69729-3

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NO. 69729-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOHN HARRIS, JR.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Whether Harris's claim of an irreconcilable conflict with trial counsel should be rejected because the record establishes that Harris received effective representation at trial and because the record is devoid of any evidence that Harris and his trial attorney were having difficulty communicating during the trial.

2. Whether the trial court's restitution order for the victim's burial expenses should be affirmed because restitution was authorized by statute and causally connected to Harris's commission of the crime of driving with a revoked license in the second degree.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the defendant, John Harris, Jr., with felony hit and run and driving with a revoked license in the second degree for striking and killing Clashana Grayson with his car on April 9, 2010. CP 1-6, 8-9. Harris made a motion to discharge his

attorney on Jun 19, 2012, and that motion was denied. CP 7; 1RP (6/19/12) 20-21.[1]

A jury trial took place in November and December 2012 before the Honorable Christopher Washington. At the conclusion of the trial, the jury found Harris guilty of both crimes as charged and rendered a special verdict that Harris had caused Clashana Grayson's death. CP 49-51; 8RP (12/5/12) 1063-64. The trial court imposed a high-end standard-range sentence of 75 months on the felony hit and run, and a statutory maximum sentence of 364 days on the revoked license charge, to be served consecutively. CP 52-62; 8RP (12/19/12) 1086-87.

A restitution hearing was held on June 11, 2013 before the Honorable Suzanne Parisien. Although the State conceded that the court could not order restitution on the hit and run charge pursuant to Washington case law, the State asked the court to impose restitution for Clashana Grayson's burial expenses on Harris's conviction for driving with a revoked license in the second

[1] The verbatim report of proceedings consists of nine volumes of transcripts, eight of which are sequentially paginated and identified by volume number, and two of which contain proceedings on multiple dates. In this brief, the transcripts will be referenced by volume number (*e.g.*, "2RP") when that volume comprises a single date, by volume number and date (*e.g.*, "1RP (6/19/12)") when that volume comprises multiple dates, and by date alone (*e.g.*, "RP (6/11/13)") for the one transcript that is separately paginated and not identified by volume number.

degree. CP 76-87; RP (6/11/13) 6-10, 12-13. Harris objected on grounds that the crime and the losses were not causally connected. CP 88-90; RP (6/11/13) 10-12, 13-14. The trial court agreed with the State that a causal connection existed, and ordered restitution. CP 91-92; RP (6/11/13) 15-16.

Harris now appeals. CP 63-74.

2. SUBSTANTIVE FACTS

Shortly before 11:00 p.m. on April 9, 2010, Clashana Grayson got off the bus at a stop on East Marginal Way in Tukwila. 2RP 187-90. Metro bus driver Michael Donow told her to "have a great night," and she replied, "I plan on it." 2RP 190.

Ulonda Carpenter was a regular patron of the Annex Tavern, which is across the street from the bus stop. 2RP 196-201. Just as Grayson was getting off the bus, Carpenter parked her car next to the tavern. 2RP 199-01. Grayson began crossing East Marginal Way and, as Carpenter watched, she was struck by a red Cadillac and was thrown into the air. 2RP 202-03. The Cadillac appeared to be speeding. 2RP 223. David Sabedra was working as a tow truck driver that night, and he was parked near the scene, waiting to clock out at the end of his shift. 5RP 646-48. He also saw the

Cadillac hit Clashana Grayson, and he watched as she went "like a rag doll up over the car, and landed behind the car." 5RP 649. After the Cadillac struck Grayson, both Carpenter and Sabedra saw the driver stop the Cadillac, get out, walk to the rear of the car, and look directly at Grayson, who was lying motionless in the street. 2RP 210-11; 5RP 651. He then got back into his car, and drove away. 2RP 211; 5RP 651-52.

Ulonda Carpenter and other patrons from the Annex ran into the street to help Grayson, who was obviously severely injured. 2RP 203-04, 208. Carpenter and the others were waving their arms in an effort to stop traffic, and David Sabedra was in the process of moving his tow truck into the road to block traffic, when a small silver car ran over Grayson. 2RP 203-04; 5RP 653-54. It appeared to Sabedra that the small silver car and another similar car were racing when Grayson was run over. 5RP 654-55. The silver car did not stop, either.[2] 2RP 204.

