

STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION II

No. 38262-8-II

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

STATE OF WASHINGTON,
Respondent,

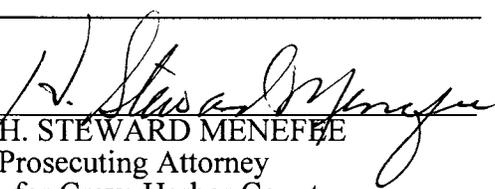
v.

JERRY LEE CHASE,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK McCAULEY, JUDGE

BRIEF OF RESPONDENT


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P.M. 8-17-2009

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COUNTER STATEMENT OF THE CASE

The defendant, Jerry Chase, beat his house mate, Jonathon Dodds, to death. Paramedics and emergency medical technicians who arrived at the scene found Dodds laying on his back in the front room without a pulse and without breathing. (RP 54-55). Melissa Bronoske, a firefighter/paramedic, asked Chase what had happened and he stated that he and Dodds had gotten into an altercation and told her that Dodds had come into his bedroom picking a fight with him and that he had kicked Dodds in the chest to get him away from him and Dodds had walked out of the room and then he had heard a thud. (RP 101). Chase told her that he had walked out of his bedroom and saw Dodds having a seizure. (RP 101). As paramedics attempted to insert a tube into Dodds' trachea, they found the throat blocked by a wad of paper towels stuffed down the throat behind the tongue. (RP 90-91). The paramedics were unable to resuscitate Dodds and he was subsequently pronounced dead at the scene. (RP 63-64).

An autopsy was performed on Mr. Dodds' body by Doctor Daniel Selove, a Forensic Pathologist. Dr. Selove observed multiple bruises over the chest and abdomen of Mr. Dodds that had formed at or about the time of his death. (RP 229-230). Dr. Selove also found that Dodds had

received a blow to the back of his head with substantial enough force to cause sub dural bleeding. (RP 233). Dodds' larynx had been fractured breaking it into two halves and his trachea had also been fractured. (RP 233-234). Dr. Selove also found 19 of the victim's 24 ribs had been fractured, 9 of those ribs had single fractures, 9 others had two fractures and 1 rib had three fractures for a total of 30 fractures to the 24 ribs on both sides of the victims body. (RP 234). Dr. Selove found that the sternum had multiple fractures and he concluded that it would have taken multiple forceful blows to have created these injuries. (RP 242). Additionally Dr. Selove also found that Dodds' right lung was lacerated and was bleeding into the plural cavity. (RP 235). The victim's left diaphragm had been torn from a forceful blow which caused it to rupture. Mr. Dodds' liver had multiple lacerations which divided it into three separate parts with several minor pieces. In addition, Mr. Dodds' intestine was ruptured and the supporting tissues consisting of the mesentery had multiple lacerations and tears. The omentum which is the membrane covering the abdomen also had multiple tears or ruptures. (RP 235-236). The bleeding resulting from these severe abdominal injuries alone would have caused the victim to bleed to death. (RP 236-237).

Dr. Selove found that the victims back had been fractured at the junction of the fifth and sixth thoracic vertebra. Dr. Sealove testified that this is the most severe form of fracture to the back because the back bones were completely separated and this would have resulted in the immediate

loss of use of the body below that level. (RP 237).

Dr. Selove testified that the nature and extent of these injuries were more commonly consistent with injuries received from a car accident or falling from a height. (RP 239). He also indicated that the fractures to the ribs were such that it created a condition called “flail chest” which results in death by asphyxiation because the victim would be unable to breathe or inflate his lungs. (RP 241). Selove testified that the fractures to the spine larynx and trachea were also potentially fatal injuries. (RP 244-245)

The doctor testified that it would have taken multiple blows with great force to create all of these injuries, similar to being jumped on or stomped. (RP 242-244). He also testified that the injuries to the chest could not have been caused by improper or over aggressive CPR efforts and the nature of the injuries, particularly the number of fractures and the locations of the fractures on the ribs were not consistent with those types of injuries. (RP 240). Dr. Selove testified that all of the injuries he observed on Mr. Dodds’ body could not have been caused by a seizure or by fall caused by a seizure. (RP 256).

