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SUPREME COURT NO. 85410-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERICK DESHUM JORDAN,

Petitioner.

**SUPPLEMENTAL BRIEF OF RESPONDENT –
STATE OF WASHINGTON**

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A. ISSUE PRESENTED

The legislature intends that out-of-state offenses that are comparable to Washington crimes be included in a defendant's offender score. This Court last year held that the statutory requirement of comparable definitions of offenses does not include a comparison of defenses available in each State. Has Jordan established that holding is incorrect and harmful, justifying reversal of that precedent?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Erick Jordan was charged with murder in the second degree with a firearm enhancement for the killing of Maurice Jackson, and unlawful possession of a firearm in the first degree, both occurring on July 13, 2007. CP 11-13. His codefendant, Marcus Dorsey, was charged with two counts of assault in the second degree, relating to shots fired at police officers who responded to the scene. CP 11-13. Jordan and Dorsey were jointly tried in King County Superior Court, Judge

Dean Lum presiding. 1RP 1-2.¹ A jury found Jordan guilty as charged. CP 14-16. Based on an offender score of eight on the murder conviction, Jordan received a standard range sentence of 417 months on the murder conviction and 75 months on the firearm conviction, to run concurrently. CP 169-75.

The convictions and sentence were affirmed by the Court of Appeals. State v. Jordan, 158 Wn. App. 297, 241 P.3d 464 (2010).

2. SUBSTANTIVE FACTS

On July 13, 2007, defendant Erick Jordan stood facing an unarmed man, Maurice Jackson, pointing a gun at Jackson. 6RP 6-8; 13RP 683-84. Jordan's friend Marcus Dorsey was with him. 6RP 76-82, 102-03; 11RP 102-03, 488-93. Both Jordan and Dorsey had loaded .38 caliber revolvers. 7RP 88-92; 11RP 333-40; 12RP 529. As Jackson stood silently, empty-handed, Jordan said, "Do you want me to shoot you motherfucker?", then shot Jackson in the face and in the chest; Jackson died immediately as a result of the gunshot wounds. 6RP 6-7; 7RP 9, 30-31; 10RP 248-57.

¹ The verbatim report of proceedings is referred to in this brief as follows: 1RP (5-29-08); 2RP (5-30-08); 3RP (6-4-08); 4RP (6-5-08); 5RP (6-9-08); 6RP (6-10-08); 7RP (6-16-08); 8RP (6-17-08); 9RP (6-18-08); 10RP (6-19-08); 11RP (6-23-08); 12RP (6-24-08); 13RP (6-25-08); 14RP (6-26-08); and 15RP (1-15-09).

Three independent civilian witnesses saw the killing. 4RP 11, 19-20; 6RP 2-6; 13RP 674-79. The two who saw Jackson before he was shot saw that he was standing quietly or backing up when he was shot—they saw nothing in Jackson's hands. 6RP 6-8; 13RP 683-84. Two police officers also saw the killing: they saw Jordan standing in the street, shooting multiple times toward Jackson (although the officers could not see the victim from their vantage point). 6RP 36-39, 56, 76-79, 128-29.

Jordan and Dorsey ran away as police drove up. 6RP 36-39, 76-79. Jordan ran a short distance and apparently broke into the home of an elderly woman to try to hide from police but eventually ran out again and was caught. 8RP 12-16; 9RP 86-106. He had a .38 caliber revolver in his pocket that was determined to have fired the bullets that killed Maurice Jackson. 7RP 88-92; 9RP 106; 10RP 258-59; 11RP 344.

3. TEXAS MANSLAUGHTER CONVICTION

The trial court included a Texas manslaughter conviction in Jordan's offender score. 15RP 19-20. Jordan was convicted by a

jury in Texas in 1992 of voluntary manslaughter. CP 56.² That jury concluded that Jordan intentionally or knowingly caused the death of Juan Gillespie by shooting him with a deadly weapon, a pistol, on July 26, 1992, acting under the influence of sudden passion arising from an adequate cause. CP 48, 56. Under Texas law, "adequate cause" is defined as "cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." Texas Penal Code § 19.04 (1992) (attached in Appendix 1) (now codified in Tex. Penal Code § 19.02); CP 51.

