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STATE OF WASHINGTON
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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.

Answer to Petition for Review

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 ORIGINAL

I. INTRODUCTION

On April 30, 2010, while driving from Idaho to Washington on Interstate 90, Kay Pruczinski was pulled over by Idaho State Police Trooper Allen Ashby on a Washington road. CP at 23-24. He followed her along Interstate 90 and initiated a traffic stop in Washington for a minor traffic violation. CP at 128. Upon arriving at the driver's side window, Ms. Pruczinski became concerned with Mr. Ashby's demeanor, actions and intentions. She requested a female officer be called to the rural, dark road as she did not feel comfortable with Mr. Ashby's conduct. CP at 128.

Instead of running her name and date of birth, Mr. Ashby broke her window with his expandable baton and attempted to pull her out of the broken window. Id. Amid Ms. Pruczinski's screams of terror, Mr. Ashby pulled her out of her vehicle, offensively searched her, and arrested her for "obstruction" while a video camera recorded the conduct. CP at 24. While Mr. Ashby continued to be aggressive and hostile with Ms. Pruczinski, she continued to cry and beg for a female officer to search her. Id. at 25. He made no effort to initiate a traffic stop on her vehicle while in the State of Idaho and only initiated a traffic stop after observing Ms. Pruczinski violate laws within the State of Washington. Id. at 128.

The Idaho courts ultimately dismissed the obstruction charges against Ms. Pruczinski. The trial court dismissed Ms. Pruczinski's lawsuit based on lack of personal and subject matter jurisdiction; however, she prevailed on appeal when Division III of the Washington State Court of Appeals applied the significant amount of case law on personal and subject matter jurisdiction, all of which rests solely in her favor.

Mr. Allen Ashby now requests review from this Court in an attempt to avoid the consequences of his conduct while within the confines of our State. Ms. Pruczinski and Mr. Bell respectfully request this Court deny Mr. Ashby's Petition for Review.

II. ARGUMENT

A. Summary of Arguments

Mr. Ashby's analysis mischaracterizes the status of the case law. After reviewing and applying the law, it becomes clear that he is subject to Washington jurisdiction, both personal and subject matter. The arguments outlined below show there is no plausible expectation for granting review of the decision by the Court of Appeals.

B. Review of the Court of Appeals Decision Should Not Be Granted

Mr. Ashby's Petition for Review is a discretionary one which this Court is not required to accept. Of course, as the last court within the Washington court system, Mr. Ashby is certainly allowed to request review. However, his basis for requesting review is flawed and mischaracterizes the published opinion issued by the Court of Appeals.

i. The Court of Appeals Decision Does Not Conflict With Existing Law

Mr. Ashby contends that the Court of Appeals' decision conflicts with two cases, Grange Ins. Ass'n v. State, 110 Wn.2d 752, 757 P.2d 933 (1988) and Does 1-9 v. CompCare, Inc., 52 Wn. App. 688, 763 P.2d 1237 (1988). Neither case helps Mr. Ashby nor was either case improperly used by the Court of Appeals in this case.

Grange, supra, was dismissed because of insufficient contacts with the State of Washington. Literally, there were no contacts by the Grange Defendants in the State of Washington. The cows, which were the source of the jurisdictional issue, never even arrived in Washington and that is why the Court dismissed the case for lack of jurisdiction. Here, because Mr. Ashby left the State of Idaho and drove into the State of Washington, that is considered "purposeful contact" pursuant to Grange, CompCare and

Oliver v. Am. Motors Corp., 70 Wn.2d 875, 425 P.2d 647 (1967), as well as several other well established cases in this state.

Further, this case has nothing to do with whether or not Mr. Ashby “intentionally and expressly” aimed his activities at the State of Washington or its residents, as Mr. Ashby states in his Petition for Review. The standard is whether or not Mr. Ashby had actual or constructive notice that his actions in Washington could result in consequences in Washington. Oliver v. Am. Motors Corp., 70 Wn.2d 875, 887, 425 P.2d 647 (1967). Being an Idaho law enforcement officer, Mr. Ashby certainly had at least constructive notice that his conduct (in either state) would have consequences.

The first point of inquiry; however, is whether or not Mr. Ashby’s contact on the night of April 30, 2010, occurred within the borders of the State of Washington, and everything shows that he did, including his own stipulation that the events occurred within the borders of the State of Washington. Court of Appeals Opinion, Page 3; Report of Proceedings at 6, 9.

The second point of inquiry is whether Mr. Ashby’s contact within the State of Washington was “purposeful” pursuant to Grange, CompCare and Oliver. For contact to be “purposeful,” all that is required is that “the

actor intend[s], or at least could have been charged with knowledge that his conduct might have consequences in another state.” Oliver at 70 Wn.2d 875, 887 (1967)(emphasis added).

Mr. Ashby’s argument that “substantial contact” (rather than purposeful contact) is a required standard is flawed. He cites to CompCare, which discussed substantial “connections.” The case provided an important objective test to determine jurisdiction, and that is, “[s]hould the defendant, based upon his contact with the forum state, reasonably anticipate being hauled into court there?” CompCare, 52 Wn. App. At 696-698 (citing Huebner v. Sales Promotion, Inc., 38 Wash.App. 66, 684 P.2d 752 (1984), review denied, 103 Wash.2d 1018, cert. denied, 474 U.S. 818, 106 S.Ct. 64, 88 L.Ed.2d 52 (1985)).

Nothing suggests that Mr. Ashby did not have constructive notice that committing an act in Washington would have consequences in Washington—he is a police officer after all and is expected, at the very least, to know that actions in one jurisdiction will have consequences in that jurisdiction. Without that basic level of knowledge, Mr. Ashby would arguably be unable to do his job if he did not know that actions have consequences, and in the legal system, those consequences come from the jurisdiction the act is committed in.

