Supreme Court No. 90976-8

Court of Appeals No. 70529-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIAN LONG,

Petitioner,

v.

BRUSCO TUG & BARGE, INC., a Washington corporation; BO BRUSCO and his marital community,

Respondents.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDENT

Respondents Brusco Tug & Barge, Inc., and its Chief Executive Officer, Bo Brusco (collectively "Respondents"), who prevailed in a jury trial and before the Court of Appeals, answer the petition for review filed by Brian Long. Respondents do not raise any issues for review. This Court should deny the petition for review.

II. COURT OF APPEALS DECISION

Division I of the Washington Court of Appeals, in an unpublished opinion, applied existing Washington law and correctly affirmed the trial court's denial of Long's motion for a new trial. The opinion did not announce a new holding, clarify the law, or conflict with precedent.

The opinion does not raise any of the considerations for review under RAP 13.4(b). Therefore, the petition for review should be denied.

III. COUNTER-STATEMENT OF LONG'S ISSUES PROPOSED FOR REVIEW

Respondents re-frame the issues presented by Long, to more accurately track the opinion and the appellate standard of review:

1. Did the trial court permissibly exercise its discretion in denying Long's motion for a new trial based on alleged jury misconduct where the purported extrinsic evidence inhered in the verdict? **Yes.**

2. Did the trial court permissibly exercise its discretion in denying Long's motion for a new trial based on alleged jury misconduct

where the purported extrinsic evidence was irrelevant to any issue before the jury and therefore could not have affected the verdict? **Yes.**

IV. SUMMARY OF ARGUMENT

This case involved a single claim for unlawful employment retaliation under the Washington Law Against Discrimination. Appellant Brian Long ("Long") sued his former employer Brusco Tug & Barge, Inc. ("Brusco"), and its Chief Executive Officer, Bo Brusco, for money damages after Long was reassigned to a new position. After a two-and-a-half-week trial and two days of deliberations, the jury returned a defense verdict because Long failed to meet his burden of proof as to liability. CP 1764–65.

The trial had been about one issue: whether Brusco retaliated against Long for opposing what Long reasonably believed to be discrimination on the basis of a disability when Long attempted to hire Anthony Morgan. After the jury returned a complete defense verdict, Long moved for a new trial, arguing, *inter alia*, that a juror had introduced "extrinsic evidence" that affected the jury's verdict. CP 1768–79. The Honorable William Downing denied Long's motion for a new trial. Long appealed that decision to the Court of Appeals, which in an unpublished opinion affirmed Judge Downing's permissible exercise of discretion. In doing so, the Court of Appeals followed—and did not change or extend—

Washington law.

There was no juror misconduct. Even if there were, the verdict was not affected. The petition should be denied, and the verdict should stand.

V. COUNTER-STATEMENT OF THE CASE

A. Facts at trial

Brusco provides tugboat services to many ports on the Pacific Coast, including the Port at Everett, Washington. RP 1289–92, 1295, 1475–76, and 1479–81. Long had been Brusco's port manager at the Port of Everett. RP 1546. In that role, he had several managerial duties, one of which was to ensure that two tug boats and crews were always available to assist a ship coming into port. RP 1312–13. He was also responsible for captaining one of two tugboats that Brusco used in the Port of Everett. RP 1483, 1485, and 1513–14.

In December 2009, Long abandoned his post to go on an unapproved vacation that put him in Long Beach, Washington, four and a half hours away from the Port of Everett, despite knowing that (1) a ship was scheduled to come into port while he was away and (2) he was expected to captain a second tugboat to assist the ship, if necessary. RP 1344–47, 1585–95, and 2009–35. Long had been told earlier that if he wanted to take such a vacation, he would have to arrange it with his immediate boss, Kevin Campbell, or with the CEO, Bo Brusco. RP 1585–

86. In this instance, Long did neither. Instead, he presumed that (1) the incoming ship would not require a second tug to assist it (one tug was already available) and, therefore, (2) no one at Brusco's main office would know that he was gone. RP 2019–20.