Clashana Grayson died at the hospital, and an autopsy was performed on April 12, 2010 by Dr. Timothy Williams. 4RP 450-51. Grayson had suffered significant head injuries from striking either the Cadillac or the street; she had a skull fracture, and bruising and

[2] The silver car and its driver were never identified. 3RP 349.

bleeding on her brain. 4RP 458, 466. Grayson's heart was bruised and her spleen and liver were lacerated. 4RP 467. Grayson had suffered fractures of the pelvis, left fibula, and left humerus. 4RP 484, 487, 494. Grayson's death was a result of blunt-force injuries of the head, torso, and extremities, with the head injury being the most serious injury. 4RP 512. Dr. Williams concluded that Grayson's most significant injuries were consistent with being hit by a car while she was in an upright position as opposed to being run over while she was prone. 4RP 508.

Ulonda Carpenter gave an interview with a local television news station the day after the collision and gave a description of the man she saw getting out of the Cadillac. 2RP 219. As it turned out, Carpenter was acquainted with Harris's brother, and she had met Harris also, although she did not recognize him the night of the collision. 2RP 220-21. Harris's brother approached her at the bank and said "his brother didn't mean to do it." 2RP 220. At that point, Carpenter knew that Harris was the Cadillac driver. 2RP 221.

Subsequently, on the same day as Clashana Grayson's autopsy, Harris contacted Tukwila Police Detective Donald Dart through an attorney and arranged to turn himself in. 3RP 346; 4RP 567-68. Detective Dart and Detective Tom Stock interviewed

Harris in the presence of his attorney, and a recording of the interview was played for the jury. 4RP 567-69. Harris admitted he was driving the Cadillac that struck Clashana Grayson. He said that he "panicked" after hitting her and left the scene. 4RP 572. Harris explained that he had heard the next day that she had died. 4RP 572.

However, Harris also insisted that Grayson was not lying in the street after he struck her with his car; rather, he claimed that she was off to the side of the road. 4RP 578, 581, 611. Harris claimed that after he struck Grayson, the driver of the second car pulled up next to him and said, "Yeah, she's dead, man," and then drove away. 4RP 578-79. Harris said the driver of the second car looked like "a gang banger[.]" 4RP 610. Harris admitted that his driver's license was "probably" suspended when he was driving that night.[3] 4RP 617.

Harris's Cadillac was seized by the police. It had damage consistent with striking a pedestrian, and human tissue was stuck to the car as well. 3RP 348, 370-72, 388-90. The tissue was

[3] Harris also testified at trial. His testimony was largely consistent with his statement to the police. 6RP 759-81.

conclusively matched to Clashana Grayson through DNA testing. 3RP 388-90.

C. ARGUMENT

1. THE RECORD DOES NOT SUPPORT HARRIS'S CLAIM THAT HE AND HIS TRIAL ATTORNEY HAD AN IRRECONCILABLE CONFLICT DUE TO A COMPLETE BREAKDOWN IN COMMUNICATION.

Harris first claims that he should be granted a new trial because the Criminal Presiding Judge did not grant his motion to substitute counsel based on a purported breakdown in communication between Harris and his trial attorney, and thus, that his Sixth Amendment right to counsel was violated. Brief of Appellant, at 6-14. This claim should be rejected because the record simply does not support it. Aside from Harris's bare assertion five months before trial that he and his attorney were not communicating effectively, there is absolutely no evidence in the record that Harris and his attorney had any difficulty communicating during the trial or that Harris received inadequate representation at trial due to an irreconcilable conflict with counsel. Therefore, this Court should affirm.

A defendant is entitled to a new trial due to a violation of the Sixth Amendment right to conflict-free counsel only if the defendant demonstrates that counsel had an actual conflict of interest that adversely affected counsel's performance. Mickens v. Taylor, 535 U.S. 162, 171-72, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002); State v. Dhaliwal, 150 Wn.2d 559, 573, 79 P.3d 432 (2003). Another form of conflict arises when a defendant and trial counsel have an "irreconcilable conflict" with one another due to a "complete breakdown in communication." In re Personal Restraint of Stenson, 142 Wn.2d 710, 723, 16 P.3d 1 (2001). In such cases, "[i]f the relationship between lawyer and client completely collapses, the refusal to substitute new counsel violates the defendant's Sixth Amendment right to effective assistance of counsel." Id. at 722.

