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Supreme Court No. _____
Wn. App. ___, 241 P.3d 464 (2010)
Court of Appeals No. 63016-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERICK DESHUM JORDAN,

Petitioner.

PETITION FOR REVIEW

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STATE OF WASHINGTON

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A. IDENTITY OF MOVING PARTY AND COURT OF APPEALS DECISION

Erick Deshum Jordan, the appellant below, petitions this Court to review the part-published Court of Appeals opinion issued November 1, 2010. A copy of the opinion is attached as an Appendix.

B. OPINION BELOW

In In re the Personal Restraint of Lavery, 154 Wn.2d 249, 111 P.3d 837 (2005), this Court held that the concern that underpins the analysis of whether out-of-state convictions are comparable to Washington offenses, and thus may be used to enhance the SRA offender score, is whether the defendant could have been convicted for the same conduct in Washington. Where the elements of the out-of-state offense are different or broader than the relevant Washington crime, then the use of the conviction to enhance a sentence may violate the Fourteenth Amendment and article I, section 3 guarantee of due process. This Court has reaffirmed that self-defense, when raised, becomes an element of the substantive crime that must be disproved beyond a reasonable doubt at trial.

In its published opinion, the Court of Appeals disregarded the due process concerns at the core of the comparability analysis, and ruled that the absence of self-defense does not become an element when it is properly raised. The Court thus held a fundamentally different and more

restrictive law of self-defense in a Texas did not preclude the use of Jordan's Texas conviction to elevate his SRA offender score, even though the State could not prove he would have been convicted for the same conduct in Washington. The Court's opinion disregards this Court's precedent and conflicts with Division Two's opinion in State v. Carter, 154 Wn. App. 907, 230 P.3d 181 (2010).

C. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals opinion, which fails to follow this Court's precedent regarding comparability under the SRA and the law of self defense, and conflicts with an opinion from another division of the Court of Appeals, present important constitutional questions and issues of substantial public interest that should be reviewed by this Court? RAP 13.4(b)(1); RAP 13.4(b)(2); RAP 13.4(b)(3); RAP 13.4(b)(4).

2. An accused person has the due process right not to be tried while incompetent. Thus, according to statute, where a concern as to competency is raised, the defendant must be referred for a competency evaluation. Does the Court of Appeals opinion approving the trial court's failure to follow this mandatory procedure despite a concern as to Jordan's competency present an important constitutional question and issue of substantial public interest that should be reviewed by this Court? RAP 13.4(b)(3); RAP 13.4(b)(4).

3. Should this Court review the Court of Appeals opinion holding that Jordan was not denied his Sixth Amendment right to a defense by the trial court's refusal to issue justifiable homicide instructions? RAP 13.4(b)(3); RAP 13.4(b)(4).

4. Should this Court review the Court of Appeals holding that Jordan's Fourteenth Amendment right to a fair trial was not violated by prosecutorial misconduct? RAP 13.4(b)(3); RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

Erick Deshum Jordan was convicted following a jury trial of one count of second degree murder with a firearm and one count of unlawful possession of a firearm in the first degree. CP 11-16.

Prior to trial, Jordan's attorney told the court that he had concerns about Jordan's competency to stand trial. 1RP 4.¹ He stated that Jordan had been attacked in the King County Jail and had been placed on a suicide watch. Id. He said that it had been difficult to communicate with Jordan and that he could not tell whether Jordan could understand him, explaining, "[Jordan] would go from being very uncommunicative to focused on things outside of the issues that we had to deal with at trial." Id. He asked the court to engage in a colloquy with Jordan to verify that he was competent to stand trial. 1RP 5.