The trial court found that the State had proved conclusively, beyond a reasonable doubt, that Jordan was the person convicted of that crime. 15RP 19. In his appeal, Jordan does not dispute that the State proved with certified documents that he had a 1992 Texas conviction for voluntary manslaughter.

The trial court concluded that the crime was comparable to murder in the second degree in Washington and assigned it two

² Certified copies of the documents relating to Jordan's Texas manslaughter conviction and his prior Washington convictions were admitted as exhibits at sentencing. 15RP 15-17. The references in this brief are to the copies of those documents attached to the State's sentencing memorandum. CP 17-144.

points in Jordan's offender score. CP 21, 170, 175; 15RP 20.³ For the first time on appeal, Jordan claimed that a Texas manslaughter conviction is not comparable to a Washington felony because the definition of self defense in Texas differs from the definition of self defense in Washington. The Court of Appeals rejected this claim. Jordan, 158 Wn. App. at 300-04.

C. ARGUMENT

Jordan argues that his Texas manslaughter conviction should not have been included in his offender score because it is not legally comparable to a Washington homicide, based on the defenses available in each state and the procedure applied in the courts of each state. This claim already has been rejected by this Court and was properly rejected by the Court of Appeals: legal comparability under the Sentencing Reform Act ("SRA") is focused on the elements of the crime and does not require that all possible defenses and procedures be identical to those in Washington.

³ The prosecutor incorrectly scored this prior conviction as two points, and the trial court repeated that error. CP 21, 170, 175. If Jordan is resentenced, that error should be corrected, counting three points if the Texas crime is comparable to either murder in the second degree or manslaughter in the first degree. RCW 9.94A.030(45); RCW 9.94A.525(9).

1. THE LEGISLATURE INTENDS THAT OUT-OF-STATE FELONY CONVICTIONS BE INCLUDED IN A DEFENDANT'S OFFENDER SCORE.

The legislature has manifested its intent that out-of-state convictions be included in a defendant's criminal history under the SRA. RCW 9.94A.030(11) explicitly defines "criminal history" as the defendant's prior convictions, "whether in this state, in federal court, or elsewhere." The rule for classification of out-of-state convictions is statutorily defined as follows:

Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

RCW 9.94A.525(3). Out-of-state and federal convictions are classified "according to the comparable offense definitions and sentences provided by Washington law." Id. A federal felony conviction that is not comparable to a Washington crime also is included in the defendant's criminal history, as a Class C felony. Id.

This Court recognizes that the SRA was designed to "[e]nsure that the punishment for a criminal offense is proportionate

to the seriousness of the offense *and the offender's criminal history.*" State v. Morley, 134 Wn.2d 588, 602, 952 P.2d 167 (1998) (emphasis in original) (quoting RCW 9.94A.010(1)). The purpose of the offender score provisions is to ensure that defendants with equivalent prior convictions are treated the same way. Morley, 134 Wn.2d at 602.

This Court in State v. Morley noted the many definitions in the SRA that expressly include out-of state and federal crimes that are comparable to Washington crimes. Id. at 597-98 (citing definitions of "criminal history," "drug offense," "escape," "felony traffic offense," and "most serious offense.") The court rejected a claim that a general court-martial is not a conviction under the SRA because it does not comply with the criminal procedure set out in Washington Revised Code Title 10. Id. at 597-99. Although the SRA definition of "conviction" refers to an adjudication "pursuant to Title 10," the Court concluded that it could not read the statute in a way which would exclude every out-of-state conviction because "the legislature obviously intended out-of-state convictions to be considered." Id. at 598.

