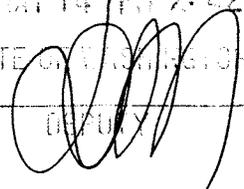


COURT OF APPEALS
DIVISION II

NO. 38262-8-II

03 MAY 14 PM 2:42

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY 

STATE OF WASHINGTON,

Respondent,

v.

JERRY L. CHASE,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF GRAYS HARBOR COUNTY

Before the Honorable F. Mark McCauley, Judge

OPENING BRIEF OF APPELLANT

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P.M. 5-13-2009

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by admitting appellant's custodial statements.

2. The trial court erred by concluding that appellant's custodial statements were voluntary.

3. The trial court erred by concluding that appellant's *Miranda* waiver was voluntary.

4. The trial court erred by adopting "Undisputed" Finding of Fact No. 7, insofar as the court found that appellant was not intoxicated, was affected only "[a] little," and acknowledged that he had been previously been advised of his *Miranda* warnings by another officer.

5. The trial court erred by adopting "Undisputed" Finding of Fact 8, insofar as the court found that appellant understood his rights.

6. The trial court erred by adopting "Undisputed" Finding of Fact No. 9, insofar as the court found that appellant acknowledged remember his warnings from the previous day.

7. The trial court erred by the Finding as to Disputed Fact insofar as the court found that "the defendant had the capacity and did, in fact, understand that he was under arrest for homicide, did understand his peril, did understand his *Miranda* rights and did have the ability to reason and make intelligent choices concerning his rights."

8. The trial court erred by adopting Conclusion of Law No. 4, which reads as follows:

Statements of the defendant to Deputy Wallace during transport and at the sheriff's office before the interview, were not in response to interrogation. The defendant's remarks were spontaneous. In any event, his remarks were made by the defendant after proper advisement of Miranda and a knowing and intelligent decision on the part of the defendant to speak.

9. The trial court erred by adopting Conclusion of Law No. 5, which reads as follows:

The defendant was properly advised of Miranda warnings by Detective Organ. The defendant made a knowing and intelligent waiver of those rights.

10. The trial court erred by adopting Conclusion of Law No. 6, which reads as follows:

All statements made by the defendant were voluntary.

11. The court erred when it refused to give appellant's proposed self-defense instructions.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Must appellant's custodial statements be excluded because alcohol may have influenced his cooperation with investigators? Assignments of Error Nos. 1-10.

2. Must appellant's custodial statements be suppressed because alcohol may have influenced his decision to waive his *Miranda*

rights? Assignments of Error Nos. 1-10.

3. Testimony from a paramedic referred to “an altercation” between appellant and another man, but did not specify whether it was a verbal or physical altercation. Counsel requested self-defense instructions, but the court refused because it reasoned that the testimony was insufficient to for a jury to conclude appellant acted in self-defense. Did the court err when it refused to give the requested self-defense instructions? Assignment of Error 11.

C. STATEMENT OF THE CASE

1. Procedural history:

Jerry Chase [Chase] was charged by information filed in Grays Harbor County Superior Court on June 7, 2007, with one count of second degree murder while committing or attempting to commit second degree assault, contrary to RCW 9A.32.050(1)(b). Clerk’s Papers [CP] at 1-2.

The court heard a motion suppress statements pursuant to CrR 3.5 on February 1 and 6, 2008. The court found that Mr. Chase’s initial statements to law enforcement when they arrived at the scene on June 1, 2007 were noncustodial. RP (3.5 Hearing) at 125-26. The court found that after Jonathan Dodds died, Mr. Chase was placed under arrest and advised of his *Miranda* rights and that he had acknowledged that he understood his rights. RP (3.5 Hearing) at 126. The court found that he was then transported to the Sheriff’s Office and advised of his rights a

second time and that that his statements to police were knowingly, intelligently, and voluntarily made after acknowledgement of his rights. RP (3.5 Hearing) at 126.

Findings of Fact and Conclusions of Law were entered on February 26, 2008. CP at 64-69. Appendix B.

Following a defense motion for a competency evaluation, Mr. Chase was found competent to stand trial and findings were entered May 5, 2008. CP 268-70.

