

No. 42635-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Kenneth Youngblood,

Appellant.

Grays Harbor County Superior Court Cause No. 10-1-00185-1

The Honorable Judge David Edwards

Appellant's Opening Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY

P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

ASSIGNMENTS OF ERROR 1

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

STATEMENT OF FACTS AND PRIOR PROCEEDINGS 3

ARGUMENT 7

I. Mr. Youngblood’s conviction infringed his Fourteenth Amendment right to due process because the court’s nonstandard instruction failed to tell jurors that Mr. Youngblood had no burden to prove that a reasonable doubt exists. 7

A. Standard of Review 7

B. The Washington Supreme Court has approved WPIC 4.01 as the only permissible instruction for defining the burden of proof in a criminal case. 8

C. The trial court’s nonstandard instruction outlining the burden of proof created a manifest error affecting Mr. Youngblood’s Fourteenth Amendment right to due process. 10

D. The trial court’s erroneous instruction outlining the burden of proof error was not harmless beyond a reasonable doubt. 12

II.	Mr. Youngblood’s conviction violated his Fourteenth Amendment right to due process because the evidence was insufficient to prove the elements of first-degree manslaughter.	16
A.	Standard of Review.....	16
B.	Due process required the prosecution to prove beyond a reasonable doubt that Mr. Youngblood acted recklessly and caused Mr. Davis’s death.	16
	CONCLUSION	21

TABLE OF AUTHORITIES

FEDERAL CASES

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) ... 8, 16

Kentucky v. Whorton, 441 U.S. 786, 99 S.Ct. 2088, 60 L.Ed.2d 640 (1979)
..... 9

Smalis v. Pennsylvania, 476 U.S. 140, 106 S. Ct. 1745, 90 L. Ed. 2d 116
(1986)..... 17, 19, 21

Taylor v. Kentucky, 436 U.S. 478, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978). 9

WASHINGTON STATE CASES

Bellevue School Dist. v. E.S., 171 Wash.2d 695, 257 P.3d 570 (2011) 7, 16

City of Bellevue v. Lorang, 140 Wash.2d 19, 992 P.2d 496 (2000) .. 13, 14,
16

Matter of Lile, 100 Wash.2d 224, 668 P.2d 581 (1983) 9

State v. Bashaw, 169 Wash.2d 133, 234 P.3d 195 (2010) 7

State v. Bennett, 161 Wash.2d 303, 165 P.3d 1241 (2007) 9, 10, 11, 12, 13

State v. Burke, 163 Wash.2d 204, 181 P.3d 1 (2008) 14, 15

State v. Castillo, 150 Wash.App. 466, 208 P.3d 1201 (2009) 10, 12

State v. Castle, 86 Wash.App. 48, 935 P.2d 656 (1997)..... 10

State v. Irby, 170 Wash.2d 874, 246 P.3d 796 (2011) 13

State v. Jimenez-Macias, ___ Wash.App. ___, 286 P.3d 1022 (2012)..... 10

State v. Kirwin, 165 Wash.2d 818, 203 P.3d 1044 (2009)..... 8, 16

State v. Kylo, 166 Wash.2d 856, 215 P.3d 177 (2009) 8, 12

State v. Lundy, 162 Wash.App. 865, 256 P.3d 466 (2011).....	10, 11, 13
State v. McHenry, 88 Wash.2d 211, 558 P.2d 188 (1977).....	9
State v. Meekins, 125 Wash.App. 390, 105 P.3d 420 (2005).....	20
State v. Montgomery 163 Wash.2d 577, 183 P.3d 267 (2008)	8
State v. Nunez, 174 Wash.2d 707, 285 P.3d 21 (2012).....	8
State v. Peters, 163 Wash.App. 836, 261 P.3d 199 (2011).....	17
State v. R.H.S., 94 Wash.App. 844, 974 P.2d 1253 (1999).....	17
State v. Russell, 171 Wash.2d 118, 249 P.3d 604 (2011)	8, 12

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. XIV	1, 2, 7, 8, 10, 16
Wash. Const. Article I, Section 3.....	1, 8, 9