2. THE DEFENSES AVAILABLE IN ANOTHER JURISDICTION ARE NOT PROPERLY PART OF A COMPARABILITY DECISION.

Jordan claims that an out-of-state crime is not comparable unless the parameters of self defense in the out-of-state jurisdiction exactly correspond to the parameters of self defense under Washington law; that claim is without merit. The plain language of the comparability standard in RCW 9.94A.525 limits the comparison to offense definitions and this Court has interpreted that language to include only the elements of the crimes.

In State v. Sublett, this Court rejected the argument that a difference in available defenses renders an out-of-state conviction not comparable to a Washington crime. 176 Wn.2d 58, 89, 292 P.3d 715 (2012). Sublett argued that because Washington recognizes a diminished capacity defense to robbery (and every crime with an intent element) but California has abolished diminished capacity as a defense, a California robbery conviction is not comparable to a Washington robbery conviction. Id. at 88-89. The Court held that “the comparability inquiry remains on the elements of the crime.”⁴ Id. at 89. The opposite result would have

⁴ This conclusion was joined by Justice Madsen, concurring. Sublett, 176 Wn.2d at 90. The other concurring opinions, comprising the four other members of the court, joined in affirming the decision but did not specifically address this issue. Id. at 136, 145.

eliminated every California conviction from the criminal history of Washington defendants, except for the very limited category of strict liability offenses.⁵

Respect for stare decisis requires a clear showing that an established rule is incorrect and harmful before it is abandoned. State v. Devin, 158 Wn.2d 157, 168, 142 P.3d 599 (2006). Jordan has not established that the holding of Sublett is both incorrect and harmful.

The Court of Appeals in the case at bar held that Jordan's argument is inconsistent with the plain language of RCW 9.94A.525(3), that "[o]ut-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law." Jordan, 158 Wn. App. at 303. The court observed that the statute contains no language that would suggest that defenses must be identical. Id.

If a defendant does not agree that his out-of-state conviction is comparable to a Washington felony, the court applies a two-part test to determine comparability. In re Pers. Restraint of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). First, the sentencing court

⁵ This Court has accepted review of a case in which one issue is whether the abolition of diminished capacity as a defense in the State of Florida precludes a finding that a Florida conviction is comparable to a Washington crime. State v. Leroy Jones, No. 85236-7.

compares the elements of the out-of-state offense with the elements of a Washington crime. Morley, 134 Wn.2d at 606. If the results of the comparison show that the elements of the crimes are substantially similar, or if the foreign jurisdiction defines the crime more narrowly, the out-of-state conviction counts toward the offender score. Lavery, 154 Wn.2d at 255. If the Washington statute defines the offense more narrowly, the court conducts a factual comparability analysis, which requires the sentencing court to determine whether the defendant's conduct, as evidenced by facts admitted, stipulated to, or proved beyond a reasonable doubt, would have violated the comparable Washington statute. State v. Thiefault, 160 Wn.2d 409, 415, 158 P.3d 580 (2007).

Jordan was convicted by a jury in Texas in 1992 of voluntary manslaughter. CP 56. In his Petition for Review, Jordan does not dispute that the elements of that offense are comparable to the elements of Washington manslaughter in the first degree.⁶ The elements of the Texas conviction for voluntary manslaughter were that Jordan intentionally or knowingly caused the death of another person, but acted "under the immediate influence of sudden passion arising from adequate cause." CP 44, 48; Tex. Penal Code

⁶ His argument that a defendant who raises a claim of self defense has created an additional element of the crime is addressed *infra*.

§§ 19.02 and 19.04 (1992) (attached in Appendix 1). The Texas crime is legally comparable to manslaughter in the first degree.

The alternative of first degree manslaughter comparable to Texas voluntary manslaughter is that the slayer recklessly caused the death of another person. RCW 9A.32.060(1)(a). The Texas definition of "knowingly" is narrower than the Washington definition of "recklessly," which is the mental state required for manslaughter in the first degree. Compare Tex. Penal Code § 6.03 (1992) with RCW 9A.08.010(1)(c) (both statutes are attached in Appendix 1). As a result, any conviction for voluntary manslaughter in Texas would require conduct constituting at least manslaughter in the first degree under Washington law.

