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Division I  
State of Washington

NO. 73064-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

KAREEM HARRIS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES D. CAYCE

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Legal causation asks whether the relationship between the harm intended or hazarded by the defendant and the harm that ultimately resulted is sufficiently close that liability should attach as a matter of law, based on considerations of justice, policy, and precedent, once the defendant is found to be the cause in fact of the harm. Where the jury found beyond a reasonable doubt that the defendant was the cause in fact of the victim's death and acted with intent to cause the victim's death, was legal causation satisfied as a matter of law?

2. Although causation in fact is a question for the jury, legal causation is a question of law for the court to decide based on considerations of justice, policy, and precedent. Where the trial court used the standard WPIC causation instruction to properly instruct the jury on causation in fact, but did not add language instructing the jury on legal causation, was the causation instruction proper and sufficient?

3. Our supreme court has held that it is not deficient performance for defense counsel to agree to a standard WPIC jury instruction that has not been questioned by the appellate courts. Where defense agreed to the standard WPIC regarding causation,

the validity and sufficiency of which has never been questioned by the appellate courts, and where there is no reasonable probability that the juror's verdict would have been different had the instruction included language regarding legal causation, has the defendant failed to establish that his counsel rendered ineffective assistance by agreeing to the WPIC causation instruction?

**B     STATEMENT OF THE CASE**

1.     PROCEDURAL FACTS.

The State charged the defendant, Kareem Harris, by amended information with one count of murder in the first degree with a firearm enhancement. CP 7. A jury found Harris guilty as charged and found the firearm enhancement proven. CP 55, 63. The trial court imposed a high-end standard range sentence of 320 months in prison, plus an additional 60 months for the firearm enhancement. CP 108. Harris timely appealed. CP 115.

2.     SUBSTANTIVE FACTS.

Around 5:00 a.m. one morning in October 2009, Wilbur Lee Gant was getting into his car to go to work when the defendant,

Kareem Harris, shot him five times. 11RP<sup>1</sup> 70-72; 13RP 26, 35; 19RP 116. Harris had previously worked at the same factory as Gant before being fired for time card fraud, and was angry at Gant due to the role Harris believed Gant had played in his firing.<sup>2</sup> 21RP 131; 22RP 11. After multiple neighbors called 911, medics intubated Gant to keep him breathing and transported him to Harborview Medical Center, where he underwent emergency surgery to control bleeding that otherwise would have quickly killed him. 11RP 26, 44, 71; 18RP 71-73, 80.

Doctors found bullet wounds in Gant's left elbow, upper left abdomen, right hip, left buttock, left thigh, and two different places in his back. 18RP 73. After cutting Gant's abdomen open from the breast bone to the pelvis to assess the damage, doctors discovered that bullets had struck Gant's liver, gallbladder, colon, and pylorus, which is the valve connecting the stomach to the small intestine. 18RP 76. The injury to Gant's liver causing bleeding so extensive

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<sup>1</sup> This brief will refer to the 29 volumes of the verbatim report of proceedings as 1RP (11/5/13), 2RP (11/6/13), 3RP (8/6/14), 4RP (8/12/14), 5RP (8/14/14), 6RP (8/21/14), 7RP (7/2/14, 7/3/14, & 11/21/14), 8RP (9/4/14), 9RP (9/8/14), 10RP (9/9/14), 11RP (9/10/14), 12RP (9/11/14), 13RP (9/16/14), 14RP (9/17/16), 15RP (9/18/14), 16RP (9/22/14), 17RP (9/23/14), 18RP (9/24/14), 19RP (9/25/14), 20RP (9/29/14), 21RP (9/30/14), 22RP (10/2/14), 23RP (10/6/14), 24RP (10/7/14), 25RP (10/9/14), 26RP (10/13/14), 27RP (10/14/14), 28RP (10/15/14), and 29RP (10/16/14).

<sup>2</sup> Because the identity of the shooter is not at issue in this appeal, this brief will not summarize the other evidence that was offered at trial to corroborate Gant's statements that it was Harris who shot him.

that doctors found one third of Gant's total blood supply pooled in his abdominal cavity. 18RP 75-76. In addition to stemming the bleeding from Gant's liver, doctors had to remove the pylorus, disconnecting the stomach from the small intestine, remove a portion of the colon containing the valve between the small and large intestine, and remove Gant's gallbladder. 18RP 79-81; 22RP 149.

The next day, Gant, who was still unconscious and on a ventilator, underwent two more surgeries: one to repair his elbow and remove bullet fragments from it, and another to reconnect the now-disconnected portions of his gastrointestinal tract and to close up his abdominal cavity. 18RP 84-85, 91-93. Because it was not possible to recreate the pylorus, doctors had to connect Gant's small intestine directly to what remained of his stomach. 18RP 88, 91-92. The loss of the valves between the stomach and the small intestine and between the small and large intestines affects the orderly movement of food through the gastrointestinal system, and makes it easier for material to move from the intestines back into the stomach, which normally should not happen. 22RP 151.

Gant remained hospitalized for 16 days following the shooting. 18RP 108. During that time, he endured complications

such as an infection in his colon, collapsed lungs, and fluid collecting in his liver. 18RP 96, 101-03; 19RP 108. He also suffered from anxiety and nightmares, and was diagnosed with post-traumatic stress disorder ("PTSD"), a common occurrence among patients who suffer a severe traumatic injury. 18RP 98. As a result of his injuries, Gant was in considerable pain, was unable to walk unassisted, and had general weakness throughout his body, limiting his ability to get in and out of bed or do household activities. 18RP 110; 19RP 55. He needed help dressing himself and changing his bandages. 18RP 112.

As Gant recovered at home under the care of his wife over the ensuing months, his physical state appeared to slowly improve, but his mental state worsened. 19RP 55. His pain decreased and he was able to walk more easily, though he would use a cane for the rest of his life. 19RP 55, 69. Over the next year, Gant continued to take medication and see doctors and physical therapists regularly for issues related to the shooting, such as multiple instances of bronchitis, continued severe PTSD, removal of some of the bullet fragments left in his body, mobility problems in his elbow, and leg muscle spasms and numbness. 19RP 75, 91, 105, 107, 125; 21RP 86.