WASHINGTON STATUTES

RCW 69.50.415	20, 21
RCW 9A.08.010.....	17, 18
RCW 9A.32.060.....	17

OTHER AUTHORITIES

RAP 2.5.....	8, 12
WPIC 4.01.....	8, 9, 10, 11, 13

ASSIGNMENTS OF ERROR

1. Mr. Youngblood's conviction infringed his Fourteenth Amendment right to due process because the trial court's nonstandard instruction outlining the burden of proof shifted the delicate balance approved by the Supreme Court.
2. The trial court erred by failing to instruct jurors that Mr. Youngblood had "no burden of proving that a reasonable doubt exists."
3. The trial court erred by giving Instruction No. 3.
4. Mr. Youngblood's conviction infringed his Fourteenth Amendment right to due process because the evidence was insufficient to prove the elements of first-degree manslaughter.
5. The prosecution failed to prove that Mr. Youngblood had actual knowledge that mixing Seroquel and alcohol created a substantial risk of death.
6. The prosecution failed to prove that Mr. Youngblood had the capacity to understand the risk of death resulting from ingesting Seroquel and alcohol in the quantities alleged here.
7. The prosecution failed to prove that Mr. Youngblood caused the death of Mark Davis.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process requires that jury instructions properly outline the burden of proof in a criminal trial. Here, the trial court used a nonstandard instruction, omitting language that the accused person has no burden to establish that a reasonable doubt exists. Did the trial court's nonstandard instruction infringe Mr. Youngblood's right to due process under the Fourteenth Amendment and Wash. Const. Article I, Section 3?
2. To obtain a conviction for first-degree manslaughter, the prosecution was required to prove that Mr. Youngblood had

actual knowledge that ingesting Seroquel and alcohol created a substantial risk of death. The prosecution produced no evidence showing that Mr. Youngblood had the capacity to understand the risk of mixing Seroquel and alcohol (due to his mental illness and intoxication) and that he had actual knowledge of the risk. Did the conviction violate Mr. Youngblood's Fourteenth Amendment right to due process because the evidence was insufficient to prove that Mr. Youngblood caused Davis's death?

3. To obtain a conviction for first-degree manslaughter, the prosecution was required to prove that Mr. Youngblood caused the death of Mark Davis. Here, Mr. Youngblood allegedly provided Seroquel pills to Mr. Davis, who voluntarily ingested them. Did the conviction violate Mr. Youngblood's Fourteenth Amendment right to due process because the evidence was insufficient to prove that Mr. Youngblood caused Davis's death?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

By December of 2010, fifty-five-year-old Kenneth Youngblood had suffered multiple strokes. RP¹ 42, 148, 156, 181. He struggled with diabetes, depression, post-traumatic stress disorder, and alcohol dependence, and he relied on others for assistance with his daily activities. RP 42, 179, 186, 200-202. Among other medications, he was prescribed Seroquel. RP 39.

On December 18, 2010, Mr. Youngblood met Mark Davis at a bar. Davis was thirty years old. He was described as an alcoholic who didn't participate in treatment, and he was separated from his wife and five-year-old son. RP 14-15. He regularly took an herbal supplement called kudzu. RP 18. Although he'd been sober for a six-week period, he'd resumed drinking and had also started using marijuana. RP 16-21, 89-93.

Following a memorial service for a friend who'd committed suicide, Davis went to a bar. RP 89-92. He arrived intoxicated, and was seen stumbling and slurring his words. RP 95-96. The bartender cut off Davis because he was obviously intoxicated. RP 86-87, 95. He cried several times during his time at the bar, was clearly upset about his friend,

¹ The trial transcript, which is sequentially numbered, is the only portion of the Verbatim Report of Proceedings cited in this brief.

and he was heard to make at least three statements about wanting to kill himself. RP 89, 100.

Mr. Youngblood, his daughter Katherine, Katherine's friend Emily Brisby, and Davis all went to Mr. Youngblood's house when they left the bar. RP 102-105, 135, 137-138. The four drank and talked. RP 106, 171.²

At some point, Davis, who was still upset, cried and made suicidal statements. He was unable to visit with his son and this was very painful to him. RP 123, 139, 149. Mr. Youngblood told Davis that Seroquel would help him sleep, and he poured some of his medication into Davis's hand. According to his daughter, Mr. Youngblood seemed to expect Davis to count out a few pills from the handful he'd received. RP 107-108, 139-141. When Mr. Youngblood turned away, Davis swallowed the entire handful. RP 125, 139-141, 150. Davis tried to get more pills, but Mr. Youngblood and his daughter prevented him from doing so. RP 143.

