Court of Appeals Cause No. 31977-6-III

No. 91466-4

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

KAY L. PRUCZINSKI, a single person, and
RICKY BELL, a single person,

Respondents,

v.

ALLEN ASHBY and JENNIFER ASHBY, husband and wife,
and the marital community comprised thereof,

Petitioners.

REPLY IN SUPPORT OF PETITION FOR REVIEW

PETER J. JOHNSON, WSBA # 6195
Johnson Law Group, P.S.
103 E. Indiana, Suite A
Spokane, WA 99207-2317
Phone: (509) 835-5000
Email: pjohnson@johnsonlaw.org

Attorney for Petitioner Ashby

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

Other

I. INTRODUCTION

Trooper Ashby's[1] Petition for Review established that the Court of Appeals' decision conflicts with prior court decisions and it raises questions of constitutional law, involves issues of substantial public interest, and creates significant confusion. Pruczinski's[2] answer fails to address the constitutional and substantial public interest issues and instead argues that the Court of Appeals followed the applicable law. However, she does so only by presenting allegations which have no basis in fact and are not contained in the record, and by misstating the analysis required under prior court decisions.

Pruczinski's Answer to the Petition for Review contains several statements couched as facts which are no where in the record or are incomplete. For example:

---

1 The Petitioner is Trooper Allen Ashby of the Idaho State Police (referred to hereinafter as "Trooper Ashby" or "Ashby"). Ashby is the Defendant in the action filed in the Spokane County Superior Court and the Respondent in the action filed in the Court of Appeals of the State of Washington, Division III.

2 The Respondents are Kay L. Pruczinksi and Ricky Bell (referred to collectively hereinafter as "Pruczinski"). They are the Plaintiffs in the action filed in the Spokane County Superior Court and the Appellant in the action filed in the Court of Appeals of the State of Washington, Division III.

- Pruczinski states that "Instead of running her name and date of birth, Mr. Ashby broke her window ..."Answer to the Petition for Review, pg. 2. This "fact" is no where in the record nor does Pruczinski cite to the record for it. Indeed, Pruczinski refused to provide Trooper Ashby with any information, to roll down her window, or to step out of her car. CP 41-42.
- Pruczinksi also states that "The Idaho courts ultimately dismissed the obstruction charges." Answer to the Petition for Review, pg. 3. This likewise is no where in the record nor does Pruczinski cite to the record for this statement. In fact, as a matter of public record, Pruczinski forfeited a bond on a charge of disturbing the peace which arose out of this traffic stop.
- Pruczinski further states that Trooper Ashby only stopped her "after observing Ms. Pruczinski violate laws within the State of Washington" Answer to the Petition for Review, pg. 2) and "having observed all alleged traffic violations of Ms. Pruczinski in Washington State." Answer to the Petition for Review, pg. 7. This is simply not supported by the record. Trooper Ashby first observed Ms. Pruczinski on I-90 in Idaho, weaving in her lane of travel. He

continued to observe her, she turned onto North Idaho Road which winds its way back and forth over the state border and straddles the state border, and after he determined she had re-entered Idaho and increased her speed beyond the posted speed limit, he activated his lights to stop her and investigate. CP 41-42.

The Court of Appeals' decision should be reviewed to resolve divergent court decisions, to decide important questions of law, and to resolve the confusion it creates.

II. LEGAL ANALYSIS

A. THE COURT OF APPEALS' DECISION IS AT VARIANCE WITH PRIOR COURT DECISIONS AND IS UNTENABLE.

Contrary to Pruczinski's Answer to the Petition for Review, the Court of Appeals' decision did not apply the requisite analysis established by prior rulings of this Court in *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 757 P.2d 933 (1988); the Court of Appeals, Division III, in *Does 1-9 v. CompCare, Inc.*, 52 Wn. App. 688, 763 P.2d 1237 (1988); and the U.S. Supreme Court in *Walden v. Fiore*, 134 S.Ct. 1115, 188 L.Ed.2d 12 (2014). As these cases and the precedents from which they are derived clearly hold: "[T]he length and grasping power of the long arm statute must be limited by both the statutory provisions of RCW 4.28.185 and also by the defendant's

constitutional rights to due process as currently defined by the highest court's decisions." *Callahan v. Keystone Fireworks Mfg. Co.*, 72 Wn.2d 823, 835, 435 P.2d 626 (1976). *See also, FutureSelect Portfolio Mgmt., Inc., v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 964, 331 P.3d 29, 34 (2014).