Bronchitis is a viral respiratory illness that usually does not require antibiotics. 19RP 108. However, the damage to Gant's lungs and scar tissue that resulted from being intubated, put on a ventilator, and suffering collapsed lungs following the shooting put Gant at greater risk that bronchitis would develop into pneumonia, so doctors felt it necessary to treat the bronchitis conservatively with antibiotics. 19RP 108-10, 125-26.

Gant's PTSD manifested in the form of extreme anxiety, constant sweating, nightmares, daily panic attacks, fear of leaving his home, and extreme discomfort with being around people outside his immediate friends and family. 19RP 95; 21RP 21. His symptoms were so debilitating that he never became able to return to work. 19RP 79, 114-15; 21RP 20.

One evening in early January 2011, approximately 14 months after the shooting, Gant's wife called an ambulance after Gant became short of breath and began coughing up blood. 19RP 76; 22RP 65. Blood tests and a CT scan at St. Francis hospital revealed that Gant's kidneys were not functioning properly, and that he had pneumonia, a bacterial infection, in both lungs. 22RP 67-68. Doctors determined that the bacteria infecting Gant's lungs were E. coli, and that he was suffering from severe sepsis, a

frequently lethal condition wherein a severe localized infection quickly disseminates throughout the entire body, overwhelming the kidneys, lungs, heart, and brain. 22RP 73-75.

Gant was intubated and given fluids and multiple antibiotics, but remained unstable in the intensive care unit throughout the night. 22RP 75. The next morning, a “code blue,” indicating a loss of breathing or heart function, was called a total of four times. 22RP 78, 85-87. Gant remained unconscious throughout the day, and died at 1:46 p.m. that afternoon, less than 24 hours after arriving at the hospital. 22RP 90, 97.

Medical examiner Dr. Timothy Williams performed an autopsy, and identified the cause of death as bilateral bronchopneumonia resulting from remote gunshot wounds. 22RP 123, 168. E. coli is not a common bacteria found in cases of pneumonia; it occurs naturally only in the colon. 22RP 73; 27RP 27. Williams testified that the damage to Gant’s colon from the shooting “facilitated or caused those [E. coli] organisms to get into the lungs, which caused the pneumonia.” 22RP 169. Williams described two possible ways in which that may have happened; the first was that the loss of the valves in Gant’s gastrointestinal tract may have allowed E. coli to move from the colon into the stomach,

and from there be regurgitated into the throat and breathed into the lungs, a process known as aspiration. 22RP 169-70. The second was that the scar tissue and permanent staples resulting from the bowel injuries may have resulted in chronic inflammation, which would allow E. coli to move from the colon directly into the bloodstream, which would then carry the bacteria into the lungs, causing pneumonia. 22RP 170. Williams explained that, as is often the case with pneumonia, it was not medically possible to definitively determine which particular path the E. coli took to get into Gant's lungs. 22RP 173.

The autopsy also revealed that the shooting and ensuing surgeries had resulted in extensive scar tissue, turning Gant's abdomen into "basically just one matted mass of organs embedded in scar tissue." 22RP 134. Williams testified that some level of internal scar tissue, also known as adhesions, was common after abdominal trauma or surgery, but that Gant presented one of the most extreme cases of abdominal adhesions he'd seen in his career. 22RP 136-37. He described how the abdominal organs are normally anchored only to the back wall of the abdominal cavity, and are able to move around to accommodate expansion of

the diaphragm, the muscle that separates the chest cavity from the abdomen, in the course of breathing or coughing. 22RP 134.

In Gant's case, the immobility of the abdominal organs meant that Gant's ability to cough, and thus clear debris out of his airway, was impaired. 22RP 134-35. This put him at higher risk of pneumonia, and left him less able to detect the early onset of pneumonia. 22RP 171. The lack of organ mobility also would have impaired the downward movement of food through the gastrointestinal system. 22RP 150.

The autopsy also revealed that Gant was in the early stages of both emphysema and cirrhosis of the liver when he died. 22RP 141-42, 145. However, medical examiners determined that neither condition played a significant role in Gant's death—the cirrhosis had not progressed to the point of affecting liver function, and the emphysema would have been detectable while the patient was alive, which it was not in Gant's case, if it were severe enough to contribute to death. 22RP 163; 27RP 32.

Chief medical examiner Dr. Richard Harruff testified that he agreed with Williams' conclusion that Gant's death was caused by pneumonia due to multiple remote gunshot wounds. 27RP 22. He explained that Williams' inclusion of emphysema and cirrhosis of

the liver as “pathological diagnoses” in the autopsy report merely signified that they had been detected during the autopsy, and did not necessarily mean that they contributed to Gant’s death. 27RP 16-17. Harruff testified that the gunshot wounds were “a very important contributing factor[,] and quite likely the most important contributing factor” in Gant’s death. 27RP 23. While acknowledging the possibility that more than one factor contributed to Gant’s death, Harruff testified that he was “100 percent” certain that “the gunshot wound injuries were a major contributing factor to Mr. Gant’s death.” 27RP 37.

Harris’s theory of the case was that he was not the shooter, and that the shooting did not cause Gant’s death. 28RP 40-68. Harris testified on his own behalf that he was not the person who shot Gant. 26RP 6. The sole other defense witness was Dr. Carl Wigren, a forensic pathologist. 24RP 19-20. Wigren testified that he had reviewed Gant’s medical records but had not spoken to any of Gant’s doctors or care providers, and opined that the gunshot wounds were “in no way related” to the pneumonia that killed Gant. 24RP 31, 65, 83.

