

No. 49343-8-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CARLOS PEREZ CALDERON

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
Cause No. 15-1-02263-9

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #6 (WPIC 4.11), CP 31. *See* Exhibit 1.
2. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #11 (WPIC 28.01), CP 36. *See* Exhibit 2.
3. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #12 (WPIC 10.03), CP 37. *See* Exhibit 3.
4. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #13 (WPIC 28.02), CP 38. *See* Exhibit 4.
5. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #14 (WPIC 28.05), CP 39. *See* Exhibit 5.
6. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #15 (WPIC 10.04), CP 40. *See* Exhibit 6.
7. The trial court erred when it excluded Mr. Perez-Calderon's proposed jury instruction #16 (WPIC 28.06), CP 41. *See* Exhibit 7.
8. The trial court erred when it excluded Mr. Perez-Calderon's *supplemental* proposed jury instruction #1 (WPIC 17.02), CP 58. *See* Exhibit 8.
9. The trial court erred when it excluded Mr. Perez-Calderon's *supplemental* proposed jury instruction #2 (WPIC 17.04), CP 59. *See* Exhibit 9.

10. The trial court erred when it excluded Mr. Perez-Calderon's *supplemental* proposed jury instruction #3 (WPIC 17.05). CP 60. See Exhibit 10.
11. The trial court erred in allowing the state, over objection, to file an amended information on the day of trial in retaliation for Mr. Perez-Calderon's rejection of the state's plea offer.
12. The trial court erred when it declined to suppress Mr. Perez-Calderon's custodial statements.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred when it refused to include lesser included instructions of manslaughter in the first degree and manslaughter in the second degree? (Assignments of Error #1-7)
2. Whether the trial court erred when it refused to include instructions relating to lawful use of force/self-defense? (Assignments of Error #8-10)
3. Whether the trial court erred in allowing the state, over objection, to file an amended information on the day of trial in retaliation for Mr. Perez-Calderon's rejection of the state's plea offer (Assignments of Error #11)
4. Whether the trial court erred when it declined to suppress defendant's custodial statements to police? (Assignments of Error #12)

III. STATEMENT OF THE CASE

A. Procedural History

On June 10, 2015, Mr. Perez-Calderon was charged by way of information with Murder in the Second Degree under RCW 9A.32.050(1)(a). He also faced domestic violence and firearm enhancements. CP 1. On June 21, 2016, the case was called for trial. RP 4 (6/21/2016). The state indicated that it would be moving to amend the information, in particular, adding an “alternative” theory of the case as well as adding an aggravating factor under RCW 9.94A.535(3)(h) based on the presence of a child. *Id.* at 26. The alternative theory within the amended information charged Mr. Perez-Calderon with Murder in the Second Degree under a theory of felony murder for committing or attempting to commit a second-degree assault. *Id.* Mr. Perez-Calderon objected to the amendment, citing prosecutorial vindictiveness based on Mr. Perez-Calderon’s decision to not accept a plea offer. The Court accepted the amended information. CP 13. Trial commenced on June 21, 2016.

Prior to trial, a CrR 3.5 hearing was held. RP 38 (6/22/16). Specifically, the defense sought to exclude all custodial statements made by Mr. Perez-Calderon to Detectives Bowl and Punzalan during his lengthy, recorded interrogation after Ms. Hughes’ death. *Id.* at 51, 67.

Prior to deliberations, the trial court received proposed jury instructions from the state and defense. Over objection, the Court declined defense proposed instructions related to the lesser included charges of manslaughter in the first and

second degree (requested instructions 6, 11, 12, 13, 14, 16)¹ as well as instructions relating to self-defense (supplemental instructions 1, 2, and 3). RP 619 (7/6/16). The trial court did, however, instruct the jury on excusable homicide. CP 108 (Court's Instruction to the jury #18).

On July 7, 2016, the jury found Mr. Perez-Calderon guilty of Murder in the Second Degree and that he was armed with a firearm during the commission of the crime. RP 685 (7/7/16). The jury also found the incident to be an aggravated domestic violence offense. *Id.* at 686. On August 19, 2016, Mr. Perez was sentenced to a term of 360 months. CP 171-185. Mr. Perez timely filed notice of intent to appeal to this Court. CP 191.