Trial to a jury commenced July 22, 2008, the Honorable F. Mark McCauley presiding.

Following the State's case-in-chief, defense counsel unsuccessfully moved to dismiss upon failure to present a *prima facie* case. RP at 279.

The court declined to give the defense's proposed self-defense instruction. RP at 285-86. The trial court stated: "I don't think there was any reasonable juror with this slight scintilla of mentioning of an altercation and picking a fight that could reasonably conclude in any way that it was self-defense." RP at 286.

Defense counsel made no objections to instructions given by the court, and noted its exceptions to the court's failure to give Proposed Defense Instructions No. 10, (WPIC 17.02); No. 11, (WPIC 17.04) and No. 12 (WPIC 17.05). RP at 288-89. CP 411-12.

The jury returned a verdict of guilty to the charge of second degree felony murder. RP at 336; CP 439.

The court sentenced Mr. Chase within the standard range. RP at 348; CP 469.

Timely notice of appeal by the defense was filed on August 22, 2008. CP at 493-494. This appeal follows.

2. Trial testimony:

Grays Harbor County Deputy Sheriff Robert Crawford and Hoquiam police officer Jeff Salstrom were dispatched to 534 Ocean Beach Road, north of Hoquiam, Washington, at approximately 4:30 a.m. on June 1, 2007. RP at 28, 29, 107. Mr. Chase was standing in the living room of the house when police arrived. RP at 30. Jonathan Dodds was lying on the living room floor. RP at 30. Grays Harbor County Deputy Sheriff Stephen Larson arrived several minutes later. RP at 118.

Mr. Chase told Deputy Crawford and Officer Salstrom that he had kicked Mr. Dodds in the chest. RP at 31, 109. Deputy Crawford did not see any injuries to Mr. Chase. RP at 40. He stated that Mr. Chase appeared to be distraught. RP at 44. Mr. Chase said that he had an altercation with Mr. Dodds because he told Mr. Dodds to turn down an amplifier playing loud music, and that Mr. Dodds had come into his room, and that he had kicked Mr. Dobbs in the chest and that he had collapsed about five minutes later. RP at 60, 112. Neither officer saw signs of a

struggle in the house. RP at 110.

Paramedics were also dispatched to the house, and entered after the police had cleared the residence as part of a safety check. RP at 27, 28, 110. When Hoquiam Fire Department paramedics arrived, Mr. Chase was on his knees next to Mr. Dodds, who was lying on his back on the living room floor. RP at 54. Mr. Dodds had no pulse and had no electrical activity in his heart. RP at 55. Paramedics started giving him cardiopulmonary resuscitation and applied a bag mask in order to force oxygen into his lungs. RP at 55. When placing a breathing tube in his trachea in order to give him oxygen, the paramedics encountered an obstruction in his throat. RP at 56-57. A paramedic retrieved a wadded up paper towel “[a]bout the size of a racketball” from Mr. Dodds’ throat. RP at 57, 58, 76, 92, 99. Paramedics also administered epinephrine and atropine intravenously. RP at 59, 80. Mr. Chase repeatedly asked them to shock Mr. Dodds. RP at 59, 61, 81. Mr. Chase told them that Mr. Dodds had had a seizure and was foaming at the mouth and he used the paper towel to soak up saliva. RP at 59, 76. Paramedic Aaron Cihak testified that they did not shock Mr. Dodds because that is done when there is an excessive amount of electrical activity in the heart, and in Mr. Dodds case there was no electrical activity in his heart. RP at 61.

Paramedics administered CPR for approximately 30 minutes, and then stopped after consulting with a physician at the Grays Harbor Community Hospital emergency room. RP at 63, 64, 82, 99.

Mr. Chase was placed under arrest. RP at 124. The aid crew informed the officers that Mr. Dodds was dead, and Mr. Chase was taken to a patrol vehicle and administered his *Miranda* warnings. RP at 137, 138. After he was given his warnings, he said that he did not do anything and that Mr. Dodds had had a seizure. RP at 138. He was transported to the Sheriff's Office, and during that trip said that he "kicked my brother but I did not kill him[,]” and that he had a seizure. RP at 139. At the Sheriff's Office in Montesano, he said that Mr. Dodds should not have been playing his music so loud and that he hates to be woken up when he's sleeping. RP at 141.

