

Supreme Court No. 80110-0
Court of Appeals No.'s 51791-1-I & 55065-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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CITY OF AUBURN,

Petitioner,

v.

TERESA A. HEDLUND,

Respondent.

ON APPEAL FROM

KING COUNTY SUPERIOR COURT

03-2-00810-9-KNT

Honorable James Cayce

AND

AUBURN MUNICIPAL COURT

C78961 AUP and IC7374 AUP

Honorable Patrick Burns

CLERK

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STATE OF WASHINGTON

ANSWER TO PETITION FOR REVIEW

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RULES, STATUTES AND OTHERS

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**A. COUNTERSTATEMENT OF ISSUES PRESENTED IN CITY'S
PETITION**

In its Petition for Review, the City of Auburn (hereinafter referred to as "City") seeks review of three issues in City of Auburn v. Hedlund, ___ P.3d ___, 2007 WL 730793 (Wash. App. Div. 1)(2007). Ms. Hedlund opposes the City's petition. The issues the City raises are:

1. The Court of Appeals erred in holding that Ms. Hedlund was a victim under RCW 9A.08.020 because she was an accomplice before she became a victim.

2. The Court of Appeals erred in holding that reinstating the DUI charge against Ms. Hedlund after the trial court's dismissal violated the constitutional prohibition against double jeopardy because it was an oral ruling and was not final.

3. Court of Appeals erred in not ruling on issues presented by City in its cross-petition

challenging the Superior Court's decision on Ms. Hedlund's RALJ appeal reversing her convictions for Furnishing Liquor to a Minor and Furnishing Tobacco to a Minor.

B. STATEMENT OF THE CASE

This case arises from a tragic automobile accident on July 16, 2001 in the City of Auburn. CP 771-72. The car, driven by Tom Stewart, struck a large concrete pillar. CP 1006. Auburn and Kent Police Department officers who responded to the scene found the dead bodies of five young people who had been ejected from the car. CP 773-75, 808-10. Inside the car they found Stewart dead in the driver's seat and Teresa Hedlund, the sole survivor of the accident, critically injured in the front passenger seat. CP 774-75. Ms. Hedlund was transported to the hospital, where she was treated over a lengthy period of time for extensive injuries. CP 850, 868, 895, 911-12.

During the subsequent investigation, police found a video camera in the car which contained a video recording. CP 862. The videotape included portions depicting a party that purportedly occurred at the apartment Hedlund shared with her mother, fiancé, and four-year old daughter, as well as a sequence that Hedlund purportedly shot from the passenger seat of the car before the accident. CP 1187-92, 1260. The police investigation also established that Hedlund, Stewart, and all but one of the passengers had consumed alcohol, and that Stewart was speeding and driving erratically. CP 915-16, 1177-82.

On July 10, 2002, the City charged Hedlund as an accomplice to driving under the influence of alcohol (hereinafter referred to as "DUI"), as an accomplice to reckless driving (both under RCW 9A.08.020), and to furnishing alcohol to a minor. The City's theory of criminal liability was that Hedlund bore accomplice liability for

Mr. Stewart's drunken and reckless driving because her use of the video camera aided, promoted, and encouraged others, including Stewart, to act outlandishly. CP 760. Subsequently, the City filed an additional charge of furnishing tobacco to a minor. Trial commenced on January 27, 2003. CP 206, 212. On January 30, at the close of the City's evidence, Hedlund moved to dismiss the DUI and reckless driving accomplice liability charges. CP 573-74. Hedlund argued that due to her injuries, she was a "victim" under any applicable statutory definition and that she therefore was not an accomplice under RCW 9A.08.020(5). CP 576-78.

The court agreed that Hedlund was a "victim" and therefore not an accomplice to the DUI and reckless driving charge. CP 597-98. The court reasoned that RCW 9A.08.020(5) unambiguously states that a victim is not an accomplice; that factually it was irrefutable that Hedlund suffered extensive injuries requiring months of

hospitalization and rehabilitation; that as one who sustained injuries as a direct result of the crime charged, she is a victim; and that while a jury could conclude that her conduct leading up to the accident was inappropriate, and may well have aided and abetted, there was no way a jury could find that Hedlund was not also a victim of Stewart's reckless and drunken driving. CP 597-98. The court dismissed the reckless driving and DUI charges. CP 598.

The City sought a continuance of the trial so that it could immediately seek a writ of review in superior court and the court recessed the trial for several days. CP 598-600, 602, 604, 610. The next day, the City filed a petition for a writ of review. The King County Superior Court granted the writ, rejecting Hedlund's argument that the petition was barred by double jeopardy, and stayed the trial. RP 2/3/03, 10-14. The court found that Hedlund was a victim of vehicular assault, not DUI and reckless driving,

and that RCW 9A.08.020(5) would apply only to vehicular assault. RP 2/5/03, 30-32. The court concluded that continuation of the jury trial was not barred by double jeopardy, reversed the trial court order dismissing the reckless driving and DUI charges, reinstated the charges, and remanded for continuation of trial. RP 2/5/03, 12-14, 30-34.

