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SUPREME COURT
STATE OF WASHINGTON
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NO. 90051-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RYAN P. MOORE,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. ARGUMENT

THERE IS NO NEED FOR THIS COURT TO REVIEW STANDARD JURY INSTRUCTION THAT HAVE BEEN UPHELD BY ALL THREE DIVISIONS OF THE COURT OF APPEALS.

The petitioner is challenging a jury instruction that has been used in almost every criminal trial in Washington for decades. He asks this court to hold that this instruction contains a structural error that should result in automatic reversal. He thus asks this court to overturn every criminal conviction that is now pending on direct appeal.

All three divisions of the Court of Appeals have rejected identical claims. State v. Meggyesy, 90 Wn. App. 693, 958 P.2d 319, review denied, 136 Wn.2d 1098 (1998) (Division One); State v. Brown, 130 Wn. App. 767, 124 P.3d 663 (2005) (Division Two); State v. Wilson, 176 Wn. App. 147, 307 P.3d 823 (2013) (Division Three), review denied, 179 Wn.2d 1012 (2014). The Meggyesy opinion includes a detailed analysis of the factors set out in State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). Further review of this issue is unwarranted.

The roles of judges and juries in Washington are defined by Const., art. 4, § 16: “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” Since Territorial days, courts have recognized the duty of the jury to follow the law declared by the court. Hartigan v. Territory, 1 Wash. Terr. 447, 448-51 (1874) (upholding oath requiring jury to try case “according to ... the law as given by the court”).

The law applicable to the present case is RCW 9A.76.170:

Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state ... and who fails to appear ... as required is guilty of bail jumping

This statute provides that a person who commits the specified acts “is guilty” – not “may be guilty.” Under Article 4, § 16, it is the duty of the jury to determine the facts -- to decide whether the defendant committed the acts described in the statute. It is the duty of the court to declare the law – that a person who commits those acts “is guilty of bail jumping.” Once this law is declared, it is the duty of the jury to accept and apply it.

Based on these principles, jurors have the duty to convict the defendant if they, in their sole discretion, determine that all of the elements of the crime have been proved beyond a reasonable

doubt. Telling this to the jury is neither coercion nor interference in the jury's fact-finding process. Rather, it precisely reflects the division of responsibility set out in Article 4, § 16 – the jury must determine the facts, but the court must declare the law.

The defendant claims that the practice in Washington Territory was to the contrary. In support of this claim, he cites one case: Leonard v. Territory, 2 Wash. Terr. 381, 7 P. 872 (1885). In Leonard, the relevant instructions were held to be *erroneous*. Id. at 400. Erroneous instructions given in one case do not establish “common law practice.” As already pointed out, the Territorial Supreme Court recognized in Hartigan that jurors have the duty to follow the law declared by the court.

The jury instructions in this case correctly reflect legal principles that have been recognized in Washington since 1874. No further review of these instructions is warranted.

III. CONCLUSION

The petition for review should be denied.

Respectfully submitted on April 18, 2014.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: *Seth A. Fine*
SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Respondent

Sent via e-mail
On this day I ~~mailed a properly stamped envelope~~
delivered to the attorney for the defendant that
contained a copy of this document.
I certify under penalty of perjury under the laws of the
State of Washington that this is true.
Signed at the Snohomish County Prosecutor's Office
this 18th day of April, 2014

[Handwritten signature]

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Thanks.

Diane.

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