Mr. Chase also told police that he and Mr. Dodds had bought vodka and brandy at a liquor store in Hoquiam, and then had drunk both bottles at the house earlier. RP at 156. Mr. Dodds had gone to bed and Mr. Chase had wanted to sing karaoke. RP at 156. His karaoke machine was broken, so he plugged it into a guitar amplifier that belonged to Mr. Dodds. RP at 156. Mr. Chase then went to bed and Mr. Dodds woke him up and was angry because Mr. Chase had used his amplifier without permission. RP at 157. Mr. Chase said it did not look like Mr. Dodds was going to turn the light off, and he had asked him to, so he got out of bed and kicked him in his stomach, and that Mr. Dodds fell against a door frame and then walked to his bedroom. RP at 157. He said that he went to the kitchen to get water, and that Mr. Dodds came out from his bedroom and then collapsed on the floor. RP at 158. He said that he at first thought

he was faking, and then thought that he was having a seizure. RP at 159.
Mr. Chase called 911. RP at 159.

Mr. Chase made and signed a written statement RP at 162, 215.
Exhibit 24.

Dr. Daniel Selove conducted an autopsy on Mr. Dodds on June 1, 2007. RP at 227. He found an assortment of blunt trauma injuries to Mr. Dodds. RP at 228. Dr. Selove testified that Mr. Dodds had a lacerated liver and was bleeding into his chest cavity, which was a fatal injury. RP at 244. Mr. Dodds had numerous rib and sternum fractures that also would have been fatal on their own. RP at 244. His spine was broken, which caused paralysis. RP at 237, 244. Mr. Dodds' larynx and trachea were also fractured, which Dr. Selove stated would be life threatening, and potentially fatal. RP at 245.

Mr. Chase did not testify at trial. RP at 280.

D. ARGUMENT

I. THE TRIAL COURT VIOLATED MR. CHASE'S CONSTITUTIONAL PRIVILEGE AGAINST SELF INCRIMINATION BY ADMITTING HIS CUSTODIAL STATEMENTS.

The Fifth Amendment to the U.S. Constitution provides that “No person shall... be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V. This privilege against self-

incrimination is applicable to the states through the due process clause of the Fourteenth Amendment. U.S. Const. Amend. XIV; *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964). Similarly, Article I, § 9 of the Washington State Constitution, provides that “No person shall be compelled in any case to give evidence against himself...” Wash. Const. Article I, § 9. Despite the difference in wording, both provisions have been held to provide the same level of protection. *State v. Easter*, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996). The law presumes that statements made by a suspect while in custody were compelled in violation of the privilege against self-incrimination. *State v. Corn*, 95 Wn. App. 41 at 57, 975 P.2d 520 (1999). Two standards determine the admissibility of custodial statements: the due process “coercion” or “voluntariness” test, and the *Miranda* test. *State v. Nelson*, 108 Wn. App. 918 at 924, 33 P.3d 419 (2001), citing *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) and *State v. Reuben*, 62 Wn. App. 620, 814 P.2d 1177 (1991). Admission of a custodial statement violates the coercion or voluntariness test if law enforcement overbears an accused’s will to resist, resulting in confessions that are not freely self-determined. *Reuben*, at 624. The privilege against self-incrimination absolutely precludes use of any involuntary statement against an accused in a criminal trial, for any purpose. *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d

290 (1978).

