of bodily injury[.]” RP at 438-39. When Hinzman grabbed Officer Wiper’s wrist and pulled it under the front of his body, this constituted evidence of an intentional touching that was harmful or offensive. When Hinzman grabbed the taser out of Officer Wiper’s hand and pointed it at him, this constituted evidence, similar to that presented in *Godsey* and *Brown*, from which the jury could have inferred Hinzman intended to create an apprehension of bodily injury in Officer Wiper. And, as with Sgt. Lane, the jury heard that after the incident Hinzman told Capt. Kirk he would have “kicked their asses” had he not arrived. Thus, taken in the light most favorable to the State, there was sufficient evidence for the jury to find Hinzman intentionally assaulted Officer Wiper.

Further, there was sufficient evidence for the jury to find Hinzman intended to commit the felony of disarming a law enforcement officer when he assaulted Officer Wiper.³ By removing Officer Wiper’s taser from him, the jury could have surmised Hinzman intended to disarm Officer Wiper. The jury was not required to find that Hinzman achieved this objective, but merely that he had the intent to do so. Because Officer Wiper immediately

³ As with the assault in the second degree charge against Sgt. Lane, Hinzman does not argue that there was insufficient evidence for the jury to find he did not have the intent to commit the felony of disarming an officer when he assaulted Officer Wiper.

reacquired the taser, this appears to be what the jury found.⁴ As additional evidence of his intent to disarm, the jury also heard evidence that Hinzman attempted to remove Sgt. Lane's firearm when he grabbed and tugged on Sgt. Lane's holster during the altercation.

Of course, "resolution of factual disputes is a task for the trier of the fact[.]" *Valentine*, 132 Wn.2d at 23. Here, the jury determined that during an extremely violent and dangerous fight with police, Hinzman intentionally assaulted Officer Wiper with the intent to disarm him. Because sufficient evidence was presented for the jury to reasonably infer this is what occurred, his conviction for assault in the second degree against Officer Wiper should remain undisturbed. As with Sgt. Lane, because Officer Wiper was a police officer performing his official duties at the time of this assault, the evidence was also sufficient to support Hinzman's conviction for assault in the third degree against Officer Wiper. Thus, when all reasonable inferences are drawn in favor of the State and against Hinzman, there was sufficient evidence supporting each of the jury's unanimous verdicts.

⁴ The jury did not find Hinzman guilty of the crime of disarming a law enforcement officer. Although there was no inconsistency between the verdicts, even if there were this would not impact a sufficiency analysis. *See State v. Goins*, 151 Wn.2d 728, 733-34, 92 P.3d 181 (2004) ("a guilty verdict can stand, even where the defendant was inconsistently acquitted of a predicate crime... jury convictions on separate counts should not be disturbed, despite inconsistencies, so long as there is sufficient evidence to support the conviction.").

Finally, Hinzman's petition ignores several important facts in the record the Court of Appeals relied on in reaching its decision. The entire record must be considered when considering Hinzman's sufficiency claim. The Court of Appeals explained that "[a]ppellate courts defer to the fact finder on the resolution of conflicting testimony, credibility determinations, and the persuasiveness of the evidence." Slip Opinion at 1-2 (citing *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014)). The Court of Appeals held that "[v]iewing the evidence in the light most favorable to the State, the evidence is sufficient to prove assault of both officers beyond a reasonable doubt." Slip Opinion at 7. The Court of Appeals relied on several key facts:

- Prior to going to the ground, "Hinzman kicked Officer Lane multiple times in the right knee and shin."
- During the struggle, "Hinzman grabbed Officer Wiper's wrist and pulled it."
- While on the ground, "Hinzman kicked Officer Lane in the shin, knee, pelvis area, and collarbone."
- Also on the ground, "Hinzman then grabbed the taser out of Officer Wiper's hand and pointed it at Officer Wiper."

Slip Opinion at 2-3. The Court of Appeals explained that by intentionally kicking Sgt. Lane multiple times, by grabbing Officer Wiper's wrist, and by grabbing the taser out of Officer Wiper's hand and pointing it at him, there

was sufficient evidence for the jury to find Hinzman intentionally assaulted both officers. Slip Opinion at 7-9.

Hinzman's petition fails to mention the facts upon which the Court of Appeals based its decision. When determining whether there was sufficient evidence, the Court of Appeals rightly considered all of the facts. Hinzman cannot support his insufficient evidence claim by selectively ignoring unfavorable facts in the record. Because there was sufficient evidence for the jury to find Hinzman intentionally assaulted both officers, his petition fails to raise a significant question of constitutional law under RAP 13.4(b)(3).

VI. CONCLUSION

Because the petition does not meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

Respectfully submitted this 14th day of June, 2018.



Eric H. Bentson, WSBA #38471
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Michelle Sasser, certifies the Response to Petitioner for Review was served electronically via Portal to the following:

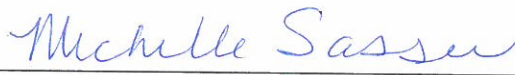
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and,

Mr. Thomas Kummerow
Washington Appellate Project
Melbourne Tower, Suite 701
1151 Third Ave.
Seattle, WA 98101
tom@washapp.org

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 June 14th, 2018.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

June 14, 2018 - 2:18 PM

Transmittal Information

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Appellate Court Case Title: State of Washington v. William Todd Hinzman
Superior Court Case Number: 15-1-01158-5

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