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SUPREME COURT
STATE OF WASHINGTON

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SUPREME COURT OF THE STATE OF WASHINGTON

BY RONALD R. CARPENTER

CLERK

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State of Washington, Respondent,)
)
v.)
)
Steven Andrew Janda, Petitioner,)

Statement of Grounds for
Direct Review by the
Supreme Court

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Review from King County Superior Court No. 10-1-05571-8KNT

Steven Andrew Janda seeks direct review of the decision of
The King County Superior Court entered on March 16, 2011.

NATURE OF THE CASE

This case involves two allegations of unlawful practice of law
incited by members of the bar that were investigated by members
of the bar at the Practice of Law Board and referred to members of
the bar at the prosecuting attorney's office. The fees were paid
voluntarily so the Practice of Law Board routinely victimizes those
who file such complaints by claiming the persons are victims of
theft by deception. Hence, two charges of theft are included in the
indictment.

The indictment was filed on June 10, 2010. The trial
commenced on March 9, 2011, and the case was decided on

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March 16, 2011. The defendant studied the law of the case earnestly for 276 days in preparation for the trial. The prosecution rarely referred to the law. One week before the trial was to commence, the court ordered in limine on motion of the prosecution that the defendant was not to argue the law of the case with respect to the statutory meaning of “nonlawyer” and the statutory classification of such persons defined as “not active members of the bar.” The prosecution was relieved of arguing the law of the case. The professional witness of the state acknowledged on the stand that it is not possible to have not active status with a bar association prior to being an active member of the bar. Nevertheless, the jury returned a verdict of guilty because the court ordered the defendant was “not an active member of the bar” even though he was never a member.

GROUND FOR REVIEW

The defendant seeks direct review under RAP 4.2(a)(4) contending the case involves a fundamental and urgent issue of broad public import which requires prompt and ultimate determination by the Supreme Court because it is the providence of the High Court to ultimately govern and to regulate the practice of law and to safeguard and to protect what is not the unauthorized

practice of law as defined by the legislature and U.S Supreme Court.

ASSIGNMENTS OF ERROR

Assignments of Error

1. The court erred by entering an order in limine on motion by the prosecution on March 2, 2011 that any argument be excluded during any phase of the trial that RCW 2.48.180 (1)(b) does not include within the definition of "nonlawyer" individuals who have never been active members of the state bar. Appendix 1
2. The court erred by ruling on November 9, 2010 that persons who have never been members of the state bar are included in the statutory definition of nonlawyer under RCW 2.48.180 as persons who are not active members of the bar.
3. The court erred by ruling on November 9, 2010 that persons who paid the defendant for services that the state contends were against the law and without such payment the offense could not be alleged, are not parties to the offense and need not be joined to the indictment. Appendix 2
4. The court erred by not dismissing the indictment as defective because it does not contain the essential elements of the offense and includes elements that requires the defendant to have

had prior active status with the bar association; i.e., "...the defendant, while not an active member of the state bar."

5. The court erred by ordering the defendant to not use the court rules to defend himself before the jury, including the fact that "inactive status" appears 45 times in the ELC and refers to "not active members of the bar" and the term "nonlawyer" appears 49 times in the court rules and merely means the person is not a lawyer. In contrast to the class of persons defined as "not active members of the bar" in RCW 2.48.180, who were termed "nonlawyers" in the statute by the legislature in 1995.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issues pertaining to assignment no. 1

1. Is it the burden of the state to prove every element of the offense beyond a reasonable doubt?

When the court ordered in limine that the defendant was not to argue that he was not defined in the statute as a "nonlawyer" the court relieved the state of its burden proving the threshold element of the charge under RCW 2.48.180 (2)(a) which states a "nonlawyer" practices law or holds himself out as entitled to practice law. The nonlawyers defined in the charging statute are persons who have had prior active membership status with the bar, and

specifically states persons who are suspended and disbarred from membership. When the statute states a class of persons upon which the statute operates it is against the canon of *expressio unius est exclusion alterius* to add other things or persons which might otherwise be implied.

Therefore, the court wrongfully relieved the state from proving an element of the offense, which, even under the plain language, erred from the rules of grammar, but also deviated from the canon of *expressio*.