The police officers that responded to the scene with the medical personnel did not notice any evidence in the house consistent with a fight or altercation between two grown men. (RP 39, 110). The officers did not notice any injuries to Chase that would be consistent with a fight other than a healing burn on his right hand. (RP 47, 126, 152-153).

After Mr. Dodds was declared dead, Chase was arrested by the

officers and advised of his Miranda Rights. (RP 137-138). After the defendant was advised of his rights, he spontaneously told Deputy Wallace that he had not done anything, that Dodds had just had a seizure. (RP 138). Deputy Wallace then transported the defendant to the Grays Harbor County Sheriff's Department and during the transport, the defendant remarked to Deputy Wallace that he had kicked his brother, referring to Dodds, but did not kill him and that Dodds had a seizure. (RP 139). Chase also asked Deputy Wallace if they would do an autopsy on Dodds, feeling that it would rule him out as a cause of Dodds' death. (RP 139). Upon arrival at the Grays Harbor County Sheriff's Department, Deputy Wallace took Chase to a break room in the front office of the sheriff's department and had him sit down and got him a bottle of water. While Deputy Wallace and Chase were waiting for detectives to arrive, Chase told Deputy Wallace that Dodds should not have been playing his music so loud because he hates being woke up when he is sleeping. (RP 141-142). Deputy Wallace remained with Chase for about ten or fifteen minutes in the break room before the detectives arrived. Wallace described Chase's demeanor and behavior during the time that he transported him and while he was with him in the break room as polite and courteous. (RP 139, 142). Deputy Wallace indicated that it appeared that Chase had been drinking because he could smell alcohol and Chase's eyes were watery and bloodshot. (RP 139).

Shortly after 6:00 a.m. that morning, detectives' Organ and Davin

met Chase in the break room at the Grays Harbor County Sheriff's Office. They introduced themselves to Chase and began by asking him how he was feeling. (RP 151-152) Chase said he was not feeling well that he had a lot to drink the night before. (RP 152) Detective Organ then asked Chase if he was intoxicated and he told him no. (RP 152). Detective Organ also asked him if he felt affected by what he had to drink and he said a little bit. (RP 152). Detective Organ then asked him a number of questions to determine if he understood who they were and where Mr. Chase was at. (RP 152). Detective Organ then decided that based on his observations of Mr. Chase and his response to the questions that Mr. Chase was sober enough to be interviewed.

Detective Organ then told Chase that they were investigating the death of Jonathon Dodds and advised Mr. Chase of his rights using a written advise of rights waiver form. (RP 155). Detective Organ indicated that he went over the advise of rights waiver form with Mr. Chase by reading it to him and asking him if he understood those rights, which he acknowledged on the form. (RP 155), (CP EXHIBIT 25).

Chase told the detectives that he and Mr. Dodds had gone into Hoquiam the previous afternoon and bought a fifth of Vodka and a bottle of Brandy. He told the detectives that he and Dodds consumed all the liquor and some of the beer that was in the house. He said that eventually Mr. Dodds had gone to bed and he had stayed up singing Karaoke utilizing Dodds' amplifier because his own was not working. (RP 155-156). He

told detectives that he then went to bed and was awakened by Dodds who had turned on his bedroom light and was standing in the doorway angry that Chase had used his amplifier. Chase said that he apologized for using it without asking but it looked like Dodds was going to leave without turning the light off, even though Chase had asked him to do so. Chase said he got pissed off so he got out of bed and kicked Mr. Dodds in the stomach causing Mr. Dodds to fall against the door frame. He said that Dodds then turned and walked back to his own bedroom. (RP 157). Chase said that he then went into the kitchen and got a glass of water out of the refrigerator and saw Dodds come out of his bedroom, look at him and collapse. (RP 158). During the course of the oral interview, Chase did not have any problem tracking the conversation or understanding the detective's questions. (RP 213). While Detective Organ prepared a written statement on the computer workstation in the room, the defendant caught and corrected several of Detective Organ's typos. (RP 163, 215). After correcting those typos, a final statement was printed and the defendant noted that there was one drug name on the form which he felt was misspelled but did not know the proper spelling himself. Chase after reading the statement, signed the statement but noted the misspelling on the statement but initialed that particular word. (RP 163)

