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Supreme Court No. 86427-6

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Petitioner,

vs.

Aaron Hahn

Appellant/Respondent

Clallam County Superior Court Cause No. 08-1-00195-3
The Honorable Judge George L. Wood

ANSWER TO PETITION

Manek R. Mistry
Jodi R. Backlund
Attorneys for Appellant/Respondent

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

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I. THE PETITION SHOULD BE DENIED BECAUSE THE CASE DOES NOT MEET ANY OF THE CRITERIA SET FORTH IN RAP 13.4(B).

The Court of Appeals reversed Mr. Hahn's conviction because the trial court erroneously refused to instruct the jury on a lesser-included offense. Opinion, pp. 15-16. In making its decision, the Court of Appeals applied the two-pronged test set forth in *State v. Workman*, 90 Wash.2d 443, 584 P.2d 382 (1978). Petitioner argues that the Court of Appeals' decision "eliminates the second prong of the *Workman* analysis." Petition, p. 10. This could be understood as an argument that review is appropriate under RAP 13.4(b)(1).¹

Petitioner is incorrect. The Court of Appeals applied both prongs of *Workman* to the facts of this case, and concluded that Mr. Hahn was entitled to instructions on the lesser-included offense. *See* Opinion, p. 15 ("Turning to the factual prong, we must determine whether the evidence supports an inference that only the lesser crime of solicitation to commit fourth degree assault was committed"). The Court of Appeals' Opinion is thus in harmony with *Workman*.

The essence of Petitioner's argument is that the Court of Appeals made a mistake when applying the factual prong of *Workman*. Petition,

¹ Petitioner fails to argue for acceptance of review with reference to the four criteria set forth in RAP 13.4(b)(1)-(4). Instead, Petitioner asserts that review should be accepted "[p]ursuant to RAP 13.4" generically. Petition, p. 1.

pp. 10-16. But this sort of error is not appropriate for Supreme Court review: it presents no conflict with Supreme Court precedent, it is not at variance with another Court of Appeals decision, it is not of constitutional dimension, and it is not of substantial public interest. *See* RAP 13.4(b). It is also incorrect.

Petitioner is unhappy with the result reached by the Court of Appeals. Petitioner's disagreement with the result does not mean that the Court of Appeals strayed from precedent. There is no basis to accept review. RAP 13.4(b). Accordingly, the Petition should be denied.

II. IF REVIEW IS ACCEPTED, ADDITIONAL ISSUES MUST ALSO BE REVIEWED FOR A FAIR AND COMPLETE RESOLUTION OF THE CASE.

Although the Court of Appeals ruled in Mr. Hahn's favor on one issue and reversed his conviction, it decided three issues against him and declined to reach two other issues. Opinion, p. 7 n. 2, and 7-15. If this Court accepts review of the issue identified by the Petitioner, it should also review the following issues:

1. Did the First Amended Information fail to charge a crime and violate Mr. Hahn's right to notice under the Fifth, Sixth, and Fourteenth Amendments, and under Wash. Const. Article I, Sections 3 and 22?

This issue raises significant questions under the state and federal constitutions that are also of substantial public interest, and thus should be

decided by the Supreme Court. RAP 13.4(b)(3) and (4). The details of the argument are set forth in Mr. Hahn's briefing to the Court of Appeals.

2. Were Mr. Hahn's statements to the police and their agents obtained in violation of his right to counsel under Wash. Const. Article I, Section 22 because Mr. Hahn was already represented in a prosecution closely related to the charged crime?

This issue raises significant questions under the state constitution that are also of substantial public interest, and thus should be decided by the Supreme Court. RAP 13.4(b)(3) and (4). The details of the argument are set forth in Mr. Hahn's briefing to the Court of Appeals.

3. Was Mr. Hahn's conviction obtained in violation of his right to a jury trial under the Sixth and Fourteenth Amendments and Wash. Const. Article I, Sections 21 and 22 because of the improper admission of opinion testimony?

This issue raises significant questions under the state and federal constitutions that are also of substantial public interest, and thus should be decided by the Supreme Court. RAP 13.4(b)(3) and (4). The details of the argument are set forth in Mr. Hahn's briefing to the Court of Appeals.

4. Was Mr. Hahn denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel?

This issue raises significant questions under the federal constitution that are also of substantial public interest, and thus should be

decided by the Supreme Court. RAP 13.4(b)(3) and (4). The details of the argument are set forth in Mr. Hahn's briefing to the Court of Appeals.

5. Is the criminal solicitation statute overbroad because it punishes constitutionally protected speech in violation of the First and Fourteenth Amendments?

This issue raises significant questions under the federal constitution that are also of substantial public interest, and thus should be decided by the Supreme Court. RAP 13.4(b)(3) and (4). The details of the argument are set forth in Mr. Hahn's briefing to the Court of Appeals.

III. CONCLUSION

For the foregoing reasons, this Court should not accept review. If review is accepted, this Court should review the additional issues listed in the preceding section.

Respectfully submitted September 20, 2011.

BACKLUND AND MISTRY



Jodi R. Backlund, No. 22917
Attorney for the Appellant

Manek R. Mistry

Manek R. Mistry, No. 22922
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of this Answer to the State's Petition postage pre-paid, to:

Aaron Hahn, DOC #332715
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

and sent it electronically (by agreement) to:

Clallam County Prosecuting Attorney
bwendt@co.clallam.wa.us

on September 20, 2011.

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

Signed at Olympia, Washington on September 20, 2011.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

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I have attached the document listed above for filing.
Thank you.
Jodi Backlund

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Backlund & Mistry
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870