Contrary to Long's assumption, the ship, Westwood Shipping, Inc.'s M/V SEVILLA, called for a second tug to assist its entry into the port. RP 2021, 2027. John Juker, who was Long's second-in-command, attempted to contact Long, who missed the call because he was out jogging. RP 2027–28. After learning of the situation, Long attempted to find coverage. RP 2027–30. In the meantime, Juker located David Brusco, a fully qualified ship assist tug skipper who was Bo Brusco's son, the former port manager at the Port of Everett, and Long's predecessor in that position. RP 2027–30. David Brusco happened to be only twenty minutes away, so he dropped everything, drove to the Port of Everett, and captained the second tugboat that assisted the M/V SEVILLA safely in. RP 1854–56 and 2021–35.

As soon as Bo Brusco discovered that Long was four and a half hours away when a ship called for the assistance of a second tug, he told Brusco's Chief Operating Officer Dave Callantine and its Compliance Manager Dan Zandell to "get him out of Everett!" RP 915–17. Callantine and Zandell telephoned Kevin Campbell, who in turn telephoned Long.

RP 1586–95. Campbell told Long that he was relieved from his position at the Port of Everett. RP 1592–93.

That same day, Long and Campbell spoke again. RP 1594–95. Campbell offered Long a reassignment as a captain in Brusco's ocean division. RP 1594–95. Long had been a successful ocean captain before taking the job of port manager for the Port of Everett. RP 1348–49. Long never responded to this offer. Brusco attempted to get Long to accept the ocean job several more times over the next six days, but Long did not accept the position or return to work. RP 1617–43.

Instead, Long sued Brusco and Bo Brusco and alleged that the reassignment (or "termination," as Long preferred to describe it) was in retaliation for Long's involvement—months earlier—in hiring a deckhand with a prosthetic leg named Anthony Morgan. CP 1–8. Long lost at trial.

B. In deliberations, the jurors discussed life experiences that were not pertinent to the issues in the case.

After losing at trial, Long sought a new trial and filed declarations from four of the twelve jurors in an attempt to establish juror misconduct. CP 1768–92. After receiving briefing from the parties and reviewing the record, the trial court concluded that the declarations did not establish misconduct that affected the verdict. CP 1945–50.

The declarations mentioned (1) the status of jury deliberations at certain points in time (CP 1780, 1782, and 1784); (2) some jurors'

thoughts and feelings regarding deliberations and the desire to review notes and exhibits (CP 1781–82, 1784–86, and 1791); (3) thoughts and feelings about a speech or presentation reportedly made by juror David Wlaschin, during which he relied on notes and spoke forcefully for between twenty and thirty minutes (CP 1781, 1784–85, 1788, and 1791); (4) partial summaries of what Mr. Wlaschin said, including that he was in the Navy, the waters were rough, there were ladders and slippery decks, and his belief that Navy/ocean/maritime law would not allow one with a prosthesis to work on deck (CP 1781, 1784, 1788–89, and 1791); (5) juror reactions to Mr. Wlaschin's monologue (CP 1781–82, 1785, and 1791); and (6) other irrelevant issues.

As to Mr. Wlaschin's life experience and personal beliefs, Juror 2 stated as follows: "[Juror 12] talked about knowing Navy laws, and that none of the Coast Guard/Ocean/Maritime laws would allow anyone with prosthesis to work on the deck of a ship or boat." CP 1781. Juror 2 said about another juror's statements, "I *think* that he said: 'yeah, that breaks Coast Guard law.'" *Id.* (emphasis added).

Juror 7 made a similar declaration about Juror 12 mentioning an absence of law: "[Juror 12] talked at length about maritime laws, navy [sic] rules and repeated multiple times that **no laws existed** that would allow a deckhand with a prosthetic leg to be on a boat." CP 1784

(emphasis added). The thrust of Juror 6's declaration was also that Juror 12 referred to an *absence* of law to allow a person with a prosthetic leg to serve as a deckhand:

> [Juror 12] started by telling us that he had spent many years on ships and in the U.S. Navy and knew about the law, and about boats, and about safety. He said that **he did not know of any law** on the books including the Coast Guard laws that would every [sic] let someone work as a deckhand on a boat. He said that these laws simply **do not allow** people to crew boats and act as Able Bodied Seamen with prosthetics. He knew from serving on ships that boats are very dangerous, and that someone like Anthony Morgan should not be on a boat by law. The point he emphasized the most, and he was very well organized, authoritative was that **there were no laws** that would have allowed Morgan on board as a deckhand. He was very convincing and had a command of marine safety and the laws that govern them.