The next day, after receiving the preliminary autopsy results, Detective Organ and Sergeant Shumate again contacted Chase in the Grays Harbor County Jail. Detective Organ asked Chase if he remembered him

from the day before and Chase indicated that he did. Chase also acknowledged that he remembered his rights which had been given him the day before. (RP 192-194). Detective Organ then told him that they had learned the cause of death and discovered that the injuries that Chase inflicted on Dodds had killed him. Chase then said that he wanted to talk to an attorney and asked specifically for one attorney. The officers then attempted to make contact with that attorney for him but were unable to do so. (RP CrR 3.5 42-43).

At the CrR 3.5 hearing the defendant testified that he had gone to bed around 2:00 a.m. Chase also testified that he was going in and out of blackouts during this time and did not remember being advised of his rights by Deputy Wallace or being advised of his rights at the Grays Harbor County Sheriff's Department. (RP CrR 3.5 104-107). Chase testified that the only thing he remembered basically about the interview at the Sheriff's Department was being really tired, drunk, and very confused. (RP CrR 108-109). He also remembered drinking water, he remembered drinking coffee, and smoking cigarettes. (RP CrR 3.5 108). The defendant also acknowledged that he had been arrested on several previous occasions, he had his Miranda Rights read to him before and that he was familiar with them. (RP CrR 3.5 113-114).

At the conclusion of the CrR 3.5 hearing the Court found that the defendant's statements were voluntary and that his custodial statements were admissible at trial. (RP CrR 3.5 123-127) (CP 64-69). The defendant

did not testify at trial nor call any witnesses. At the completion of the trial, the defendant was found guilty and this appeal has ensued.

RESPONSE TO ASSIGNMENTS OF ERROR

1. Substantial evidence supports the trial courts finding that the defendant's statements were voluntary and admissible.

The defendant argues that he was intoxicated at the time of his custodial interview and that therefore the Court's finding that his statements were voluntary and admissible was error.

A defendant's statements made during custodial interrogation may not be used at trial unless the defendant had been advised of his Miranda Rights and the statement was voluntary and made after a valid waiver of those rights. Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, 16L.Ed. 2d, 694 (1966); State v. Aten, 130 Wash.2d 640, 663, 927 P.2d 210 (1996). To determine whether a defendant's statements were voluntary, the Court uses a totality of the circumstance's test to determine whether the defendant's statements were coerced. State v. Broadaway, 133 Wash.2d 118, 132, 942 P.2d 363 (1997).

In considering the totality of the circumstances, the trial court may consider the defendant's physical condition, age, mental abilities, and physical experience, and police conduct. State v. Aten, 130 Wash.2d at 664. Intoxication is a relevant factor for the Court to consider along with other factors, but does not alone render a confession involuntary. State v. Turner, 31 Wash.App. 843, 846, 644, P.2d. 1224 (1982). A trial court's

determination of voluntariness will not be overturned on appeal if there is substantial evidence in the record to support the trial court's finding.

State v. Ng, 110 Wash.2d 32, 37, 750 P.2d 632 (1988).

In this case, the defendant simply asserts that he was intoxicated during his interrogation and therefore not capable of voluntarily waiving his Miranda Rights or making a voluntary statement to the officers. The only evidence the defendant submitted to the trial court concerning voluntariness was the defendant's testimony that he had been drinking with Dodds in the evening of May 31, into the morning hours of June 1. (RP 101, CrR 3.5).

The defendant testified that he thought he had been drinking Vodka and some Brandy, possibly some champagne and some beer. (RP 102, CrR 3.5). The defendant also testified that he was unsure how much he had actually had to drink but thought he had drunk until the hard liquor was gone. (RP 102, CrR 3.5). He testified that he had gone to bed at about 2:00 a.m. and only vaguely recalled the first two responding officers arriving at the house on the morning of June 1. (RP 103, CrR 3.5). The defendant also claimed he did not have any memory of being advised of his rights by Deputy Wallace or being placed in the car and traveling to Montesano by Deputy Wallace. The defendant also claimed that he did not remember being advised of his rights at the Grays Harbor County Jail at approximately 6:18 in the morning. (RP 105-106, CrR 3.5). The defendant however did remember where Detective Organ was sitting and

the distance between that location and the love seat in the interview room and also the location of Detective Davin in the interview room. Also he remembered drinking water and smoking some cigarettes and maybe drinking some coffee. (RP 107-108, CrR 3.5).

