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STATE OF WASHINGTON
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SUPREME COURT NO. 91281-5
C.O.A. No. 45099-2-II cons/w 45367-3-II
Cowlitz Co. Cause NO. 13-1-00183-4

**SUPREME COURT OF STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

BRIAN DAVID THOMPSON,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

RYAN JURVAKAINEN
Prosecuting Attorney
ERIC BENTSON/WSBA#38471
Deputy Prosecuting Attorney
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 ORIGINAL

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I. IDENTIFY OF RESPONDENT

The respondent is the State of Washington, represented by Eric H. Bentson, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS DECISION

The Court of Appeals correctly decided this matter, holding that the issues raised were without merit under RAP 18.14(e)(1). The respondent respectfully requests this Court deny review of the October 9, 2014, Ruling Commissioner Affirming the Judgment and Sentence in *State v. Brian David Thompson*, Consol. Nos. 45099-2-II, 45367-3-II, affirming Thompson's convictions.¹

III. STATEMENT OF THE CASE

Thompson was convicted after a jury trial of burglary in the second degree, criminal impersonation in the first degree, and possession of a stolen vehicle. On appeal he maintained that a show-up identification that occurred immediately after the burglary by Timothy McCormack violated due process, and his attorney's failure to object to its admission was ineffective assistance of counsel. In a statement of additional grounds, Thompson also argued that the owner of the storage units, Larry Wood,

¹ Thompson's motion to modify this ruling was denied by the Court of Appeals on December 17, 2014.

should not have been permitted to testify to his observations of a surveillance video. Thompson's appeal and statement of additional grounds were consolidated by the Court of Appeals. The Court of Appeals commissioner affirmed the convictions. The commissioner held that the identification was not unduly suggestive, and because Thompson failed to show a manifest error affecting a constitutional right, he was unable to challenge the admission of Wood's testimony regarding his observations of the surveillance video for the first time on appeal. Thompson filed a motion to modify the commissioner's ruling. The Court of Appeals denied Thompson's motion to modify on December 17, 2014. Thompson has now petitioned for review.

IV. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION

Because Thompson's petition fails raise any claim that would meet the criteria for review under RAP 13.4(b) it is not properly before this Court. 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.

Here, in his petition Thompson argues that Wood's testimony regarding his observations on the surveillance video contradicted McCormack's testimony and concludes that this alleged contradiction shows McCormack was untruthful. On this basis, Thompson asks for a new trial and a hearing to suppress McCormack's testimony. Thompson makes no attempt to demonstrate how the decision of the Court of Appeals conflicts with another decision of the Supreme Court, another decision of the Court of Appeals, raises a significant question of constitutional law, or involves an issue of substantial public interest. Additionally, Thompson's argument here—that Wood's testimony regarding the surveillance video shows McCormack was untruthful—was never made to the Court of Appeals. Rather, in Thompson's statement of additional grounds, he argued Wood should not have been permitted to testify to the content of the surveillance video. Thus, the argument Thompson presented to the Court of Appeals was that the evidence should not have been admitted, while here he argues that this same evidence showed another witness to be untruthful. Because Thompson raises an issue that was not specifically brought before

the Court of Appeals, there is no decision for the Supreme Court to review. Further, Thompson fails to demonstrate that any of the criteria for review listed under RAP 13.4(b) apply. Accordingly, his petition should be denied.

V. CONCLUSION

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

Respectfully submitted this 11th day of March, 2015.

Ryan P. Jurvakainen
Prosecuting Attorney
Cowlitz County, Washington

By 

Eric H. Bentson, WSBA #38471
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

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

Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504
supreme@courts.wa.gov

and,


Mr. Peter Tiller
The Tiller Law Firm
P.O. Box 58
Centralia, WA 98531-0058
ptiller@tillerlaw.com

and, sent to the Appellant by US Mail to:

Mr. Brian Thompson
DOC# 911912 (TB14)
Airway Heights Corrections Center
P.O. BOX 2049
Airway Heights, WA 99001

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 March 12th, 2015.



Michelle Sasser

OFFICE RECEPTIONIST, CLERK

To: Sasser, Michelle; ptiller@tillerlaw.com
Subject: RE: PAs Office Scanned Item Brian D. Thompson, 91281-5, Response to Petition for Review

Received 3-12-2015

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Sasser, Michelle [mailto:SasserM@co.cowlitz.wa.us]
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Attached, please find the Response to Petition for Review regarding the above-named Petitioner.

Any questions, please contact this office.

Thanks, Michelle Sasser

From: pacopier_donotreply@co.cowlitz.wa.us [mailto:pacopier_donotreply@co.cowlitz.wa.us]
Sent: Thursday, March 12, 2015 12:55 PM
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