

No. 42853-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Vonda Pritchard,

Appellant.

Clallam County Superior Court Cause No. 10-1-00387-7

The Honorable Judge Ken Williams

Appellant's Reply Brief

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ARGUMENT

I. THE INFORMATION FAILED TO ALLEGE CAUSATION, AN ESSENTIAL ELEMENT OF VEHICULAR ASSAULT.

A constitutionally insufficient charging document requires reversal, even if challenged for the first time on review. *State v. Kjorsvik*, 117 Wash.2d 93, 102, 812 P.2d 86 (1991); *State v. McCarty*, 140 Wash.2d 420, 425, 998 P.2d 296 (2000). Causation is a non-statutory element of vehicular assault: the prosecution must show that the accused person’s subpar driving proximately caused the victim’s injuries. RCW 46.61.522; *State v. Sanchez*, 62 Wash.App. 329, 331, 814 P.2d 675 (1991). The Information here failed to allege a causal relationship between Ms. Pritchard’s subpar driving and the injuries inflicted. CP 18.

Accordingly, the Information is deficient, even under the liberal reading required for a post-verdict challenge. See *Kjorsvik*, at 102. Respondent claims that the word “and” can be read to imply causation. Brief of Respondent, p. 5. This is incorrect.

The word “and” suggests that the two elements—injury and subpar driving—are co-occurring. It does not suggest that one is the proximate cause of the other. Indeed, Respondent’s argument—that the Information is sufficient because it tracks the statutory language—ignores the non-statutory element altogether. Brief of Respondent, p. 5. Respondent does

not point to any other language—even “inartful” language—that could fill the gap.

Accordingly, the Information is deficient, and prejudice is conclusively presumed. *McCarty*, at 425. Ms. Pritchard’s conviction must be reversed and the charge dismissed. *Id.*

II. MS. PRITCHARD’S STATEMENTS SHOULD HAVE BEEN SUPPRESSED.

A. Ms. Pritchard’s statements were involuntary.

Involuntary statements are inadmissible for any purpose. *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978). A statement is involuntary if it is not the product of a rational intellect and a free will. *Gladden v. Unsworth*, 396 F.2d 373, 380-381 (1968). The burden of establishing voluntariness rests with the prosecution. *United States v. Jenkins*, 938 F.2d 934, 937 (9th Cir. 1991).

Ms. Pritchard’s statements were extracted from her following a serious accident, at a time when she was in a hospital strapped to a backboard receiving medical care (which did not include pain medication).¹ RP (10/31/11) 20-22, 33-34, 37, 39, 43, 118-124.

¹ Respondent faults Ms. Pritchard for failing to introduce evidence of the kind of care she was receiving, and the level of pain from which she suffered. Brief of Respondent, p. 10. But the burden is on the state to show voluntariness; accordingly, any failure of proof should be held against the prosecution. *Jenkins*, at 937.

Furthermore, she was “highly intoxicated,” and was found to have an elevated blood alcohol level. RP (10/31/11) 22; RP (11/1/11) 80, 114.

Under these circumstances, Ms. Pritchard’s statements were not voluntary. Respondent argues that voluntariness was established, relying on the trial court’s finding that Ms. Pritchard’s responses were appropriate rather than incoherent. Brief of Respondent, p. 8.

But mere coherency is not the test for voluntariness: a person may give coherent and truthful statements that are nonetheless involuntary. See *Townsend v. Sain*, at 320 (rejecting the coherency standard); see also *Jackson v. Denno*, 378 U.S. 368, 377, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964) (“the issue of voluntariness [is] a determination uninfluenced by the truth or falsity of the confession.”) Nor is Ms. Pritchard’s decision to refuse testing at the end of the interaction—after she’d already provided statements—proof that she exercised free will in speaking to the officer when he first addressed her.

Furthermore, Respondent fails to address the trial court’s failure to enter findings on these issues. Brief of Respondent, pp. 9-10. As noted in the Appellant’s Opening Brief, the absence of findings must be held against the state. *Ellerman*, at 524.

Ms. Pritchard’s statements were involuntary. The prosecution did not prove otherwise to the trial court, and Respondent presents no

argument warranting a different conclusion. Accordingly, the conviction must be reversed, the statements suppressed, and the case remanded for a new trial. Townsend, supra.

B. Ms. Pritchard's statements should have been excluded because they were the product of custodial interrogation without benefit of Miranda.

Ms. Pritchard stands on the argument set forth in her Opening Brief.

III. MS. PRITCHARD'S CONVICTION WAS BASED IN PART ON BLOOD TEST RESULTS THAT WERE NOT DEMONSTRABLY RELIABLE.

Ms. Pritchard stands on the argument set forth in her Opening Brief.

IV. THE TRIAL COURT SHOULD NOT HAVE ALLOWED THE PROSECUTION TO INTRODUCE TESTIMONY IN VIOLATION OF MS. PRITCHARD'S NURSE-PATIENT PRIVILEGE AND HER RIGHT TO PATIENT CONFIDENTIALITY UNDER FEDERAL LAW.

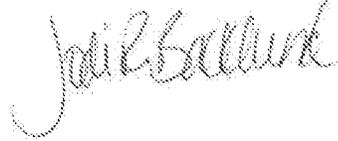
Ms. Pritchard stands on the argument set forth in her Opening Brief.

CONCLUSION

Ms. Pritchard's conviction must be reversed and the case dismissed. In the alternative, the charge must be remanded for a new trial.

Respectfully submitted on July 30, 2012.

BACKLUND AND MISTRY

A handwritten signature in cursive script that reads "Jodi R. Backlund".

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 30, 2012.

A handwritten signature in black ink, appearing to read "Jodi R. Backlund". The signature is written in a cursive style with a large initial "J".

Jodi R. Backlund, WSBA No. 22917
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BACKLUND & MISTRY

July 30, 2012 - 8:42 AM

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