B. Facts

Mr. Perez-Calderon, appellant herein and Ms. Hughes, the deceased, had previously been in a dating relationship. RP 237 (6/28/16). Ms. Hughes had two daughters from previous relationships unrelated to Mr. Perez-Calderon. *Id.* In early June of 2015, Mr. Perez-Calderon was living alone in Lakewood but, as part of an active-duty Army assignment, he was to be leaving his home for a few weeks while training at the Yakima, Washington Training Center. *Id.* at 236-37. Ms. Hughes and her daughters had been living in a shelter in Seattle but Mr. Perez-Calderon offered to let them stay at his house while he was away. *Id.* at 237-38.

¹ Mr. Perez-Calderon clarified the record regarding his proposed instructions, noting that if the trial court were to instruct the jury on manslaughter in the first and second degree that the definitions for recklessness and negligence would need to be amended. The trial court noted the issue and indicated it would have required changes in the definitions if the instructions were to be allowed but since they were not, the issue was moot. RP 592-93 (7/6/2016).

On June 5, 2015 Mr. Perez-Calderon and his friend, Ivan Montes – also an active duty Army Service Member – went to Seattle to pick up a new engine for Mr. Montes’ vehicle. RP 236 (6/28/16). They left the engine in the back of Mr. Perez-Calderon’s vehicle that night and then he returned the next day, Mr. Montes returned around noon. Id. at 237. During that time, Mr. Montes, along with Mr. Perez-Calderon, played with their dogs and watched as Ms. Hughes’ daughters also played with the dogs. Id. at 262. They then began the process of removing the car engine from the back of Mr. Perez-Calderon’s vehicle. Id. After spending some time removing the engine from Mr. Perez-Calderon’s vehicle, Mr. Montes left the house to go get his hair cut. Id. He left his dog with Mr. Perez-Calderon. Id. at 264. Because it was an extremely hot day, the plan was, upon Mr. Montes’ return, to take the kids and the dogs to the park. Id. at 266-267.

Mr. Montes returned about an hour later. Id. at 265. Upon returning Mr. Montes observed “pandemonium.” Id. at 267. He observed that Ms. Hughes was on the ground; injured. Id. at 240. He observed Mr. Perez-Calderon in a panicked state; on the phone with 911. Id. at 239, 267. In response to Mr. Montes’ question regarding what happened, Mr. Perez-Calderon responded: “We got into a fight. She got mad at me and she flipped the table. My gun was on the table. It went off. She’s been shot.” Id. at 241.

Police responded to Mr. Perez-Calderon’s 911 call. RP 160 (6/27/16). Several officers arrived at the home and identified their presence. Id. at 161. In response to their request to exit the house, police were told, “I am doing CPR. Get in here.” Id. at 162. Upon entry, police observed Mr. Montes and Mr. Perez-

Calderon providing assistance to Ms. Hughes – who had been shot in the chest.

Id. at 168. Officer Kolp described his initial observations:

When I entered the house, it was sort of chaotic. I observed a female on the floor to my right. Her feet were facing me. There were two males performing medical aid on the female. There seemed to be a large amount of blood there. The gentleman on the right was on his knees conducting what I recall to be CPR compressions. The gentleman on the left was on his knees, and he appeared to be what I recall to be like holding a pressure type using his hand over what appeared to be a wound on the victim's chest.

Id. at 178-79.

Officer Osness described his observations of the scene upon entry:

Walked in, saw what appeared to be a living room table on its top. Two subjects kneeling next to a female who was laying on her back. One subject was in the process of performing CPR. There was blood under her head basically. There was other various items. There was a living room and a kitchen beyond that.

Id. at 193.

According to police, Mr. Perez-Calderon, in response to what occurred, stated: “the gun was on the table and it went off and hit her in the chest” Id. at 174-75. He specifically stated to Officer Kolp, “We were arguing. She flipped the table. The gun went off.” Id. at 180. Unfortunately, Ms. Hughes could not be revived. RP 470 (6/29/16).