Wigren’s analysis focused on what he perceived to be inconsistencies in Gant’s reporting of his alcohol use both before

and after the shooting, and concluded that Gant was underreporting his alcohol use in a way that was “consistent with” ongoing chronic alcohol abuse. 24RP 37-38. Gant’s statements to doctors, and his wife’s testimony at trial, indicated that Gant had once been a heavy drinker, but had cut back after meeting his wife, and continued to be a moderate drinker after the shooting, becoming drunk fewer than 10 times in the 14 months between the shooting and his death. 19RP 72-73, 140; 20RP 7, 10; 21RP 14. Based on the fact that Gant had a low blood-alcohol level when he arrived at the hospital the evening before he died, Wigren speculated that Gant “could have been” extremely drunk earlier in the day and could have passed out and aspirated. 24RP 62. He later stated more definitively, with no additional support, that Gant’s pneumonia resulted from Gant aspirating stomach contents during a drunken stupor. 24RP 142. He noted that the E. coli could conceivably have entered Gant’s system through something he consumed rather than from his own colon. 24RP 71-73.

On cross-examination, Wigren acknowledged that his opinions relied entirely on the assumption that he had accurately interpreted Gant’s medical records. 24RP 158. However, questioning by the prosecutor revealed numerous flaws in Wigren’s

understanding of Gant's physical state and health following the shooting. For example, he mistakenly believed that Gant had returned to work full-time within four months of the shooting, when in fact Gant had never been well enough to return to work, and admitted that he relied on that belief in forming his opinion that the gunshot wounds had nothing to do with Gant's death. 24RP 85-89. He also mistakenly believed that surgeons who treated Gant at Harborview had removed only one valve in Gant's gastrointestinal tract, leaving the valve between Gant's stomach and small intestine in place, and he did not know how much of Gant's stomach had been removed. 24RP 96-97, 109. Based on this inaccurate understanding of the surgical repairs, Wigren asserted that bullet wounds would not have had any effect on the functioning of Gant's gastrointestinal tract. 24RP 116.

Finally, Wigren's opinion that Gant suffered from chronic alcohol abuse both before and after the shooting was undercut by Wigren's own testimony and that of numerous other witnesses. Wigren agreed that his assessment of Gant's alcohol use weighed heavily in his ultimate opinion that the pneumonia that killed Gant had nothing to do with the gunshot wounds. 24RP 116. He admitted that his opinion of Gant's alcohol abuse relied largely on

social history sections of Gant's medical records from various visits, and that he had no idea what role the auto-population of historical data in Virginia Mason's electronic medical records might have played in generating the information that he assumed had been provided contemporaneously by Gant at each visit. 24RP 90. He also was unaware that Gant had been diagnosed with PTSD, and assumed that Gant's sweating and tremors during a particular doctor's appointment indicated that Gant was suffering from alcohol withdrawal; he was unaware that sweating and tremors could be symptoms of PTSD. 24RP 116, 118.

A doctor who treated Gant at Harborview testified that if Gant had been a chronic heavy alcohol user at the time of the shooting, there would have been no way to mask the physiological signs of alcohol withdrawal during his prolonged hospitalization; however, Gant displayed no such signs. 21RP 129-30. Multiple other doctors also testified that Gant showed no signs of chronic heavy alcohol use after the shooting, and Williams testified that while Gant's early-stage cirrhosis of the liver could have been caused by chronic alcohol use at some point in his life, at death he lacked the other physiological signs typically present in chronic heavy drinkers. 19RP 129; 21RP 19; 22RP 172-73.

Gant's wife testified that although after the shooting Gant sometimes snuck alcohol when she was not around, there were no signs that he had done so in the days leading up to his final hospitalization, nor had he drunk in her presence the night before his final hospitalization. 19RP 77, 80. Nevertheless, Wigren stated that even though he had "no way of knowing" whether Gant had in fact drunk himself into unconsciousness and then aspirated his own vomit into his lungs, he believed that this was what had caused the pneumonia. 24RP 145. However, Wigren admitted that although medical records from Gant's final hospitalization indicated that doctors had found food particles in his esophagus, the autopsy found no evidence of any food particles in Gant's lungs. 22RP 97; 24RP 145.

After deliberating for only one day, the jury found Harris guilty of murder in the first degree as charged. 29RP 10; CP 63. As a result, they did not address any of the lesser included offenses on which they had been instructed, which included attempted murder in the first degree. CP 56.

**C. ARGUMENT**

**1. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THAT HARRIS WAS THE LEGAL CAUSE OF THE VICTIM'S DEATH.**

Harris contends that the evidence admitted at trial was insufficient to support a finding that the shooting by Harris was the legal cause of Gant's death. This claim should be rejected. Legal causation looks at the relationship between the result intended or hazarded by the defendant and the ultimate result that occurred in order to determine whether, as a matter of policy, the defendant should be held liable for the ultimate result once proven to be a "cause in fact" of it. Because the evidence was sufficient to support the jury's finding that Harris acted with intent to kill his victim, legal causation was satisfied and Harris was properly held liable for Gant's death after the jury determined that he was a cause in fact of the death.

**a. The Legal Cause Standard.**

Washington recognizes two elements of causation, both of which must be present before criminal liability can be imposed: cause in fact (sometimes called "but for" cause) and legal cause (sometimes called "proximate" cause). State v. Bauer, 180 Wn.2d 929, 935-36, 329 P.3d 67 (2014). Although many jurisdictions use

“proximate cause” to refer solely to legal cause, Washington courts have traditionally used the term “proximate cause” to encompass both elements of causation.<sup>3</sup> Id. at 936 n.5. Factual causation refers to the “but for” consequences of the defendant’s act—the physical causal connection between an act and an injury. Id. at 936. In contrast, legal causation “involves a determination of whether liability *should* attach as a matter of law given the existence of cause in fact.” Id. (emphasis in original). As a question of law, the determination of legal causation is an issue for the court rather than the jury, and turns on “mixed considerations of logic, common sense, justice, policy, and precedent.” Id. at 936; Colbert v. Moomba Sports, Inc., 163 Wn.2d 43, 51, 176 P.3d 497 (2008).

