92241-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 32268-8-III

STATE OF WASHINGTON, Respondent,

v.

ERIC MARCEL HARRIS, Petitioner.

PETITION FOR REVIEW

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TABLE OF CONTENTS

AUTHORITIES CITED

Cases

FEDERAL CASES

WASHINGTON CASES

Court Rules

I. IDENTITY OF PETITIONER

Eric Marcel Harris requests that this court accept review of the decision designated in Part II of this petition.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the decision of the Court of Appeals filed on August 6, 2015, affirming the Stevens' County Superior Court's finding that his request for counsel during post-arrest questioning was equivocal. A copy of the Court of Appeals' unpublished opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

Under *State v. Radcliffe*, 164 Wn.2d 900, 194 P.3d 250 (2008), an equivocal request for counsel in which the defendant stated "Maybe I should talk to a lawyer" was an inadequate invocation of the accused's Fifth Amendment right. Here, the defendant stated, "Well I don't know I think I should probably have a lawyer present." Multiple federal courts interpreting the Fifth Amendment requirements have held that while couching a request in conditional terms such as "maybe" renders the request equivocal, use of colloquialisms such as "I think I should" contact an attorney are unequivocal requests for counsel. This Court is asked to

determine whether an invocation for counsel is unequivocal when the defendant does not use conditional language but states that counsel should "probably" be present.

IV. STATEMENT OF THE CASE

Eric Harris was convicted of second degree murder with a firearm enhancement in the shooting death of his brother, Larch.[1] CP 1, 9, 347. At the time of his arrest, Harris was advised of his constitutional rights by a police detective. CP 24; 1 RP 19. When asked if he was willing to talk, Harris stated, "Well I don't know I think I should probably have an attorney present." CP 24. The following colloquy ensued:

> Gilmore: Okay
>
> Harris: I mean, don't you, I mean uh, I don't know well uh let's just get it over with
>
> Gilmore: alright, you sure? Cause it's your prerogative man ...
>
> George: You gotta ...
>
> Gilmore: Um I mean it is what it is uh we've only got one side of it but I don't want to force you into ...
>
> Harris: well there's only gonna be one side, the other guy's dead

[1] Because the two brothers share a last name, this Petition will refer to the Defendant by his last name and his brother by first name for purposes of clarity. No disrespect is intended.

Gilmore: well I haven't heard from you, see what I'm saying

Harris: k, right

Gilmore: So like I say, I'm not, I'm not gonna push it on ya if, if ya choose to talk to an attorney, that's fine if ya, if ya choose to talk to us that's fine to, but it's it's gotta be your decision man

George: It has to be your decision, Eric

Harris: uh, let's just get it done now.

CP 24-25. Harris then gave a statement implicating himself in the shooting. 1 RP 27-43.

The trial court found that Harris's initial request for counsel was equivocal and admitted his statement at trial. CP 374-75. The court of appeals affirmed the finding, explaining that the request was "accompanied by conditions, words of ambiguity, or obfuscating language." *Slip op.* no. 32268-8-III (August 6, 2015), at 5. Harris now seeks review of the conclusion that his invocation was equivocal.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(3), review will be accepted if the petition involves a significant question of law under the Constitution of the State of Washington or of the United States. Here, the issue presented for review concerns the scope of a defendant's right to counsel during pre-arraignment questioning under the Fifth Amendment to the U.S.

Constitution, and the language required to render a request for counsel unequivocal. Accordingly, the standard is met.

In *U.S. v. Davis*, 512 U.S. 452, 459, 114 S. Ct. 2350, 129 L.Ed.2d 362 (1994), the U.S. Supreme Court held:

> [I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.

The *Davis* Court acknowledged that while a suspect is not required to "speak with the discrimination of an Oxford don," the request for counsel must be articulated sufficiently clearly that a police officer would understand the statement to be a request for an attorney. *Id.* Accordingly, because the defendant in *Davis* had merely stated, "Maybe I should talk to a lawyer," further questioning was not prohibited and the defendant's statement was appropriately admitted into evidence. *Id.* at 462.