Trial resumed in Auburn Municipal Court and Hedlund was convicted of DUI as an accomplice, furnishing alcohol to a minor, and furnishing tobacco to a minor. CP 162-64. She was acquitted of reckless driving as an accomplice. CP 162. Hedlund appealed her convictions to the King County Superior Court under the Rules of Appeal for Courts of Limited Jurisdiction (RALJ). CP 1. The Court of Appeals stayed consideration of Hedlund's previously-filed motion for discretionary review until the RALJ appeal was concluded.

On September 9, 2004, the King County Superior Court on RALJ appeal rejected numerous challenges by Hedlund and affirmed the trial court on nine different issues. CP 1256. But the Court concluded that the trial court abused its discretion in refusing to sever the furnishing of tobacco to a minor charge from the other charges, allowing the jury to hear the 911 tape, and admitting part three of the videotape showing Hedlund's daughter with a lit cigarette in her mouth. CP 1256-59. The Superior Court concluded that the cumulative prejudicial effect of the errors required a new trial and reversed and remanded the case to the Auburn Municipal Court for a new trial consistent with the decision. CP 1259. On September 27, 2004, the City filed a motion for discretionary review. On January 28, 2005, the Court of Appeals granted Hedlund's motion for discretionary review while passing City's motion for discretionary review to the panel hearing Hedlund's appeal. On March

11, 2007, the Court of Appeals issued its written opinion affirming the trial court's basis for dismissing the DUI charge against Ms. Hedlund and reversing her conviction.

C. ARGUMENT

1. THE COURT OF APPEALS CORRECTLY INTERPRETED THE PLAIN LANGUAGE OF RCW 9A.08.020.

In its Petition for Review, the City advances the argument that Ms. Hedlund became a victim after she engaged in conduct making her an accomplice to Mr. Stewart's crimes of Reckless Driving and DUI. Pet. at 2, 16-18. It again argues that this Court should read some sort of temporal or chronological element into RCW 9A.08.020, rather than simply interpret the statute based on its plain language. The Court of Appeals based its interpretation of 9A.08.020 on two fundamental principles of statutory construction: (1) Statutes should be interpreted based on their plain and ordinary language,

Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002), Coalition for the Homeless v. DSHS, 133 Wn.2d 894, 905, 949 P.2d 1291 (1997), and (2) strained and unrealistic interpretations of statutes are to be avoided. State v. Fjermestad, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). The City's strained line of argument was expressly rejected by the Court of Appeals, just as it was rejected by the trial court (CP 585-595) and the Superior Court (RP 2/5/03 14-22, 28-30). Having been rejected by three different courts in three separate proceedings, this argument should be no more persuasive to this Court, particularly when the City has not presented any additional authority to support its position. Accordingly, any further review of this issue is unwarranted.

In its Petition, the city claims that this matter is an issue of substantial public interest under RAP 13.4(b)(4). Pet. at 14-18. This contention demonstrates that the City

confuses the media attention and notoriety the case generated with it being a matter substantially affecting the citizens of this state. This case was newsworthy because of the tragic loss of life and the highly unusual nature of the City's prosecution of the sole survivor of the accident, by attempting to hold her criminally responsible for another person's drunken and reckless driving based on a novel theory of accomplice liability. Accordingly, this particular case has a unique set of facts and circumstances that may very well never be repeated. This case does not encompass any of the factors our courts have examined to determine if a moot issue is still one of "substantial public interest." Philadelphia II v. Gregoire, 128 Wn.2d 707, 712, 911 P.2d 389 (1996) (Factors considered in determination are: whether the issue is of a public or private nature; whether an authoritative determination is desirable to provide future guidance to

public officers; and whether the issue is likely to recur). Nor is it a case destined to affect other criminal proceedings. See State v. Watson, 155 Wn.2d 574, 577-78, 122 P.3d 903 (2005). Because of the unusual facts and circumstances and convoluted procedural history of this case, it lacks any significant precedential value that would merit this Court's further attention.

2. THE COURT OF APPEALS CORRECTLY HELD THAT REINSTATING THE DISMISSED CHARGES AGAINST MS. HEDLUND VIOLATED THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY.