When a defendant claims on appeal that he is entitled to a new trial due to an irreconcilable conflict with counsel, counsel's actual performance at trial is the focus of the reviewing court's analysis. Accordingly, when a defendant makes an irreconcilable conflict claim, prejudice is presumed on appeal only when the record shows that counsel's representation was inadequate

because of counsel's conflict with the defendant. In re Stenson, 142 Wn.2d at 724. In addition, the reviewing court considers the extent of the purported conflict between the defendant and counsel, the adequacy of the trial court's inquiry into the purported conflict, and the timeliness of the defendant's motion for new counsel. Id. (citing United States v. Moore, 159 F.3d 1154, 1158-59 (9th Cir. 1998)). In any event, the record must demonstrate that the defendant and trial counsel were at odds to a degree that affected counsel's ability to represent the defendant before a new trial will be granted.

For example, in a case where the defendant refused to cooperate or communicate with trial counsel at all, and where counsel's resulting representation at trial was "perfunctory," the record established a complete breakdown in communication that justified reversal of the defendant's conviction. Brown v. Craven, 424 F.2d 1166, 1169-70 (9th Cir. 1970). As another example, in a case where the attorney-client relationship was a "stormy one with quarrels, bad language, threats, and counter-threats," and where these problems persisted over time, the defendant was entitled to a new trial due to an irreconcilable conflict with counsel. United States v. Williams, 594 F.2d 1258, 1259-60 (9th Cir. 1979). And in

a case where counsel referred to the defendant by a racial slur and threatened to provide the defendant with inadequate representation if he insisted on going to trial rather than accepting a plea bargain, a complete breakdown in communication was established. Frazier v. United States, 18 F.3d 778, 783 (9th Cir. 1994). The common thread in all of these cases is that counsel's representation of the defendant at trial was negatively affected by conflict with the defendant.

On the other hand, in In re Stenson, no irreconcilable conflict was established despite disagreements between Stenson and his attorneys that became so contentious that "strong words were exchanged" and one of the attorneys stated on the record that he could no longer "stand the sight" of Stenson. In re Stenson, 142 Wn.2d at 728-29. Despite these problems, the Washington Supreme Court agreed with the trial court that Stenson was not entitled to new counsel because, "whatever the disagreements between Stenson and his counsel, . . . there is no evidence to suggest that the representation Stenson received was in any way inadequate." Id. at 730. Therefore, the court held that "[t]he differences between defendant and counsel in this case do not come close to constituting denial of counsel to such an extent that

prejudice may be presumed," and it rejected Stenson's claim because the extent of the conflict was not serious enough to warrant reversal. Id. at 732; *see also* State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004) ("general dissatisfaction and distrust with counsel's performance" is not sufficient cause to justify appointing new trial counsel). A far less compelling case than Stenson presents itself here.

In this case, Harris made a motion to discharge his trial attorney five months before trial. Harris stated that he and counsel "just had one trial and we had some misunderstandings," that there were "two other trials" pending, and Harris did not want to "go in there with – with not – not having an understanding with this man." 1RP (6/19/12) 21. When the Criminal Presiding judge asked Harris to clarify what he meant, Harris said, without elaboration, "Well, we're not able to communicate, Your Honor." 1RP (6/19/12) 21. The judge asked Harris if he had anything else to say; Harris responded, "No, Your Honor." The judge then denied Harris's motion to discharge counsel. 1RP (6/19/12) 21.

Trial began five months later and lasted for more than two weeks. Nowhere in the trial record did either Harris or his trial attorney indicate that they were having any further problems

communicating, or that they were in any way at odds with one another. To the contrary, the record shows that Harris and trial counsel communicated (at the very least) about Harris's trial attire (*see* 2RP 238-39), about the accuracy of a transcript of Harris's interview with the police (*see* 4RP 543-44), and about Harris's trial testimony, which was presented to the jury without any apparent conflict between Harris and counsel (*see* 6RP 759-81, 811-13). In addition, Harris acknowledged on the record that he and trial counsel had discussed whether Harris should take the stand a second time to give supplemental testimony (*see* 7RP 903-04, 934-35), and the record further establishes that Harris and trial counsel discussed whether Harris should enter a guilty plea for strategic reasons near the end of the trial (*see* 8RP 956-61). Undoubtedly, these were not the only communications between Harris and counsel during trial.