2. Did the jury rely on the ruling in limine that the defendant was not to argue he was not defined in the statute? When a jury is given incorrect instructions, it is uncertain whether their decision was based upon the law or error. Therefore, the decision of the jury is defective.

3. Did ordering the defendant to not argue the law of the case violate his Sixth and Fourteenth Amendment Right under the U.S. Constitution? A defendant has the right to defend himself with the law and to argue his theory of the case. Moreover, it is the duty of the defendant to argue all issues to be preserved on appeal. Therefore, when the defendant was ordered not to argue his case his Sixth Amendment guaranty of was violated and his equal

protection rights were prejudiced under the Fourteenth Amendment of the U.S. Constitution. Moreover, the accusers were relieved from being compelled to answer questions to explain the cause and the nature of the allegations against him because the court removed the law of the case from the controversy.

Therefore, the Sixth and Fourteenth Amendment rights of the defendant were violated.

4. When the court ruled the defendant was implied in the statute, did it violate the canon of *expressio unius est exclusio alterius*?

Expressio unius est exclusio alterius is a common maxim of statutory construction. The maxim holds that where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature." *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

Implying a criminal element that includes an entire class of persons, literally the size of the whole world, is a violation of the Fourteenth Amendment under the U.S. Constitution. The law requires similar treatment for similarly situated persons. Disbarred

and suspended attorneys are not in the same class as persons who have never been members of the bar and the legislature has distinguished them in the statute.

Here, in RCW 2.48.180, the language “a person who disbarred and suspended from membership from the state bar” is the person expressed that bars inclusion of other elements. It is against the law to element swap the meaning of nonlawyer in the court rules with the meaning in the statute. The statute specifically defines the elements that constitute a nonlawyer under the statute and it is against the law for the court to imply other elements because the maxim expressio bars inclusion of implied elements when specific elements are expressed in the statute. RCW 2.48.180 is a textbook example of the perfect application of Expressio.

In re the State vs. Veitz, where the young man argued LPNs should be included in the patient physician privilege because the statute says nurses and LPNs are nurses. The court said under the rule of expressio, because the statute defines nurse as an RN, and does not mention LPN, the omission of LPNs is deemed intended by the legislature under the maxim of expressio.

Therefore, the court violated the rule in expressio when it ruled that persons who have never been members of the bar may be implied in the statute because the statute expresses the persons in a certain class and person who are not members of the class may not be implied.

Issue pertaining to assignment of error no. 2

1. Did the ruling that the statutory classification of nonlawyer includes persons who were never members of the bar also violate the canon of ejusdem generis? RCW 2.48.180 is also a textbook case example of ejusdem generis. The rule states that general terms are confined to the meaning of specific terms when placed together in the statute. The notion that a prosecutor could remove the specific terms and continue to act as if the statute was never amended in 1995 and then place the hatchet version in the complaint without "disbarred and suspended" is unprecedented in U.S. history. The statute at issue specifies the elements of identification and status of the person referred to as a person who is "not an active member of the bar". That is the general term. The specific terms which follow are "disbarred and suspended". In the statute when general and specific terms are together, the specific terms restrict the meaning of the general terms to embrace similar

things or classes of things. Consequently, the meaning of “not an active member” is confined to similar persons expressed by disbarred and suspended and refers to members on the inactive roster. The statutory phrase “not an active member” is any person whose membership with the bar is not active and includes suspended and disbarred persons. All of these persons have the right to petition for reinstatement. Persons who have never had membership have no such right.

In re State v. Van Woerden, the court gave the example in the case as “general” including “specific” or “specific”. This is an identical twin to RCW 2.48.180. In this case, “not an active member” is the general term and the specific terms include “disbarred” and “suspended” from membership from the state bar.

Therefore, the ruling of “nonlawyer” is defined differently than it is in the court rules and clearly violated the rule of ejusdem generis.

Issues Pertaining to Assignment of Error No. 3.