Manslaughter in the first degree is defined as a serious violent offense under the SRA. RCW 9.94A.030(45)(a). Any out-of-state conviction for an offense that is comparable to that crime will count as three points in the offender score for a current murder conviction. RCW 9.94A.030(45)(b); RCW 9.94A.525(9).⁷

Because counting the Texas crime as manslaughter in the first degree results in a higher offender score than the court actually

⁷ The prosecutor incorrectly scored this prior conviction as two points, and the trial court repeated that error. CP 21, 170, 175. If Jordan is resentenced, that error should be corrected.

applied, there is no reversible error in the trial court's finding the crime comparable to murder in the second degree. This Court may affirm on any basis supported by the record. State v. Poston, 138 Wn. App. 898, 904-05, 158 P.3d 1286 (2007).⁸

Jordan claims that his Texas crime is not legally comparable to a Washington homicide conviction because there are details of the doctrine of justifiable homicide that differ in Washington and Texas. Several of the differences that he identifies are inaccurate. Jordan is incorrect in his assertion that the burden of proof as to self defense differs between Texas and Washington – the Texas jury was instructed that the State had the burden of disproving self defense beyond a reasonable doubt. CP 55. Jordan also is incorrect in his assertion that the standard for justifiable homicide is narrower in Texas because deadly force is lawful only if the slayer believes he is under attack with deadly force, while in Washington a slayer need fear only great personal injury. The jury in Texas was instructed that the definition of deadly force is: "force that is intended or known by the person using it to cause, or in the manner

⁸ Even if the Texas definition of "knowingly" was comparable only to negligence under RCW 9A.08.010, the Texas crime would be comparable to manslaughter in the second degree, RCW 9A.32.070, which is defined as a violent offense (RCW 9.94A.030(54)) and would score as two points (RCW 9.94A.525(9)), which was the number of points attributed to this conviction in the trial court.

of its use or intended use is capable of causing death or serious bodily injury." CP 54. The Texas slayer may respond with deadly force if he believes that he is being attacked with force capable of causing death or serious bodily injury, a standard comparable to that in Washington.

Jordan is correct that one detail of the defense of lawful use of force is different in the two states: Washington provides that a person has no duty to retreat if he is assaulted in a place where he has a right to be, while in Texas in 1992 the use of lawful force in self defense was limited to a situation in which "a person in his situation would not have retreated." Compare State v. Wooten, 87 Wn. App. 821, 825, 945 P.2d 1144 (1997) with Tex. Penal Code § 9.32 (1992); CP 53.⁹

Jordan argues that the absence of self defense is an element of the crimes of murder and manslaughter in Washington, but that argument fails because a conviction of homicide does not require proof of the absence of self defense unless the issue is presented by the evidence at trial. State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). Moreover, the "no duty to retreat" doctrine is not relevant to every self defense claim in Washington.

⁹ Texas now parallels Washington law on this point. Tex. Penal Code § 9.32(c).

State v. Benn, 120 Wn. 2d 631, 659, 845 P.2d 289 (1993); Wooten, 87 Wn. App. at 825. There are no facts in the record that would establish whether the doctrine was applicable in this case. The State's responsibility to disprove a defense beyond a reasonable doubt when the issue is presented is not unique to self defense. As the Court of Appeals in the case at bar noted, the same is true for the defense of good faith claim of title in a theft case. Jordan, 158 Wn. App. at 303 n. 20 (citing State v. Hicks, 102 Wn.2d 182, 184, 683 P.2d 186 (1984)); RCW 9A.56.020. The absence of self defense is not an element of murder or manslaughter in Washington.

The cited difference in the burden of production of evidence before the jury will be instructed on self defense also does not preclude comparability. Morley has established that differences in procedure do not affect comparability analysis. 134 Wn.2d at 597-99. In any event, the jury in Jordan's 1992 murder trial was instructed on self defense, so that difference in the law would not negate comparability in this case. CP 53-55.