Davis became increasingly sedated and he was helped to the bathroom. RP 110-111. He remained there and the others checked on him. RP 112-113. According to Brisby, Mr. Youngblood told the others

² Brisby, who was under 21, didn't drink inside the bar. She did admit to drinking alcohol outside the bar and at Mr. Youngblood's home. RP 103-104, 114, 146.

he was not worried about Davis, because he himself had taken a similar number of pills in the past without negative effect. RP 113, 127.

The next morning, medical assistance was summoned, and medics arrived to find Davis deceased on the bathroom floor. RP 22-23. Police came to the house and found Mr. Youngblood subdued and cooperative. RP 27. He had very little memory of the night before, due to his medication and alcohol use. RP 33, 153.

An autopsy revealed that Davis had Seroquel and a very high level of alcohol in his system. RP 51, 54, 57. The doctor who performed the autopsy opined that Davis's death resulted from alcohol and Seroquel, and classified it as accidental. RP 57, 62. The toxicologist who analyzed a blood sample obtained from Davis's body found Seroquel, Clonopin and alcohol. RP 67-69, 73-74. She opined that the Seroquel could have been fatal without the alcohol, but that she was not certain that the Seroquel caused the death. RP 71, 77, 79.

Mr. Youngblood was charged with Manslaughter in the First Degree.³ CP 1. His primary defense at trial was that he lacked the capacity to understand and appreciate the risk that Davis might die from the combination of alcohol and Seroquel ingested. RP 203-204, 206-207,

³ Initially, the state also charged him with Controlled Substances Homicide, but the charge was later dismissed. CP 1; Order Dismissing entered 8/1/11, Supp. CP.

214-215. The prosecution did not introduce any direct evidence (such as a warning label regarding risk of death, or a printout reflecting this that Mr. Youngblood might have received from a pharmacy) bearing on this issue. See RP, generally.

A state psychologist named Dr. Knopp testified that Mr. Youngblood had the capacity to act intentionally or with knowledge at the time he gave Davis the Seroquel. RP 172-188. The basis for her conclusion was a review of the incident reports, which showed Mr. Youngblood had knowledge of basic facts and the ability to perform simple actions. RP 176-177. She was not asked and did not testify regarding whether or not he had the capacity to understand and appreciate the risk posed by combining Seroquel and alcohol in the quantities alleged. RP 172-178.

Defense psychologist Dr. Brent Trowbridge testified that Mr. Youngblood lacked the capacity to understand and appreciate the risk involved in giving Seroquel to Davis. RP 195-215. He opined that Mr. Youngblood's ability to know basic facts or perform simple actions did not establish his capacity to understand and appreciate the risk of combining Seroquel and alcohol. RP 203204.

The court's instructions included the following language defining reasonable doubt and outlining the burden of proof:

The Defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A Defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. It, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt. Instruction No. 3, Supp. CP.

The jury returned with a verdict of guilty on the charge of Manslaughter in the First Degree. CP 4. After he was sentenced, Mr. Youngblood timely appealed. CP 4-11, 12.

ARGUMENT

I. MR. YOUNGBLOOD’S CONVICTION INFRINGED HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS BECAUSE THE COURT’S NONSTANDARD INSTRUCTION FAILED TO TELL JURORS THAT MR. YOUNGBLOOD HAD NO BURDEN TO PROVE THAT A REASONABLE DOUBT EXISTS.

A. Standard of Review

Constitutional violations are reviewed de novo. *Bellevue School Dist. v. E.S.*, 171 Wash.2d 695, 702, 257 P.3d 570 (2011). Jury instructions are reviewed de novo as well. *State v. Bashaw*, 169 Wash.2d 133, 140, 234 P.3d 195 (2010), overruled on other grounds by *State v.*

Nunez, 174 Wash.2d 707, 285 P.3d 21 (2012). Instructions must make the relevant legal standard manifestly apparent to the average juror. State v. Kylo, 166 Wash.2d 856, 864, 215 P.3d 177 (2009).

A manifest error affecting a constitutional right may be raised for the first time on review.⁴ RAP 2.5(a)(3); State v. Kirwin, 165 Wash.2d 818, 823, 203 P.3d 1044 (2009).