Furthermore, the record contains no evidence whatsoever that trial counsel's representation was inadequate or was in any way negatively affected by an irreconcilable conflict with Harris. To the contrary, the record shows that counsel and Harris worked together to mount the most plausible defense possible given the overwhelming evidence of Harris's guilt – *i.e.,* attempting to raise a

reasonable doubt as to whether Harris's car or the second car had caused Clashana Grayson's death, and asking the jury to return a verdict on a less serious hit and run charge based on causing injury rather than death. *See* 8RP (12/4/12) 1025-27, 1047-48.

Based on this trial record, Harris has not established an irreconcilable conflict that would justify granting him a new trial due to a denial of the right to counsel. First, he has not shown that trial counsel's representation was inadequate due to a breakdown in communication, and therefore, prejudice cannot be presumed. As to the extent of any purported conflict between Harris and his trial attorney, the record of the trial itself shows no conflict at all. And, regarding the adequacy of the lower court's inquiry, the presiding court asked Harris whether he had anything to say other than the bald assertion that he and his attorney were not communicating effectively. Harris stated, "No, Your Honor." 1RP (6/19/12) 21. Accordingly, no further inquiry was necessary.[4] As stated above, this case is far less compelling than In re Stenson; thus, as in Stenson, this Court should reject Harris's claim of an irreconcilable conflict with trial counsel.

[4] The State agrees that the motion to discharge counsel was timely. However, this is the only factor in the analysis that weighs in Harris's favor.

Nonetheless, Harris cites a document that he filed in one of his *other* cases in support of his claim that an irreconcilable conflict existed in *this* case. Brief of Appellant, at 12. This document – a letter from Harris to a different judge dated July 25, 2012 – asserts that Harris and his trial counsel disagreed about trial strategy in defending against a charge of attempting to elude. CP 122-26. As a preliminary matter, this document is not part of the record in *this* case, and thus, it should not be considered.[5] *See* State v. McFarland, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995) ("a personal restraint petition is the appropriate vehicle" for bringing matters before the court that are not in the record). Moreover, a disagreement over trial strategy does not constitute an irreconcilable conflict entitling the defendant to new counsel in any event, because matters of strategy "are properly entrusted to defense counsel, not the defendant." State v. Thompson, 169 Wn. App. 436, 459, 290 P.3d 996 (2012), rev. denied, 176 Wn.2d

[5] The letter appears to concern the trial that Harris mentioned during his motion to discharge counsel before the Criminal Presiding judge on June 19, 2012. However, Harris did not bring any of the information contained in the letter to the Criminal Presiding judge's attention during the hearing. Rather, when asked if he had anything else to say, Harris said, "No, Your Honor." 1RP (6/19/12) 21. Given that the letter was written more than a month after the hearing in Criminal Presiding and was addressed to a different judge, it strains the bounds of reason to suggest that this letter is somehow germane to the Criminal Presiding judge's decision to deny Harris's motion to discharge counsel.

1023 (2013). Accordingly, even if this document *were* properly designated and relevant, it does not support Harris's claim.[6]

In sum, Harris has not established an irreconcilable conflict with trial counsel that resulted in a denial of the right to counsel under the Sixth Amendment. Trial counsel's representation was not deficient, the extent of the purported conflict between Harris and counsel during trial was nonexistent, and, despite the Criminal Presiding court's attempts to ascertain the nature of Harris's dissatisfaction with counsel five months before trial, Harris provided nothing more than bare assertions that are not supported by the record. This Court should reject Harris's claim, and affirm.

2. THE TRIAL COURT'S RESTITUTION ORDER IS AUTHORIZED BY STATUTE AND PROPERLY BASED ON A CONVICTION FOR DRIVING WITH A REVOKED LICENSE IN THE SECOND DEGREE.