In its Petition, the City characterizes the trial court's ruling on Ms. Hedlund's mid-trial motion to dismiss as a "spontaneous action." Pet. at 5. Nothing could be further from the truth. While the Court may have made statements indicating its reluctance in dismissing the DUI and Reckless Driving charges, there was nothing equivocal about the decision. The record of the

proceedings is clear that the trial judge gave careful consideration to Ms. Hedlund's motion to dismiss based upon her victim status. CP 574-98. After denying the Ms. Hedlund's companion motion to dismiss charges for insufficiency of the evidence, the trial judge stated that he would consider the matter over the lunch hour and conduct his own legal research. CP 582-83. The respondent was given the opportunity to present contrary authority and argument to the court. CP 584-95. After the parties presented argument, the trial court clearly set forth its reasoning on the record and was clear and unequivocal in its ruling. CP 597-96.

The City also disputes the notion that the trial court's ruling dismissing the charges was final. Pet. at 4-5, 14. It attached numerous pleadings to its Petition to demonstrate that none of the documents contain the words "final ruling." Nevertheless, it is impossible to conceive of a reason why the City would have

gone to so much trouble to obtain a writ of review from the Superior Court if the trial court's decision had been anything other than final. Nor can one imagine why the Superior Court would have entertained the writ and acted in an appellate capacity to review a decision of a lower court that was preliminary or advisory in nature. The Court of Appeals held that the trial court's decision was final because such a conclusion was patently obvious. The City's contention that the trial court's decision was not final, but merely preliminary or advisory, is purely revisionist advocacy.

Further, the City repeats its assertion that double jeopardy is a defense that is waived if not affirmative pled, which is based on one unusual and readily distinguishable Federal opinion in U.S. v. Parker, 368 F.3d 963 (7th Cir 2004). Pet. at 6, 14. This argument is contrary to the well-settled principle that defendants may raise constitutional issues, such as double

jeopardy, for the first time on appeal. RAP 2.5(a)(3); State v. Clark, 139 Wn.2d 152, 156, 985 P.2d 377 (1999); State v. Scott, 110 Wn.2d 682, 686, 757 P.2d 377 (1988). Counsel is unaware of any authority that requires a defendant who has successfully obtained dismissal of a charge to then plead double jeopardy to the trial court as an affirmative defense to avoid waiving the issue in subsequent proceedings.

The City argues that a conflict in decisions exists under RAP 13.4(b)(1) in that the Court of Appeals' holding conflicts with a prior decision in State v. Collins, 112 Wn.2d 303, 771 P.2d 350 (1989). Pet. at 12-13. To the contrary, the Court of Appeals clearly distinguished its holding from that in Collins, while following precedent established by the United States Supreme Court in Smith v. Massachusetts, 543 U.S. 462, 125 S.Ct. 1129, 160

L.Ed 2d 914 (2005). Accordingly, there is no conflict of decisions for this Court to resolve.

While the prohibition against double jeopardy is indisputably a Constitutional issue, it should be noted that Court of Appeals' holding on this issue did not determine the outcome of the case. Clearly, its holding that the plain language of RCW 9A.08.020(5) barred prosecution of Ms. Hedlund effectively determined the outcome of the appeal. Therefore, it was frankly unnecessary for the Court to address the double jeopardy issue in its opinion. To do so departed from the general principle that appellate courts should avoid addressing Constitutional issues when the case can be resolved on non-constitutional grounds. Seattle v. Williams, 128 Wn.2d 341, 347, 908 P.2d 359 (1995), State v. Smith, 104 Wn.2d 497, 505, 707 P.2d 1306 (1985).

3. THE COURT OF APPEALS WAS NOT REQUIRED TO RULE ON THE ISSUES PRESENTED BY THE CITY IN ITS CROSS-PETITION.

The convoluted procedural history of the case makes it rather unclear as to whether the Court of Appeals was bound to review the Superior Court's decision on Ms. Hedlund's RALJ appeal. The Superior Court decision the City sought review of in its cross-petition was separate and distinct from the Superior Court decision on the City's writ of review that was properly before the Court of Appeals. The issues encompassed by the Court of Appeals decision were also completely separate and distinct from those raised by the City in its cross-appeal. It is not clear precisely what assignment of error the City is raising, nor has the City cited any authority with respect to what action the Court of Appeals was required to take. Further, it is unclear what authority the City is relying upon in seeking relief from this Court.

Ms. Hedlund has always maintained that the Superior Court employed sound analysis and reasoning in reversing and remanding the matter back to the trial court, and no persuasive contrary authority was ever presented to the Court of Appeals. Therefore, there is no confusion about the status of the Furnishing Liquor to a Minor of Furnishing Tobacco to a Minor charges. The Superior Court reversed those convictions and held that Ms. Hedlund is entitled to new trials in Auburn Municipal Court and no appellate court has taken any action to disturb that ruling.

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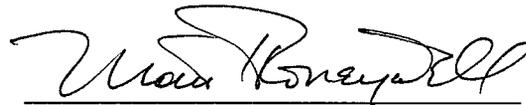
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D. CONCLUSION

For the reasons set forth above, this Court should deny the City's Petition for Review.

DATED this 10th day of May, 2007.

Respectfully Submitted



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