

1. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Reasonable Doubt

Each defendant who has entered a plea of guilty. Puts in issue every element of each crime beyond a reasonable doubt. Requiring Washington Pattern Jury instructions to be used a States burden in each case. State v Bennet, 161 Wn.2d 303,306, 165 P.3d 1241(2007). It is Washington Supreme Court dictum, in it's inherent supervisory powers to use WPIC 4.01 in every sase. In Bennet, State Supreme Court discussed Various definitions of the reasonable doubt standard in it's jurisdiction causing it to be so crucial to fundamental fairness that it has required Washington Courts to act here to a clear simple accepted uniform instruction, State v. Bennet 161 Wn.2d at 317.

The State did not meet it's burden ot prove assault in the first or second degree's burden for 'great bodily harm'. It permitted the trial court, to neglect to instruct the jurors That this element of first degree assault was not the defendants to disprove. Even though the element at great bodily harm can be present without or distinct from the WPIC 2.03.01 definition : "Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part. The trial court abuses it's discretion by failing to instruct jurors only on the definition for, "physical injury".

WPIC 2.04 definition for great bodily harm means a bodily injury that creates a probability of death. None of the victims alleged injuries fit this criteria. A significant serious permanent loss of impairment of the function of any bodily part or organ, Accord RCW 9A. 36.011, The requisite WPIC 35.08 'Great Bodily Harm' elements were never proven by the state. The trial courts failure to instruct the jury properly, is reversible error.

To convict Linarez of first degree assault, RCW 9A.36.011(a)-(c), the alleged victims needed to have sustained, Great bodily harm or death, OR some type of disfigurement, leaving the jurors to believe that they could convict merely by determining a "physical injury"; The trial court deprived the defendant of a fair trial. While the deficient instruction, may have set forth all 3 of the alternate means, listed in element 2 WPIC 35.02, without requiring the findings of fact and conclusions of law. It was not sufficient to support the charge or the conviction for first degree assault, State v. Atkinson, 661, 54 P.3d 702 (2002).

While a trial court traditionally has considerable discretion in wording jury instructions, State v. Castle, 86 Wn.App 48,62, 935 P.2d 656 (1997). Court or Appeals Division Two reviews the claimed errors in jury instructions, an instruction that misstates the applicable law. (great bodily injury that creates the probability of death) is reversible error, if it causes prejudice. State v. Kennard, 101 Wn.App.533,537, 6 P.3d 38, review denied, 142 Wn.2d 1011 (2000).

b. GREAT BODILY HARM: DEFINITION

Trial court committed reversible error by leaving jurors to determine whether a physical injury is serious. State v. Taiit, 93 Wn.App. at 791-92, 970 P.2d 785; State v. Welker, 37 Wn.App. at 638 N.2 1110. Also the instruction uses the word disfigurement. The trial court should have elaborated further, on the meaning of disfigurement. The absence of doctor reports should have clued the court to offer remedial definition for great bodily harm. It's failure to do so prejudiced the defendant Id.

The Washington 'Abiding Belief' traditional instruction (WPIC 4.01), has been upheld in enough appellate cases; see State v. Pirtle, 127 Wn.2d 628, 904 P.2d 245(1995); State v. Lane, 56 Wn.App 286, 299-301, 786 P.2d 277 (1989); rejection the argument that WPIC dilutes the States burden of proof); State v. Mabry, 51 Wn.App. 24, 751 P.2d 882 (1988)(relied on by teh State Supreme Court in Pirtle); State v. Price, 33 Wn.App. 472, 655 P.2d 1191 (1982). The United States Supreme Court has also upheld the use of this traditional abiding belief instructions. See Victor v. Nebraska, 511 U.S 1, 114 S.Ct. 1239, 127 L.ED.2d 538 (1994).

2. CONCLUSION

The State of Washington owes Jude Linarez, a fair trial. In front a properly instructed jury, Who is not lured into obviating States burden, of proving each element of each crime beyond a reasonable doubt. May it please the court to reverse and remand.

Submitted this 11th day of January 2010.

Respectfully Submitted

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