Under the *Miranda* test, advice of the right to remain silent and the right to counsel must precede custodial interrogation. *Corn*, at 57. An accused may waive her or his *Miranda* rights provided the waiver is made voluntarily, knowingly and intelligently. *Corn*, at 57. The waiver “must be made with ‘full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’” *Corn*, at 58, quoting *Miranda*, at 444. The State must show that the defendant was fully advised of his rights, understood them, and knowingly, voluntarily, and intelligently waived them. *Corn*, at 57; *Reuben*, at 625. The court must examine the totality of the circumstances surrounding the interrogation when making the determinations concerning the uncoerced nature of the choice and the level of comprehension of the right being relinquished. *Corn*, at 58. When the State seeks to admit custodial statements obtained in the absence of an attorney, the State bears the “heavy burden” of establishing the defendant's waiver. *Corn*, at 58. These standards apply “whether a confession is the product of physical intimidation or psychological pressure and, of course, are equally applicable to a drug-induced statement.” *Townsend v. Sain*, 372 U.S. 293 at 307, 83 S. Ct. 745, 9 L. Ed. 2d 770 (1963), emphasis added, overruled on other grounds by *Keeney v. Tamayo-Reyes*, 504 U.S. 1 at 5, 112 S. Ct.

1715, 118 L. Ed. 2d 318 (1992).

a. The State failed to prove that Mr. Chase's statements were voluntary due to his earlier consumption of alcohol.

Prior to being interrogated, Mr. Chase, who described himself as an alcoholic, stated that he was drinking with Mr. Dodds on May 31 and into the morning of June 1, 2007. RP (3.5 Hearing) at 101. CP 66. Finding of Fact No. 7. He and Mr. Dodds had consumed vodka, brandy, beer, and possibly champagne prior on May 31 and into June 1. RP (3.5 Hearing) at 102, 103. Mr. Chase stated that he went to bed at approximately 2:00 a.m. on June 1 and that he “was pretty drunk.” RP (3.5 Hearing) at 103. He stated that he “vaguely remembered Deputy Crawford and Officer Salstrom at the house, and said that he was still “[p]retty drunk” at that time. RP (3.5 Hearing) at 103. He stated that he did not remember his *Miranda* warnings being given to him at the scene and did “not really” remember being placed in a patrol car. RP (3.5 Hearing) at 104. He stated that he was still drunk when he was questioned by Grays Harbor County Detective Matt Organ and that he did not remember signing the Advice of Rights Form. RP (3.5 Hearing) at 106. He stated that he would not have signed anything and would have asked for an attorney if he had been sober. RP (3.5 Hearing) at 107.

The testimony offered by the State included the observations of

the officers who had contact with Mr. Chase before and during the interrogation was that while Mr. Chase had been drinking, but that he was not intoxicated when questioned at approximately 6:15 p.m. on June 1. RP (3.5 Hearing) at 164, 165.

Given the state of intoxication that he described, the State failed to meet its heavy burden of proving that his statements were voluntarily made. The fact that he gave coherent statements has no bearing on whether or not his decision to talk was voluntarily made. *See Townsend v. Sain* at 320 (rejecting the coherency standard); see also *Reuben*, at 624 (The question of voluntariness is “to be answered with complete disregard of whether or not [the accused] in fact spoke the truth.”) Because the State did not show that Mr. Chase’s statements were the product of free will, rather than the alcohol intoxication described by Mr. Chase, the trial court should not have concluded that his statements were voluntary. The custodial statements must be suppressed, the conviction reversed, and the case remanded for a new trial. *Townsend v. Sain, supra*.

- b. The State failed to establish that Mr. Chases’s *Miranda* waiver was voluntary since the alcohol he drank the night and morning before, may have rendered him artificially compliant prior to the waiver.**

The State’s failure to produce evidence that Mr. Chase’s *Miranda* waiver was voluntary likewise requires suppression of his statements.

Even assuming the waiver was knowingly and intelligently made, with a full understanding of its consequences, there remains a significant question as to whether or not the waiver was the product of free will. The alcohol may have diminished Mr. Chase's free will, as outlined above. If drinking alcohol made him more compliant or increased his desire to cooperate, the waiver was involuntary.

Because the State failed to disprove this possibility, the statements must be suppressed, the conviction reversed, and the case remanded for a new trial.

2. THE TRIAL COURT ERRONEOUSLY FAILED TO GIVE A SELF-DEFENSE INSTRUCTION THAT WAS WARRANTED BY THE EVIDENCE THEREBY DENYING MR. CHASE HIS RIGHT TO DUE PROCESS

- a. A criminal defendant is entitled to jury instructions on self-defense if there is some evidence to support giving the instruction.**

The general rule is that each side is entitled to have the trial court instruct upon its theory of the case if there is evidence to support that theory. *State v. Theroff*, 95 Wn.2d 385, 389, 622 P.2d 1240 (1980). Once there is some evidence from whatever source to support a claim of self-defense, the defendant has satisfied his burden, and the issue is properly raised. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983);

State v. Adams, 31 Wn. App. 393, 395, 641 P.2d 1207 (1982). *State v. Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997).