Mr. Perez-Calderon was arrested and interviewed by Detective Ray Punzalan. RP 344 (6/28/16). Upon asking Mr. Perez-Calderon about fighting with Ms. Hughes, Mr. Perez-Calderon told Detective Punzalan that “she [Ms. Hughes] had swatted him with an ACU digital camouflage shirt, top” and had also thrown

a chalice at him – which had broken. RP 357-58 (6/28/16). The “chalice” that had been thrown at Mr. Perez was described as “a heavy-duty wine glass,” – “heavier” and “thicker than a normal wine glass you see at a restaurant.” RP 456 (6/29/16).

Trial commenced on June 21, 2016. During trial, Detective Punzalan was asked about his interview of Mr. Perez-Calderon, at which point the following exchange occurred:

- Q: You keep asking him questions and ask him possibilities that may have happened?
- A: Certainly.
- Q: Part of your possibility, is it could have inadvertently gone off if it was in your hand when she flipped the table. That was one scenario you gave?
- A: Right.
- Q: When he was turning or something?
- A: Grabbed it inadvertently as the table flipped, as the table was coming towards him. A lot of possibilities.
- Q: A lot of possibilities in this case. He was consistent he didn't know how it happened?
- A: Yes.
- Q: The only thing we know for sure is it went off and she died as a result?
- A: Correct.

RP 388-89 (6/29/16).

When asked about his familiarity with firearms, Mr. Perez-Calderon stated he was familiar with them, asserting “I'm a gun guy.” RP 362 (6/28/16).

IV. ARGUMENT

This Court should reverse Mr. Perez-Calderon's conviction for the following reasons: first, by declining Mr. Perez-Calderon's proposal to instruct the jury on the lesser included offenses of manslaughter in the first and second degree, as well lawful use of force/self-defense, the trial court denied Mr. Perez-

Calderon his ability to argue his theory of the case. Such action was inconsistent with several holdings from this Court as well as our Supreme Court.

Second, Mr. Perez-Calderon's conviction should be reversed where his charges were amended, over objection, to include an alternative count of felony murder as well as an additional sentencing enhancement based on his rejection of the state's plea offer. Such action on the part of the prosecutor amounted to reversible prosecutorial misconduct and it was error for the trial court to permit the amendment.

Third and finally, for the reasons listed below, the trial court erred in denying Mr. Perez-Calderon's motion to suppress statements given during his lengthy interrogation.

A. It was error to exclude Mr. Perez-Calderon's proposed jury instructions.

Either party in a criminal case is entitled to have the jury instructed on its theory of the case if there is evidence to support that theory. State v. Fisher, 185 Wn.2d 836, 848, 374 P.3d 1185 (2016); State v. Williams, 132 Wn.2d 248, 259-60, 937 P.2d 1052 (1997); State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). In evaluating the evidence, the trial court must view it in the light most favorable to the party requesting the particular instruction. Fisher, 185 Wn.2d at 849, citing Fernandez-Medina, 141 Wn.2d at 455-56. This evidence may come from "whatever source" that tends to show that the defendant is entitled to the instruction. Fisher, *supra*, ("whatever source" includes utilization of the state's evidence), citing State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).

“Failure to do so is reversible error.” Fisher, 185 Wn.2d at 849, *citing* State v. Griffin, 100 Wn.2d 417, 420, 670 P.2d 265 (1983).

Here, there was sufficient evidence presented to instruct the jury on the lesser included offenses of manslaughter in the first and second degree as well as lawful use of force/self-defense and it was reversible error to refuse to do so.

1. The trial court erred in refusing to include lesser included instructions relating to manslaughter in the first and second degree.

In Washington, a defendant is entitled to a lesser included offense instruction if two conditions are met: first, each of the elements of the lesser offense must be a necessary element of the offense charged, and second, the evidence in the case must support an inference that the lesser crime was committed. State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). Challenges to jury instructions based on errors of law are reviewed *de novo*, while those based on the facts of the case are reviewed for an abuse of discretion. *see* State v. Clausing, 147 Wn.2d 620, 626-27, 56 P.3d 550 (2002); State v. Hunter, 152 Wn.App. 30, 216 P.3d 421 (2009).