The Washington Supreme Court adopted *Davis* in *State v. Radcliffe*, 164 Wn.2d 900, 194 P.3d 250 (2008). As in *Davis*, the defendant in *Radcliffe* stated, "Maybe [I] should contact an attorney." 164 Wn.2d at 907. Accordingly, the *Radcliffe* Court held that the request was equivocal and the defendant's subsequent statement was admissible at trial. *Id.* at 907-08.

Since *Davis*, federal courts have examined a number of phrases to determine whether they "can be reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis*, 512 U.S. at 459. In cases where the accused used language of possibility, stating that he or she "maybe" or "might" want a lawyer, and in cases where the defendant questions the need for a lawyer, the courts have concluded that the request was equivocal. *See, e.g., U.S. v. Fouche*, 776 F.2d 1398, 1401 (9th Cir. 1985) (*overruled on other grounds in California v. Hodari D.*, 499 U.S. 621, 111 S. Ct. 1547, 113 L.Ed.2d 690 (1991)) (accused said he "might want a lawyer"); *Norman v. Ducharme*, 871 F.2d 1483, 1484 (9th Cir. 1989) (defendant asked police officer whether he should get an attorney); *U.S. v. Ogbuehi*, 18 F.3d 807, 813 (9th Cir. 1994) (defendant asked officer whether he needed a lawyer); *U.S. v. Doe*, 60 F.3d 544, 546 (9th Cir. 1995) (defendant's mother stated "maybe he ought to see an attorney.").

By contrast, in cases where the defendant simply preceded the request for counsel with self-referential language such as "I think," courts have concluded the invocation was unequivocal. *See, e.g., Shedelbower v. Estelle*, 885 F.2d 570, 573 (9th Cir. 1989) (acknowledging invocation when accused stated, "You know, I'm scared now. I think I should call an attorney."); *Cannady v. Dugger*, 931 F.2d 752, 755 (11th Cir. 1991) ("I

think I should call my lawyer" was an unequivocal request for counsel). As such, courts have acknowledged that in the absence of qualifying or conditional language, or express confusion about whether counsel should be sought, invocations of counsel are effective even when they include some verbal throat-clearing ("I think") or grammatical modifications that are stated in obligatory, rather than conditional, terms ("I should" vs. "I might").

Washington appellate courts applying *Radcliffe* have reached similar conclusions in distinguishing between equivocal and unequivocal requests for counsel. In *State v. Nysta*, 168 Wn. App. 30, 42, 275 P.3d 1162 (2012), Division One of the Court of Appeals held that "I gotta talk to my lawyer" was an unambiguous invocation in the absence of conditional language such as "maybe," "perhaps," "if," or "or." But in *State v. Pierce*, 169 Wn. App. 533, 545-46, 280 P.3d 1158 (2012), Division Two of the Court of Appeals found an invocation unequivocal even when it included conditional "if" language because the condition – that police were accusing him of murder – had been clearly established. Then, by contrast, in *State v. Gasteazoro-Paniagua*, 173 Wn. App. 751, 756-57, 294 P.3d 857 (2013), the Division Two court held that the phrase "I guess I'll just have to talk to a lawyer about it" expressed doubt and therefore amounted to an equivocal statement. And in *State v. Herron*,

177 Wn. App. 96, 103, 318 P.3d 281 (2013), Division Three of the Court of Appeals held that a conditional statement of future intent such as "if I am going to get charged" or "if it goes further" served to render a request for counsel equivocal.

These authorities demonstrate some disagreement between the divisions as to the type of language and circumstances that render a request for counsel equivocal. For example, while use of the conditional "if" in *Herron* was held to render the request equivocal, a conditional "if" in *Pierce* did not. While some federal courts have distinguished equivocal from unequivocal invocations by inquiring whether the statement implicates a present desire to consult with counsel rather than a potential desire for counsel, Washington courts lack a consistent standard or analytical framework to determine when an invocation is equivocal. *See, e.g., U.S. v. Lee*, 413 F.3d 622, 626 (7th Cir. 2005).