CP 1788 (emphasis added).

Juror 1's declaration did not indicate that Mr. Wlaschin made a statement of law but rather that the Navy would not allow someone with a prosthetic leg to work on the deck of a ship:

> [Juror 12] mentioned that he spent many years in the Navy and is quite familiar with the laws of the organization and stated that **there would be no way that the Navy (or other maritime organizations such as the Coast Guard)** would have let a man with a prosthetic leg work on the deck of a ship.
>
> . . .
>
> [Another juror] agreed and bolstered the point by adding what seemed to be a confirmation about Coast Guard law

and then applied his experience in construction . . . .

CP 1791 (emphasis added).

During voir dire, Mr. Wlaschin had openly disclosed that he was "retired from the U.S. Navy." RP 172. In addition, he disclosed that he retired from a power generation business in sales. *Id.* He further disclosed that his activities include, *inter alia*, boating on Puget Sound. *Id.* Long's counsel chose to ask no questions to determine the extent of Mr. Wlaschin's naval experience. RP 176–93, 213–29.

In ruling upon Long's motion for a new trial, the trial court correctly examined the context of the case and the issues that were then at hand (in addition to others not raised in this appeal). CP 1945–49. The trial court then noted that the declarations mostly addressed the deliberative process, explaining as follows:

> Most of what has been put before the Court concerns the jury's deliberative process behind closed doors and a proper respect for the jurors and for the jury system precludes the Court from considering it. The one thing that potentially stands out is the assertion that a juror may have inserted into the discussions *a personal belief*, based on his experience that Coast Guard regulations would not permit a man with a prosthetic leg to work on a vessel.

CP 1949 (emphasis added). The trial court then concluded that Mr. Wlaschin's personal belief related solely to a non-issue:

> Regardless of whether one stretches to call this an insertion of outside facts or law into the deliberations, it is clear it only related to the non-issue of whether or not Mr. Morgan

> was actually discriminated against and not to those matters that were in issue.

Id. The trial court expressly concluded "that there was no jury misconduct resulting in outside information being put before the jury and affecting the verdict." CP 1950. The record supports this analysis.

VI. ARGUMENT AND AUTHORITY AS TO WHY REVIEW SHOULD NOT BE ACCEPTED

The petition raises all four standards for review under RAP 13.4(b), but it satisfies none of them. The petition raises no novel issue, seeks no change in the law, and establishes no conflict of decisions. There is no reason for this Court to review Judge Downing's discretionary decision to deny a motion for a new trial where no juror misconduct affected the verdict. The controlling law is already well established.

A. Long has failed to satisfy any of the considerations that govern acceptance of review.

Long's petition fails to meet the standards under RAP 13.4. Instead, perhaps in tacit recognition that the Court of Appeals followed and applied existing Washington precedent, Long attempts to re-argue the same points that were raised to the Court of Appeals.

This Court will not accept review of a matter unless one of the following four conditions is met:

> (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.

RAP 13.4(b). This case involves none of these. Moreover, the case law is well developed. Review would not enhance the development of the law, but would merely involve this Court in a needless exercise.

B. The unpublished opinion does not conflict with a decision of the Washington Supreme Court or Washington Court of Appeals.

The Court of Appeals cited, discussed, and followed the same cases that the parties addressed on appeal. The Court of Appeals did not change, extend, narrow, or clarify the law. It simply applied the law to the facts of the case. There is no conflict under RAP 13.4(b)(1)–(2).

1. Judge Downing permissibly exercised his discretion and denied Long's motion for a new trial.

A trial court's decision whether to grant a new trial is reviewed only for abuse of discretion. *E.g.*, *Hill v. GTE Directories Sales Corp.*, 71 Wn. App. 132, 140, 856 P.2d 746 (1993). This deferential standard applies to motions based upon alleged juror misconduct: "Initially, with regard to the claims of juror misconduct, it must be noted that a decision of whether

the alleged misconduct exists, whether it is prejudicial and whether a mistrial is declared are all matters for the discretion of the trial court." *Richards v. Overlake Hosp. Med. Ctr.*, 59 Wn. App. 266, 271, 796 P.2d 737 (1990). Even if misconduct is found, "great deference is due the trial court's determination that no prejudice occurred." *Id.*

A trial court does not abuse its discretion unless its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *Id.* A verdict cannot be impeached without a "strong, affirmative showing of juror misconduct[.]" *Id.*

2. ***No juror misconduct affected the verdict.***

To determine whether juror conduct warrants a new trial, a court must determine (1) whether the juror interjected new or novel extrinsic evidence so as to constitute misconduct and, if so, (2) whether such misconduct affected the verdict. *E.g.*, *Richards*, 59 Wn. App. at 270. Long does not seek to change or refine this showing, but only to have this Court apply this law to the facts of his case in the hope of obtaining a different outcome. That hope is in vain, especially in light of the deferential standard of review. The record does not warrant a new trial.

