

No. 28609-6-III  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

COREY CHRISTMAN,

Defendant/Appellant.

APPEAL FROM THE GRANT COUNTY SUPERIOR COURT  
HONORABLE JOHN M. ANTOSZ

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BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. Insufficient evidence supports appellant's controlled substances homicide conviction.

2. The controlled substances homicide statute is unconstitutionally vague as applied.

*Issues pertaining to assignments of error.*

1. The State alleged appellant delivered a controlled substance that was used by the person to whom it was delivered, resulting in the user's death. The State presented expert testimony that death was caused by the combination of the delivered substance plus methamphetamine plus alcohol.

a. Is there insufficient evidence to support the conviction where, under the plain meaning of the statute, the use of the delivered drug alone must result in the death?

b. If the term "resulting in" is ambiguous, does the rule of lenity require this Court to interpret it in appellant's favor?

2. Is RCW 69.50.415 unconstitutionally vague in violation of the Fourteenth Amendment to the United States Constitution and article I section 3 of the Washington State Constitution because the ambiguous

phrase “resulting in” requires an ordinary person to guess at its meaning and fails to establish standards to preclude arbitrary enforcement?

**B. STATEMENT OF THE CASE**

On a September 2008 evening, a group of 7-8 young people who were mostly friends met to party at the sand dunes near Moses Lake, Grant County, Washington. RP<sup>1</sup> 166, 174–75, 177, 198–199, 312–313. Drugs and alcohol were being used. RP 167, 176–177, 191–192, 200. The defendant, Corey Christman, brought nine and one-half (9-1/2) methadone pills he’d obtained from his step-mother. RP 168, 170. Apparently, Christman intended to sell some of the pills to obtain money. RP 354–355.

On two occasions during the evening, Christman gave his friend Ryan Mulder a total of five to six of the pills. RP 157, 172, 188, 318–319, 324. When Mulder asked later on for a few more pills, Christman directed him to more pills in Christman’s coat pocket down by the bonfire. RP 172. Christman noticed the next morning that the pills in his pocket were gone. RP 85, 158. Sibley had also seen Mulder go to Christman’s truck and retrieve some pills. RP 188–189, 192.

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<sup>1</sup> The trial transcript prepared by court reporter Tom Bartunek is contained in three volumes numbered sequentially and will be referred to as “RP \_\_\_\_”. Reference to the remaining two transcripts prepared by transcriptionist Ken Beck will include the date of the hearing, e.g., “10/27/09 RP \_\_\_\_”.

The party lasted one and one half to two hours. RP 199. Several people including Mulder left in a car and went to Sibley's house. On the way, Mulder may have had a seizure but then seemed to calm down. RP 189–191, 201, 320–321. At Sibley's house, several people noticed Mulder was very intoxicated and really messed up. RP 206–207, 209, 211–212. Some people then walked with Mulder to a nearby house, where he was going to stay that night in the carport/garage. RP 190, 202–203, 212–213, 218, 321–322. Someone there said Mulder seemed and smelled really drunk. RP 218–219, 221.

The next morning house residents found Mulder lying in the carport area barely breathing, and someone called 911. RP 203–204, 219–220. Mulder later died in a hospital. RP 104, 128–129, 215, 250.

John Howard, a forensic pathologist for the Spokane County Medical Examiner's Office, testified that the manner of death was accidental, meaning an unnatural event caused the death. RP 260. He concluded the cause of death was hypoxic encephalopathy<sup>2</sup> due to the use of methadone, methamphetamine and alcohol. RP 258. A blood sample sent to the Washington State Toxicology Lab contained methadone in a quantity reported as 0.23 milligrams per liter. RP 266–267. Dr. Howard

testified this is a level higher than has been identified in other cases of causing death by itself or producing clinical signs of toxicity, and that 0.23 milligrams per liter of methadone can be lethal and has been shown in other cases to be lethal. RP 271, 284.

However, the doctor testified that in this case, within reasonable medical certainty, methadone, methamphetamine and alcohol caused the death of Mr. Mulder. RP 273, 283. In his opinion, the three combined to hasten Mr. Mulder's death and therefore each was a cause of death. RP 284. He testified that in this case, there was no way to separate the effects of the three drugs. RP 284. Earlier simple hospital screening tests had showed the unquantitated presence of methamphetamine and alcohol. RP 268. In Dr. Howard's opinion, methamphetamine and alcohol played some role in the death (RP 269) and were also causes of death. RP 281–282.

In pertinent part, the jury was instructed that in order to convict Christman of controlled substances homicide, the state had to prove beyond a reasonable doubt:

... (4) That Ryan Mulder subsequently used the substance delivered by the defendant:

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<sup>2</sup> “Hypoxic encephalopathy means the brain was damaged due to lack of oxygen or inadequate oxygen supply ... and [Mr. Mulder] was no longer capable of controlling the heartbeat and the respirations on his own with his own brain.” RP 258–259.

(5) That use of the controlled substance delivered by the defendant resulted in the death of Ryan Mulder;

...

Instruction No. 12, CP 32. The term “resulting in” was not defined for the jury, nor was a “proximate cause” definition instruction requested or given to the jury.