The defendant's rendition of his memory does not comport with the testimony of the investigating officers. Both Detective Organ and Detective Davin have indicated that the defendant was aware of who they were, where they were, and what was going on. (RP 34-35, 88-89, CrR 3.5). At the time Detective Organ contacted the defendant, he asked him whether he recalled having his rights read to him by Deputy Wallace and the defendant responded that he did. (RP 34, CrR 3.5). Organ also inquired about whether he was intoxicated and the defendant specifically indicated that he was not. (RP 35, CrR 3.5). During the interview process Detective Organ described the defendant as alert and cooperative. Detective Organ testified that the defendant was tracking his conversation when asked questions in a normal matter. (RP 37-38, CrR 3.5).

When Detective Organ began to prepare a written statement, the defendant would go over the statement and participate in making corrections including finding any typos in the statement until a final draft was prepared. (RP 40, CrR 3.5). In the final draft the defendant noted that a medication was probably misspelled and circled it and initialed that spelling. (RP 40-41, CrR 3.5).

The next day Detective Organ and Sergeant Shumate contacted the

defendant again. Detective Organ introduced Sergeant Shumate to the defendant and asked the defendant if he remembered him. The defendant indicated that he did. Detective Organ also asked the defendant if he remembered his rights from the day before and he indicated that he did and that he was willing to speak with them again. (RP 42, CrR 3.5). Detective Organ then advised the defendant that they had received information from the autopsy showing that Dodds died of injuries apparently inflicted by Mr. Chase. At this point, Chase simply said, "No," and that he wanted to talk to an attorney and specifically requested a particular attorney. (RP 42, CrR 3.5).

The first interview commenced at approximately 6:18 in the morning was slightly over four hours after the defendant's own statements indicating that he quit drinking. The written statement was completed at approximately 10:00 a.m. or four hours later, which would be some eight hours after the time the defendant claims he quit drinking.

Deputy Wallace who initially advised the defendant of his Miranda Rights and spent significant time, approximately 35-40 minutes in an enclosed car with the defendant, testified that he noticed a moderate odor of intoxicants from the defendant, watery blood shot eyes, and occasionally slightly slurred speech. (RP 75, CrR 3.5). Deputy Wallace indicated that if this was a traffic situation observed would it have been sufficient for him to ask the defendant to undertake some voluntary sobriety tests. (RP 76, CrR 3.5). Deputy Wallace also testified that absent

the sobriety test, he would estimate the defendant to be somewhere close to around a .08. (RP 77, CrR 3.5).

At the time the defendant was contacted by Detective Organ and Detective Davin, he was, according to Detective Davin, able to keep up with the conversation and alert. (RP 89-90, CrR 3.5). Detective Davin also indicated that in the approximate four hours that she spent with the defendant, she did not notice the order of intoxicants about the defendant.

After listening to the testimony, the Court directly addressed the intoxication issue and indicated that it was clear that the defendant had been drinking a lot the afternoon and evening the day before and possibly even into the early hours the day of the interview to some degree. But the court noted that at the point of first contact during his custodial interrogation, it had been at least four hours since his last drink and the interview concluded approximately eight hours after his last drink. The Court indicated that while he felt that was a factor that he would consider, he would also couple it with all the responses, especially the testimony of the officers that were there, indicating that they were able to communicate with him. The Court indicated that there was no evidence that he was stumbling or falling down or severely slurring his words. The Court also noted that he was making appropriate responses to appropriate questions and his memory did not seem to be affected because of his ability to relate accurately the events of the previous day and that night. The Court noted that the defendant clearly remembered who was seated where and how

many feet apart during the interview process even nearly a year later. The Court then pointed out that while they felt the defendant may have been under the influence to some degree and it was factored into his analysis, it was not sufficient to bar his statements. (RP 123-124, CrR 3.5).