"A strong, affirmative showing of misconduct is necessary in order to overcome the policy favoring stable and certain verdicts and the secret, frank and free discussion of the evidence by the jury." *Breckenridge v.*

Valley Gen. Hosp., 150 Wn.2d 197, 203, 75 P.3d 944 (2003) (internal quotation marks and citation omitted). In this case, no alleged juror misconduct could have affected the verdict, because any alleged misconduct did not relate to any issue before the jury.

A juror who injects extrinsic evidence that is outside the record and that affects the verdict commits misconduct. *Breckenridge*, 150 Wn.2d at 199 n.3; *Richards*, 59 Wn. App. at 270, 272–73. When a juror actually reviews pre-printed material regarding laws, like *Black's Law Dictionary* or a pre-printed pamphlet regarding forest protection laws, the trial court is within its discretion to grant a new trial. *See Adkins v. ALCOA*, 110 Wn.2d 128, 131–32, 135–38, 750 P.2d 1257 (1988); and *Bouton-Perkins Lumber Co. v. Huston*, 81 Wash. 678, 681–84, 143 P. 146 (1914). But a juror's reliance on personal life experience in evaluating the evidence does not inject "extrinsic evidence" into deliberations, especially when those life experiences are disclosed in voir dire. *Breckenridge*, 150 Wn.2d at 199, 204–05; *Richards*, 59 Wn. App. at 273–74. And jurors expressing opinions based on life experience and the admitted evidence do not inject "extrinsic evidence" into jury deliberations. *See Richards*, 59 Wn. App. at 272–73. For example, a new trial is not warranted when a juror who had some medical training made statements to other jurors about her interpretation of medical records in evidence. *Id.*

a. *Mr. Wlaschin's discussion was not extrinsic evidence.*

Here, Mr. Wlaschin's discussion of the circumstances of his Navy and maritime experience was merely a discussion of his personal life experience. This does not constitute extrinsic evidence. To the extent that Mr. Wlaschin vaguely, though passionately, referred to whatever he might have thought about maritime law, there is no indication that he consulted any authorities, reviewed any external sources, or brought with him any legal texts.

No juror comes to the court without life experience that is affected by societal rules, laws, and norms. All jurors have beliefs about how people can and should act in society. Mr. Wlaschin's oral deliberations in the jury room reflect just that. Mr. Wlaschin expressed his personal beliefs about seamen with prosthetic legs working on boats based on life experience. Those personal beliefs did not relate to the law in the case, which had nothing to do with whether Brusco discriminated against Anthony Morgan. Rather, this case was about whether Brusco retaliated against Long. Mr. Wlaschin's beliefs, therefore, were part of the lens through which he examined and understood the facts regarding Anthony Morgan, not Long. At most, his experience in the maritime industry helped him evaluate facts, just like the juror in *Breckenridge*, whose experience with his wife's migraine helped him to evaluate the evidence,

and the juror in *Richards*, whose medical background helped her to evaluate the evidence.

Mr. Wlaschin's rhetorical, passionate expression inheres in the verdict but does not undermine it. People often express themselves in opinionated and animated ways when their personal experiences spark passion in the subject matter. The record on review offers no evidence to establish that Mr. Wlaschin's vague statements somehow rise to the level of extrinsic evidence.[1]

b. *Mr. Wlaschin's discussion did not affect the verdict.*

Even if Mr. Wlaschin's beliefs about maritime law were extrinsic evidence, they could not possibly have had an effect on the verdict, because neither maritime law nor the propriety of Mr. Morgan's hiring were issues before the jury. The jury was instructed numerous times that this case was not about whether Brusco discriminated against Mr. Morgan. Rather, it was about whether Brusco retaliated against Long. Therefore, maritime law on the issue of whether Mr. Morgan was capable of working on a boat was irrelevant to the issues decided by the jury. Indeed, Long expressly *conceded* this to the Court of Appeals, characterizing Mr. Wlaschin's beliefs to be related to "laws not at issue in Long's case...."