In State v. Berlin, 133 Wn.2d 541, 550-551, 947 P.2d 700 (1997), our Supreme Court held that manslaughter in the first and second degree meet “the legal prong of the Workman test.” *Id.* at 551. Thus, the question for this Court is whether Mr. Perez-Calderon can meet the second prong of the Workman test: did the evidence from trial support an inference that the lesser crime was committed? Workman, 90 Wn.2d at 447-48.

Recently our Supreme Court, in State v. Henderson, 182 Wn.2d 734, 344

P.3d 1207 (2015) declared:

In criminal trials, juries are given the option of convicting defendants of lesser included offenses when warranted by the evidence. Giving juries this option is crucial to the integrity of our criminal justice system because when defendants are charged with only one crime, juries must either convict them of that crime or let them go free. In some cases, that will create a risk that the jury will convict the defendant despite have reasonable doubts. As Justice William Brennan explained, “where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of *some* offense, *the jury is lively to resolve its doubts in favor of conviction.*” To minimize that risk, we err on the side of instructing juries on lesser included offenses. A jury must be allowed to consider a lesser included offense if the evidence, when viewed in the light most favorable to the defendant, raises an inference that the defendant committed the lesser crime instead of the greater crime. If a jury could rationally find a defendant guilty of the lesser offense and not the greater offense, the jury must be instructed on the lesser offense.

Id. at 736 (internal citations omitted).

This Court should reverse Mr. Perez-Calderon’s conviction based on the trial court’s refusal to “err on the side of instructing juries on lesser included offenses” – when it declined to instruct the jury on the lesser-included offenses of manslaughter in the first and second degree. Mr. Perez-Calderon never wavered in his position that he was on the couch while arguing with Ms. Hughes. As the argument escalated, she began throwing things at him (the chalice), swinging at him (“swatting him with an ACU digital camouflage shirt, top”) and ultimately

flipped a coffee table towards him. He stated the “gun went off” but that he didn’t know how. During his interview with Detective Punzalan, Mr. Perez-Calderon acknowledged that there were many possibilities as to how the gun went off:

- Q: You keep asking him questions and ask him possibilities that may have happened?
- A: Certainly.
- Q: Part of your possibility, is it could have inadvertently gone off if it was in your hand when she flipped the table. That was one scenario you gave?
- A: Right.
- Q: When he was turning or something?
- A: Grabbed it inadvertently as the table flipped, as the table was coming towards him. A lot of possibilities.
- Q: A lot of possibilities in this case. He was consistent he didn’t know how it happened?
- A: Yes.
- Q: The only thing we know for sure is it went off and she died as a result?
- A: Correct.

RP 388-89 (6/29/16).

It was error to not allow Mr. Perez-Calderon to argue his theory that Ms. Hughes’ death was accidental where there was clear evidence that he possibly killed her by grabbing the gun during his attempt to shield himself from the chalice/ACU top/coffee table during their struggle. Further, the jury could have rationally concluded that the mere existence of the firearm and Mr. Perez-Calderon’s possession/handling of it during an escalating domestic dispute – one where he was being assaulted – could reasonably be considered reckless or negligent conduct that led to Ms. Hughes’ death. He told Detective Punzalan that he was a “gun guy” and, therefore, the “possibility” that he “inadvertently”

grabbed the gun during his attempt to turn away from the flipping table could surely be considered reckless or negligent conduct.

In Hunter, this Court reversed a second-degree murder conviction with very similar facts where the trial court declined to instruct the jury on first and second degree manslaughter – but, like here, did instruct on excusable homicide².