The trial court should evaluate whether there is sufficient evidence to instruct on self-defense by reviewing the entire record in the light most favorable to the defendant. *State v. Callahan*, 87 Wn. App. 925, 933, 943 P.2d 676 (1997). *State v. Westlund*, 13 Wn. App. 460, 465, 536 P.2d 20 (1975). The court focuses on those events immediately preceding and including the alleged criminal act. *Id.* Because the defendant is entitled to the benefit of all of the evidence, evidence tending to establish self-defense need not come from the defendant's testimony. *Id.*

When the jury considers a claim of self-defense, it considers the defendant's subjective, but reasonable, belief of imminent harm from the victim. *State v. LeFaber*, 128 Wn.2d 896, 899, 913 P.2d 369 (1996). It is not necessary that the jury find actual imminent harm. *Id.* Rather, the jury should put itself in the shoes of the defendant to determine whether that fear was reasonable "from all the surrounding facts and circumstances as they appeared to the defendant." *Id.* at 900.

Whenever justification or excuse would negate an essential element of the crime charged, due process requires the State to disprove justification or excuse beyond a reasonable doubt. *State v. Fondren*, 41

Wn. App. 17, 22, 701 P.2d 810, rev. denied, 104 Wn.2d 1015 (1985).

b. There was sufficient evidence to raise the issue of self-defense.

Parties are entitled to instructions on each theory of the case that is supported by the evidence. *State v. Theroff*, 95 Wn.2d 385, 622 P.2d 1240 (1980). In this present case, paramedic Aaron Cihak stated that Mr. Chase told him that he and Mr. Dodd had had “an altercation” and that “one of them had their music playing loud and it bothered the other one.” RP at 60. The court below, however, refused to give the requested self-defense instructions because the court contended that Mr. Chase’s statement to the paramedic “doesn’t tell me if it was physical altercation or verbal altercation.” RP at 286. The trial court judge stated that it was not sufficient to constitute “under any circumstances no matter how a jury would look at it as a defense in this situation where the person was killed by the descriptive injuries that we must had sufficient testimony to tell me that there was a very substantial situation going on.” RP at 286.

Mr. Chase had a colorable self-defense claim. The testimony of Mr. Cihak was that there was an altercation, but did not specify whether it was physical or verbal. Judge McCauley’s ruling was an abuse of discretion in that he took that factual determination away from the jury.

c. Reversal is required.

The error in refusing to give self-defense instructions was not

harmless. An error affecting a defendant's ability to raise a self-defense claim is constitutional in nature and requires reversal unless it is harmless beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d at 497. Instructional error such as occurred here, which deprived Mr. Chase of his ability to seek acquittal under a viable self-defense claim, was not harmless error. *State v. Hutchinson*, 85 Wn. App. 726, 733, 934 P.2d 1201 (1997). Reversal of Mr. Chase's conviction is therefore required.

E. CONCLUSION

Based on the above, Jerry Chase respectfully requests this court to reverse and dismiss his conviction for second degree murder and remand for new trial.

DATED: May 13, 2009.

Respectfully submitted,
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Jerry Chase

APPENDIX A

STATUTES

RCW 9A.32.050

Murder in the second degree.

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony.

[2003 c 3 § 2; 1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 §9A.32.050 .]

APPENDIX B

FILED
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OF COUNTY CLERK
GRAYS HARBOR, WA

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OFFICE OF COUNTY CLERK
GRAYS HARBOR, WA

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CHESTER T. FAY
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

No.: 07-1-325-1

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

v.

JERRY LEE CHASE

Defendant.

THIS MATTER having come on before me, judge of the above-entitled court, the defendant appearing in person and with his attorneys, Erik Kupka and David Mistachkin, the State appearing through Gerald R. Fuller, Chief Criminal Deputy, Grays Harbor County Prosecuting Attorney, and the court having heard testimony enters the following:

UNDISPUTED FACTS

1.