[1] Moreover, whether Mr. Wlaschin distilled his thoughts on paper that he brought from outside the courtroom is of no moment. His thoughts—by definition—inhere in the

Brief of Appellant at 28.[2] No Washington appellate court yet has reversed a trial court's denial of a motion for a new trial where a juror made a vague anecdotal reference to rules or norms that were unrelated to the law to be applied by the jury in the case.

Long argues that Mr. Wlaschin's beliefs about Coast Guard rules goes to the reasonableness of his belief that Mr. Morgan was discriminated against. This is a red herring. In closing, Respondents *expressly conceded and did not dispute* Long's assertion that he had such a reasonable belief:

> Counsel spent the vast majority of his closing argument talking about Anthony Morgan. But as the judge has instructed you, this is not a discrimination case. This is not a case about whether Anthony Morgan was discriminated against or not. The defendants don't even dispute that Mr. Long reasonably believed that Anthony Morgan was discriminated against.

RP 2329–30.

Notwithstanding the reported passion of his deliberations with his fellow jurors, Mr. Wlaschin's comments had nothing to do with any issue the jury was to decide. The trial court was correct that the verdict was not improperly affected by Mr. Wlaschin's discussion of his Navy experience and beliefs about an absence of maritime law. The Court of Appeals

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verdict.

[2] Long also concedes this in his petition for review. Petition at 8 (stating that "[t]he legality of Long's hiring of Mr. Morgan was not before the jury and as such—there was no Coast Guard, or Maritime laws or regulations [sic] at issue in this case.").

followed existing Washington law and affirmed.

Long has not shown (and cannot show) that the alleged misconduct—which was focused on whether Brusco acted improperly with respect to Anthony Morgan—prejudiced Long when his claim was that Respondents retaliated against *him*. This case was *not* about whether Respondents discriminated against Anthony Morgan. In fact, the jurors were expressly instructed that they were to make no decisions regarding alleged discrimination against Anthony Morgan. RP 2269–70.

The trial court carefully examined the issues and noted that there could not possibly have been any prejudicial misconduct because the information was irrelevant: "it is clear [Mr. Wlaschin's communication to the jury] only related to the non-issue of whether or not Morgan was actually discriminated against and not to those matters that were in issue." CP 1949. "[O]bjectively, . . . their determinations were not impacted by the introduction of extrinsic information into the deliberative process." CP 1950. Unlike the Washington cases in which extrinsic law permitted or required a new trial, the vague juror comments here did not relate to the law in this case.

C. The remaining aspects of the four jurors' declarations also inhere in the verdict.

Affidavits of jurors may not be considered if they attest to matters that inhere in the verdict. *Richards*, 59 Wn. App. at 272. Although a juror

may state facts from which the court will determine their probable effect, the juror may not say what effect the juror believes that extrinsic information might have had upon the verdict. *Id.*; *see also Gardner v. Malone*, 60 Wn.2d 836, 840, 376 P.2d 651 (1962).

"The individual or collective thought processes leading to a verdict inhere in the verdict and cannot be used to impeach a jury verdict." *Breckenridge*, 150 Wn.2d at 204–05 (internal quotation marks omitted). A juror's post-verdict statements about the way in which the jury reached its verdict cannot be relied upon to grant a new trial. *Id.* at 205. This includes the jurors' thought processes, as this Court has explained:

> The mental processes by which individual jurors reached their respective conclusions, their motives in arriving at their verdicts, the effect the evidence may have had upon the jurors or the weight particular jurors may have given to particular evidence, or the jurors' intentions and beliefs, are all factors inhering in the jury's processes in arriving at its verdict, and, therefore inhere in the verdict itself, and averments concerning them are inadmissible to impeach the verdict.

Cox v. Charles Wright Acad., Inc., 70 Wn.2d 173, 179–80, 422 P.2d 515 (1967) (as quoted in *Breckenridge*, 150 Wn.2d at 205); *see also State v. Gobin*, 73 Wn.2d 206, 210–11, 437 P.2d 389 (1968) (noting that affidavits from jurors stating which considerations entered into their deliberations and controlled their actions "could not be rebutted without probing the mental processes of the jurors"). "It is not for the juror to say what effect

the remarks may have had upon his verdict[.]" *State v. Parker*, 25 Wash. 405, 415, 65 P. 776 (1901).