The jury found Christman guilty of controlled substances homicide as charged. RP 378; CP 38. The court imposed a standard range sentence of 61 months. CP 42, 44. This appeal followed. CP 59.

## C. ARGUMENT

### 1. Insufficient evidence supports Christman’s controlled substances homicide conviction.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the State must prove every element of a crime charged beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). Evidence is sufficient to support a conviction only if, when viewed in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a

reasonable doubt. State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005).

The State charged Mr. Christman with controlled substances homicide in violation of RCW 69.50.415. That statute provides in relevant part:

A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c)[,] which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

RCW 69.50.415(1) (alteration added).

The term “resulting in” is not defined for purposes of the statute. The “to convict” instruction given in this case used the language of the statute: “(5) That use of the controlled substance delivered by the defendant resulted in the death of Ryan Mulder; ...”. Instruction No. 12, CP 32. However, the Comment to Washington Pattern Instructions–Criminal 29.02. notes that “[i]t is not clear whether the Legislature intended that the death of the user must be proximately caused by the use of the controlled substance or that use of the controlled substance merely ‘result in the death of the user.’” The Comment further states that if the standard is determined to be “proximate cause,” the words “proximately caused” should be substituted for the words “resulted in,” and the jury

should be instructed as to the definition of “proximate cause”. 11

WASHINGTON PRACTICE: WASHINGTON PATTERN JURY

INSTRUCTIONS: CRIMINAL 29.02, Comment (3d ed. 2008).<sup>3</sup> Here, the

jury was not instructed as to proximate cause or the meaning of the term

“resulting in.”

a. Under the statute’s plain meaning, the State presented insufficient evidence the use of the delivered drug alone resulted in the death.

Clear and unambiguous statutory language is not subject to judicial construction. State v. Anderson, 58 Wn. App. 107, 111, 791 P.2d 547

(1990). An undefined term in a statute will be given its usual and ordinary

meaning, and the court may use a dictionary definition to determine the

usual and ordinary meaning of the term. State v. Van Woerden, 93 Wn.

App. 110, 116, 967 P.2d 14 (1998), *rev. denied*, 137 Wn.2d 1039 (1999).

Moreover, criminal statutes must be given a strict and literal interpretation.

Id.

The term “resulting in” is not defined by statute or Washington

case law. Common dictionary definitions of the intransitive verb “result”

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<sup>3</sup> In crimes which are defined to require specific conduct resulting in a specified result, the defendant's conduct must be the "legal" or "proximate" cause of the result. 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 3.12, at 390 (1986). Before criminal liability is imposed, the conduct of the defendant must be both (1) the actual cause, and (2) the "legal" or "proximate" cause of the result. LaFave & Scott, at 392.

include “to proceed or arise as a consequence, effect, or conclusion <[e.g.,] death *resulted* from the disease>” or “to have an issue or result <[e.g.,] the disease *resulted* in death>” (emphasis in original) (alteration added) (Merriam–Webster’s Online Dictionary May 9, 2010) and “to spring, arise, or proceed as a consequence of actions, circumstances, premises, etc.,” or “to terminate or end in a specified manner or thing.” Webster’s Encyclopedic Unabridged Dictionary of the English Language 1642 (Deluxe Ed., Thunder Bay Press 2001). Applied to this case, the death must have occurred as a consequence of the use of the methadone.

As expressed in closing argument, the State’s theory was that the methadone delivered by Christman was the sole cause of death. RP 357–359, 369–370, 372–373. But the state’s expert testified that methadone, methamphetamine and alcohol in combination caused Mulder’s death and that it was not possible to separate out the effect of one from the other two. RP 258, 266–267, 273, 281–284.

The State therefore did not prove the methadone delivered by Christman “resulted in” Mulder’s death under the common meaning of the term. Because the State failed to prove an essential element of the crime, the conviction for controlled substances homicide must be reversed and the charge dismissed with prejudice. Smith, 155 Wn.2d at 505.

b. Assuming the statute is ambiguous, the rule of lenity applies.

A statute is ambiguous if it is susceptible to two or more reasonable interpretations. Van Woerden, 93 Wn. App. at 116. If a statute is ambiguous, courts look to other sources of legislative intent to discern the statute’s meaning. Id. at 116 (citing State v. Rhodes, 58 Wn. App. 913, 915–916, 795 P.2d 724 (1990)). If there is no clear contrary legislative intent, this Court applies the rule of lenity, which resolves statutory ambiguities in favor of the accused. Van Woerden, 93 Wn. App. at 116 (citing In re Personal Restraint Petition of Sietz, 124 Wn.2d 645, 652, 880 P.2d 34 (1994)).

The legislature enacted the controlled substances homicide statute in 1987 as part of “An Act Relating to criminal penalties for, criminal sentences for, education regarding, and treatment for alcohol and substance abuse[.]” Laws of 1987, ch. 458, § 2; 1987 Session Laws of the State of Washington, Preamble at page 1997. According to the Final Legislative Report Summary, “It is made a class B felony to provide a person with a controlled substance that results in the user’s death.” 1987 Final Legislative Report, 50<sup>th</sup> Wash. Leg., at 174. Among other things, the Act removed offenders convicted of certain offenses involving narcotic drugs from eligibility for first time offender status under the Sentencing

Reform Act, and proscribed or tightened penalties for certain illegal drug activities involving a minor. Id. at 174–175.