B. The Washington Supreme Court has approved WPIC 4.01 as the only permissible instruction for defining the burden of proof in a criminal case.

The Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV. The state constitution provides similar protection. Wash. Const. Article I, Section 3. In a criminal prosecution, due process requires the government to prove each element of the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The accused person “has no burden to present evidence.” State v. Montgomery 163 Wash.2d 577, 598, 183 P.3d 267 (2008).

⁴ The court may also accept review of other issues argued for the first time on appeal, including constitutional errors that are not manifest. RAP 2.5(a); see State v. Russell, 171 Wash.2d 118, 122, 249 P.3d 604 (2011).

The Washington Supreme Court has exercised its “inherent supervisory authority to instruct Washington trial courts to use only the approved pattern instruction WPIC 4.01 to instruct juries that the government has the burden of proving every element of the crime beyond a reasonable doubt.” *State v. Bennett*, 161 Wash.2d 303, 318, 165 P.3d 1241 (2007) (emphasis added). The Court noted that “every effort to improve or enhance the standard approved instruction necessarily... shifts, perhaps ever so slightly, the emphasis of the instruction.” *Bennett*, at 317.

In addition, a nonstandard instruction that fails to properly instruct on the burden of proof is “a grievous constitutional failure.” *State v. McHenry*, 88 Wash.2d 211, 214, 558 P.2d 188 (1977). Such an instruction violates due process, and requires reversal if the accused person was denied a fair trial “in light of the totality of the circumstances--including all the instructions to the jury, the arguments of counsel, whether the weight of the evidence was overwhelming, and other relevant factors...” *Kentucky v. Whorton*, 441 U.S. 786, 789, 99 S.Ct. 2088, 60 L.Ed.2d 640 (1979) (citing *Taylor v. Kentucky*, 436 U.S. 478, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978)); see also *Matter of Lile*, 100 Wash.2d 224, 228, 668 P.2d 581 (1983) (adopting the *Whorton* standard under Article I, Section 3).

- C. The trial court's nonstandard instruction outlining the burden of proof created a manifest error affecting Mr. Youngblood's Fourteenth Amendment right to due process.

The Bennett court disapproved an instruction known as the Castle instruction,⁵ concluding that it passed constitutional muster but was not helpful. Bennett, at 315-318. Instead, the Supreme Court exercised its supervisory authority and ordered trial courts to use the pattern instruction, which reads (in relevant part) as follows:

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

WPIC 4.01 (emphasis added) (certain bracketed materials omitted).

Division I has held that failure to use WPIC 4.01 requires reversal, unless the instruction used in its place is an improvement upon WPIC 4.01. State v. Castillo, 150 Wash.App. 466, 472-473, 208 P.3d 1201 (2009). By contrast, Division II has held that failure to use WPIC 4.01 is subject to harmless error analysis. State v. Lundy, 162 Wash.App. 865, 870-871, 256 P.3d 466 (2011).⁶ In Lundy, the trial court used a modified

⁵ State v. Castle, 86 Wash.App. 48, 935 P.2d 656 (1997).

⁶ A recent decision noted Bennett's holding that the Castle instruction is not constitutionally deficient. State v. Jimenez-Macias, ___ Wash.App. ___, ___, 286 P.3d 1022 (2012). The Jimenez-Macias court erroneously suggested that Lundy addressed "a Castle instructional error." Jimenez-Macias, at ___. This is not quite correct: the instruction at issue in Lundy was not a Castle instruction; instead, the Lundy court found harmless a

instruction, which differed only slightly from the pattern instruction.

Lundy, at 870-71. The Lundy court found that the instruction correctly communicated the standards set forth in WPIC 4.01:

[The instruction] emphasized the presumption of innocence... Furthermore, [it] accurately described the State's burden of proof by clearly instructing the jury that the State must prove each element of the crimes charged beyond a reasonable doubt and that the defendant has no burden of proving that a reasonable doubt exists.

Id. at 873 (emphasis added).

In contrast to Lundy, the trial court's instruction outlining the burden of proof in this case failed to explicitly tell jurors that Mr. Youngblood had "no burden of proving that a reasonable doubt exists." See Instruction No. 3, Supp. CP; cf WPIC 4.01. The deficiency was not remedied elsewhere in the court's instructions. See Instructions, generally, Supp. CP.

