

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 103625-6
)	
vs.)	
)	ANSWER TO PETITION
RIGO ROBERTO CORTEZ,)	FOR REVIEW
)	
Petitioner.)	
)	
)	

Petitioner Rigo Roberto Cortez seeks review of the Court of Appeals' unpublished decision in this case, State v. Cortez, No. 84744-9-I, __ Wn. App. 2d __, 2024 WL 3937452 (Aug. 26, 2024), upholding his three convictions for child molestation of his step-granddaughter. Cortez asks this Court to review the Court of Appeals' conclusions that (1) the evidence was sufficient to support the convictions; (2) any error in admitting certain evidence under ER 404(b) was harmless; (3) Cortez's

convictions do not violate the protection against double jeopardy; (4) the trial court properly imposed a community custody condition requiring urinalysis and/or breathanalysis to monitor compliance with unchallenged conditions barring consumption of alcohol and controlled substances; and (5) the trial court properly imposed a community custody condition prohibiting “sexual contact in a relationship . . . until the treatment provider approves of such.”

The State asks this Court to deny the petition for review because Cortez fails to establish that the criteria for review set out in RAP 13.4(b) are present in this case. His arguments regarding most of the issues listed above amount to arguments that the Court of Appeals erred in following this Court’s well-settled precedent, or in applying this Court’s well-settled precedent to the facts of this case. E.g., Petition for Review at 7-25.

Cortez's only argument for review of the fourth issue is that the Court of Appeals' holding conflicts with another Court of Appeals decision, but no such conflict exists. Petition for Review at 26 (asserting conflict with State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003)). The holding in this case turns on the fact that the condition at issue was imposed to monitor compliance with other properly imposed conditions, while the condition at issue in Jones (participation in alcohol counseling) was not a monitoring condition and thus was not statutorily authorized unless it was itself crime-related. Cortez, slip op. at 25-26; Jones, 118 Wn. App. at 208.

The reasoning and authority set out in the Court of Appeals' opinion make clear that Cortez's appeal is meritless and provide additional support for the conclusion that the criteria for review are not met here. If this Court nevertheless grants review on certain issues raised in Cortez's petition, it

should also review related issues litigated below but not addressed by the Court of Appeals.

Specifically, if this Court reviews the Court of Appeals' holding that any error in the trial court's application of ER 404(b) was harmless, this Court should also review whether the trial court actually erred in admitting the challenged evidence under ER 404(b). This issue was fully briefed by the State below. Br. of Respondent at 37-45. The Court of Appeals did not address the issue on the merits, and instead "assume[d], without deciding" that the trial court erred before concluding that any such error was harmless. Cortez, slip op. at 12.

If this Court reviews the Court of Appeals' holding that the jury instructions in this case did not create a double jeopardy violation per se, only the *potential* for such a violation, this Court should also review the alternative arguments briefed by the State below that any per se constitutional error in the instructions was invited by Cortez

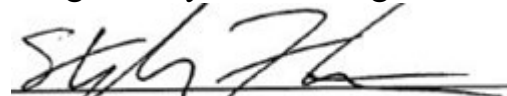
and was harmless beyond a reasonable doubt. Br. of Respondent at 55-58.

The State respectfully asks this Court to deny the petition for review. If the Court nevertheless grants review of the ER 404(b) issue and/or the double jeopardy issue, the State requests that this Court to also review the related issues identified above that were not addressed by the Court of Appeals.

This document contains 635 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Submitted this 17th day of December, 2024.

LEESA MANION (she/her)
King County Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'Steph FH', written over a horizontal line.

Stephanie Finn Guthrie, WSBA #43033
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appellate Unit
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 477-9497 FAX (206) 259-2795

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

December 17, 2024 - 10:26 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,625-6
Appellate Court Case Title: State of Washington v. Rigo Roberto Cortez

The following documents have been uploaded:

- 1036256_Answer_Reply_20241217102509SC338772_6501.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 103625-6 ANSWER TO PETITION FOR REVIEW.pdf

A copy of the uploaded files will be sent to:

- greg@washapp.org
- richard@washapp.org
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Bora Ly - Email: bora.ly@kingcounty.gov

Filing on Behalf of: Stephanie Finn Guthrie - Email: stephanie.guthrie@kingcounty.gov
(Alternate Email:)

Address:

King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98104
Phone: (206) 477-9499

Note: The Filing Id is 20241217102509SC338772