In the present case, Harris's request – "I think I should probably have an attorney present" – employs obligatory ("should") and probabilistic ("probably") language rather than conditional terms ("if") or language invoking only a possibility ("maybe," "might"). Because the effectiveness of Harris's invocation concerns the practical application of the Fifth Amendment right to counsel during investigation, this Court

should accept review to evaluate whether the Court of Appeals correctly held that Harris's language "cast doubt on whether he truly desired to have an attorney present." *Slip op.* no. 32268-8-III (August 5, 2015) at 5.

VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(3) and this Court should enter a ruling reversing the trial court's ruling concluding that Harris's invocation of counsel was equivocal and admitting his subsequent statement at trial.

RESPECTFULLY SUBMITTED this 4th day of September, 2014.

ANDREA BURKHART, WSBA #38519
Attorney for Petitioner

DECLARATION OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Timothy Rasmussen
Stevens County Prosecutor
215 S. Oak Street
Colville, WA 99114

Eric M. Harris, DOC # 888118
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

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

Signed this 4th day of September, 2015 in Walla Walla, Washington.

Breanna Eng

APPENDIX A

FILED
AUGUST 6, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. ERIC MARCEL HARRIS, Appellant.	)	No. 32268-8-III
	)	UNPUBLISHED OPINION

KORSMO, J. — Eric Harris appeals his second degree murder conviction for the shooting death of his brother, arguing that the trial court erred by admitting his statement to law enforcement, in excluding proffered defense testimony, and in finding chemical dependency. We affirm.

FACTS

Eric Harris shot his brother, Larch Harris, with a shotgun during a confrontation witnessed by several others. He was arrested the next day. Once at the jail, Deputy Sheriffs Michael Gilmore and Michael George sought to interview him at the Stevens County Jail. They obtained Mr. Harris's consent to record and informed him of his *Miranda* rights including the right to have an attorney present during questioning. Mr. Harris averred that he understood his rights, but waivered on the decision to request an

attorney, saying "well I don't know. I think I should probably have an attorney present." The following exchange occurred:

> **GILMORE**: Okay.
> **HARRIS**: (Inaudible) telling you, I mean --. I don't know. This is (inaudible).
> **GILMORE**: All right. It's your -- it's your prerogative, man. I mean, it is what it is. We've only got one side of it, but I don't want to force you into --
> **HARRIS**: Well, there's only going to be one side. The other guy's dead.
> **GILMORE**: Well, I haven't heard from you -- . . . See what I'm saying?
> **HARRIS**: Right.
> **GILMORE**: So, -- Like I say, I'm not -- I'm not going to push it -- on you. If you choose to talk to an attorney, that's fine. If you -- if you choose to talk to us, that's fine, too. But its – its [sic] got to be your decision, man.
> **GEORGE**: Got to be your decision, Eric.
> **HARRIS**: Let's just get it done.

Report of Proceedings (RP) at 24-25.

Mr. Harris proceeded to explain the events leading up to his arrest; he admitted that he fired the fatal shot. Prior to trial, he moved to suppress those statements. The trial court denied the motion, determining that Mr. Harris voluntarily waived his right to counsel. In so deciding, the trial court noted that his initial statement was equivocal and the ensuing colloquy to confirm whether he was invoking the right was proper.

The matter proceeded to jury trial on charges of first degree murder and unlawful possession of a firearm. The recorded interview was played for the jury during testimony from the two deputies. In addition, the State presented evidence from eyewitnesses, forensic experts, and investigators. To buttress its proof of premeditation, the State

enlisted the testimony of Mr. Harris's cellmate, Shane Lyng. Among other items, Mr. Lyng's testimony included evidence that Mr. Harris lacked remorse for killing. In turn, Mr. Harris proffered two witnesses to rebut the testimony, arguing that the witnesses were intended as fact witnesses of Mr. Harris's post-incident but pre-arrest demeanor and the fact that he was crying. The trial court found that evidence of his demeanor at the time of the arrest was irrelevant and that his conduct of crying was being offered as an assertion and therefore excluded as hearsay.