The legislative history, however, is silent as to whether the undefined term “resulting in” should be given its common meaning or a technical legal or medical meaning. Van Woerden, 93 Wn. App. at 116. Without legislative direction, the definition of “resulting in” is thus ambiguous. The rule of lenity therefore applies, and this Court should adopt the construction of “resulting in” most favorable to Christman. Id. at 117. Under that construction, there was no proof that use of the methadone alone resulted in Mulder’s death. The remedy is reversal and dismissal of the charge. Smith, 155 Wn.2d at 505.

**2. The controlled substances homicide statute, RCW 69.50.415, is unconstitutionally vague.**

The Legislature’s failure to define “resulting in” renders the statute unconstitutionally vague. A vague statute violates due process. State v. Stevenson, 128 Wn. App. 179, 188, 114 P.3d 699 (2005). The Fourteenth Amendment and article I, section three of the state Constitution protect citizens from impermissibly vague penal statutes. City of Sumner v. Walsh, 148 Wn.2d 490, 499, 61 P.3d 111 (2003).

The due process vagueness doctrine serves two important purposes: first to provide citizens with fair warning of what conduct they must avoid; and second, to protect them against arbitrary enforcement or discriminatory enforcement of the statute by providing ascertainable standards of guilt. State v. Halstien, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993); Stevenson, at 188.

To avoid unconstitutional vagueness, a statute must meet two requirements and is unconstitutional if either requirement is not satisfied. Halstien at 117-18. Under the first ground, "a statute meets constitutional requirements '[i]f persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of disagreement.' " State v. Watson, 160 Wn.2d 1, 7, 154 P.3d 909 (2007) (alteration in original) (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 179, 795 P.2d 693 (1990)). Under the second ground, a statute is unconstitutionally vague if it " 'contain[s] no standards and allow[s] police officers, judge, and jury to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute in any given case.' " Douglass, 115 Wn.2d at 181 (quoting State v. Maciolek, 101 Wn.2d 259, 267, 676 P.2d 996 (1984)).

When a criminal statute does not define words alleged to be unconstitutionally vague, the court may look to existing law, ordinary usage, and the general purpose of the statute to determine whether the statute is sufficiently clear. State v. Hunt, 75 Wn. App. 795, 801, 880 P.2d 96 (1994) (citation omitted).

The vagueness doctrine is limited. Id. at 118. A statute is presumed to be constitutional unless it appears unconstitutional beyond a reasonable doubt. Id. The party challenging the statute bears the burden of proof. Id. Unless First Amendment interests are involved, statutes are evaluated in light of the facts of the case, i.e. by “inspecting the actual conduct” of the challenger rather than hypothetical outlying situations. Stevenson, at 189. Since Christman’s case does not implicate the First Amendment, the Court should evaluate the challenge as applied to the facts in the case at hand. Douglass, 115 Wn.2d at 182–183.

The facts of this case illustrate the ambiguity inherent in the undefined term “resulting in” which in turn renders the means of committing controlled substances homicide unconstitutionally vague as applied to Christman.

The State relied on expert testimony that a combination of three drugs caused death to prove that use of one of the drugs—the methadone delivered by Christman—“resulted in” Mulder’s death.

But the undefined term “resulted in” fails to specify whether a person could be punished for committing controlled substances homicide if (1) the delivered drug is not a cause of death but is present in the user’s system;<sup>4</sup> (2) the delivered drug is *a* cause of death (according to the state’s expert, within a reasonable medical certainty) or (3) only if the delivered drug is *the* cause of death (the common meaning of the verb “result” as established by its dictionary definition). Where, as here, “persons of common intelligence must necessarily guess at its meaning and differ as to its applicability,” a statute is impermissibly vague. Douglass, 115 Wn.2d at 178.

This ambiguity also invites arbitrary enforcement and subjective decision-making. The ambiguity permitted the State to charge, and the jury to convict, Christman of controlled substances homicide without proving that use of the methadone he delivered “resulted in” the death of another person under the plain meaning of the term. The statute is

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<sup>4</sup> While they are disfavored (State v. Anderson, 141 Wn.2d 357, 367, 5 P.3d 1247 (2000)), the Legislature may create strict liability crimes. State v. Rivas, 126 Wn.2d 443, 452, 896 P.2d 57 (1995).

unconstitutionally vague and therefore it is void. Christman's conviction must be reversed. Walsh, 148 Wn.2d at 502.

**D. CONCLUSION**

For the reasons stated, the conviction should be reversed and the charge dismissed.

Respectfully submitted May 10, 2010.

A handwritten signature in cursive script, reading "Susan Marie Gasch". The signature is written in black ink and is positioned above a horizontal line.

Susan Marie Gasch  
Attorney for Appellant