On June 1, 2007, at about 4:15 a.m., deputies were dispatched to 534 Ocean Beach Road. The caller had reported to Harbor 911 that he had just killed his brother by kicking him in the chest. Deputy Crawford and Hoquiam Officer Salstrom responded, arriving at about 4:30 a.m.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW -1-

H. STEWARD MENESEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
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2.

Crawford went to the back door of the house. He opened the door and announced himself. The defendant called to the deputy to come into the house. Crawford and Salstrom entered the house. The defendant was standing near Jonathan Dodds who was lying on the living room floor. The defendant stated, "I kicked him in the chest." The officers checked the residence to make sure there were no other persons in the house. They then admitted the aid crew into the house to treat Mr. Dodds.

3.

During the time the aid crew was treating Mr. Dodds, the defendant and the officer were standing in the living room. The defendant was not restrained. In response to a question from one of the aid personnel the defendant stated that he had placed a paper towel down Mr. Dodds' throat because Dodds was foaming at the mouth. In response to another question from one of the aid personnel, the defendant stated that he had assaulted Mr. Dodds because he would not turn down the amplifier.

4.

As aid personnel were treating Dodds, Deputy Larson arrived at the residence. Larson spoke to the defendant in the living room asking him for his name and asking him to identify Dodds. Larson asked the defendant if Dodds was his brother. The defendant explained that Dodds was his boyfriend and that they had recently moved to the area from Arizona.

5.

After a time, the aid crew informed law enforcement that Dodds was deceased. Chase walked into the kitchen. Deputy Larson called his supervisor and explained the details of the incident. Following the call, Deputy Larson directed Deputy Wallace to place the defendant under arrest and put him the back of a patrol car. The defendant was informed that he was under

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3
4 arrest for domestic violence homicide and was read his rights from a Miranda card, Exhibit 1.
5 The defendant told Wallace that he understood his rights and made the remark "I did not do
6 anything. Jon just had a seizure."

7
8 6.

9 Deputy Wallace transported the defendant to the Grays Harbor County Sheriff's Office.
10 Wallace was told that he was not to interrogate the defendant. During the ride, the defendant
11 made a number of spontaneous remarks. Once at the sheriff's office, Wallace placed the
12 defendant in the interview room and obtained a bottle of water for Chase to drink. As they sat in
13 the room, the defendant made additional spontaneous remarks about himself, the deceased and
14 the events surrounding Dodds' death.

15 7.

16 Detective Organ and Detective Davin contacted the defendant in the front interview room
17 of the sheriff's office. At the defendant's request, he was provided with a cup of coffee and
18 cigarettes. When asked how he was feeling, the defendant stated that he had a lot to drink the
19 night before and that he was "feeling it." The defendant denied being intoxicated. When asked
20 if he felt affected by the alcohol that he had consumed, the defendant stated, "A little." The
21 defendant acknowledged that he understood that Davin and Organ were police officers and that
22 he was at the sheriff's office in Montesano. The defendant acknowledged that he had previously
23 been advised of his Miranda rights by Deputy Wallace.

24 8.

25 The defendant was advised of his Miranda rights by Detective Organ, reading from
26 Exhibit 2. The defendant told Organ that he understood his rights and agreed to speak to Organ
27 and Davin. Verbal statements and a written statement were taken over an approximate four hour
period. The defendant did not ask for the presence of counsel. The defendant did not say at any

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point that he did not wish to speak to the officers. On the completion of the interview, the defendant was booked into the Grays Harbor County Jail

9.

The following morning, Detective Organ and Sergeant Shumate contacted the defendant in an interview in the Grays Harbor County Jail. The defendant acknowledged remembering his Miranda rights for the day before. The officers explained the extent of Dodds' injuries, having received the autopsy findings. At this point, the defendant stated, "I think I want to talk to an attorney." Following this, the defendant made a comment that he could not read. Detective Organ asked him if he had forgotten how to read over night. The defendant responded that he did not know how to read and that it was embarrassing.