The jury acquitted Mr. Harris of first degree murder, but found him guilty of the possession charge and of the lesser included crime of second degree murder. At sentencing, the trial court determined that Mr. Harris had a chemical dependency based on testimony that much of the conflict between him and his brother had been fueled by drugs and alcohol. The court ordered drug and alcohol treatment and random urinalysis upon his release. Mr. Harris then appealed to this court.

ANALYSIS

Mr. Harris contends that the trial court should have excluded his statement to the police, should have permitted defense testimony about his remorse, and should not have found him chemically dependent. We address the contentions in that order.

Request for an Attorney during Police Interview

This court reviews findings of fact from a CrR 3.5 hearing for substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Conclusions of law

derived from those findings, however, are given de novo review. *State v. Gasteazoro-Paniagua*, 173 Wn. App. 751, 755, 294 P.3d 857, *review denied*, 178 Wn.2d 1019 (2013). Unchallenged findings are verities on appeal. *Id.* Mr. Harris's challenge to the soundness of the court's conclusion that his statement was equivocal is subject to de novo review.

Custodial interrogations invoke a criminal suspect's *Miranda* rights. *State v. Radcliffe*, 164 Wn.2d 900, 905, 194 P.3d 250 (2008). Included in these rights is the right to have counsel present during the interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). A suspect may waive his or her right to counsel and proceed with the questioning if done in an informed, voluntary manner. *Radcliffe*, 164 Wn.2d at 905-906. Once waived, a suspect may, at any time, change his or her mind and request an attorney. *Id.* at 906. The questioning must cease. *Edwards v. Arizona*, 451 U.S. 477, 484-485, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981). To invoke the right, the request must be "unequivocal," meaning that the suspect "must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994). *Accord*, *Gasteazoro-Paniagua*, 173 Wn. App. at 755-756.

Alternatively, when a police officer reasonably cannot draw the conclusion that a suspect desires counsel, he or she is under no compulsion to cease questioning. *Radcliffe*, 164 Wn.2d at 906. This distinction prevents the process from forming "irrational

obstacles to legitimate police investigative activity." *Davis*, 512 U.S. at 460. To hold otherwise would needlessly prevent police from questioning a suspect even in situations where the suspect did not wish to have a lawyer present. *Id.*

Mr. Harris maintains that his statement, "[w]ell, I don't know. I think I should probably have an attorney present," is an unequivocal invocation of his right to counsel. We disagree. Washington courts do not consider statements that are accompanied by conditions, words of ambiguity, or obfuscating language to be unequivocal. *Radcliffe*, 164 Wn.2d at 907 ("maybe [I] should contact an attorney"); *State v. Herron*, 177 Wn. App 96, 103, 318 P.3d 281 (2013), *review granted*, 182 Wn.2d 1001, 342 P.3d 326 (2015) (requesting an attorney "if I am going to get charged" and "if it goes farther"); *Gasteazoro-Paniagua*, 173 Wn. App. at 756 ("I guess I'll just have to talk to a lawyer about it"). Here, Mr. Harris's statement was couched in terms of indecision and ambiguity. He used the phrases "I don't know" and "should probably." These obfuscating phrases were enough to cast doubt on whether he truly desired to have an attorney present. When the detectives sought to clarify, Mr. Harris resolved any doubt on the topic by saying "[l]et's just get it done." Thus the trial court correctly concluded that Mr. Harris's statement was equivocal. There was no error.[1]

[1] We therefore need not decide whether any error was harmless in light of the theory of self-defense. Mr. Harris did not testify and the only basis for the self-defense instruction came through the admission of his statement to the deputies.

Relevance and Hearsay

Next Mr. Harris contends that the trial court's exclusion of demeanor evidence violated his Sixth Amendment right to present a defense because it prevented his rebuttal of the State's evidence showing he lacked remorse. The trial court did not abuse its discretion.