The standard for establishing cause in fact is identical in civil and criminal cases. Bauer, 180 Wn.2d at 936. However, our supreme court announced in Bauer that legal causation is narrower in criminal cases than in civil cases, requiring “a closer relationship between the result achieved and [the result] intended or hazarded”

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<sup>3</sup> The Brief of Appellant adopts the convention of using “proximate cause” exclusively as synonymous with “legal cause.” Brief of Appellant at 9. In light of the contradictory uses of “proximate cause” in the caselaw, this brief will use the term “legal cause” instead, and will avoid the term “proximate cause” when possible.

by the defendant, because of the more severe consequences imposed upon a finding of guilt in criminal law. Id. at 936-37, 940. In that case, Bauer was charged with assault in the third degree after a child obtained a lawfully-owned handgun that Bauer had left lying around the house, and then brought the gun to school, where it accidentally discharged and injured a classmate. Id. at 93. The supreme court eventually concluded that, because the defendant's conduct was not criminal and did not risk injury in and of itself, policy and precedent prohibited extending criminal liability to him. Id. at 940-45.

The Bauer court explained that, in civil cases, legal causation may be present even though the defendant's non-criminal negligent act was not capable of directly causing injury, such as where a defendant who leaves a tractor operational and unguarded is held liable for damages caused by children who stole the tractor, or where a store owner who sells alcohol to a minor is held liable for injuries to another minor who obtained the alcohol from the first minor. Id. at 938 (citing Schooley v. Pinch's Deli Market, Inc., 134 Wn.2d 468, 480, 951 P.2d 749 (1998); Bronk v. Davenny, 25 Wn.2d 443, 171 P.2d 237 (1946); Parrilla v. King County, 138 Wn. App. 427, 430-31, 157 P.3d 879 (2007)).

However, the Bauer court concluded that there was no support in Washington caselaw for finding legal causation in a criminal case “based on negligent acts similar to those in [Schooley, Bronk, and Parrilla] that were incapable of causing injury directly.” Id. at 938-39.

The Bauer court noted that although Washington courts have found legal causation in cases where the victim’s actions or those of a third party contributed to the harm or were also a but-for cause of the harm, in each such case the defendant committed “an intentional criminal act capable of causing harm in and of itself.” Id. at 939 (citing State v. Leech, 114 Wn.2d 700, 705, 790 P.2d 160 (1990); State v. Perez-Cervantes, 141 Wn.2d 468, 6 P.3d 1160 (2000); State v. Christman, 160 Wn. App. 741, 249 P.3d 680 (2011)). The court concluded that while legal causation exists in a criminal case where the defendant commits an intentional criminal act capable of causing harm in and of itself, it does not exist where the defendant’s act is not criminal and is incapable of causing harm in and of itself. Id. at 939-40.

b. Legal Causation Is Satisfied In This Case.

The legal causation rule enunciated in Bauer and described above is satisfied by Harris’s shooting of Gant, which was a

criminal act that would have quickly killed Gant if not for prompt medical intervention. The existence of legal causation is particularly clear where, as here, the harm that ultimately results was specifically intended by the defendant, as there can be no closer relationship “between the result achieved and that intended.” Id. at 936-37.

That legal causation is satisfied in this case is made even more clear by the fact that one of the cases cited by the supreme court in Bauer as an example of proper legal causation has remarkably similar facts. In Perez-Cervantes, the defendant was convicted of second degree murder for an incident in which he stabbed the victim, causing life-threatening internal bleeding that was surgically repaired at the hospital. 141 Wn.2d at 471. The victim stabilized and was released to recuperate at home, but days later began to internally re-bleed from the stab wound. Id. By the time the victim sought medical attention, it was too late, and he died from the internal bleeding before help arrived. Id. An autopsy revealed that the victim had consumed heroin and cocaine between the stabbing and his death, which could have caused the re-bleeding by increasing the victim’s blood pressure, and could have also masked the pain of the re-bleeding, causing the victim to

delay seeking medical attention. Id. at 472. As a result, the death certificate listed the drug abuse as a contributing factor in the death. Id.

The Bauer court identified Perez-Cervantes as an example of the principle that a defendant who stabs someone is the legal cause of the victim's death (assuming the stabbing was a cause in fact of the death) even if the victim's own subsequent conduct contributed to his death, because the defendant committed an intentional criminal act that was directly harmful. Bauer, 180 Wn.2d at 939 (citing Perez-Cervantes, 141 Wn.2d 468). Harris's case is nearly identical as far as legal causation is concerned.

Like Perez-Cervantes, and unlike Bauer, Harris committed an intentional criminal act—shooting Gant five times—that was directly harmful. Like Perez-Cervantez, and unlike Bauer, the jury found that Harris acted with the intent to cause the exact result that eventually occurred—the victim's death.<sup>4</sup> CP 33, 63. There is thus no basis in “logic, common sense, justice, policy, and precedent” to determine that liability should not attach as a matter of law once the jury found that Harris's actions were a cause in fact of Gant's death. Bauer, 180 Wn.2d at 936. Therefore, legal causation was satisfied.

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<sup>4</sup> The evidence was more than sufficient to support the jury's finding that Harris intended to cause Gant's death, and Harris does not contend otherwise.

Harris's argument that legal causation is lacking in his case turns on his contention that Bauer stands for the proposition that, in every fact pattern, a finding of legal causation in a criminal case "requires proof of a more direct connection between the act and the injury" than would be required in a civil case addressing the same fact pattern. Brief of Appellant at 10. He then looks at cases addressing what is required to establish cause in fact in civil cases, and contends that a more direct factual causal relationship between the act and the result is required in order to establish legal causation in criminal cases. Brief of Appellant at 10-13. In so doing, Harris both misinterprets Bauer and conflates factual and legal causation.

The distinction Bauer draws between criminal and civil legal causation exists only in certain fact patterns—ones where the defendant's conduct is neither criminal nor capable of causing harm by itself. Bauer, 180 Wn.2d at 936-40. Additionally, rather than focusing, as Bauer directs, on the relationship between the result he intended and the result that eventually occurred, Harris analyzes legal causation by focusing on the factual causal relationship between the shooting and Gant's eventual death. Brief of Appellant at 9-13. While Bauer does cite cases from other jurisdictions that

talk about the need for a sufficiently direct connection between the defendant's "act" and the result, Bauer makes clear that it is the intended or hazarded *result* of the defendant's act that must be sufficiently connected to the ultimate result in order to satisfy legal causation. Id. at 936-37.