The defendant simply argues that he was intoxicated at the time of his interrogation and since he has blackouts and cannot remember what took place during that interrogation, his statements must be considered involuntary.

There is no evidence that the State made any improper promises or any threats to induce the defendant to make any statements. The defendant had been advised of his Miranda Rights on two occasions approximately one hour apart and signed a written waiver agreeing to speak to the officers. In State v. Saunders, 120 Wash.App. 800, 810, 86 P.3d 232 (2004) a similar case, where inebriation was a factor, the court found it was not dispositive, even though the defendant in that case appeared inebriated during the interrogation. The manner in which the defendant responded made it clear he understood the questions that were being posed to him. State v. Saunders, 120 Wash.App. 800, 810, 86 P.3d 232 (2004).

Similarly in this case, the defendant, who was familiar with his Miranda Rights and affirmatively responded that he understood the rights when they were given to him by Deputy Wallace, made spontaneous statements to Deputy Wallace while being transported indicating that he knew he was in custody because he had kicked Mr. Dodds and indicated that he wanted

an autopsy done to rule him out of the cause of the death. Furthermore, the defendant indicated that he realized deputies would be going through the belongings at the house and didn't want the detectives to tear up his house so he would authorize them to use his keys to access anything that might be locked. (RP 66-69, CrR 3.5).

Again upon arrival at the Grays Harbor County Sheriff's Department the defendant affirmatively acknowledged his rights both verbally and in writing, was able to respond clearly to questions and took an active part in preparing his written statement, including corrections of various typos and misspellings. The defendant also affirmatively acknowledged the next day that he recalled being advised of his rights by Detective Organ. This evidence, even taking into account the defendant's claim of intoxication and loss of memory, provides substantial evidence to support the Court's determination that the defendant's statements were voluntary and admissible.

2. There was insufficient evidence to support an instruction for self defense in this case.

The defendant argues that the trial court erred by failing to give a requested self defense instruction. The defendant asserts that instruction was supported by the statement made by Melissa Bronoske, a firefighter/paramedic who was part of the team treating Mr. Dodds. Bronoske related a statement made by the defendant indicating that the defendant and Mr. Dodds had gotten into an altercation that Dodds had come into the defendant's bedroom picking a fight with him and that the

defendant kicked him in the chest to get away from him, at which point Dodds had walked out of the room and the defendant had heard a thud, and then saw the patient lying on the floor having a seizure. (RP 101). The defendant does not point to any other evidence indicating that he was acting in self defense. Mrs. Bronoske also testified that she did not remember the defendant saying anything about a physical interaction between them, but only remembered that Mr. Dodds had come into the room confrontational but she didn't know if that meant verbally or physically. (RP 106).

The defendant's requested instruction was based on WPIC 17.02 and the defendant argued to the trial court that the giving of self defense instruction under 17.02 was appropriate since the underlying assault in the felony murder charge underlying felony in the felony murder charge was assault. (RP 282).

In order to present a self defense instruction to a jury, a defendant must produce some evidence which tends to prove that a killing occurred in circumstances amounting to self defense. State v. Walker, 136 Wash.2d 767, 772, 966 P.2d 883 (1998). The Court in Walker went on to hold that to determine whether a defendant has produced sufficient evidence to show reasonable apprehension of harm, the trial court has to apply a mixed subjective and objective analysis. State v. Walker at 772. Citing State v. Bell Wash.App. 561, 567, 805 P.2d 815 (1991). The Walker Court stated: "If the trial court finds no reasonable person in the defendant's shoes could

have perceived a threat of great bodily harm, then the Court does not have to instruct the jury on self defense.” State v. Walker at 773. The Walker Court went on and parenthetically stated that, “If anyone of the elements of self defense is not supported by the evidence, the self defense theory is not available to the defendant, and the defendant cannot present the theory to a jury.” State v. Walker, 40 Wash.App. 658, 665, 700 P.2d 1168 (1985). See also State v. Griffith, 91 Wash.2d 572, at 575, 589 P.2d 799 (1979).