No case has held that an out-of-state conviction is legally comparable only if the foreign state offers the identical defenses as in Washington, and nothing in the SRA requires the court to

examine all available defenses in the foreign state and compare them to Washington defenses before scoring the out-of-state conviction. In Morley, this Court rejected a similar argument, holding that a military court martial qualified as a prior criminal conviction despite substantial differences between the court martial procedures and Washington criminal procedure. 134 Wn.2d at 597-99. The Court reasoned that no state's procedures would fully comply with all of Washington's rules of criminal procedure and that if it required out-of-state convictions to conform to Washington procedures before allowing those convictions to be counted, every out-of-state conviction would be excluded from consideration – a result clearly contrary to the purposes of the SRA. Id. at 597.

It is very unlikely that any two states offer identical defenses under their criminal codes and common law. For example, in contrast with Washington and Texas, some states place the burden of establishing self-defense on the defendant. Martin v. Ohio, 480 U.S. 228, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987). There are a variety of formulations for the defense of insanity throughout the states. See 2 Paul H. Robinson, Criminal Law Defenses § 173, at 280-313 (1984). The same is true with respect to the duress defense; some states limit the defense to situations where death is

threatened, while Washington allows the defense where there is a threat of death or grievous bodily injury. Id. at § 177, at 359-60; RCW 9A.16.060(1); see also Peter Westen and James Mangiafico, The Criminal Defense of Duress, 6 Buff. Crim. L. Rev. 833, 837 (2003) ("[d]efenses of duress differ considerably from jurisdiction to jurisdiction"). If Jordan's argument is accepted, it is likely that very few out-of-state convictions would be legally comparable. Such a result would be clearly contrary to the purposes of the SRA.

The State is unaware of any Washington decision where the elements of the out-of-state crime were substantially similar to the comparable Washington offense, but the court held that the out-of-state conviction was not legally comparable because the possible defenses in the foreign state differed. In Lavery, upon which Jordan relies, this Court held that the *elements* of federal bank robbery were not substantially similar to the crime of robbery in Washington because the crimes had different mens rea elements. 154 Wn.2d at 255-56. When discussing the significance of the differences in mens rea, the Court simply observed that Lavery would have had defenses to the crime in Washington not available in federal court. Id. at 256. The Court did not hold that different

defenses, on their own, would justify a finding that the crimes were not comparable.

Finally, should this Court conclude that the Texas voluntary manslaughter conviction is not legally comparable to manslaughter in the first degree, the proper remedy is to remand for a resentencing hearing where the State may attempt to establish the factual comparability of the offenses based on the charge and the facts necessarily found by the Texas jury. Thiefault, 160 Wn.2d at 417. The only comparability argument made in the trial court was that the "sudden passion" element of Texas law was not comparable to Washington law, but the trial court properly noted that that element, which at that time mitigated a Texas murder to manslaughter, would not constitute even diminished capacity in Washington. 14RP 20. The State should be given the opportunity to respond to the comparability of defense argument first raised on appeal. Thiefault, 160 Wn.2d at 417. Further, RCW 9.94A.525(22) and RCW 9.94A.530(2) now specifically provide that the parties may provide all relevant evidence regarding criminal history at any

resentencing. State v. Griffith, 164 Wn.2d 960, 969-70, 195 P.3d 506 (2008) (J. Madsen, concurring).¹⁰

3. THE STATUTORY DEFINITION OF COMPARABLE CRIMES DOES NOT IMPLICATE DUE PROCESS.

Jordan in his petition for review asserts that it is a violation of due process to include an out-of-state conviction in his offender score unless that conviction is legally and factually comparable to a Washington crime.¹¹ He is incorrect. The legislature defined by statute the out-of-state convictions that will be included. RCW 9.94A.525(3). There is no constitutional right to a narrower definition and Jordan cites no case in which a court has concluded that principles of due process limit that definition.