¹ Citations to the record are set forth in Jordan's opening brief at Br. App. 4 n. 1

Jordan's responses during the colloquy were rambling and disjointed. 1RP 7-8. Nevertheless, the court ruled that it did not have concerns about Jordan's competency. 1RP 8-9. At a CrR 3.5 hearing held immediately after this colloquy, Jordan told the court that he did not understand the proceedings. 1RP 9. The court then asked him, "Mr. Jordan, do you understand this?" Jordan responded, "I'm here, and I'm just going along." 1RP 10.

During trial, the court denied Jordan's requests for jury instructions on justifiable homicide and the lesser included offenses of manslaughter in the first and second degree. 13RP 709.

In cross-examination, the prosecutor cast aspersions on defense counsel by saying counsel was "trying to imply" facts that were not true, and trying to confuse a police officer witness, and asked a witness to comment directly on Jordan's veracity, asking, "Is it fair to say that sometimes when people aren't telling the truth their stories change?" 9RP 67-68. Defense counsel's objection to this question was sustained. Id. Undeterred, the prosecutor asked the witness, "Have you ever been around someone who is not telling the truth and the story kind of keeps changing from time to time, 'Yeah, that is what I mean. That's the story?'" Id. The witness responded, "frequently." Id.

In closing argument, the prosecutor reiterated this theme, telling

the jurors that Jordan was “not telling the truth” when he talked to law enforcement because he was “guilty.” 14RP 736. The prosecutor concluded her summation with an impassioned plea to the jurors to vindicate the rights of alleged victim Maurice Jackson:

[T]he hardest thing about prosecuting a homicide or murder case is we all never get to meet the victim. For that I am sorry. We didn't get to know a lot about him. But the one thing I hope that you recall during your deliberations is that he does matter. He matters the same that any of us matter. And he matters not only for what happened to him, but what matters about this case is for what is happening out in these neighborhoods, out on city streets. People pulling out guns in public. You know why they do that? Because they are relying on the code of silence. You don't pull your gun out in public and shoot and kill somebody in a crowd, unless you think that nobody will tell on you. But the good news is that people are starting to tell. And we are thankful for that.

14RP 811-12.

At sentencing, the court concluded that Jordan's 1992 Texas juvenile conviction for voluntary manslaughter was comparable to the crime of murder in the second degree, and, based on Jordan's other Washington felony history, determined his offender score on the murder conviction was eight and on the unlawful possession of firearm conviction six. 15RP 20-21; CP 153.

The Court of Appeals rejected Jordan's challenges to his conviction and offender score. He respectfully requests this Court grant his petition for review.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THIS COURT SHOULD REVIEW THE PUBLISHED COURT OF APPEALS OPINION THAT ERRONEOUSLY FOUND JORDAN'S TEXAS CONVICTION COMPARABLE ALTHOUGH THE STATE COULD NOT PROVE HE WOULD HAVE BEEN CONVICTED FOR THE SAME CONDUCT IN WASHINGTON.

- a. The inclusion of out-of-state offenses in the SRA

offender score violates due process unless the foreign convictions are legally and factually comparable to crimes in Washington. Where the State alleges a defendant's criminal history contains out-of-state felony convictions, under the SRA, the State bears the burden of proving the existence and comparability of those convictions. RCW 9.94A.525;² State v. Ford, 137 Wn.2d 472, 480, 973 P.2d 452 (1999).

To determine whether a foreign conviction is comparable to a Washington offense, the court engages in a two-step analysis. First, the court must compare the elements of the out-of-state offense with the elements of potentially comparable Washington crimes. Ford, 137 Wn.2d at 479 (citing State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998)). If the elements of the foreign conviction are comparable to the elements of

a Washington offense on their face, the foreign offense counts toward the offender score as if it were the comparable Washington offense. Lavery, 154 Wn.2d at 255. If the elements of the prior offense are not comparable, or are broader than the pertinent crime in Washington, then the court may look to the facts admitted by the defendant or proved by indictment or trial to determine if the prior offenses are comparable. Id. at 256-57. In this latter instance, however, the court must exercise care. As this Court explained in Lavery:

Where the foreign statute is broader than Washington's, [an examination of the underlying facts] may not be possible because there may have been no incentive for the accused to have attempted to prove that he did not commit the narrower offense.