Harris also claims that the restitution order for Clashana Grayson's burial expenses should be vacated because it is not authorized by statute and is not causally connected to the crime of driving with a revoked license in the second degree. Brief of

[6] In addition, the question of whether counsel provided adequate representation at trial is necessarily a case-specific inquiry. Accordingly, even if Harris's letter has some bearing on the case in which it was filed, it plainly has no relevance in this case.

Appellant, at 14-25. This argument should be rejected. The restitution order is authorized by RCW 9A.20.030(1), and the damages were caused by Harris's commission of the crime in accordance with the test for causation under Washington law. The restitution order should be affirmed.

A trial court's authority to order restitution is "purely statutory." State v. Smith, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992). Accordingly, as a preliminary matter, a restitution order must be authorized by statute.

In this case, the State cited three statutes in its briefing for the trial court that could potentially authorize restitution when a defendant has been convicted of a gross misdemeanor such as driving with a revoked license in the second degree: RCW 9.92.060(2), RCW 9.95.210(2), and RCW 9A.20.030(1). CP 79. The State agrees with Harris that the first two of these three statutes do not apply. Under RCW 9.92.060(2), restitution may be ordered as a condition of a suspended sentence. Harris did not receive a suspended sentence[7]; rather, he received a statutory

[7] Although the judgment and sentence refers to Harris's sentence as "suspended," the trial court "suspended" a sentence of 364 days in jail on condition that Harris serve 364 days in jail. CP 60. This is not a suspended sentence because nothing was actually suspended.

maximum sentence of 364 days in jail. CP 60-62. Under RCW 9.95.210(2), restitution may be ordered as a condition of probation. Harris was not sentenced to probation, either. CP 60-62. Accordingly, neither RCW 9.92.060(2) nor RCW 9.95.210(2) authorize restitution in this case.

But the State does not agree with Harris with respect to RCW 9A.20.030(1), which provides that restitution may be ordered in lieu of a fine when the defendant has "caused a victim to lose money or property through the commission of a crime[.]" Harris argues, without citation to authority, that this statute does not authorize restitution in this case because the statute "is limited to offenses involving losses [of] money or property." Brief of Appellant, at 17. This unsupported assertion is incorrect. Rather, in ordering restitution "the sentencing court can order the defendant to pay the *actual* amount of loss caused by the crime to any person damaged; neither the name of the crime nor the named victims limit the award." State v. Thomas, 138 Wn. App. 78, 83, 155 P.3d 998 (2007) (emphasis in original).

Accordingly, RCW 9A.20.030(1) provides the necessary statutory authority for the restitution order in this case. Therefore, the remaining issue for this Court to resolve is whether Harris's

crime of driving with a revoked license is causally connected to the losses incurred by Clashana Grayson's family for her burial expenses.

Restitution should be ordered for losses that are causally connected to the crime of conviction. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). "Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss." Id. at 966 (citing State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)). To determine whether a causal connection exists, the reviewing court examines "the underlying facts of the charged offense, not the name of the crime" in question. Griffith, 164 Wn. App. at 966 (quoting State v. Landrum, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992)). Moreover, losses need not be foreseeable; rather, restitution should be ordered in any case where the losses were the result of the defendant's crime under "a 'but for' inquiry." Tobin, 161 Wn.2d at 524.

As the State argued at the restitution hearing before the trial court, Division Two's decision in State v. Thomas provides the closest analogy to this case. In Thomas, the defendant was charged with vehicular assault, but was ultimately convicted of

the lesser offense of DUI, a gross misdemeanor. Thomas, 138 Wn. App. 80-81. At sentencing, over the defendant's objection, the trial court ordered the defendant to pay over $7,000 in restitution for her injured passenger's medical expenses. Id. at 81. The issue presented on appeal was whether the passenger's injuries were causally connected to the crime of DUI, particularly in light of the fact that the jury did not find the defendant guilty of vehicular assault. Id. The Thomas court agreed with the trial court that the passenger would not have been injured but for the defendant's commission of the crime of DUI, despite the fact that the jury had not found vehicular assault beyond a reasonable doubt. Id. at 83. A similar case presents itself here.

