

**FILED**

JUL 12, 2012

Court of Appeals  
Division III  
State of Washington

No. 302334

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

RICHARD SOLIZ,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE MICHAEL G. McCARTHY, JUDGE

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BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY THE ASSIGNMENT OF ERROR.

1. Whether sufficient evidence supported the conviction for manslaughter in the second degree, and the absence of a self-defense justification for the homicide, beyond a reasonable doubt?

B. ANSWER TO ASSIGNMENTS OF ERROR.

1. Sufficient evidence supported the conviction, as a rational trier of fact could have found the offense proven beyond a reasonable doubt based upon the forensic evidence, medical testimony and Mr. Soliz' own testimony.

II. STATEMENT OF THE CASE

The State supplements Mr. Soliz' Statement of the Case with the following narrative.

Mr. Soliz' close friend Oscar Flores, Jr., was the third individual in the deceased's vehicle on the night in question. He testified at trial that Mr. Lemus was driving, he was in the back seat, and Mr. Soliz was in the passenger front seat. **(RP 40-41)**

Before he got out of the vehicle to go home, he did not notice that any argument occurred between Mr. Soliz and Mr. Lemus. They were

talking, but he could not hear the conversation over the loud music. **(RP 41-43)**

Later, when Soliz appeared at his door, he noticed blood on Soliz' pants, shirt and hands, as well as wounds on his hands and the left side of his stomach. **(RP 47)**

On cross-examination, Mr. Soliz allowed that it was he who must have been responsible for stabbing Mr. Lemus, but could not remember it. **(RP 597; 619)** "Yeah, I don't remember and I know I didn't mean it." **(RP 619)**

Mr. Soliz did not summon aid that night, even though he was injured and Lemus was seriously injured. **(RP 625)**

While Soliz initially described trying to dispose of the knife to the police officers, at trial he could not remember what he did with the knife. **(RP 599)**

A forensic examination of Mr. Lemus' Jaguar revealed blood staining in and around the driver's seat, as well as between the seat and door. **(RP 344; Ex. 117-118)**

There was blood on the steering wheel, as well as on the console. **(RP 345-6; Ex. 122; 124)**

In contrast, there was no blood staining on the passenger seat or in the front of the front passenger seat area. **(RP 346-47; Ex. 127)**

Analysis of blood samples retrieved from inside the vehicle revealed that the DNA profile matched that of Mr. Lemus, including that from the driver's seat, the front and rear of the center console, as well as the steering wheel. **(RP 368-72)**

Dr. Selove, the forensic pathologist who performed the autopsy on Mr. Lemus, testified at length as to his observations and findings.

Injuries to Mr. Lemus' face included cutting wounds consistent with having been caused by a knife edge. **(RP 216-17; Ex. 152)**

There was a stab wound to his lip, as well as other injuries consistent with being struck, or landing upon, a hard, flat surface. **(RP 218-221; Ex. 167, 168)**

Dr. Selove documented a stab wound to Lemus' left ankle, which he believed to be a defensive wound consistent with the victim having raised his foot to protect his body while in a sitting position. **(RP 222-223; Ex. 155)**

There was a stab wound to the back of the right shoulder, which was directed from Lemus' right towards the left side of his body. **(RP 223-24; Ex. 156)**

Four more stab wounds were inflicted to the lower right side of Lemus' back. Of those, two penetrated deeply enough to penetrate Mr. Lemus' liver, passing through the diaphragm. **(RP 226; Ex. 165)**

Mr. Lemus bled to death as a result of his injuries, both within the chest cavity, as well as to the outside of his body. The internal bleeding caused a lung to collapse. **(RP 227-28)**

The pathologist further observed stab wounds to the right hand and wrist of the decedent, which he testified were consistent with defensive wounds. **(RP 231-32)**

In Dr. Selove's opinion, further defensive wounds were located on the left hand, as well as the right front forearm. **(RP 234-35; Ex. 163-68)**

Additionally, Dr. Selove had an opportunity to analyze some photographs of the wounds to Mr. Soliz. He was of the opinion that those wounds would be consistent with several scenarios, including defensive wounds, but would also be consistent with a hand which had been holding the knife slipping off the handle, or self-inflicted wounds. **(RP 237-41; Ex. 67, 70, 72)**

### III. ARGUMENT

#### 1. Sufficiency of the Evidence.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences

that reasonably can be drawn therefrom.” Id.; State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). An appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992).

In reviewing the sufficiency of the evidence, an appellate court need not be convinced of guilt beyond a reasonable doubt, but must determine only whether substantial evidence supports the State’s case. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303, *review denied* 119 Wn.2d 1003, 832 P.2d 487 (1992).

The law of self-defense is well-settled in Washington. As Mr. Soliz’ sets out in his opening brief, where a defendant raises the affirmative defense of self-defense, and the jury is so instructed, the State must prove the absence of self-defense beyond a reasonable doubt. State v. Acosta, 101 Wn.2d 612, 615-16, 683 P.2d 1069 (1984).

A homicide is justifiable when committed in the actual resistance of an attempt to commit a felony upon, or to inflict great personal injury to the slayer. RCW 9A.16.050(1), (2).

The jury was properly instructed on the elements of second degree manslaughter, as well as justifiable homicide. **(CP 196-01)** Indeed, no error is assigned to the instructions.

The jury was instructed, in part, that a homicide is justifiable if the slayer “employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of the incident.” **(CP 199)**

This is consistent with the case law cited by Mr. Soliz, including State v. Walden, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997); State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993).

As the deputy prosecutor stated during closing arguments, the evidence in this case proved beyond a reasonable doubt that Mr. Soliz mounted a sustained attack upon Mr. Lemus, intending to kill him. At the very least, the evidence supports the jury’s verdict that he acted with criminal negligence. Mr. Lemus was trying to protect himself by raising his feet to ward off the attack, sustaining defensive wounds on both his

ankles and his hands and forearm. He was stabbed multiple times in the back, as well as in his face. He was stabbed deeply enough that he bled to death. Mr. Soliz' wounds could have been defensive, or resulted from the knife slipping from his hand, or were self-inflicted.

Even if, as Mr. Soliz' claimed, Mr. Lemus was the one who produced the knife and initiated an attack on Mr. Soliz, the force he used was far beyond what a reasonably prudent person would do under the same circumstances.

A rational trier of fact could have found Mr. Soliz guilty beyond a reasonable doubt, and Mr. Soliz' assignment of error is without merit.

#### IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the conviction.

Respectfully submitted this 12<sup>th</sup> day of July, 2012.

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***Certificate of Service***

I, Kevin G. Eilmés<sup>7</sup>, hereby certify that on this date I served copies of the foregoing upon counsel for the Appellant via electronic filing with the court, by agreement, and pursuant to GR 30(B)(4), and on the Appellant Richard Soliz by depositing a copy in the U.S. Mail.

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/s/ Kevin G. Eilmes