Jordan relies primarily on In re Pers. Restraint of Lavery for this proposition, but Lavery neither holds that factual comparability is required nor applies a due process analysis. 154 Wn.2d at 255-58. The court in Lavery held that if the elements of the foreign conviction are comparable to the Washington crime, the foreign

¹⁰ At resentencing, any subsequent convictions, including the burglary in the first degree pending at the time of this trial, King County No. 07-1-04419-8 (CP 18, 139-44), also will be counted in Jordan's offender score.

¹¹ Jordan cites both federal and State constitutions, U.S. Const. amend. XIV and WA Const. art. I, § 3, in his statement of the case. His argument addresses only the federal constitutional guarantee. Petition at 1, 6.

crime counts. Id. at 255. The court held that if the elements are not comparable, the only facts that may be considered in a comparison of the crimes are facts admitted, stipulated to, or proved to the fact-finder beyond a reasonable doubt. Id. at 258.

The United States Supreme Court case upon which Jordan relies to establish a due process violation also is inapposite. That case held that the federal courts will review a claim of constitutional error in a state proceeding where due process is implicated, if the claim calls into question the reliability of an adjudication of guilt and probably resulted in the conviction of a person who is actually innocent. Murray v. Carrier, 477 U.S. 478, 495-96, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986). Jordan's argument is not that the sentencing proceeding was unreliable but that the legal definition of comparability should be modified. Carrier did not involve a sentencing proceeding or suggest that there is a due process standard applicable to statutory definitions.

The other Washington cases upon which Jordan relies also are not persuasive. One has been reversed by this Court. In re Pers. Restraint of Carter, 172 Wn.2d 917, 263 P.3d 1241 (2011), reversing 154 Wn. App. 907, 230 P.3d 181 (2010). This Court held that a claim that a prior conviction was not comparable to a

Washington crime is not a claim of constitutional error; it is a claim of statutory error only. Id. at 933. The second case Jordan cites stands only for the proposition that in determining criminal history, due process requires that a court base its decision on reliable information, more than bare allegations. State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009).

The basis for the decision in the case at bar was certified court documents and Jordan does not dispute their reliability. Jordan's challenge to the legal comparability of his Texas manslaughter conviction does not implicate due process.

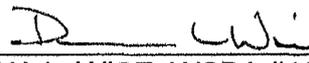
D. CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Court of Appeals and affirm the sentence imposed.

DATED this 28th day of June, 2013.

Respectfully submitted,

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Appendix 1

Appendix 1

RCW 9A.08.010 GENERAL REQUIREMENTS OF CULPABILITY.

(1) Kinds of Culpability Defined.

(a) INTENT. A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) RECKLESSNESS. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

(d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

Texas Penal Code § 6.03 (1992)

DEFINITIONS OF CULPABLE MENTAL STATES.

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Texas Penal Code § 19.02 (1992)

MURDER.

(a) A person commits an offense if he:

- (1) intentionally or knowingly causes the death of an individual;
- (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or
- (3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(b) An offense under this section is a felony of the first degree.

Texas Penal Code § 19.04 (1992)

VOLUNTARY MANSLAUGHTER.

(a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(d) An offense under this section is a felony of the second degree.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan F. Wilk, the attorney for the petitioner, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent – State of Washington, in STATE V. ERICK DESHUM JORDAN, Cause No. 85410-6, in the Supreme Court of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame
Name
Done in Seattle, Washington

6/28/13
Date

OFFICE RECEPTIONIST, CLERK

To: Wise, Donna
Cc: 'Susan Wilk'
Subject: RE: State v. Jordan, No. 85410-6

Rec'd 6-28-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Wise, Donna [<mailto:Donna.Wise@kingcounty.gov>]
Sent: Friday, June 28, 2013 3:11 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Susan Wilk'
Subject: State v. Jordan, No. 85410-6

Good afternoon:

Please accept for filing the attached document (Supplemental Brief of Respondent – State of Washington) in State v. Erick Deshum Jordan, No. 85410-6

The certificate of service is attached to the document.

Thank you.

Donna Wise

Senior Deputy Prosecuting Attorney
WSBA #13224
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