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FILED
July 13, 2016
Court of Appeals
Division I
No. 73064-9-I State of Washington

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

STATE OF WASHINGTON,

Respondent,

v.

KAREEM HARRIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ARGUMENT 1

**Because the State did not prove Mr. Harris’s actions
caused Mr. Gant’s death there is insufficient evidence
to support his conviction of first degree murder..... 1**

B. CONCLUSION.....5

TABLE OF AUTHORITIES

Washington Supreme Court

Herskovits v. Grp. Health Co-op. of Puget Sound, 99 Wn.2d
609, 664 P.2d 474 (1983)..... 2

State v. Aten, 130 Wn.2d 640, 927 P.2d 210 (1996) 2

State v. Bauer, 180 Wn.2d 929, 329 P.3d 67 (2014) 2

State v. Engstrom, 79 Wn.2d 469, 487 P.2d 205 (1971) 1

State v. Little, 57 Wn.2d 516, 358 P.2d 120 (1961) 2

Washington Court of Appeals

*Estate of Dormaier ex rel. Dormaier v. Columbia Basin
Anesthesia, P.L.L.C.*, 177 Wn. App. 828, 313 P.3d 431 (2013)..... 2

Statutes

RCW 9.32.030 1

A. ARGUMENT

Because the State did not prove Mr. Harris's actions caused Mr. Gant's death there is insufficient evidence to support his conviction of first degree murder.

Proof of first degree murder requires the State prove the defendant caused the death of another. RCW 9.32.030. To prove causation of a murder the State must do more than simply prove a defendant's act may have been one possible link in a chain of events the ultimately culminates in the death of another, or that the act contributed some unknowable amount to that death. The proof can be no less than in the tort context, no less than establish the act contributed more than 50% to the person's ultimate death. Any other standard would permit a conviction of murder no matter how remote the defendant's and no matter how minimal the contributory effect of that act to a person's ultimate death.

The cause of death in a murder case is a question of fact. *State v. Engstrom*, 79 Wn.2d 469, 476, 487 P.2d 205 (1971). Thus, the State was required to prove proximate causation to the jury. The State never undertook to prove and did not prove that fact.

As detailed in Mr. Harris's opening brief, proof of causation of death in the civil arena requires more than proof of merely a contributing act. Instead, proof of cause of death requires proof that a

person's act increased the likelihood of death beyond 50%. *Herskovits v. Grp. Health Co-op. of Puget Sound*, 99 Wn.2d 609, 623, 664 P.2d 474 (1983) (Pearson, J. concurring); *Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C.*, 177 Wn. App. 828, 850, 313 P.3d 431 (2013). “[I]n criminal law, . . . it is not normally enough merely to prove that [the] accused occasioned the harm; he must have ‘caused’ it in the strict sense.” *State v. Bauer*, 180 Wn.2d 929, 936, 329 P.3d 67 (2014). This Court must reject the State’s argument that proximate cause in a murder case is substantially broader than in civil actions such as wrongful death actions.

The State’s evidence must establish the cause of death to a reasonable medical certainty. Indeed, the State cannot even establish the *corpus delicti* of murder if it does not have such evidence. *State v. Aten*, 130 Wn.2d 640, 659, 927 P.2d 210 (1996).

In a homicide case, where the life or liberty of a citizen is at stake, and where the guilt of the accused must be established beyond a reasonable doubt, the causal connection between the death of the decedent and the unlawful acts of the respondent [accused] cannot be supported on mere conjecture and speculation

Id. at 66 (quoting *State v. Little*, 57 Wn.2d 516, 358 P.2d 120 (1961)).

Aten held that the State cannot meet that standard if it cannot rule out an innocent cause of death. It logically follows that to rule out an innocent cause, the State must establish the criminal cause is more

likely than not the actual cause. Neither of the State's experts offered such an opinion. Instead, each simply identified possible causes of death.

Dr. Williams stated it was not possible to medically determine how Mr. Gant contracted pneumonia. 10/2/14 RP 173.

Dr. Haruff explained by his office's standards, if any injuries caused by another person contribute in any fashion to the death it is a "homicide." *Id.* Thus, his task, and ultimately his opinion, is limited solely to the question of whether the injuries contributed to death without regard to how much they contributed. To say that one of many contributing factors was the most significant factor is not the same as saying that factor created more than a 50% diminution in the chance of survival.

Indeed, in its response, the State does not point to a single piece of testimony from either expert that their opinion is held to any degree of certainty. Instead, the State contends that because the court must view the evidence in the light most favorable to the State, the court must assume the jury rejected natural causation and instead found Mr. Harris's act more likely than not was the cause death. Brief of Respondent at 31-32. But that inflates the expert's opinion beyond the limits the experts themselves placed upon it. Again, Dr. Williams stated

it was not possible to determine how Mr. Gant contracted pneumonia. 10/2/14 RP 173. Dr. Haruff never undertook to do so, limiting himself to determining whether the act contributed in any degree to death. Echoing Dr. Williams's admission, Dr. Haruff stated "There's no direct evidence that would link the pneumonia to an aspiration event. It cannot be excluded." 10/14/14 RP 25. He explained further that the autopsy could not determine what the "direct cause" of the pneumonia was and instead simply identifies reasonable possibilities. 10/14/14 RP 29.

If the experts could not say with medical certainty this last link in the chain, aspiration, actually caused the pneumonia which led to death, they certainly could not say with medical certainty an earlier link in that theoretical chain of events, aspiration occurred due to abdominal injuries resulting from the shooting, caused Mr. Gant's death. Even in the light most favorable to the State the gap in the evidence remains. That standard of review does not permit a reviewing court to inflate the experts' degree of certainty beyond what they themselves expressed.

B. CONCLUSION

For the reasons above and in Mr. Harris's initial brief, this Court should reverse Mr. Harris's conviction of first degree murder.

Respectfully submitted this 14th day of July, 2016.

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)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF JULY, 2016, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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