Unlike the instructions in Bennett and Lundy, Instruction No. 3 provided an incomplete statement regarding the burden of proof by neglecting to tell jurors that the accused person had no burden. In other words, Instruction No. 3 did not make the relevant standard manifestly

version of WPIC 4.01 that "modified the WPIC by reversing the order of the first two paragraphs and modifying the first three sentences of the paragraph on the State's burden of proof." Lundy, at 871. The instruction in Lundy did not contain the offending Castle language at issue in Bennett; nor did it omit the sentence missing from the instruction in this case. Id.

apparent to the average juror. *Kyllo*, at 864. The effect of this was to leave open the possibility that Mr. Youngblood had the burden of raising a reasonable doubt. The instruction that persuaded Division I to reverse in *Castillo* was characterized by this same omission.⁷ *Castillo*, at 473.

The nonstandard instruction used by the trial court in this case is not the “simple, accepted, and uniform instruction” adopted by the Supreme Court. *Bennett*, at 318. Instead, by leaving out required language, Instruction No. 3 “shifts, perhaps ever so slightly, the emphasis of the instruction.” *Bennett*, at 318. The omission of an important component of the burden of proof created a manifest error affecting Mr. Youngblood’s right to due process under the state and federal constitutions.

Accordingly, the error may be raised for the first time on review. RAP 2.5(a)(3).⁸

D. The trial court’s erroneous instruction outlining the burden of proof error was not harmless beyond a reasonable doubt.

Under *Castillo*, the error here would require automatic reversal.

The *Castillo* court reasoned that the Supreme Court’s clear and unambiguous directive did not allow for any exceptions. *Castillo*, at 472-

⁷ The instruction in that case suffered from other flaws as well.

⁸ Furthermore, even if not “manifest,” the error is significant, and the court should exercise discretion to review its merits. *Russell*, at 122.

473. In Division I, the only nonstandard version of WPIC 4.01 that could survive analysis under Bennett would be one that improves upon the pattern instruction. *Id.*, at 473. The court concluded that the error here is sufficient to require reversal because it is not an improvement on the standard instruction:

The omission of the last sentence of WPIC 4.01 from the given instruction alone warrants the conclusion that Instruction No. 3 is not better than the WPIC.

Id.

In Division II, however, an erroneous instruction on the burden of proof is subject to harmless error analysis under the stringent test for constitutional error. *Lundy*, at 872.

Constitutional error is presumed prejudicial, and the state bears the burden of proving harmlessness beyond a reasonable doubt. *State v. Irby*, 170 Wash.2d 874, 886, 246 P.3d 796 (2011); *City of Bellevue v. Lorang*, 140 Wash.2d 19, 32, 992 P.2d 496 (2000). To overcome the presumption, the state must establish beyond a reasonable doubt that the error was trivial, formal, or merely academic, that it did not prejudice the accused, and that it in no way affected the final outcome of the case. *Lorang*, at 32. Reversal is required unless the state can prove that any reasonable fact-finder would reach the same result absent the error and that the untainted

evidence is so overwhelming it necessarily leads to a finding of guilt.

State v. Burke, 163 Wash.2d 204, 222, 181 P.3d 1 (2008).

The error here is not harmless beyond a reasonable doubt. First, the error was not “trivial, formal, or merely academic.” Lorang, at 32. The instruction omitted an essential component of the burden of proof: the rule that an accused person need not raise a reasonable doubt in order to be acquitted. Instruction No. 3, Supp. CP. Because the burden of proof forms part of the bedrock upon which the entire criminal justice system rests, errors in communicating the standard will seldom, if ever, be considered harmless.

Second, there is at least some possibility that the deficient instruction prejudiced Mr. Youngblood and affected the final outcome of the case. Lorang, at 32. Mr. Youngblood’s primary defense involved diminished capacity and/or voluntary intoxication: his attorney argued to jurors that he did not know of and disregard a substantial risk that Davis would die after ingesting Seroquel and alcohol. RP 195-216, 228-242. As a result of the erroneous instruction, jurors likely believed that Mr. Youngblood bore the burden of raising a reasonable doubt (for example through the expert testimony of Dr. Trowbridge). See RP 195-216.