The Court of Appeals properly applied all of the applicable case law in this matter. Because Mr. Ashby violated the laws of Washington State while literally standing (physically present) in Washington State, having observed all alleged traffic violations of Ms. Pruczinski in Washington State, and having conducted himself in a manner contrary to Washington law, Mr. Ashby's actions have consequences in Washington State. This case is the consequence of his actions.

ii. The Court of Appeals Decision Does Not Incorrectly Apply Prior Opinions of the U.S. Supreme Court

Again, Mr. Ashby mischaracterizes the decisions of higher courts as it relates to establishing jurisdiction. He states that the Court of Appeals applied a constitutional due process analysis which was rejected by the U.S. Supreme Court in Walden v. Fiore, ___ U.S. ___, 134 S.Ct. 1115, 188 L.Ed.2d 12, 82 U.S.L.W. 4097 (2014); however, in reality, the Court of Appeals followed the Walden standard and applied the case law appropriately in this case. In Walden, the Georgia police officer was working as a deputized Drug Enforcement Administration agent at an airport. He came into contact with the plaintiffs while working at the airport, and was sued by the Plaintiffs for his role in drafting a probable cause affidavit to seize certain funds from the plaintiffs. He never went

into Nevada, nor did he have any type of “minimum” or “purposeful” contact with Nevada. Where the deputy in Walden had no actual contact with Nevada, here, Mr. Ashby drove a marked patrol car that was patrolling the border of Idaho and Washington, actually following a driver into the State of Washington and committing tortious acts within the State of Washington. This case is factually distinguishable, to say the least, from Walden.

The constitutional due process analysis pursuant to Walden actually helps Kay Pruczinski, not Mr. Ashby. Here, the Court of Appeals determined that Mr. Ashby had sufficient contact with the State of Washington. According to the U.S. Supreme Court, in order to determine jurisdiction the Court must first determine whether or not Mr. Ashby had a relationship with Washington based on his *conduct* and the connection between that conduct and Washington. Walden v. Fiore, ___ U.S. ___, 134 S.Ct. 1115, 188 L.Ed.2d 12, 82 U.S.L.W. 4097 (2014)(citing Burger King Corp v. Rudzewicz, 471 U.S. 462, 475 (1985)). As stated above, Mr. Ashby conceded that the conduct occurred in Washington State. Second, the Court must look to Mr. Ashby’s *contacts* with Washington. "minimum contacts" analysis. *Id* (citing International Shoe v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). Again, the

fact that Mr. Ashby was in the State of Washington at the time of the incident is sufficient to satisfy the “minimum contact” due process requirement. He created the relationship with Washington State based on his conduct within the borders of Washington.

There is no discrepancy between what Division III of the Washington Court of Appeals did in this case and what the U.S. Supreme Court has done with dozens of jurisdictional questions before. As the Supreme Court has said numerous times, “it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” Walden, supra, at 1115; Burger King, supra, at 478.

iii. The Court of Appeals Did Not Fail to Follow The Appropriate Standard of Review in Determining that Washington Courts Had Subject Matter Jurisdiction

As the Court of Appeals stated, “[t]he superior courts of Washington State have subject matter jurisdiction over tort actions.” Opinion at 10. This lawsuit against Mr. Ashby is based on Mr. Ashby’s conduct while in the State of Washington. The courts of Washington State resolve disputes such as this all the time. It does not matter if Mr. Ashby was an employee of Idaho or the federal government; when his conduct occurred within the confines of this State and violated laws of this State,

our courts gained jurisdiction over the subject matter of this controversy. More aptly stated by the Court of Appeals, “[i]t should come as no surprise to Trooper Ashby that his conduct in our state could subject him to Washington jurisdiction,” both subject matter and personal. Opinion at 9.

iv. It is Not Appropriate For This Court to Determine Issues of Comity At This Time

Whether or not to invoke comity is a discretionary decision of the trial court. Haberman v. Washington Public Power Supply System, 744 P.2d 1032, 109 Wn.2d 107 (Wash. 1987)(citing Mianecki v. Second Judicial Dist. Court, 99 Nev. 93, 98, 658 P.2d 422, cert. dismissed, 464 U.S. 806, 104 S.Ct. 195 (1983); Smith v. Fletcher, 102 Wash. 218, 222, 173 P. 19 (1918). This is not an issue that the Court of Appeals felt comfortable with ruling on and should not be an issue that this Court rules on. This decision is best left to the trial court.

Additionally, leaving this matter to the Idaho Courts would leave Ms. Pruczinski without a remedy, as the statutory time limits to make a claim against a government official has passed. It would not be just to take away her rights here, when all the case law supports her case’s

jurisdictional standing, and then send her to Idaho to fail at prosecuting an action against the tortfeasor, Mr. Ashby.

III. CONCLUSION

For the reasons stated above, Ms. Pruczinski and Mr. Bell respectfully request this court deny review of Trooper Ashby's Petition for Review and allow the trial court to resolve the remaining issues as ordered by the Court of Appeals.

DATED this 10th day of April, 2015.

PHELPS & ASSOCIATES, P.S.

By: 

DOUGLAS D. PHELPS, WBSA #22620
Attorneys for Plaintiffs/Respondents

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 10th day of April, 2015, a true and correct copy of the foregoing Answer to Petition for Review was caused to be served to the following by the method indicated below:

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OFFICE RECEPTIONIST, CLERK

To: Branden Gradin
Cc: Peg Phelps; Dyana Whitacre; Travis Spannagel; Kate Allison
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Good afternoon. Please e-file the attached Answer to Petition for Review in Pruczinski v. Ashby, Court of Appeals Case No. 31977-6-III.

Please let me know if you need anything additional to process this filing.

Sincerely,

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