In arguing that legal causation was not proven in his case, Harris spends considerable time examining whether the evidence established a sufficiently high likelihood that Gant's death was attributable to the shooting. Brief of Appellant at 9-13. However, such inquiry is irrelevant to the issue of legal causation; it is factual causation—on which point the sufficiency of the evidence has not been challenged—that examines to what extent the ultimate result is factually (as opposed to morally) attributable to the defendant's actions. See Hartley v. State, 103 Wn.2d 768, 777-79, 698 P.2d 77 (1985) (cause in fact is defined as "a cause which in a direct sequence, unbroken by any new independent cause, produces the [injury or event] complained of and without which such [injury or event] would not have happened.").

The conflation of factual and legal causation in Harris's brief is particularly evident in Harris's repeated reliance on factual causation cases within his argument on legal causation. E.g., Brief

of Appellant at 10 (citing Herskovits v. Grp. Health Co-op. of Puget Sound, 99 Wn.2d 609, 622-23, 664 P.2d 474 (1983) (Pearson, J., concurring), which analyzed “whether cause in fact has been established”); Brief of Appellant at 11 (citing Orcutt v. Spokane Cty., 58 Wn.2d 846, 853-54, 364 P.2d 1102 (1961), which analyzed whether there was “the necessary cause and effect relationship” between the defendant’s act and the victim’s death); Brief of Appellant at 12 (citing State v. Aten, 130 Wn.2d 640, 655-60, 927 P.2d 210 (1996), which analyzed whether evidence was sufficient to establish the factual “causal connection between the death and a criminal act” required to establish the *corpus delicti* for manslaughter).

As Bauer makes clear, the determination of legal causation asks only whether the result hazarded or intended by the defendant is so different from the harm that eventually occurred that, as a matter of justice, the defendant should not be held criminally liable for the ultimate harm even if he was a cause in fact of it. Bauer, 180 Wn.2d at 936-37. Because the jury properly found that Harris intended his victim’s death, legal causation was established and criminal liability for murder was properly imposed once the jury determined that Harris was the cause in fact of Gant’s death.

- c. To The Extent This Court Determines That Harris's Appeal Challenges The Sufficiency Of The Evidence As To Causation In Fact, The Evidence Was Sufficient To Support The Jury's Finding That Harris Was A Cause In Fact Of The Victim's Death.

Harris claims the State admitted insufficient evidence of "proximate cause," but defines that term as meaning "legal cause," and bases his argument on his interpretation of the standard for legal causation set out in Bauer. Brief of Appellant at 9-10, 13. The State therefore interprets his brief as challenging only the sufficiency of the evidence as to legal causation, and not as to causation in fact. However, in the event that this Court interprets Harris's brief to also raise a challenge to the sufficiency of the evidence as to causation in fact, that claim should be rejected. The evidence was more than sufficient to support the jury's finding that the shooting was a cause in fact of Gant's death.

Instruction 18 informed the jury that Harris could not be guilty of murder unless his criminal conduct was a "proximate cause" of the victim's death, with "proximate cause" defined as "a cause which, in a direct sequence, unbroken by any new independent cause, produce[d] the death, and without which the death would not have happened." CP 45. The instruction also stated, "There may

be more than one proximate cause of a death.” CP 45. As Harris properly concedes, Instruction 18 accurately instructed the jury on the standard for determining whether the shooting was a cause in fact of Gant’s death. Brief of Appellant at 18; see also State v. Leech, 114 Wn.2d 700, 711, 790 P.2d 160 (1990) (WPIC 25.02 properly states the law); State v. Dennison, 115 Wn.2d 609, 624, 801 P.2d 193 (1990) (WPIC 25.02 pertains to cause in fact).

When an appellant claims that there was insufficient evidence to support his conviction, the reviewing court views the evidence and all inferences that can reasonably be drawn from it in the light most favorable to the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Viewing the evidence in that light, if any rational trier of fact could have found the challenged element or elements of the crime proven beyond a reasonable doubt, then the evidence is sufficient to support the conviction. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

The evidence in this case was sufficient to allow a reasonable fact finder to find beyond a reasonable doubt that the shooting was “a cause which, in a direct sequence, unbroken by any new independent cause, produce[d] the death, and without which the death would not have happened.” The medical examiner

testified that pneumonia was the immediate cause of death, and that the gunshot wounds were the underlying cause of death. 22RP 168. He explained that the gunshot wounds allowed the E. coli bacteria that were naturally present in Gant's colon to get into his lungs, causing the pneumonia. 22RP 169. Additionally, the immobility of Gant's organs due to scar tissue from the shooting made him less able to prevent infection in his lungs (i.e., pneumonia) through effective coughing, and less able to detect the early onset of pneumonia once it occurred. 19RP 108-10; 22RP 134-35, 171. Expert testimony established that, normally, patients who contract pneumonia notice a rapid decline and seek medical treatment "quite early." 19RP 111. If detected and treated early, pneumonia is easily combated with antibiotics; however, pneumonia progresses quickly, and a patient's prognosis is directly related to how soon the first dose of antibiotics is received. 19RP 110-11.

The chief medical examiner agreed that Gant's death was caused by pneumonia that was in turn caused by the gunshot wounds. 27RP 22. While he acknowledged the logical possibility that other factors contributed to Gant's death, there were no other factors that he believed had in fact significantly contributed, and he

testified that he was “100 percent” certain that “the gunshot wound injuries were a major contributing factor in Mr. Gant’s death,” and that they were “quite likely the most important contributing factor.”<sup>5</sup> 27RP 23, 37. Moreover, the medical examiners determined that Gant’s mild emphysema and cirrhosis of the liver, likely caused by his smoking and drinking, could not have been significant contributing factors in his death. 22RP 163; 27RP 32. Therefore, contrary to Harris’s theory of the case, they were not a “new independent cause” that prevented the shooting from being a cause in fact of Gant’s death.