Lavery, 154 Wn.2d at 257 (citation omitted).

The concern is that substantive differences in the criminal law of foreign jurisdictions may result in the defendant being convicted for conduct for which he may have had a legitimate defense in Washington. See id. at 258 (“Lavery had no motivation in the earlier conviction to pursue defenses that would have been available to him under the robbery statute but were unavailable in the federal prosecution”). Such an outcome violates the Fourteenth Amendment guarantee of due process. Murray v. Carrier, 477 U.S. 478, 495, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986) (“[i]n appropriate cases’ the principles of comity and finality that

inform the concepts of cause and prejudice ‘must yield to the imperative of correcting a fundamentally unjust incarceration.’”) (citation omitted); see Carter, 154 Wn. App. at 918-20 (applying “actual innocence” exception to excuse procedural default where lack of comparability invalidated persistent offender sentence).

b. The Court of Appeals failed to engage in the requisite comparability analysis, misconstrued this Court’s caselaw regarding comparability and self-defense, and created an incorrect rule that will be followed by lower courts. In its published opinion, the Court of Appeals committed significant errors. First, although the Court criticized Jordan for “conflat[ing] the two steps of the established analysis for determining comparability”, Slip Op. at 6, in fact the Court unjustifiably narrowed this Court’s holding in Lavery. Second, the Court inverted this Court’s longstanding jurisprudence on self-defense and thus, the Court authored an incorrect rule, necessitating review by this Court.

i. In Washington, self-defense when properly raised becomes an element of the substantive crime that must be disproved beyond a reasonable doubt. In Washington, when a self-defense claim is raised, the absence of self defense becomes an element of the substantive crime that must be proved beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 493-94, 656 P.2d 1064 (1983). The Court of Appeals

claimed McCullum stood for the proposition that the absence of self-defense was an element only under Washington's old criminal code, but that under the new criminal code this principle is merely "shorthand" for the State's burden. Slip Op. at 4. In so claiming, the Court of Appeals both misstated and misapplied the law of self-defense. In actuality, in McCullum this Court specifically explained:

[the statutory] changes were intended to relieve the prosecution of the necessity of pleading the absence of self-defense. By removing the words "unless it is excusable or justifiable" from the definition of homicide and including self-defense under the provisions of RCW 9A.16, entitled "Defenses", the Legislature merely relieved the State of the time-consuming and unnecessary task of alleging and proving negative propositions which may not be involved in each case. Once the issue of self-defense is properly raised, however, the absence of self-defense becomes another element of the offense which the State must prove beyond a reasonable doubt.

McCullum, 98 Wn.2d at 493-94 (emphasis added).

ii. Substantial differences between the law of self-defense in Texas and Washington permit an individual to be convicted for conduct which is not criminalized in Washington. Because the absence of self-defense is an element, had the Court of Appeals correctly applied this Court's precedents and the comparability analysis, it would have been compelled to conclude that the differences in self-defense rendered the Texas conviction not comparable to any crime in Washington. As the

Court of Appeals was constrained to admit, a self-defense claim in Texas is far narrower than in Washington:

In particular, at the time the Texas crime was committed, Jordan was entitled to use deadly force to protect himself only if he perceived it necessary to repel the use or attempted use of deadly force against him and only “if a person in his situation would not have retreated.” In Washington, a person has no duty to retreat when he is assaulted in a place where he has a right to be. Additionally, in Texas, a defendant must present affirmative proof of self-defense to be entitled to a jury instruction. In Washington, a defendant is entitled to an instruction so long as there is some evidence, from whatever source, to support the defense.

