

NO. 93888-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER HOOD,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is State v. Hood, No. 73401-6-I, filed September 26, 2016 (published).

C. ISSUES PRESENTED FOR REVIEW

If this Court accepts review of this case, the State seeks cross-review of the following additional issue the State raised in the Court of Appeals, which was decided adversely to the State:

The Court of Appeals concluded that Hood waived his challenge to the reasonable doubt instruction by failing to object in the trial court because the issue was not a manifest error affecting a constitutional right. As an alternative ground to affirm, the State renews its argument that Hood invited any error by affirmatively joining in and stipulating to the State's proposed instructions.

D. STATEMENT OF THE CASE

The defendant, Christopher Hood, was convicted of three crimes of domestic violence as defined under RCW 10.99.020:

burglary in the first degree, felony violation of a court order, and stalking. CP 111-24. The relevant facts are set forth in the State's briefing before the Court of Appeals. Brief of Respondent at 2-8.

The Court of Appeals affirmed the convictions in a unanimous published opinion. State v. Hood, ___ Wn. App. ___, 382 P.3d 710 (September 26, 2016).

E. ARGUMENT

In his petition for review, Hood raises the same issues presented to the Court of Appeals: whether the pattern instruction on reasonable doubt that this Court mandated be given in all criminal trials offends the constitution; whether the trial court properly concluded that Hood's convictions for burglary and felony violation of a court order were not the same criminal conduct; and whether RCW 9.94A.701 is ambiguous as to the community custody term applicable to first degree burglary. The State's briefing at the Court of Appeals adequately responds to the issues raised in Hood's petition for review.

If review is accepted, the State seeks cross-review of issues it raised in the Court of Appeals but that the Court's decision rejected. RAP 13.4(d). The provisions of RAP 13.4(b) are

inapplicable because the State is not seeking review, and believes that review by this Court is unnecessary. However, if the Court grants review, in the interests of justice and full consideration of the issues, the Court should also grant review of the alternative argument raised in the Court of Appeals, which it believes is consistent with existing law. RAP 1.2(a), RAP 13.7(b).

The State argued in the Brief of Respondent that Hood invited any instructional error when he “joined in” and “stipulated to” the State’s proposed jury instructions, which the trial court ultimately submitted to the jury. The Court of Appeals rejected that argument because it struggled to understand why the trial court stated on the record that the defense was “joining in” the instructions proposed by the State when there was no other record of Hood “formally stipulating to the correctness of the instructions proposed by the State.” Slip op. at 6.

The State argued for reconsideration, noting that the trial court’s comments should be read in context, and in context it was plain that the trial court was memorializing conversations that had occurred between counsel and the court. Motion to Reconsider at 4-7; Record of Proceedings (RP) 290 (trial court states, “I wanted to put on the record that counsel has stipulated to the jury instructions

submitted by the prosecution.), 415-16 (“[A]s I understand it, the defense has joined in the submission of the prosecution, so those should be ready to go.”). The Court of Appeals appears to have overlooked the context and assumed that the trial court was simply irrational; that it repeatedly stated on the record that Hood had stipulated to the State’s instructions despite having no basis to do so. The trial court is entitled to greater deference. See State v. Jasper, 174 Wn.2d 96, 123-24, 271 P.3d 876, 891 (2012) (“the appellate court will presume any conceivable state of facts within the scope of the pleadings and not inconsistent with the record which will sustain and support the ruling or decision complained of; but it will not, for the purpose of finding reversible error, presume the existence of facts as to which the record is silent).

The State also sought reconsideration because the Court of Appeals stated in this published opinion that “a defendant has no duty to propose the instructions that will enable the State to convict him.” Slip op. at 5. This assertion is not warranted and may confound trial courts in their attempts to solicit assistance from trial counsel on preparing accurate jury instructions.

The purpose of an instruction is to furnish guidance to the jury in its deliberations, and to aid it in arriving at a proper verdict, so far as it is competent for the court to

assist them. The chief objectives contemplated in the charge of the judge are to explain the law of the case, to point out the essentials to be proved on one side or the other, and to bring into view the relation of the particular evidence adduced to the particular issues involved.

13 Wash. Prac., Criminal Practice & Procedure § 4401 (3d ed.).

The jury instructions define the circumstances under which a defendant *might* be convicted. A flawed reasonable doubt instruction is structural error because it allows the jury convict on a lesser standard than permitted by law. Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993). Both the State and the defendant have a strong and vested interest in getting the instructions right. It is simply inaccurate to say that jury instructions exist solely to help convict the defendant.

The rules regarding preservation of error create incentives for litigants to object at a point in the proceedings when any problem can be fixed. See State v. Mendes, 180 Wn.2d 188, 194, 322 P.3d 791 (2014), cert. denied, 135 S. Ct. 1718 (2015) (“CrR 6.15(a) contemplates that jury instructions be submitted before trial and that the jury instructions could be settled before trial.”). Lawyers should be thoughtfully engaging in the jury instructions – not shrugging their shoulders and waiting to see what

an appellate attorney thinks should have been done. The language in the Court of Appeals opinion undermines these principles, and should be disavowed.

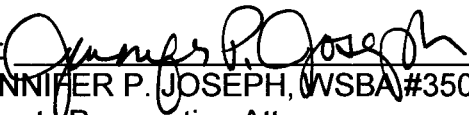
F. CONCLUSION

The State respectfully asks that the petition for review be denied. However, if review is granted, in the interests of justice the State seeks cross-review of the issues identified in Section C and E, supra.

DATED this 21st day of December, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Kevin A March, the attorney for the petitioner, at MarchK@nwattorney.net, containing a copy of the State's Answer to Petition for Review, in State v. Christopher Robin Hood, Cause No. 93888-1, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of December, 2016.

U Brame

Name:

Done in Seattle, Washington

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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