The medical experts’ testimony that the shooting was responsible for Gant’s pneumonia was supported by the fact that it is highly unusual for *E. coli* to be the bacterial agent responsible for pneumonia, as it was in Gant’s case, because *E. coli* occurs naturally only in the colon. 22RP 73; 27RP 27. The medical

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<sup>5</sup> Harris attempts to paint testimony that the gunshot wounds were a “contributing factor” in the death as less probative than testimony that the wounds were a “cause” of death. Brief of Appellant at 14-15. However, the medical examiner used “cause” and “contributing factor” interchangeably. 27RP 23 (noting that a finding that an injury was a contributing factor in the death does not require that “the injury was the only cause of death”). Also, contrary to Harris’s contention, the medical examiner’s testimony was not “limited solely to the question of whether the injuries contributed to death without regard to how much they contributed.” Brief of Appellant at 14-15. His testimony that the determination of homicide versus natural death involves a question of contribution without regard for amount of contribution was unrelated to, and in fact followed, the testimony that the gunshot wounds were likely “the most important contributing factor” in Gant’s death. 27RP 23.

examiner explained that in Gant's case the gunshot wounds allowed E. coli to eventually escape the colon and travel to the lungs.<sup>6</sup> 22RP 169. The State's experts identified two mechanisms by which this may have occurred: (1) by E. coli moving upwards from the colon into the stomach, due to the absence of the valves between the colon and the small intestine and between the small intestine and the stomach, and then being regurgitated and aspirated in to the lungs, or (2) by chronic inflammation at the site of the bullet wounds in the colon, which would allow the bacteria to move directly into Gant's bloodstream, and from there into the lungs. 22RP 169-70. The medical examiner stated that it was not medically possible to definitively determine which particular path the E. coli took to get into Gant's lungs. 22RP 173.

Harris contends that because the experts were unable to definitively say that E. coli got into Gant's lungs through aspiration, the evidence was insufficient to support the jury's finding that the shooting was a cause in fact of Gant's death. Brief of Appellant at 15-16. However, he offers no authority for the proposition that the State was required to prove not just that the shooting caused the

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<sup>6</sup> In contrast, there was no evidence to support Harris's theory that the E. coli had come from something Gant ate, rather than from his own colon, other than brief testimony by the defense expert that such a thing was possible. 24RP 71.

E. coli pneumonia, but the precise mechanism, out of two possibilities, through which that causation occurred. See DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”). If that proposition were true, a defendant whose victim died promptly after being shot in the lungs could not be found to be a cause in fact of the victim’s death if doctors were unable to determine whether the precise mechanism that caused death was blood loss or inability to breathe. The law compels no such absurd result.

Harris is also incorrect when he contends that the evidence was insufficient to support a finding of causation absent testimony that the shooting “created a more than 50% diminution in the chance of survival.” Brief of Appellant at 11, 13, 15. The cases he cites for this proposition, however, are medical malpractice cases in which the diminution in the chance of survival was analyzed only because the victim already had a potentially fatal condition before the defendant doctor became involved, which the doctor then failed to properly treat. E.g., Herskovits, 99 Wn.2d 609 (role of doctor’s delay in diagnosing patient’s cancer in patient’s death); Estate of

Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C., 177 Wn. App. 828, 313 P.3d 431 (2013) (role of doctor's failure to diagnose blood clots in patient's death).

While such cases state that evidence establishing a greater-than-50-percent reduction in the decedent's chance of survival is sufficient to establish causation-in-fact of death, nowhere do they state that such testimony is necessary to establish causation in fact in all cases, or that that expert testimony identifying the defendant's actions as the cause of death is insufficient to support a finding of causation absent testimony regarding the precise reduction in the chance of survival. Moreover, it makes no sense to talk about a reduction in the victim's "chance of survival" in a case where there is no pre-existing condition, the chance of surviving which was diminished by the defendant's actions. This case would be analogous to Herskovits and Dormaier only if the doctors in those cases had actually given the patient the condition that eventually killed him or her, rather than merely failing to treat it properly.

Harris's argument also goes astray when he attempts to analogize to the level of causation required to establish *corpus delicti* for murder. State v. Aten does not stand, as Harris contends, for the proposition that "where medical testimony cannot

rule out an innocent explanation as opposed to a criminal cause for death, the State has not presented even prima facie evidence of the *corpus delicti* of the crime of murder.” Brief of Appellant at 12.

In Aten, the defendant was tried for murder of an infant in her care, but aside from the defendant’s statements, the evidence was equally consistent with murder and natural death. The Aten court stated that “evidence that simply fails to rule out criminality or innocence does not reasonably or logically support an inference of either,” and concluded that there must be *some* evidence that is inconsistent with a hypothesis of innocence in order to establish the causal element of *corpus delicti* of murder.<sup>7</sup> Aten, 130 Wn.2d at 659, 661. Nothing in Aten supports Harris’s contention that all causes of death other than the shooting must be ruled out in order to prove that the shooting was a cause in fact of the death. Indeed, that contention is directly contradicted by the well-settled principle that there can be more than one cause in fact of a death. CP 45.

Finally, contrary to Harris’s claim that the testimony never established that Gant did not simply die naturally as a “long-term heavy smoker contracting pneumonia in the middle of winter,” the

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<sup>7</sup> Here, the fact that Gant’s colon was injured in a way that allowed E. coli to escape into his lungs, and Gant then died of an unusual case of pneumonia involving E. coli in his lungs, is inconsistent, to say the least, with the hypothesis that the shooting had nothing to do with Gant’s death.

testimony, taken in the light most favorable to the State, established that the shooting caused Gant's death by way of E. coli bacteria escaping Gant's colon due to the bullet wounds and then making its way into his lungs. Brief of Appellant at 16; 22RP 168-69. It also established that, but for the bullet wounds and the resulting extreme scar tissue, Gant would have been better able to fight off the infection and would likely have been able to detect the pneumonia at an early stage like a normal person, allowing the infection to be successfully treated with antibiotics. 19RP 108-11; 22RP 134-35, 171. This is far stronger evidence of causation than testimony the defendant's actions merely "more likely than not" caused the victim's death, which Harris concedes would be sufficient to establish causation in fact.<sup>8</sup> Brief of Appellant at 9-10.

