

No. 78377-2

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRUCE L. BENNETT, JR,

Appellant.

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Court of Appeals, Division II,  
of the State of Washington  
Cause No. 32896-8-II

Appeal from the Superior Court of the  
State of Washington for Clallam County  
The Honorable Craddock Verser, Judge  
Cause No. 04-1-00078-7

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SUPPLEMENTAL BRIEF OF RESPONDENT

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CAROL L. CASE  
Deputy Prosecuting Attorney  
Attorney for Respondent  
WSBA # 17052

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**A. APPELLANT’S ASSIGNMENT OF ERROR**

1. Bennett claims his constitutional right to due process was infringed by the court’s instruction on reasonable doubt.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the court’s instruction on reasonable doubt violated Bennett’s constitutional right to due process?  
Assignments of Error Nos. 1.

**C. STATEMENT OF THE CASE**

Pursuant to RAP 10.3(b), the State accepts Bennett’s recitation of the procedural facts set forth in his opening brief.

**D. ARGUMENT**

**I. THE REASONABLE DOUBT INSTRUCTION DID NOT INFRINGE ON BENNETT’S CONSTITUTIONAL RIGHT TO DUE PROCESS**

Bennett attempts to convince this Court that it should not use a pattern jury instruction that has been implicitly approved by our own Supreme Court in denying review of *State v. Castle*, 86 Wn.App. 48, 58, 60, 946 P.2d 402, *review denied* 133 Wn.2d 1014 (1997). In *Castle*, the Court of Appeals noted that “the concept of reasonable doubt . . . defies

easy explication,” found “no constitutional flaw” in the instruction given. *Id.* at 58, 60.

In a criminal case, the trial court must instruct the jury that the State has the burden to prove each essential element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995). It is reversible error if the instructions relieve the State of that burden. *Pirtle*, 127 Wn.2d at 656.

Although no particular wording is required, the jury instructions must define reasonable doubt and clearly communicate the correct allocation of the burden of proof. *State v. Coe*, 101 Wn.2d 772, 787-88, 684 P.2d 668 (1984).

The comment to the [simplified alternative] [revision] to WPIC 4.01A indicates “that the *Castle* instruction – supplemented by two additions recommended by the Court of Appeals – provides an accurate statement of the law and does so in a way that many practitioners and courts may also find to enhance the jurors’ understanding”. In fact, the [simplified alternative] [revision] *Castle* instruction is set forth in the pocket part of the Washington Pattern Jury Instructions at pages 24 and 25 (Supp. 1998) and page 82 of the Washington Pattern Jury Instructions pocket part (Supp. 2005). That is exactly the instruction used in the instant case.

The *Castle* court concluded that the instruction as given did not lower the State's standard of proof or shift the burden to the defendant. 86 Wn.App. at 58. Furthermore, the *Castle* court rejected the defendant's constitutional challenge to the use of the phrase "real possibility."

Looking at the instruction as a whole, it clearly instructed the jury that it was the State's burden to establish guilty beyond a reasonable doubt and that the defendant is presumed innocent unless that burden is overcome. The burden was not shifted to the defendant.

There is no constitutional flaw in the instruction given by the trial court; Bennett's due process rights were not violated. Bennett's argument is without merit.

**E. CONCLUSION**

Based on the foregoing, the State respectfully asks this Court to affirm Division II of the Court of Appeals.

DATED this 14th day of November, 2006 at Port Angeles,  
Washington.

Respectfully submitted,

DEBORAH S. KELLY  
PROSECUTING ATTORNEY



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Carol L. Case, WABA # 17052  
Deputy Prosecuting Attorney  
Attorney for Respondent

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AFFIDAVIT OF SERVICE  
BY MAIL

10 STATE OF WASHINGTON )  
11 : ss.  
12 County of Clallam )

The undersigned, being first duly sworn, deposes and says:

13 That the affiant is a citizen of the United States and over the age of eighteen years; that on the 14th day of  
14 November, 2006, affiant deposited in the mail of the United States of America a properly stamped and addressed  
15 envelope containing a copy of the following document(s): SUPPLEMENTAL BRIEF OF RESPONDENT,  
16 addressed as follows:

15 Supreme Court  
16 Temple of Justice  
17 P. O. Box 40929  
18 Olympia, WA 98504-0929

Backlund & Mistry  
203 E. Fourth Ave. E., Ste 404  
Olympia, WA 98501

17 Bruce L. Bennett, Jr. DOC 990306  
18 c/o Backlund & Mistry  
19 203 Fourth Ave. E., Ste 404  
20 Olympia, WA 98501

*Carol L. Case*  
CAROL L. CASE 17052

21 SUBSCRIBED AND SWORN TO before me this 14TH day of November, 2006.

22  
23 *Elaine Sundt*  
24 (PRINTED NAME: ELAINE SUNDT  
25 NOTARY PUBLIC in and for the State of Washington  
Residing at Port Angeles, Washington  
My commission expires: September 9, 2010

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