This Court stated:

Hunter’s testimony that the shooting was an accident raised the inference that Hunter was guilty only of manslaughter and not murder. Without the lesser included offense instruction, Hunter could not adequately argue his theory of the case. Refusal to give the lesser included instructions allowed the jury to disregard Hunter’s testimony that the shooting was an accident. Furthermore, without the instruction, the jury’s only alternative to the second degree murder conviction was a not guilty verdict, a difficult or impossible verdict in light of Hunter’s admission that he shot Sergeant in the face, which shot resulted in her death. Had the lesser included instructions been given, the jury could have reasonably inferred from all the evidence that Hunter did not intend to kill Sergeant. Therefore, the trial court abused its discretion in refusing to give the lesser included offense instructions.

Id. at 47.

Hunter is on-point. Mr. Perez-Calderon acknowledged the possibility of an inadvertent firing of the gun which led to the death of Ms. Hughes. The trial court should have instructed the jury on manslaughter in the first and second degree because its failure to do so denied Mr. Perez-Calderon his ability to argue his theory of the case and put the jury in the position of either convicting of second

² Id. at 39.

degree murder or outright acquitting Mr. Perez-Calderon. As such, in light of our Supreme Court's holding in Henderson ("If a jury could rationally find a defendant guilty of the lesser offense and not the greater offense, the jury must be instructed on the lesser offense") the trial court abused its discretion and this Court should, respectfully, reverse Mr. Perez-Calderon's conviction.

2. The trial court erred in refusing to include instructions relating to lawful use of force/self-defense.

"The trial court is justified in denying a request for a request for [an affirmative defense] instruction only where no credible evidence appears in the record to support [it]." Fisher, *supra*, quoting McCullum, 98 Wn.2d at 488. The question of whether a defendant has produced sufficient evidence to raise a claim of self-defense is a matter of law for the trial court and thus, if the trial court's basis for declining to give the proposed instruction is based on insufficient evidence, this Court's review is *de novo*. Fisher, *supra* at 849, citing Janes, 121 Wn.2d at 238 n.7.

Here, in his supplemental proposed jury instructions, Mr. Perez-Calderon sought to instruct the jury on self-defense/use of force. CP 57-60. In response, the trial court stated:

I am not going to give the instructions that were requested in the supplemental instructions from the defense regarding self-defense. I don't think it is appropriate to give self-defense instructions in a case of this nature.

RP 599 (7/6/16).

For many of the same reasons that this trial court erred in not instructing the jury on lesser-included offenses, the trial court erred in not instructing the jury on self-defense. After all, the evidence, when viewed in the light most favorable to Mr. Perez-Calderon, established (1) an escalating argument between him and Ms. Hughes, (2) that Ms. Hughes was throwing things at him, (3) that she was swatting/hitting him with the ACU top and (4) that she flipped the coffee table towards him at close proximity. The evidence suggested the firearm was on the coffee table that was flipped, and during his interview with Detective Punzalan, Mr. Perez-Calderon agreed that he may have touched and fired the gun during that moment in the struggle.

When the state amended the information on the day of trial, it added felony murder as an alternative to murder in the second degree. The predicate felony was assault in the second degree or attempted assault in the second degree. It was error to eliminate Mr. Perez-Calderon's ability to argue that the gun was possibly used to fend off Ms. Hughes' assaultive behavior towards him. The trial court erred in refusing to instruct the jury on self-defense and it is respectfully requested that this Court reverse Mr. Perez-Calderon's conviction.

B. The trial court erred when it allowed the state, over objection, to amend the information on the day of trial in response to Mr. Perez-Calderon's refusal to accept a plea agreement.

Prosecutorial vindictiveness occurs when the government acts against a defendant in response to the defendants' prior exercise of constitutional or statutory rights. State v. Korum, 157 Wn.2d 614, 627, 141 P.3d 13 (2006). A prosecution is "vindictive" only if designed to penalize a defendant for invoking

legally protected rights. Id. A defendant bears the burden of showing (1) actual vindictiveness, or (2) a realistic likelihood of vindictiveness. Id. Prosecutorial misconduct is grounds for reversal if the prosecuting attorney's conduct was both improper and prejudicial. State v. Monday, 111 Wn.2d 667, 675, 257 P.3d 551 (2011).