DISPUTED FACT

Was the defendant intoxicated?

FINDING AS TO DISPUTED FACT

The defendant did consume alcohol. The defendant may have been feeling, to some extent, the effects of the alcohol that he had been drinking. Nevertheless, the defendant had the capacity and did, in fact, understand that he was under arrest for homicide, did understand his peril, did understand his Miranda rights and did have the ability to reason and make intelligent choices concerning his rights.

Based upon the foregoing findings of fact, the court enters the following:

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CONCLUSIONS OF LAW

1.

The court has jurisdiction over the parties and subject matter herein.

2.

The statements of the defendant made at the house in the presence of Deputy Crawford and Officer Salstrom were not custodial and were not in response to police interrogation.

3.

Statements of the defendant to Deputy Larson were not custodial. The questions asked by Deputy Larson were not designed or intended to elicit a criminating response.

4.

Statements of the defendant to Deputy Wallace during transport and at the sheriff's office before the interview, were not in response to interrogation. The defendant's remarks were spontaneous. In any event, his remarks were made by the defendant after proper advisement of Miranda and a knowing and intelligent decision on the part of the defendant to speak.

5.

The defendant was properly advised of Miranda warnings by Detective Organ. The defendant made a knowing and intelligent waiver of those rights.

6.

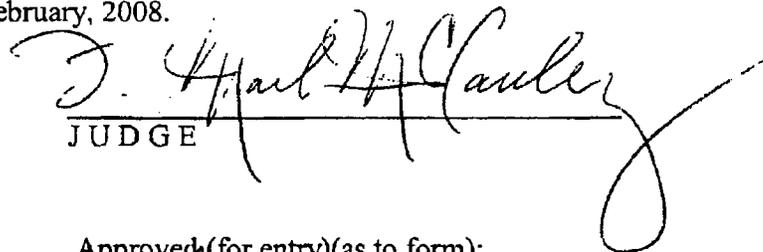
All statements made by the defendant were voluntary.

IT IS THEREFORE ORDERED that the out-of-court statements of the defendant made to investigating officers on June 1, 2007, are admissible for use by the State of Washington in its case-in-chief subject to admissibility pursuant to the Rules of Evidence, and it is

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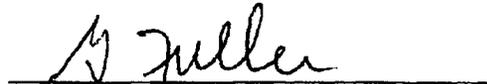
FURTHER ORDERED that the statements of the defendant following his request for counsel on June 2, 2007, being otherwise voluntary, may not be used in the State's case-in-chief but may, subject to admissibility pursuant to the Rules of Evidence, be used for cross-examination of the defendant for or rebuttal.

DATED this 25th day of February, 2008.



JUDGE

Presented by:



GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

Approved (for entry)(as to form):



ERIK KUPKA
Attorney for Defendant
WSBA #28835

DAVID L. MISTACHKIN
Attorney of Defendant
WSBA #34063

GRF/jab

COURT OF APPEALS
DIVISION II
09 MAY 14 PM 2:12
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent, vs. JERRY L. CHASE, Appellant.	COURT OF APPEALS NO. 38262-8-II GRAYS HARBOR COUNTY 07-1-00325-1 CERTIFICATE OF MAILING
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The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Appellant Jerry Chase, and Gerald R. Fuller, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on May 13, 2009, at the Centralia, Washington post office addressed as follows:

Mr. Gerald R. Fuller
Grays Harbor County
Prosecuting Attorney
102 W. Broadway Avenue, Rm 102
Montesano, WA 98563-3621

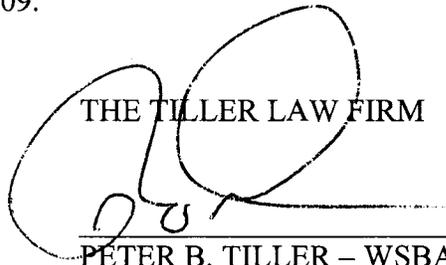
Mr. David Ponzoha
Clerk of the Court
Court of Appeals
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Tacoma, WA 98402-4454

CERTIFICATE OF
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Dated: May 13, 2009.


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Of Attorneys for Appellant

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2

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