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SUPREME COURT
STATE OF WASHINGTON
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NO. 92141-5

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD R. BROWN,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied. If review is granted, the State asks the court to review the additional issue identified in part II.

II. ADDITIONAL ISSUE

The jury was erroneously instructed on uncharged means of committing kidnapping. The jury was also instructed on a charged means, as to which there was overwhelming evidence. Were the instructions on the uncharged means harmless error?

III. STATEMENT OF THE CASE

The facts are set out in the Court of Appeals opinion.

IV. ARGUMENT

IF THIS COURT GRANTS REVIEW, IT SHOULD ALSO REVIEW THE FAILURE OF THE COURT OF APPEALS TO CONSIDER WHETHER ERROR WAS HARMLESS BECAUSE OF OVERWHELMING EVIDENCE.

The petition for review raises seven issues. Five of these (nos. 3-7) were not even raised in the appellant's brief – they were raised in the defendant's pro se Statement of Additional Grounds. All seven issues involve application of established law to the facts of this case. None of them warrant review.

If this court nonetheless grants review, it should also review an issue that was inadequately addressed by the Court of Appeals.

The State argued that an error in the jury instructions was harmless because of overwhelming evidence. The Court of Appeals rejected this argument without considering whether the evidence was overwhelming. This analysis conflicts with this court's decisions.

This issue involves the defendant's convictions for two counts of first degree kidnapping. The information alleged that the defendant committed these crimes with intent to inflict extreme emotional distress. 2 CP 925. The jury was properly instructed on that charged means. The jury was, however, also instructed on two uncharged means: holding a person for ransom or reward, and holding a person as a shield or hostage. 1 CP 121, 127 (inst. no. 11, 16).

On appeal, the State conceded that these instructions were constitutional error. Brief of Respondent at 9. The State argued, however, that the error was harmless because there was overwhelming evidence of the charged means. While the victims were being restrained, one of the perpetrators (Danny Fordham) repeatedly threatened one of the victims (Louis Munson) with an assault rifle. 1 RP 115-16; 3 RP 318, 455-56; 4 RP 637; 5 RP 765-66. The stress from this was so severe that Mr. Munson began

experiencing heart palpitations and believed that he was going to have a heart attack. 1 RP 121; 3 RP 318-19, 456.

Two of the perpetrators testified that these actions were part of the plan. 3 RP 4546; 5 RP 790. This was corroborated by the defendant's reaction to Mr. Fordham's conduct. When someone asked the defendant to calm Mr. Fordham down, the defendant responded "that's his job, he's supposed to be an intimidator." 1 RP 122; 3 RP 320. Based on this evidence, any reasonable juror would necessarily conclude that the kidnapping was committed with intent to inflict extreme emotional distress.

The Court of Appeals did not consider whether the evidence was overwhelming. Instead, the court considered whether "it is possible the jury convicted the defendant under the uncharged alternative." The court pointed out that the evidence and the State's arguments supported conviction on the uncharged alternatives. Consequently, the jury could have convicted the defendant under those alternatives, so the error was not harmless. Slip op. at 8-9.

This analysis misses the point. This court has consistently applied an "overwhelming untainted evidence" test. Under that test, constitutional error is harmless if "the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt." See,

e.g., State v. Watt, 160 Wn.2d 626, 636, 160 P.3d 640, 645 (2007);
State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). Under
this test, if the jury would necessarily find the defendant guilty on
the charged theory, instructions on uncharged means were
harmless error.

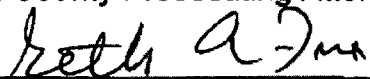
The Court of Appeals reversed the kidnapping convictions
without ever considering whether the evidence was overwhelming.
This analysis was contrary to Watt and Guloy. If this court grants
review of other issues, it should review this issue under RAP
13.4(b)(1).

V. CONCLUSION

The petition for review should be denied. If review is granted,
the court should reverse the Court of Appeals and reinstate the
convictions of kidnapping. The State is not challenging the Court of
Appeals reversal of the assault convictions. The case should
therefore be remanded for resentencing.

Respectfully submitted on September 24, 2015.

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

RONALD R. BROWN,

Petitioner.

No. 92141-5

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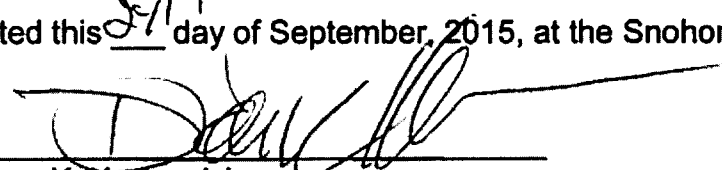
The undersigned certifies that on the 21st day of September, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Maureen M. Cyr, Washington Appellate Project, maureen@washapp.org and wapofficemail@washapp.org.

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

Dated this 21st day of September, 2015, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

OFFICE RECEPTIONIST, CLERK

To: Kremenich, Diane; maureen@washapp.org; wapofficemail@washapp.org
Subject: RE: State v. Ronald Brown

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Supreme Court Clerk's Office

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; maureen@washapp.org;
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Subject: State v. Ronald Brown

Good Afternoon...

RE: State v. Ronald R. Brown
Supreme Court No. 92141-5

Please accept for filing the following attached pleading: State's Answer to Petition for Review


Thanks.

Diane.

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