NO. 90040-0

THE SUPREME COURT OF

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANTONIO CUEVAS-CORTES,

Appellant.

RESPONSE TO PETITION FOR REVIEW BY YAKIMA COUNTY

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A. INTRODUCTION

Appellant filed a timely appeal. The parties briefed the allegation and the Court of Appeals Division III determined during work-up of the case that it did not want oral argument from the parties. The opinion was written by Chief Judge Korsmo with Judges Kulik and Fearing concurring in CJ Korsmo's opinion. The opinion denied all of the allegations raised by Appellant. Appellant moved for reconsideration, this too was denied. This petition for review was subsequently filed.

B. ISSUE PRESENTED BY PETITION

Mr. Nava has petitioned this court requesting review of the decision of the Court of Appeals. Petitioner alleges;

1. The court of appeals failed to address the allegation that two counts of incest were barred based on double jeopardy.

ANSWER TO ISSUES PRESENTED BY PETITION

1. The Court of Appeals completely addressed all issues.

C. STATEMENT OF THE CASE

The Court of Appeals set forth the facts extensively in its decision. The State will rely on that statement in the opinion filed by the Court of Appeals.

D. ARGUMENT

1. Standards of Review.

RAP 13.4(b) Considerations Governing Acceptance of Review.;

This case does not **1**) Conflict with any decision by this court, the claim that the Court of Appeals ruling is incorrect is baseless. This allegation is based on a reading of the courts decision which is incorrect and does not take into account the plain meaning of that ruling nor the facts of the case and the standard set forth in the cases cited by the Court of Appeals; **2**) This ruling does not conflict with any ruling by any other division of the Court of Appeals. This issue has been ruled on previously as indicated by the cases cited by the Court of Appeals. **3**) The ruling of the Court of Appeals does not raise a significant question under either the State or Federal Constitution; the ruling merely reiterates the law address in double jeopardy which has been in place for years if not decades. Finally this petition does not **(4)**...involve(s) an issue of substantial public interest that should be determined by the Supreme Court.

Here Appellant's claim is the "appellate court's wholesale failure to address a properly raised issue that is not otherwise moot." And that "such failures (by a panel of Division III of the Court of Appeals consisting of Chief Judge Korsmo and Judges Kulik and Fearing) are normally corrected following the filing of a motion to reconsider that

points out the missing analysis. For whatever reason, that process failed to cure the oversight here."

This very short and concise opinion concludes as follows;

"Accordingly, we hold that **incest** can be prosecuted in conjunction with either child rape or child molestation. Thus, Mr. Cuevas Cortes has not shown any potential double jeopardy violation that would have required a separate and distinct act instruction." (Emphasis mine)

Clearly the court considered the **incest** charges and found that there was no double jeopardy. When the court stated "incest" it did not delineate a degree it thereby including all degrees that had been charged.

To grant this motion would be a complete and utter waste of time. Obviously Chief Judge Korsmo and Judges Kulik and Fearing did not "ignore" this allegation on the two occasions it was before them, especially on the second occasion when their "oversight" was pointed out to them by Appellant. Clearly the panel determined the issue in the first opinion and did not need to waste more of the scare resources of that court to explain again that "Mr. Cuevas Cortes has not shown any potential double jeopardy violation that would have required a separate and distinct act instruction."

E. CONCLUSION

Appellant's claims do not meet any of the requirements of RAP 13.4. The actions of the trial court and the Court of Appeals were well reasoned decisions and should not be disturbed by this court.

Respectfully submitted this 10th day of April 2013.

s/ David B. Trefry
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