Third, a reasonable factfinder could have concluded that Mr. Youngblood did not appreciate the risk that Davis might die from an

overdose of Seroquel. Dr. Trowbridge testified that Mr. Youngblood was unable to understand and appreciate the risk that Davis would die. RP 203-204, 206-207, 214-215. The prosecution expert did not provide an opinion as to Mr. Youngblood's ability to understand and appreciate the risk that Davis would die.⁹ RP 172-188. There was evidence that Mr. Youngblood had consumed similar amounts of Seroquel and alcohol in the past without harmful effects. RP 113, 127. His daughter testified that Mr. Youngblood poured the pills into Davis's palm so that Davis could count out the number of tablets he wanted to take, and that Mr. Youngblood had not anticipated that Davis would take all of the pills. RP 140-141, 150-151. Under these circumstances, it cannot be said that the evidence of recklessness was so overwhelming that it necessarily lead to a finding of guilt. *Burke, supra*.

Fourth, a reasonable jury could have concluded that Mr. Youngblood did not cause Davis's death. Davis himself was the instrument of his own overdose; Mr. Youngblood did not force the pills down Davis's throat. RP 110, 125-126. Thus it cannot be said that the evidence was overwhelming on the element of causation. *Burke, supra*.

⁹ Instead, her testimony reflected a lack of understanding of the legal concepts involved: the focus of her testimony was on whether or not Mr. Youngblood had the capacity to be reckless in the abstract. When asked about issues pertaining to his understanding and appreciation of the risks in this case, she acknowledged, for example, that alcohol can impair a person's ability to assess risk. RP 181.

For all these reasons, the state cannot prove beyond a reasonable doubt that the error was trivial, formal, or merely academic, that it did not prejudice the accused, and that it in no way affected the final outcome of the case. Lorang, at 32. Accordingly, the conviction must be reversed and the case remanded for a new trial. Id.

II. MR. YOUNGBLOOD’S CONVICTION VIOLATED HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS BECAUSE THE EVIDENCE WAS INSUFFICIENT TO PROVE THE ELEMENTS OF FIRST-DEGREE MANSLAUGHTER.

A. Standard of Review

Constitutional violations are reviewed de novo. E.S., at 702. The sufficiency of the evidence may always be raised for the first time on appeal. *State v. Kirwin*, 166 Wash.App. 659, 670 n. 3, 271 P.3d 310 (2012).

B. Due process required the prosecution to prove beyond a reasonable doubt that Mr. Youngblood acted recklessly and caused Mr. Davis’s death.

The due process clause of the Fourteenth Amendment requires the state to prove every element of an offense beyond a reasonable doubt. U.S. Const. Amend. XIV; *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The remedy for a conviction based on insufficient evidence is reversal and dismissal with prejudice. *Smalis v.*

Pennsylvania, 476 U.S. 140, 144, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986).

To convict Mr. Youngblood of first-degree manslaughter, the prosecution was required to prove that he recklessly caused Davis's death. RCW 9A.32.060(1). Here, the prosecution failed to prove both recklessness and causation.

1. The prosecution failed to prove that Mr. Youngblood had actual knowledge that mixing alcohol and Seroquel in the quantities alleged created a substantial risk of death.

In a manslaughter case, a person acts recklessly when s/he "knows of and disregards a substantial risk that a [death] may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation." RCW 9A.08.010; *State v. Peters*, 163 Wash.App. 836, 838, 261 P.3d 199 (2011). Recklessness therefore requires proof of both subjective and objective components: "[w]hether an act is reckless depends on both what the defendant knew and how a reasonable person would have acted knowing these facts." *State v. R.H.S.*, 94 Wash.App. 844, 847, 974 P.2d 1253 (1999).

In this case, there is no proof that Mr. Youngblood had actual knowledge that mixing alcohol and Seroquel in the amounts alleged created a substantial risk of death. The prosecution did not introduce

evidence (such as text from the warning labels, or a printout from the pharmacy) warning Mr. Youngblood of the risk of death; nor did the prosecutor prove that it is common knowledge that the combination of Seroquel and alcohol creates a substantial risk of death.¹⁰

Furthermore, as Dr. Trowbridge testified, Mr. Youngblood's ability to understand and appreciate the risk was diminished because of his mental health issues and his consumption of alcohol. RP 203, 207, 214. The state's expert did not actually undermine this testimony. Dr. Knopp testified that Mr. Youngblood had some capacity to act intentionally and/or knowingly, based on her review of his actions as reflected in the incident reports. RP 172-188. While it is true that intentional or knowing conduct can establish recklessness,¹¹ the abstract capacity for intentional or knowing conduct does not establish the capacity to understand a particular risk.