In this case, Harris was not authorized to drive because his license was revoked in the second degree. In fact, Harris was aware that his license "probably [was] suspended" on the date of the crime, yet he chose to drive that night anyway. 5RP 617. If Harris had not been driving, as he was prohibited from doing because his license was revoked, he would not have struck Clashana Grayson with his car and would not have caused her

death.[8] As in Thomas, where the defendant was driving illegally because of her state of intoxication, Harris was driving illegally due to his revoked license. In each case, the losses in question (*i.e.*, medical expenses in Thomas, and burial expenses in this case) would not have occurred but for the defendant's decision to drive while prohibited from doing so. Therefore, as in Thomas, there is a "but for" causal connection between Harris's crime and the burial expenses incurred by Clashana Grayson's family, and thus, the restitution order is proper.

Nonetheless, Harris argues that there is no causal connection between his driving with a revoked license and Grayson's death, citing Schuette v. State, 822 So.2d 1275 (Fla. 1997), holding that the crime of driving with a suspended license was not causally related to getting into an accident that injured another person, and thus, "the criminal offense of driving with a suspended license does not as a matter of law mandate the award

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[8] Moreover, the jury specifically found beyond a reasonable doubt that Harris caused Grayson's death as an essential element of the felony hit and run charge. CP 51. This factual finding supports the trial court's restitution order as well. For this reason, in the event that this case proceeds to the Washington Supreme Court, the State may argue that State v. Hartwell, 38 Wn. App. 135, 684 P.2d 778 (1984), *overruled on other grounds*, State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994) (holding that restitution cannot be ordered pursuant to a charge of hit and run) is incorrect and harmful. *See* In re Stranger Creek, 77 Wn.2d 649, 466 P.2d 508 (1970).

of restitution arising out of the accident." Schuette, 822 So.2d at 1284. But the test for causation under Florida law is very different from the "but for" test for causation under Washington law.

In Schuette, the court explained that the well-established legal test for whether there is a causal connection between a crime and an award of restitution in Florida is that the losses addressed in the restitution order "must '*bear a significant relationship* to the convicted offense.'" Schuette, 822 So.2d at 1279 (quoting J.S.H. v. State, 472 So.2d 737, 738 (Fla. 1985)) (emphasis in Schuette).[9] The court further explained that the "significant relationship" test is the same as the test for proximate cause:

> Although never explicitly stated in our prior restitution cases, it would appear that the Court has equated the "significant relationship" test with the requirement of proximate causation between the criminal act and the resulting damages because the Court has required both a "but for" causation requirement and a "significant relationship" requirement.

Schuette, 822 So.2d at 1282. As the court also stated, the test for proximate cause in Florida additionally requires that the damages in question be "reasonably foreseeable[.]" Id. (quoting with approval

[9] Although Harris suggests that a "but for" causation test was adopted in Florida in Glaubius v. State, 688 So.2d 913 (Fla. 1997), Schuette specifically states that "Glaubius did not alter the analysis previously applied by the Court," referring to the "significant relationship" test. Schuette, 822 So.2d at 1280.

Arling v. State, 559 So.2d 1274, 1275 (Fla. Dist. Ct. App. 1990)). In light of these requirements, the Schuette court held that the state had not shown a significant relationship between the defendant having driven with a suspended license and the collision that caused the victim's injuries, and the court refused to create a "blanket rule of law requiring restitution whenever an accident occurs while a motorist is driving with a suspended license." Schuette, 822 So.2d at 1283.

But in Washington, unlike in Florida, the test for causation for purposes of restitution is not the same as the test for proximate cause and there is no requirement of foreseeability. Tobin, 161 Wn.2d at 524. Rather, the test in Washington is purely a "but for" causation analysis. Id. In this case, if Harris had not decided to drive while knowing that his license was revoked, he would not have killed Clashana Grayson. Accordingly, Harris's commission of the crime is a "but for" cause of Grayson's death, and the restitution award to her family members for burial expenses is proper. Harris's reliance on Schuette is misplaced.

In sum, the trial court's restitution order is authorized by statute and is causally connected to Harris's conviction for driving

with a revoked license in the second degree. Harris's arguments to the contrary should be rejected.

D. CONCLUSION

For the reasons stated above, this Court should affirm both of Harris's convictions and the trial court's restitution order.

DATED this 9th day of December, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine Winters, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOHN HARRIS, JR., Cause No. 69729-3-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

C Brame
Name

12/9/13
Date

Done in Seattle, Washington