Here, Mr. Perez-Calderon objected to the state's motion to amend the information on the day of trial. It was asserted on the record by counsel for Mr. Perez-Calderon that there was a plea offer and Mr. Perez-Calderon's apparent refusal to accept it led to the state adding the felony murder alternative as well as the enhancement under RCW 9.94A.535(3)(h). The trial court did not inquire further as to whether the amendment was in retaliation for Mr. Perez-Calderon's decision to exercise his right to trial. Instead, the court simply allowed the amendment. This was not proper and respectfully, this Court should reverse.

C. The trial court erred in not suppressing Mr. Perez-Calderon's custodial statements to police.

The Fifth Amendment to the United States Constitution states that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." Article I § 9 of the Washington State Constitution affords the same protection. State v. Unga, 165 Wn.2d 95, 100, 196 P.3d 645 (2008); State v. Earls, 116 Wn.2d 364, 374-75, 805 P.2d 211 (1991). To be admissible, a defendant's statement to law enforcement must pass two tests of voluntariness: (1) the due process test, whether the statement was the product of police coercion; and (2) the Miranda test, whether a defendant who has been informed of his rights thereafter knowingly and intelligently waived those rights before making a statement. State

v. Reuben, 62 Wn.App. 620, 624, 814 P.2d 1177 (1991). A confession that is the product of government coercion must be suppressed regardless of whether Miranda has been complied with. United States v. Anderson, 929 F.2d 96, 98 (2d Cir. 1991).

Courts evaluate the totality of the circumstances to determine whether custodial statements were voluntarily given. Unga, 165 Wn.2d at 100 (*citing* Fare v. Michael C., 442 U.S. 707, 724-25, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979); Schneekloth v. Bustamonte, 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); Miranda, 384 U.S. at 475-77)). The government must prove the voluntariness of a defendant's statement by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972).

Here, during the CrR 3.5 hearing, Detective Punzalan acknowledged he was the first detective to interrogate Mr. Perez Calderon. RP 51 (6/22/16). Further, despite Mr. Perez-Calderon's sur-name, he never inquired as to whether English was his first language. Id. at 59. He acknowledged telling Mr. Perez-Calderon that his failure to give a statement would cause Ms. Hughes' kids to have to submit to a forensic interview. Id. at 56. He admitted the interrogation lasted for several hours and that he repeatedly used the F-word.

When asked about coercion, Detective Punzalan gave his definition:

- Q. Do you have a definition of the word "coercion," what that means to you?
- A. I would suspect – my interpretation of that, physically harming someone. No rubber hoses, no water boarding. Nothing like that. No torture.
- Q. As long as it doesn't go that far, it is not coercion?
- A. Generally.

Id. at 63.

Here, in evaluating the totality of the circumstances, Mr. Perez-Calderon's statements were not given voluntarily. This Court should reject Detective Punzalan's assertion that coercion is limited to waterboarding and torture. The trial court erred in not suppressing the statements and respectfully, this Court should reverse Mr. Perez-Calderon's conviction.

V. **CONCLUSION**

Based on the above cited facts and authorities it is respectfully requested that this Court reverse Mr. Perez-Calderon's conviction and remand his case for new trial.

RESPECTFULLY SUBMITTED this 24th day of March, 2017.

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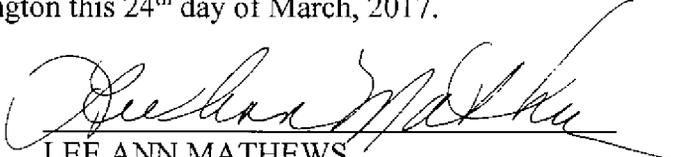
CERTIFICATE OF SERVICE

Lee Ann Mathews hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of the opening brief of appellant to the Court of Appeals, Division II, to which this certificate is attached, by electronic filing and by United States Mail or by ABC-Legal Messengers, Inc., to the following:

Kathleen Proctor
Deputy Prosecuting Attorney
930 Tacoma Avenue South, #946
Tacoma, WA 98402

Carlos E. Perez Calderon
DOC #393230
Coyote Ridge Corrections Center
P. O. Box 769
Connell, WA 99326

Signed at Tacoma, Washington this 24th day of March, 2017.