The State was not required to prove that the shooting was the *only* cause in fact of Gant's death—it was merely required to prove that it was a cause in fact of the death. CP 45. The evidence was more than sufficient to support the jury's finding that the State had met its burden of proof on that fact.

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<sup>8</sup> Harris concedes that causation in fact is identical under criminal and civil law, and that causation in fact is established in a civil case if the defendant's actions "more likely than not" caused the victim's death. Brief of Appellant at 9-10.

- d. Even if This Court Were To Find That The Evidence Was Insufficient To Establish Causation, The Proper Remedy Would Be Remand For Resentencing On Attempted Murder In The First Degree.

When an appellate court finds the evidence insufficient to support a conviction for the charged offense, it will direct a trial court to enter judgment on a lesser included offense so long as the lesser offense was necessarily found by the jury after being explicitly instructed on it. In re Pers. Restraint of Heidari, 174 Wn.2d 288, 292, 274 P.3d 366 (2012); State v. Garcia, 146 Wn. App. 821, 830, 193 P.3d 181 (2008). Here, the jury was instructed on the lesser included offense of attempted murder in the first degree, but did not reach it because it found Harris guilty as charged of murder in the first degree. CP 36, 49, 56.

Even if this Court were to find that there was insufficient evidence that Harris's acts were the legal cause or cause in fact of Gant's death, the jury's unchallenged finding that Harris acted with premeditated intent to cause Gant's death when he shot Gant necessarily encompasses a finding that Gant attempted to commit murder in the first degree. Thus, the proper remedy for any finding of insufficient evidence as to causation is a remand for resentencing on attempted murder in the first degree.

2. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON CAUSATION.

Harris contends that the trial court erred when it gave the jury the standard WPIC instruction on causation. This claim should be rejected. Not only did Harris invite the alleged error by agreeing to the challenged instruction, but the instruction properly stated the law and did not relieve the State of the burden of proving any element that needed to be found by the jury.

a. Relevant Facts.

During pre-trial motions, the trial court declined the State's request that it require Harris to provide a complete independent set of jury instructions, and stated that Harris could affirmatively adopt any of the State's instructions to which he did not object rather than proposing an identical duplicative instruction. 3RP 16-18; CP 17. Unfortunately, neither party filed its proposed jury instructions. However, the record indicates that the parties eventually arrived at a set of proposed instructions on which they agreed in every respect, and that the trial court gave the agreed instructions to the jury. 25RP 2-7; 26RP 48; 27RP 78-81.

Instruction 18 addressed causation, and mirrored WPIC 25.02. CP 45; WPIC 25.02. It stated:

To constitute murder, there must be a causal connection between the criminal conduct of a defendant and the death of a human being such that the defendant's act was a proximate cause of the resulting death.

The term "proximate cause" means a cause which, in a direct sequence, unbroken by any new independent cause, produces the death, and without which the death would not have happened.

There may be more than one proximate cause of a death.

CP 45. No other instruction on causation was given. CP 24-54.

b. Harris's Claim Of Instructional Error Is Barred By The Doctrine Of Invited Error.

Under the invited error doctrine, the appellate courts will not review a party's assertion of an error to which the party "materially contributed" at trial. In re Dependency of K.R., 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). This doctrine applies even to constitutional errors that, if manifest, would otherwise be reviewable for the first time on appeal under RAP 2.5. State v. Elmore, 139 Wn.2d 250, 280, 985 P.2d 289 (1999). Courts apply the invited error doctrine strictly, sometimes with harsh results. See, e.g., State v. Studd, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999) (holding doctrine prohibited review of legally erroneous jury instruction because defendant proposed it, even though it was standard WPIC at the time); State v. Smith, 122 Wn. App. 294, 299,

93 P.3d 206 (2004) (noting that defendant who participates in drafting of jury instruction may not challenge the instruction on appeal).

Under the invited error doctrine, “even where constitutional rights are involved, [appellate courts] are precluded from reviewing jury instructions when the defendant has proposed an instruction or agreed to its wording.” State v. Winings, 126 Wn. App. 75, 89, 107 P.3d 141 (2005). As Harris properly concedes, the record indicates that he agreed to the jury instructions given by the trial court. Brief of Appellant at 22. He therefore may not challenge them on appeal, except as part of a claim of ineffective assistance of counsel. State v. Bradley, 141 Wn.2d 731, 736, 10 P.3d 358 (2000).

c. The Trial Court’s Jury Instruction On Causation Was Proper And Complete.

Even if this Court were to determine that Harris did not invite the alleged error of which he now complains, his claim must nevertheless fail, because the trial court properly instructed the jury on causation using WPIC 25.02. Although WPIC 25.02 discusses “proximate cause,” Washington courts have declared that the instruction, which mirrors the civil causation instruction in

WPI 15.01, addresses only the “cause in fact” element of causation, and does not address the standard for determining the “legal cause” element of causation. State v. Dennison, 115 Wn.2d 609, 624, 801 P.2d 193 (1990).

Harris does not contest that the trial court’s instruction on causation was a proper instruction as to whether Harris’s actions were the cause in fact of Gant’s death. Brief of Appellant at 18; see also Leech, 114 Wn.2d at 711 (WPIC 25.02 is a proper statement of the law). He argues only that the court should have also instructed the jury on the standard for determining whether Harris’s actions were the legal cause of Gant’s death. However, he cites no authority for his contention that a jury must be instructed on the standard for legal causation. See DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”). Tellingly, the WPICs do not contain a model jury instruction on legal causation, nor do they indicate that one should be given. See Comments to WPIC 26.02 (listing other instructions that should be given with to-convict instruction for murder in the first degree); Humes v. Fritz

Companies, Inc., 125 Wn. App. 477, 498, 105 P.3d 1000, 1011 (2005) (WPICs “are to be used in preference to individually drafted instructions”); Comments to WPI 15.01 (warning practitioners to exercise care before expanding upon the pattern causation instructions).