¹⁰ Even in closing argument, the strongest statement the prosecutor could make along these lines was that "[A]ll of you in your normal life, know that mixing alcohol and pills could potentially kill somebody." RP 219. This is not the same as actual knowledge of a substantial risk of death.

¹¹ See RCW 9A.08.010(2): When recklessness is an element of an offense, "such element also is established if a person acts intentionally or knowingly."

Thus, Mr. Youngblood's ability to understand simple facts and intentionally perform straightforward actions¹² does not prove that he had the capacity to understand something more complex and less concrete, such as the degree of risk posed by combining Seroquel and alcohol. Indeed, even Dr. Kopp testified that alcohol can impair the ability to assess risk. RP 181. Her observation that Mr. Youngblood was basically coherent shed no light on his ability to understand and appreciate the specific risk at issue here, and certainly did not rebut Dr. Trowbridge's testimony.

Absent proof that (1) Mr. Youngblood could understand the risk posed by combining Seroquel and alcohol, and (2) that he had actual knowledge that the combination of the two substances in the quantities alleged here created a substantial risk of death, the evidence was insufficient to prove recklessness. Accordingly, his conviction must be reversed and the case dismissed with prejudice. Smalis, at 144.

2. The prosecution filed to prove that Mr. Youngblood caused Davis's death.

Manslaughter requires proof of proximate cause. An accused person's conduct is a "proximate cause" of harm if "in direct sequence,

¹² As Dr. Knopp indicated, Mr. Youngblood knew that the bar was closing, and intentionally invited others to his home. RP 176-177.

unbroken by any new independent cause, it produces the harm, and without it the harm would not have happened.” *State v. Meekins*, 125 Wash.App. 390, 396, 105 P.3d 420 (2005); see also Instruction No. 6, Supp. CP.

In this case, Davis’s act of ingesting the pills was a “new independent cause” that broke the direct sequence of causation and thus relieved Mr. Youngblood of liability. Although Mr. Youngblood provided the Seroquel, he did not cause Davis to ingest the drugs (i.e. by placing them in his mouth, adding them to his drink, or somehow injecting them into his body.). Instead, Davis acted—taking the pills and swallowing them—and thereby caused his own death. RP 126.

The legislature has implicitly recognized that mere delivery of drugs is not by itself a proximate cause of any subsequent overdose. See RCW 69.50.415. To convict a person of controlled substances homicide, the prosecution need not prove a causal link between the delivery of drugs and the subsequent death:

A person who unlawfully delivers a controlled substance... which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

RCW 69.50.415(1) (emphasis added). Thus in the context of controlled substances homicide—a crime that closely parallels the one here—the

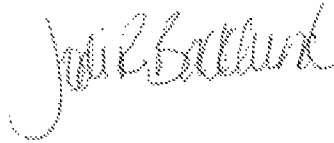
legislature has recognized that it is the decedent's use of the drug that results in death. RCW 69.50.415(1).

The evidence was insufficient to prove that Mr. Youngblood caused Davis's death. Accordingly, his conviction must be reversed and the case dismissed with prejudice. Smalis, at 144.

CONCLUSION

Respectfully submitted on November 7, 2012.

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Kenneth Youngblood, DOC #352631
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

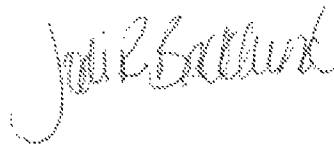
And to:

Grays Harbor County Prosecuting Attorney
102 W Broadway Ave Rm 102
Montesano, WA, 98563-3621

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on November 7, 2012.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

November 07, 2012 - 3:12 PM

Transmittal Letter

Document Uploaded: 426358-Appellant's Brief.pdf

Case Name: State v. Kenneth Youngblood

Court of Appeals Case Number: 42635-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: backlundmistry@gmail.com