To establish the statutory element, a petitioner need only demonstrate by prima facie evidence that a nonresident respondent commits one of the acts enumerated in the long-arm statute. Washington courts deem the plaintiff's averments to be true for purposes of determining jurisdiction. *Lewis v. Bours*, 119 Wn.2d 667, 670, 835 P.2d 221 (1992). Pruczinski makes much of the fact that Ashby does not argue that the stop occurred in Washington. However, even though Ashby strongly disputes the allegation, it is not before the Court on a motion to dismiss and any acceptance of the allegation is nothing more than Ashby's adherence to well-established procedural law.

Pruczinski attempts to equate the procedural requirement regarding the statutory element to an admission by Ashby sufficient to satisfy the requisite due process elements. Answer to Petition for Review, pp. 5, 7, 8, and 9. The statutory element is separate from the factual considerations required in determining whether the exercise of long-arm jurisdiction

comports with a nonresident's constitutional rights to due process. *Callahan*, 72 Wn.2d at 835. The Court of Appeals confused the statutory element of the allegation of a tort in Washington with the factors which must be considered in analyzing the constitutional limitation of due process. In effect, Pruczinksi's argument and the Court of Appeals' analysis renders any due process inquiry superfluous.

B. THE COURT OF APPEALS' DECISION RAISES A QUESTION OF LAW UNDER THE CONSTITUTIONS OF THE STATE OF WASHINGTON AND THE UNITED STATES.

By eliminating critical steps in the jurisdictional analysis as set forth in *Grange*, *CompCare* and *Walden*, as well as the series of decisions since *International Shoe*[3], the Court of Appeals' decision raises a question of constitutional law by changing the standard under which Ashby's right to due process is determined. Pruczinski essentially argues that because her allegation that a tort occurred in Washington is accepted as a verity at this stage, the due process inquiry is satisfied. The Court of Appeals' decision is based upon this misinterpretation as well and it surrenders the due process rights of Ashby, a nonresident defendant, to the allegations of Pruczinski, an Idaho plaintiff, alleging a tort in Washington. Due process limits on the

---

[3] *International Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 159, 90 L.Ed. 95 (1945).

State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties. *Walden*, 134 S. Ct. at 1122. Washington courts recently applied *Walden* and the principles embodied therein. *State v. LG Electronics, Inc.*, __ Wn. App. __, 341 P.3d 346, 355-356 (Wash. Ct. App. 2015).

In *Walden*, the U.S. Supreme Court held:

> ... a defendant's contacts with the forum State may be intertwined with his ... interactions with the plaintiff ... but a defendant's relation with a plaintiff ... standing alone, is an insufficient basis for jurisdiction.

Walden, 134 S.Ct. at 1122-1123 citing *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980).

The defendant's actions must connect him to the forum, not just to a plaintiff. *Walden*, 134 S.Ct. at 1122-23. The Court of Appeals erroneously shifted the focus of its analysis from Ashby's contacts with Washington to Ashby's contacts with Pruczinski. This approach impermissibly allows Pruczinksi's contacts with Washington and her alleged contacts with Ashby to drive the jurisdictional analysis. However, it obscures the reality that none of Ashby's conduct was directed in any way towards Washington or its residents.

In its opinion, the Court of Appeals concluded: "In view of the allegations that Trooper Ashby followed Ms. Pruczinski into Washington and committed the tortious acts here, it does not offend the notions of fair play to subject him to the jurisdiction of this state. Opinion, pg. 8. The Court of Appeals relied only upon Pruczinksi's allegations that: 1) Trooper Ashby's interaction with Pruczinski occurred in Washington; Pruczinksi suffered the brunt of the alleged harm in Washington; and 3) The acts giving rise to Pruczinski's claim allegedly occurred in Washington. Opinion, pg. 6-7. The Court of Appeals' decision effectively nullified the defendant-focused inquiry required in a due process analysis. *See Walden*, 134 S. Ct. at 1126.

Pruczinski argues that as a police officer, Trooper Ashby should have known that "committing an act in Washington would have consequences in Washington." Answer to Petition for Review, pg. 6. This statement is nothing more than a rephrasing of Pruczinski's allegation that the stop and subsequent arrest occurred on a portion of the Idaho/Washington road that was in Washington. While on its face the allegation of a tort occurring in Washington satisfies the statutory element, it does nothing to address the required due process inquiry. Pruczinski's argument, in essence, is a

misapplication of the statutory element of long-arm jurisdiction in an attempt to satisfy the requisite due process elements.