1. Did the court error when it failed to join the persons who paid for the services as defendants in the indictment?

A person who pays another person to commit an unlawful act is liable for the conduct of that person if the person commits the

act paid for. The persons also become conspirators. The state attempted to by-pass this ocean of law by alleging the accusers were somehow deceived, yet the indictment alleges no facts to support deception and the testimony of the persons in court affirms that they knew he was not an attorney. One accuser, Ms. Frelin was shown many documents which she paid for and could not even remember the purpose of the documents or any words that indicated she was in any manner deceived or tricked. The other accuser, Mr. McGraw, testified that he knew the defendant was not an attorney. He said he paid for services but for some reason claimed he could not contact the defendant when his mother passed away and so he contacted an attorney, Peter Perron, who testified that it is not possible to have "not active status" with the bar prior to having "active status" with the bar. His exact words were "that's not even possible" The state not only failed to prove deception, it failed to prove breach of contract. Hence, if the state contends that the services paid for are against the law and are not the right of the person to choose, the accusers are required to be joined to the indictment because they do not argue or prove deception.

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Therefore, the court erred in failed to join the accusers to the indictment as defendants.

Issues pertaining to assignment of error no. 4

1. Did the court error in denying the motion to dismiss the indictment for failing to include the essential elements of the offense?

A charge of unauthorized practice of law under RCW 2.48.180(2)(a) requires the criminal actor be defined as a nonlawyer under RCW 2.48.180(1)(b), who are former legal providers, whether limited or full, who have incurred discipline by the bar authorities and as a result have had an official change of status with the bar. Since the statute was amended in 1995 to include limited legal providers, to date there remains only one professional person who may be authorized by the Supreme Court to practice law in a limited scope without being a member of the bar. That person in Washington is the real estate closing officer. The nonlawyer definition in the statute includes limited practice persons who have practiced beyond the scope of their authority and incurred a change of status. These persons are not members of the bar, which is a key to realizing persons defined thereafter as “not active members” can only be prior active members because

otherwise limited legal providers would be defined as nonlawyers under the statute at the same time they are defined as legal providers, which is impossible. Thus, a person who is charged with being a “not active member” must be a prior active member with the bar. Since the defendant was never a member of the bar he cannot be a not active member and is not defined in the indictment as a person who was ever a member of the bar.

Therefore, the indictment fails to apply to the defendant and should have been dismissed when the defendant motion the court to do so.

Issues pertaining to assignment of error no. 5.

1. Did the court error when it ordered the defendant could not argue the court rules in his defense to show that the term nonlawyer was a new homonym abused by the bar?

RCW 2.48.180 provides that the defendant is allowed to use the Rules of Professional Conduct and the Admission to Practice Rules that at the time of the violation the conduct was not against the law. This provision refers to rules that define the relationship of the attorney to the courts. Persons who are not members of the bar are not subject to the RPC and APR. The majority of the provisions in RCW 2.48.180 are written to guard against financial

entanglement between disbarred members and active members. The statute introduces a new term "ownership interest" which includes loans above a reasonable commercial interest rate. The statute restricts "nonlawyers" from holding an ownership interest in a business primarily engaged in the practice of law. Consequently, when the court ruled that persons who were never members of the bar are "nonlawyers" under the statute, the result was that any person could not hold a loan in a law firm under this interpretation because nonlawyers are also restricted from holding an "investment interest" which is virtually any expenditure for profit invested in a law firm. When the defendant questioned attorney Doug Walsh for the Consumer Protection Division of the Attorney General's Office regarding loans to law firms by disbarred members under the statute he could not give a definitive answer whether or not it was legal, even though the statute states it is clearly against the law. Julie Shankland, attorney for the Practice of Law Board, answered in the same manner, asserting that more facts would be necessary regardless of how many facts were given in an illustration. The court ordered the defendant to discontinue the questioning upon insistence by the prosecution. The statute is filled with stop gap provisions to prevent financial entanglement between active and

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not active members that have no application to non-members of the bar. These stop gap provisions by the legislature ensure that the statute will not be misinterpreted to include person not defined in the statute. When the entanglement provisions are disregarded like they were by the state, the jury was misled and wrongfully convicted the defendant.

Therefore, the court erred when the defendant was ordered not to question the witnesses for the state regarding the class of persons defined in the statute as nonlawyers compared to the class of persons defined in the court rules under the homonym nonlawyer.

I respectfully request the Supreme Court to grant my petition for Direct Review.