The Sixth Amendment provides a criminal defendant the right to be "confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favor." *State v. Smith*, 101 Wn.2d 36, 41, 677 P.2d 100 (1984). In plain terms, it is "the right to present a defense." *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). The right is not absolute, though, and does not extend protection to irrelevant or immaterial evidence. *Smith*, 101 Wn.2d at 41; *State v. Weaville*, 162 Wn. App. 801, 818, 256 P.3d 426 (2011); *State v. Aguilar*, 153 Wn. App. 265, 275, 223 P.3d 1158 (2009).

We review rulings on admissibility of evidence for abuse of discretion. *State v. Quaale*, 182 Wn.2d 191, 196, 340 P.3d 213 (2014). An abuse of discretion exists "when a trial court's exercise of its discretion is manifestly unreasonable or based on untenable grounds or reasons" *Id.* at 197. Trial courts are given considerable discretion when it comes to the admissibility of evidence to the point where "reasonable persons could take differing views regarding the propriety of the trial court's actions." *Id.* at 196. To that end, an abuse of discretion occurs where the ruling is contrary to law. *Id.* at 196-197.

Absent an abuse of discretion, a trial court's ruling on the admissibility of evidence will not be disturbed on appeal. *Aguilar*, 153 Wn. App. at 275.

Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Testimony of a defendant's demeanor is admissible if relevant. *State v. Day*, 51 Wn. App. 544, 552, 754 P.2d 1021 (1988). The threshold to admit relevant evidence is low and even minimally relevant evidence is admissible. *State v. Gregory*, 158 Wn.2d 759, 835, 147 P.3d 1201 (2006). Washington courts consider evidence of a defendant's conduct that tends to reveal the defendant's consciousness of guilt to be relevant. *State v. McGhee*, 57 Wn. App. 457, 461, 788 P.2d 603 (1990); *State v. Kosanke*, 23 Wn.2d 211, 215, 160 P.2d 541 (1945). Moreover, Washington courts have repeatedly permitted demeanor evidence when offered to provide foundation for fact witnesses who testify to their own impressions.[2]

Here, Mr. Harris argues that the trial court erred in excluding the testimony of Mary Lane Elizabeth concerning his demeanor on the day of the arrest, including his

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[2] *State v. Craven*, 69 Wn. App. 581, 585, 849 P.2d 681 (1993) (a social worker properly testified to her observations of the defendant's difficulty in making eye contact and the fact that she was staring at the floor during her interview); *State v. Allen*, 50 Wn. App. 412, 418-419, 749 P.2d 702, *review denied*, 110 Wn.2d 1024 (1988) (detective allowed to testify that the defendant's grief over her husband's death did not appear to be sincere).

"reactions, the way he was acting, [and] the way he was carrying himself." RP at 1158. He argued that the testimony was relevant because it would rebut Mr. Lyng's testimony that he showed no remorse. The trial court disagreed and excluded the testimony as irrelevant. Mr. Harris's proffered demeanor evidence was not probative rebuttal evidence because he never tied this alleged remorse evidence to the killing. In contrast, the State's demeanor evidence centered on Mr. Harris's attitude while he was in jail describing the crime to his cellmate. There simply was no nexus between the defense "remorse" evidence and the shooting. Absent testimony from Mr. Harris or a proffer that clearly tied the remorse to the offense, it simply was not relevant. The trial court's conclusion was not manifestly unreasonable under the circumstances.

The trial court's conclusion also resonated with each party's respective theory of the case. Mr. Harris advanced a theory of self-defense at trial, thereby relieving the jury of deciding responsibility for the underlying act. In fact, he argued in closing that, although he shot his brother, he did not aim to kill. RP at 1499, 1508-1509. In other words, he conceded the killing but argued that it was justified. Therefore, testimony that he demonstrated remorse does not make the fact that he committed the underlying act more or less likely. The State, on the other hand, was attempting to prove premeditation and argued that Mr. Harris's behavior after the shooting showed a consciousness of guilt for forming the design to gun down his brother. Consequently, the ruling that evidence of his lack of remorse could be included in the State's case while defense evidence of

remorse should be excluded was a proper application of ER 401. Because there is no Sixth Amendment right to irrelevant evidence, there is no violation of Mr. Harris's right to present a defense. *Smith*, 101 Wn.2d at 41.