The correct analytical framework is a defendant-focused inquiry which includes the critical step of evaluating whether there existed a substantial connection between Ashby and the State of Washington, which came about through Ashby's own conduct and not solely based upon his interaction with Pruczinski, which he purposefully directed at the State of Washington, and from which Ashby benefitted. *Grange*, 110 Wn.2d at 760; *see also CompCare,* 52 Wn. App. at 696-698. Pruzinski most stridently objects to this required element because it supports a dismissal of her lawsuit. However, this standard has long been applied and upheld by the courts:

> While "physical entry into the State ... is certainly a relevant contact," *Walden*, 134 S.Ct. at 1122, a defendant's transitory presence will support jurisdiction only if it was meaningful enough to "create a '**substantial connection**' **with the forum State**," *Burger King*, 471 U.S. at 475, 105 S.Ct. 2174 (quoting *McGee*, 355 U.S. at 223, 78 S.Ct. 199).

Picot v. Weston, No. 12-17098, 2015 WL 1259528, at *5 ___ F.3d ___ (9th Cir. Mar. 19, 2015) (emphasis added).

> Jurisdiction exists where the contacts create a **substantial connection with the forum state**.

SeaHAVN, Ltd., v. Glitnir Bank, 154 Wn. App. 550, 564, 226 P.3d 141 (2010) (emphasis added).

> Jurisdiction is proper, however, where the **contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State.**

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183-84, 85 L. Ed. 2d 528 (1985) (emphasis added).

> The "**substantial connection," between the defendant and the forum State** necessary for a finding of minimum contacts **must come about by an action of the defendant purposefully directed toward the forum State.**

Asahi Metal Indus. Co. v. Superior Court of California, Solano Cnty., 480 U.S. 102, 112, 107 S. Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987) (internal citations omitted) (emphasis added).

> By requiring that "contacts proximately result from actions by the defendant himself that create a '**substantial connection**' with the forum State," the Constitution ensures that "a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts.' "

Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir. 2002) (emphasis added).

> The Court has noted, however, that **"some single or occasional acts" related to the forum may not be sufficient to establish jurisdiction if "their nature and quality and the circumstances of their commission" create only an**

> **"attenuated" affiliation with the forum.** *International Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 159, 90 L.Ed. 95 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 299, 100 S.Ct., at 568. **This distinction derives from the belief that, with respect to this category of "isolated" acts,** *id.*, at 297, 100 S.Ct., at 567, **the reasonable foreseeability of litigation in the forum is substantially diminished.**

Burger King, 471 U.S. at 476, Footnote 18 (emphasis added).

The Washington Court of Appeals, Division III, followed this well-established standard when it stated in *CompCare*:

> Stated another way, **there must exist a substantial connection between the defendant and the forum state which comes about by an action of the defendant purposefully directed toward the forum state.** *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 107 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987).
>
> ...
>
> **The issue is whether the contacts were purposefully directed toward the forum and whether the defendant benefited thereby.** *Grange Ins. Ass'n v. State, supra.*

CompCare, 52 Wn. App. at 696-698 (emphasis added).

The Court of Appeals simply removed this critical step from its analysis, and Pruczinski ignores it as well. This Court in *Grange* held:

> Where defendants **"'purposefully derive benefit'" from their interstate activities,** it would be unfair to allow them to escape the consequences that proximately arise from these activities in other jurisdictions. *Burger King*, at 473-74 (quoting *Kulko v. Superior Court*, 436 U.S. 84, 96, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978)).

> ... extending jurisdiction is justified only if the defendant has purposefully availed itself of the forum state's markets, thereby deriving benefits and protections of the forum state's laws, so that it would be unfair to allow the defendant to escape the consequences for its actions in that state.

Grange, 110 Wn.2d at 760, 762.