In this case, there is absolutely no evidence that the defendant subjectively felt that Dodds was about to or threatening to commit great bodily harm to him. His own statements to investigating detectives indicated that he kicked Dodds in the chest because Dodds had made him mad by turning on the light and waking him up and then was preparing to leave the room without turning the light off. (RP 157). Even if that small exert of testimony from the emergency medical person would be sufficient to indicate a subjective fear of imminent great bodily injury from Mr. Dodds by the defendant, clearly as the court reflects, it would not survive the objective analysis required to submit the instruction.

The Court pointed out that it felt that this evidence was not sufficient to constitute under, “. . . any circumstances . . .” self defense. The Court went on to say that furthermore he didn’t think given the testimony concerning the extent and number of injuries to Mr. Dodds that any reasonable jury conclude that those injuries were the result of self defense on the defendant’s part. (RP 286).

If a trial court refused to instruct a jury on self defense because it has found no evidence supporting the defendant's subjective belief of imminent danger of great bodily harm, then the standard of review is abuse of discretion. State v. Read, 147 Wash.2d 238, 243, 53 P.3d 26 (2002). In this case there is simply no evidence at all that Jonathon Dodds killing occurred in circumstances amounting to defense of life, or that the defendant had any reasonable apprehension of great bodily harm or threat to his life. Under these circumstances, the Court quite properly refused to instruct the jury on self defense as requested by the defendant.

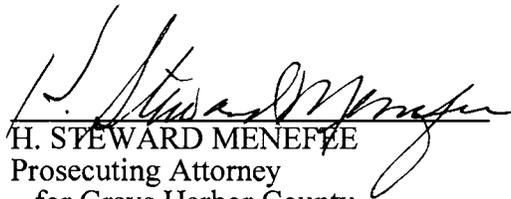
CONCLUSION

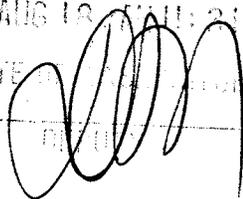
There was substantial evidence provided through the testimony of Detective Organ and Detective Davin in combination with the testimony of Deputy Wallace and Deputy Larson, Deputy Crawford and Officer Salstrom to support the Court's conclusion that the defendant was not so intoxicated at the time of his custodial interrogation that his Mirandized and uncoerced statements should be considered involuntary. The defendant's familiarity of the Miranda Rights, his demeanor and behavior during his interrogation after being advised of his rights on a second occasion and his execution of a written waiver, together with the defendant's memory the next day of the advise of rights he received previously contradicted the defendant's testimony one year later at the CrR 3.5 hearing that he had no memory of any of these events due to his

intoxication and amply support the Court's determination that the defendant's statements were voluntary and they were made after being apprised of his Miranda Rights and his waiver of those rights were voluntary.

The trial court properly refused to instruct the jury on self defense in the absence of any evidence that the defendant had a reasonable apprehension that Jonathon Dodds was going to cause him great bodily harm or that his life was in danger. In the absence of any evidence to support this crucial element of self defense, the trial court's refusal to give the self defense instruction was not an abuse of discretion. The State respectfully requests the Court to affirm the defendant's conviction.

Respectfully Submitted,


H. STEWARD MENEFFE
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COURT OF APPEALS
DIVISION II
09 AUG 18 11:21
STATE OF WASHINGTON
BY 

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

STATE OF WASHINGTON,

Respondent,

No.: 38262-8-II

v.

DECLARATION OF MAILING

JERRY LEE CHASE,

Appellant.

DECLARATION

I, *Barbara Chapman* hereby declare as follows:

On the 17th day of August, 2009, I mailed a copy of the Brief of Respondent to Peter B. Tiller, The Tiller Law Firm, Corner of Rock and Pine, P. O. Box 58, Centralia, WA 98531 and Jerry L. Chase, DOC #322164, Unit -G -A Cell 205 W, Washington State Penitentiary, 1314 N. 13th Avenue, Walla Walla, WA 99362 by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 17th day of August, 2009, at Montesano, Washington.

Barbara Chapman