Next, Mr. Harris proffered Stacy Vollendorf to testify that she observed Mr. Harris crying on the day following the shooting. The trial court excluded the evidence as hearsay after finding that the defense intended to use it for the purpose of asserting that the defendant was remorseful.

Hearsay is defined as any statement "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). This definition extends beyond spoken words to include writing or even non-verbal conduct. ER 801(a); *In re Dependency of Penelope B.*, 104 Wn.2d 643, 652, 709 P.2d 1185 (1985). Conduct is considered a statement when it is "assertive," meaning that it is intentionally being used as a substitute for words to express a fact or opinion. *Id.* at 652. By contrast, an involuntary act such as trembling is nonassertive conduct. *Id.* "[G]reetings, pleasantries, expressions of joy, annoyance or other emotions" are also considered nonassertive when they are not intentional expressions of fact or opinion and thus fall outside of hearsay. *Id.* The burden is on the objecting party to persuade the court that the conduct in question was intended as an assertion; doubtful cases are resolved in favor of admissibility. *Id.* at 654. Nonassertive conduct is governed by principles of relevance. *Id.* at 652-653.

Here, the defense offered the fact that Mr. Harris was crying to make the assertion to the jury that he felt remorseful. To the extent that the court correctly discerned that the evidence was offered as a statement of remorse, it was properly excluded as hearsay. A party's out-of-court statement is not hearsay when offered against the party. ER 801(d)(2)(i). However, when offered by the party, the normal rules against hearsay apply. Mr. Harris could not offer his "statement" of remorse through another person.

To the extent that this evidence was not a statement, but constituted simple nonassertive conduct, it was not relevant for the same reasons that Ms. Elizabeth's testimony was not relevant. Emotions, even those that evidence remorse, are not relevant unless they related to the issues in the case. Mr. Harris wanted to establish that he was remorseful about killing his brother, but never presented evidence connecting his emotions the next day to the killing. He was free to so testify or otherwise establish a connection, but he never did so.

For both reasons, the trial court properly excluded the proposed rebuttal testimony. There was no abuse of discretion.[3]

[3] Here, too we need not address whether any error was harmless in light of the acquittal on the first degree murder count to which the State's evidence of remorse was directed.

Chemical Dependency Condition

Lastly, Mr. Harris argues that the trial court lacked authority to impose drug and alcohol treatment arguing that there was insufficient evidence to support the trial court's finding of chemical dependency. We disagree.

Crime related prohibitions are orders directly related to "the circumstances of the crime." RCW 9.94A.030(10). Determining whether a relationship exists between the crime and the condition "will always be subjective, and such issues have traditionally been left to the discretion of the sentencing judge." *State v. Parramore*, 53 Wn. App. 527, 530, 768 P.2d 530 (1989). Thus, we review sentencing conditions for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). An abuse of discretion occurs when the imposition of a condition is manifestly unreasonable. *State v. Valencia*, 169 Wn.2d 782, 791-792, 239 P.3d 1059 (2010). Where a court finds that a defendant suffers from a chemical dependency, it is authorized to impose conditions that are reasonably necessary or beneficial in rehabilitating the offender. RCW 9.94A.607(1).

Here, the trial court found that Mr. Harris suffered from a chemical dependency based on collateral testimony from witnesses. The court explained that, based on this testimony, it was alerted to the fact that much of the conflict between Mr. Harris and his brother was fueled by drugs or alcohol. Consequently, the finding of chemical dependency was not manifestly unreasonable in light of the record and the court did not abuse its discretion.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Brown, A.C.J.

Lawrence-Berrey, J.

BURKHART & BURKHART, PLLC

September 04, 2015 - 2:01 PM

Transmittal Letter

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Petition for Review

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