Multiple precedents adequately cover this area of law and support the outcome here. For example, the *Breckenridge* court addressed a specific statement by and situation of a juror. The case involved migraines, and the juror—who disclosed during voir dire that his spouse experienced migraines—allegedly compared his spouse's experiences with those of the plaintiff. 150 Wn.2d at 201–06. The court explained that the juror's statement inhered in the verdict because it explained "reasons for weighing the evidence in the case the way [the juror] did and believing that [the defendant] was not liable. . . . [The] statement attributed to [the juror] explains this juror's mental process in reaching his conclusion, a factor inhering in the jury's process in arriving at its verdict." *Id.* at 206.

Similarly, in this case, the jury declarations contain precisely those aspects that inhere in the verdict: the status of jury deliberations at certain points in time, arguably implying a *post-hoc-ergo-propter-hoc* change in viewpoint (CP 1780, 1782, and 1784); some jurors' thoughts and feelings regarding deliberations and the desire to review notes and exhibits (CP 1781–82, 1784–86, and 1791); thoughts and feelings about Mr. Wlaschin's comments during deliberations, including the tenor and force of his argument (CP 1781, 1784–85, 1788, and 1791); partial summaries

of what Mr. Wlaschin said, including that he was in the Navy (something that he disclosed in voir dire), the waters were rough, there were ladders and slippery decks, and that he felt that Navy/ocean/maritime law would not permit one with a prosthesis to work on deck (CP 1781, 1784, 1788–89, and 1791); juror reactions to Mr. Wlaschin's comments during deliberations (CP 1781–82, 1785, and 1791); and other issues not relevant to this appeal. The trial court was within its discretion to conclude that those comments inhere in the verdict and are not evidence of misconduct or any effect upon the verdict. The opinion of the Court of Appeals is entirely consistent with *Breckenridge*.

D. The petition should be denied because it does not identify (and the appeal did not involve) a significant question of constitutional law.

Long does not identify or analyze any question of constitutional law. Instead, Long's petition pertains to the trial court's exercise of discretion in denying his motion for a new trial. Long's passing references to the inviolate nature of the right to a trial by jury and the court's requirement to "declare the law" are of no moment.

Long received a trial by jury. And the trial court declared the law. On his motion for a new trial, and on appeal, Long merely raised a procedural question, not a constitutional question. Notwithstanding Long's superficial citation to Washington's constitution, the petition does not

provide any basis for review under RAP 13.4(b)(3).

E. The petition should be denied because it does not identify (and the appeal did not involve) an issue of substantial public interest that should be determined by the Washington Supreme Court.

Long does not raise or discuss any issue of substantial public interest that should be determined by the Washington Supreme Court. Long's vague reference to an undermining of Washington's Law Against Discrimination is unavailing. Long's appeal did not involve any issue that was specific to that law. Rather, Long's petition pertains to the trial court's exercise of discretion in denying Long's motion for a new trial.

The Court of Appeals did not create new law. Rather, it affirmed—in an unpublished opinion that will have no precedential value—a procedural ruling of the trial court. This does not rise to the level of an issue of substantial public interest that should be determined by the Washington Supreme Court under RAP 13.4(b)(4).

VII. CONCLUSION

As Judge Downing said in his order denying Long's motion for a new trial, the perfect trial is a rarity and all could have done better. "[B]ut ultimately, it was a fair trial." CP 1950. As the Court of Appeals recognized, Long failed to establish error, let alone reversible error. The Court of Appeals followed Washington law and affirmed the trial court in an unpublished opinion.

The petition for review does not meet the requirements for review under RAP 13.4(b). This Court should deny the petition for review.

Respectfully submitted on this 4th day of December, 2014.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 5th day of December, 2014, I arranged for service of the foregoing ANSWER TO PETITION FOR DISCRETIONARY REVIEW to the parties to this action as follows:

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Rec'd 12/5/2014

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Dear Clerk:

Attached for filing with the Court is *Respondents' Answer to Petition for Discretionary Review.*

Thank you,

Mary

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