LEE ANN MATHEWS

7/11/2016 10:01 AM

JURY INSTRUCTION NO. 6

The defendant is charged with the crime of Murder in the Second Degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crimes of Manslaughter in the First Degree, or Manslaughter in the Second Degree.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.

WPIC 4.11

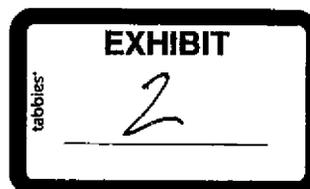


JURY INSTRUCTION NO. 11

A person commits the crime of manslaughter in the first degree when he or she recklessly causes the death of another person.

7/11/2016 12:9:10

WPIC 28.01



EO

01621

7/11/2015

JURY INSTRUCTION NO. 12

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness as to a particular result is required to establish an element of a crime, the element is also established if a person acts intentionally or knowingly as to that result.

WPIC 10.03



JURY INSTRUCTION NO. 13

To convict the defendant of the crime of manslaughter in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about June 6, 2015, the defendant engaged in reckless conduct;
- (2) That Mindy Hughes died as a result of defendant's reckless acts; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 28.02



JURY INSTRUCTION NO. 14

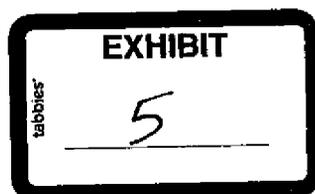
A person commits the crime of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.

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WPIC 28.05



JURY INSTRUCTION NO. 15

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and this failure constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

When criminal negligence as to a particular result is required to establish an element of a crime, the element is also established if a person acts intentionally or knowingly or recklessly as to that result fact.

WPIC 10.04



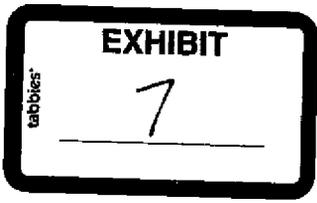
JURY INSTRUCTION NO. 16

To convict the defendant of the crime of manslaughter in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about June 6, 2015, the defendant engaged in conduct of criminal negligence;
- (2) That Mindy Hughes died as a result of defendant's negligent acts; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



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JURY INSTRUCTION NO. 1

It is a defense to a charge of assault in the second degree that the force used was lawful as defined in this instruction.

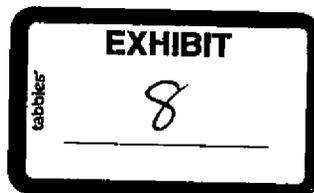
The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured or by someone lawfully aiding a person who he reasonably believes is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

The use of force upon or toward the person of another is lawful when used in preventing or attempting to prevent a malicious trespass or other malicious interference with real or personal property lawfully in that person's possession, and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

WPIC 17.02



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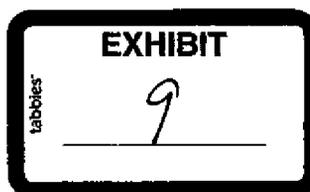
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7/11/2019

JURY INSTRUCTION NO. 2

A person is entitled to act on appearances in defending himself or another, if he believes in good faith and on reasonable grounds that he, or another, is in actual danger of injury, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

WPIC 17.04



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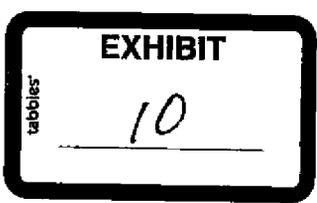
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JURY INSTRUCTION NO. 3

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by the use of lawful force.

The law does not impose a duty to retreat. Notwithstanding the requirement that lawful force be "not more than is necessary," the law does not impose a duty to retreat. Retreat should not be considered by you as a "reasonably effective alternative."

WPIC 17.05



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7/11/2016

HESTER LAW GROUP
March 24, 2017 - 2:41 PM
Transmittal Letter

Document Uploaded: 4-493438-Appellant's Brief.pdf

Case Name: State v Perez Calderon

Court of Appeals Case Number: 49343-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

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