Our supreme court has already determined that legal causation is an issue for the court, not the jury. Colbert, 163 Wn.2d at 51. This makes sense, because legal causation asks whether, “as a matter of law,” the defendant should be relieved of liability due to considerations of “justice, policy, and precedent,” despite the existence of cause in fact. Bauer, 180 Wn.2d at 936. Questions of law are for the court to decide, not the jury. State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005). Therefore, no jury instruction on legal causation was required, and it was not error for the trial court to fail to give one.

Even if legal causation were a question for the jury, the failure to give an instruction on legal causation would not be error in this case. A jury instruction on a factual issue, such as the cause-in-fact instruction, can be properly omitted when “reasonable minds could reach but one conclusion,” because questions of fact may then be determined as a matter of law. Dennison, 115 Wn.2d at

623-25. As explained in section C.1. above, the legal conclusion that Harris was the legal cause of Gant's death flows necessarily from the jury's finding that Harris was the cause in fact of Gant's death and acted with intent to cause it, because the harm intended by Harris was identical to the harm for which Harris was subsequently prosecuted.

Once the jury determined that Harris was the cause in fact of Gant's death and that he acted with intent to cause death, reasonable minds could not differ as to legal causation. Therefore, the only causation-related instruction that needed to be given to the jury was the cause-in-fact instruction properly contained in Instruction 18, and the lack of a legal causation instruction was not error. See Dennison, 115 Wn.2d at 623-25.

**3. HARRIS HAS FAILED TO ESTABLISH THAT HIS TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE IN AGREEING TO THE STANDARD WPIC INSTRUCTION ON CAUSATION.**

Harris contends that he received constitutionally ineffective assistance of counsel when his trial counsel agreed to Instruction 18, the causation instruction. This claim should be rejected. As discussed above, the trial court's instruction was proper and included all the required information. Furthermore, even had

defense counsel successfully convinced the trial court to instruct the jury on the proper legal causation standard, there is no reasonable probability that the result of the trial would have been different. Harris has thus failed to establish that his counsel rendered ineffective assistance of counsel.

A defendant in a criminal case has a constitutional right to the effective assistance of counsel. U.S. CONST. amend. VI; Wash. CONST. art I, § 22; State v. Grier, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that (1) defense counsel's performance was deficient and (2) the deficient performance prejudiced the defendant. State v. Cienfuegos, 144 Wn.2d 222, 226-27, 25 P.3d 1011 (2001); Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

a. Harris Has Failed To Establish That His Trial Counsel's Performance Was Deficient.

In order to show that defense counsel's representation was deficient, a defendant must show that "it fell below an objective standard of reasonableness based on consideration of all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "If trial counsel's conduct can be characterized

as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel.” State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). There is a strong presumption that counsel’s representation was effective, and the defendant bears the burden of showing that the representation was deficient. Grier, 171 Wn.2d at 35.

As explained in section C.2.c. above, Instruction 18 was proper and contained all the information on causation that the jury needed in order to resolve the issues within its purview. Counsel was therefore not unreasonable in agreeing to it. Even if this Court were to determine that Instruction 18, and therefore WPIC 25.02, is deficient for failure to include an instruction on legal causation, it was still not deficient performance for defense counsel to agree to what was at the time an unquestioned standard WPIC.

Our supreme court has held that where defense counsel proposes a standard WPIC and no appellate decision has yet been issued making clear that the instruction is erroneous, counsel’s performance is not deficient. State v. Kylo, 166 Wn.2d 856, 866, 215 P.3d 177 (2009) (citing State v. Studd, 137 Wn.2d 533, 550-51, 973 P.2d 1049 (1999)). This holding forecloses Harris’s ineffective assistance claim. He has not identified any decision issued prior to

his trial (nor any issued since then) that faults WPIC 25.02, or the WPICs in general, for failure to include an instruction on legal causation. Harris has thus failed to meet his burden to establish that defense counsel's agreement to WPIC 25.02 fell below an objective standard of reasonableness at the relevant time.

b. Harris Has Failed To Establish That His Trial Counsel's Allegedly Deficient Performance Prejudiced Him.

In order to show that he was prejudiced by allegedly deficient conduct, a defendant must show that defense counsel's errors were "so serious as to deprive him of a fair trial." Cienfuegos, 144 Wn.2d at 230. This requires "the existence of a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 229. Here, even if defense counsel had objected to the proposed causation instruction, there is no reasonable probability that the trial court would have actually added language regarding legal causation in light of the many cases approving of WPIC 25.02 and noting that legal causation is a question of law, and the lack of any cases faulting WPIC 25.02 for failure to address legal causation. See Bauer, 180 Wn.2d at 936 (legal causation asks whether liability should attach "as a matter of law"); Colbert, 163 Wn.2d at 51 (legal

causation “is a question of law for the court”); Leech, 114 Wn.2d at 711 (WPIC 25.02 “properly state[s] the law”).

More importantly, even if defense counsel had succeeded in convincing the trial court to give an instruction on legal causation, there is no reasonable probability that the jury’s verdict would have been different. A proper instruction on legal causation would have merely informed the jury that a person whose act is a cause in fact of another’s death, and who also acts with intent to cause the death, is the legal cause of the death. See Bauer, 180 Wn.2d at 936-39. Given that the jury found that Harris was a cause in fact of Gant’s death and intended to cause his death, there is no reasonable probability that the jury, if instructed on legal causation, would have found that Harris was not the legal cause of Gant’s death. Harris has therefore failed to establish that his counsel’s allegedly deficient performance prejudiced him.

Because Harris has failed to establish both deficient performance and prejudice, his ineffective assistance of counsel claim fails.

**D. CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Harris's conviction for murder in the first degree.

DATED this 20<sup>th</sup> day of May, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

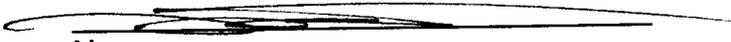
By:   
STEPHANIE FINN GUTHRIE, WSBA #43033  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Gregory Link, the attorney for the appellant, at Greg@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Kareem Harris, Cause No. 73064-9, 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.

Dated this 20 day of May, 2016.

  
Name:  
Done in Seattle, Washington