April 18, 2011.

Respectfully submitted,
Signature


Steven Andrew Janda

Affidavit of Service to Parties is filed together with this Petition.

Appendices are attached

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Appendix 1

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HONORABLE HOLLIS HILL

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

STEVEN ANDREW JANDA

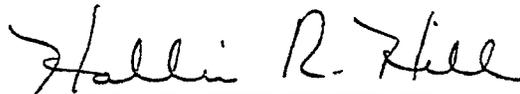
Defendant.

NO. 10-1-05571-8 KNT

ORDER IN LIMINE

This matter came before the Court on the State's Motion in Limine to exclude any argument during any phase of the trial of this matter that RCW 2.48.180 (1) (b) does not include within the definition of "nonlawyer" individuals who have never been active members of the state bar and the Court being fully advised, IT IS HEREBY ORDERED that said Motion is GRANTED. Both parties are instructed not to argue or otherwise imply or infer during trial that RCW 2.48.180 excludes from the definition of "nonlawyer" individuals who have never been active members of the state bar.

DONE IN OPEN COURT this 2nd day of March, 2011.


HONORABLE HOLLIS R. HILL

Appendix 2

Appendix 2

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II.

The Defendant has filed a "Motion to Dismiss Based Upon Misrepresentation of Statute", in which he argues that the proscription of the Unlawful Practice of Law in RCW 2.48.180 does not apply to him. The defendant argued that the definition of "nonlawyer" in RCW 2.48.180 (1) (b) only applies to persons who were at one time active members of the Washington State Bar Association, and therefore does not apply to him. The definition of "nonlawyer" in RCW 2.48.180 (1) (b), which includes a "person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership", applies to a person who has never been an active member of the state bar. The Defendant's "Motion to Dismiss Based Upon Misrepresentation of Statute" is therefore denied.

The Defendant has also filed a "Motion to Join Defendants", in which he asks the Court to join certain other individuals (including the estate of a deceased individual) as defendants in this matter. The Defendant is in essence asking the Court to file criminal charges against these individuals/entities. The filing of criminal charges is a function of the executive branch of government, not the judicial branch. The Court does not have the authority or the responsibility to file criminal charges, and it could not "join defendants" without violating the separation of powers among the three branches of government. The Defendant's "Motion to Join Defendants" is therefore denied.

The Defendant has also moved for dismissal of some or all of the counts of the Information for violations of the 1st, 4th, 5th, 6th, and 14th Amendments. To the extent that this motion is based in part on an argument that RCW 2.48.180 is void for vagueness, the Court finds that the definition of "nonlawyer" used in that statute is not so vague that persons of common intelligence must necessarily guess at its meanings and differ as to its application, and therefore finds that RCW 2.48.180 is not void for vagueness. To the extent that the Defendant is arguing that his prosecution under RCW 2.48.180 violates other rights guaranteed by the 1st, 4th, 5th, 6th, and 14th Amendments, the Defendant has not offered any analysis or authority to support his assertions, and the Court will therefore deny all of his motions to dismiss based upon those Amendments.

Finally, the Defendant has also filed "Counter-Claims of Defendant Against the State", and has moved the Court to join the Defendant's "Counter-Claims" with the criminal prosecution filed in this matter. The Defendant has not cited any authority in the Criminal Rules for Superior Court for such a joinder, nor has he cited any statutory or other authority that would permit such a joinder of civil counter-claims with a criminal prosecution. The Court does not have the authority to join civil counter-claims to a criminal prosecution, and the Defendant's motion for such a joinder is therefore denied.

III.

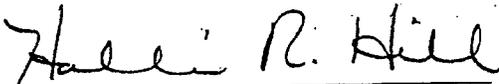
The Defendant's motions are all denied.

IV.

Judgment should be entered in accordance with the Conclusion of Law in section III. In addition to these written findings and conclusions, the Court hereby incorporates its oral findings and conclusions as reflected in the record.

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DONE IN OPEN COURT this 9th day of November, 2010.


THE HONORABLE HOLLIS HILL
Judge, King County Superior Court

Presented by:


Deputy Prosecuting Attorney ~~39277~~

Steven Andrew Janda
Defendant - Pro Se