Ashby first observed Pruczinski when her car was weaving on Interstate 90 in Idaho. CP 41. He continued observation of the Idaho car as it exited Interstate 90, traveled momentarily through Washington, traveled on to North Idaho Road, crossed into the oncoming lane of travel, crossed the fog line into the shoulder of the road, and increased its speed above the posted speed limit. CP 41. His subsequent stop of Pruczinski's vehicle in what he believed to the State of Idaho to investigate the impaired driving was not in any way an act purposefully directed at Washington. CP 41-42. While it may be said in a broad sense that any driver from either Idaho or Washington that was sharing the roadway with a potentially impaired driver benefits from the enforcement of the laws against impaired driving, it cannot be said that Ashby's concerns that the Idaho driver might be impaired were purposefully directed toward Washington or that he derived any direct benefit from his stopping of the vehicle.

C. THE COURT OF APPEALS' DECISION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

Pruczinski wholly ignores the substantial confusion created by the Court of Appeals' decision as it applies to Washington and Idaho law enforcement officers. Law enforcement officers are without any clear guidance as to how to structure their conduct, such that they are not entrapped in litigation in foreign courts because of an unintentional and non-purposeful crossing of an invisible state border when patrolling roads which straddle the state border, or which may exist in one State but be accessible only by passing through the other State.

Under the Court of Appeals' decision, officers may be forced into foreign courts under the guise of having purposefully established a substantial connection in a foreign jurisdiction even when only touching upon that State in a transitory manner and even though they derived no direct benefit therefrom. Neither an Idaho nor a Washington officer stopping a suspect on the same state border road can anticipate in which state's court either officer may be forced to defend himself. Under the Court of Appeals' decision and Pruczinski's argument, jurisdiction and due process are satisfied based solely upon a plaintiff's allegation that an officer, being on a border road, made a

transitory contact with one State or the other, at some point leading up to a traffic stop.

This issue is critically important to both Idaho and Washington law enforcement officers, as they are both faced with roads and border areas that place them in a no-man's land of personal jurisdiction under the long-arm statute. This issue is of continuing and substantial public interest and justifies review.

III. CONCLUSION

The question of long-arm jurisdiction over an out-of-state defendant is not a game of "gotcha" based upon a transitory moment on an Idaho/Washington road nor the randomness and fortuitousness of an alleged incursion onto or across an invisible state border. Determining whether the Due Process Clause of the Fourteenth Amendment permits a State court to exercise jurisdiction over a nonresident defendant requires more than a plaintiff's allegation of a tort in Washington. Personal jurisdiction must comport with fair play and substantial justice, and meet the due process elements established in the analytical framework by *International Shoe* and its progeny.

The trial court's determination that the exercise of long-arm jurisdiction over Trooper Ashby does not comport with the standards of fair play and substantial justice required under due process should have been upheld because it was based upon the appropriate due process analysis. In contrast, the Court of Appeals' decision did not employ the legal standard established by decisions of the Washington Supreme Court, Washington Court of Appeals and U.S. Supreme Court and, in fact, changed that standard. Pruczinksi argues that this is proper. However, constitutional limitations require that personal jurisdiction cannot attach without other considerations beyond an alleged "tortious act" with Washington as the alleged "place of wrong." *Oliver v. Am. Motors Corp.*, 70 Wn.2d 875, 884, 425 P.2d 647 (1967).

In conclusion, Ashby respectfully submits that the Court of Appeals should have affirmed the trial court's dismissal of the lawsuit against him.

DATED this 21st day of April, 2015.

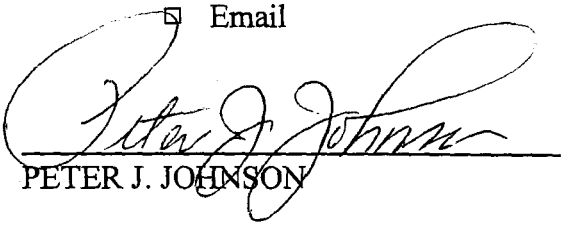
JOHNSON LAW GROUP

By: _____
PETER J. JOHNSON, WSBA # 6195
Attorney for Allen Ashby

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 21st day of April, 2015, a true and correct copy of the foregoing Petition for Review was caused to be served to the following by the method below:

Douglas D. Phelps	☒ U.S. Mail
Phelps & Associates, P.S.	☐ Hand Delivery
2903 N. Stout Road	☐ Facsimile
Spokane, WA 99206-4373	☐ Federal Express
	☒ Email



PETER J. JOHNSON

X:\17371_SUPREME COURT\PLDGS\DRAFTS\REPLY - PET FOR REVIEW (2015-04-21).WPD