Slip Op. at 3 n. 6 (citations omitted); see also Br. App. at 24-28 (discussing differences between Texas and Washington law).

c. The opinion conflicts with *Lavery* and *Carter* and should be reviewed by this Court. Thus, contrary to the Court’s holding, *Lavery* is squarely on point and controlling. As in *Lavery* and *Carter*, it is entirely possible that Jordan was convicted of conduct in Texas which would not have been criminal in Washington. This error was not merely of statutory dimension but implicated Jordan’s right to be free from unjust incarceration. *Murray*, 477 U.S. at 495; *Carter*, 154 Wn. App. at 918-20. The error, which will impact criminal sentences in addition to Jordan’s, should be reviewed by this Court.

2. THIS COURT SHOULD REVIEW THE IMPORTANT
CONSTITUTIONAL QUESTION PRESENTED BY
THE FAILURE TO ORDER A COMPETENCY
EVALUATION.

This Court should also review the Court of Appeals' approval of the trial court's failure to order a competency evaluation. An accused person in a criminal case has the fundamental right not to be tried while incompetent to stand trial. Drope v. Missouri, 420 U.S. 160, 171-72, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); State v. Heddrick, 166 Wn.2d 898, 903-04, 215 P.3d 201 (2009); U.S. Const. amend. XIV. "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." RCW 10.77.010(14).

Washington's competency statute provides greater protection against being tried while incompetent than the federal constitution. In re Personal Restraint of Fleming, 142 Wn.2d 853, 862, 16 P.3d 610 (2001). In Washington, whenever there is a reason to doubt an accused person's competency, "the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental

condition of the defendant. RCW 10.77.060 (emphasis added). “The ‘[p]rocedures of the competency statute . . . are mandatory and not merely directory.’” Heddrick, 166 Wn.2d at 904 (quoting Fleming, 142 Wn.2d at 863).

Although Heddrick was the primary case cited in Jordan’s opening and reply briefs, the Court of Appeals did not reference this decision at all. Instead, the Court simply held that defense counsel’s expressions of doubt were not sufficient to trigger a competency evaluation.² Because the Court’s opinion ignores this Court’s holding in Heddrick, misapplies RCW 10.77.060, and violates Jordan’s Fourteenth Amendment right not to be tried while incompetent, this Court should grant review.

3. WHETHER JORDAN WAS ENTITLED TO SELF-DEFENSE AND LESSER-INCLUDED OFFENSE INSTRUCTIONS PRESENTS AN IMPORTANT CONSTITUTIONAL ISSUE THAT SHOULD BE REVIEWED BY THIS COURT.

An accused person has a due process right to have the jury accurately instructed on his theory of defense, provided the instruction is supported by substantial evidence and accurately states the law. U.S.

² The Court also distinguished State v. Marshall, 144 Wn.2d 266, 27 P.3d 192 (2001), also relied upon by Jordan, on the basis of the quantum of evidence of incompetency presented in that case. Slip Op. at 12-13. But Marshall was a capital case involving a defense motion to withdraw a guilty plea. Both the nature of the case and the procedural posture of the motion warranted the presentation of substantial evidence of Marshall’s incompetency. In a case such as the case at bar, involving an indigent defendant in a non-capital case at a preliminary hearing, it is neither realistic nor fair to expect that the defendant will be able to present similar evidence in support of his incompetency.

Const. amends. V, VI, XIV; California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). If these prerequisites are met, it is reversible error to refuse to give a defense-proposed instruction. State v. Agers, 128 Wn.2d 85, 93, 904 P.2d 715 (1995).

In Washington, the threshold for a defendant to receive instructions on self-defense is very low. A defendant need not testify in order to receive an instruction on self-defense, but rather can rely on evidence from any source. McCullum, 98 Wn.2d at 488. Moreover, before issuing self-defense instructions, the court need not find there is sufficient evidence to establish a reasonable doubt on the question. State v. Acosta, 101 Wn.2d 612, 621-22, 683 P.2d 1069 (1984).

Defense counsel theorized that a claim of self-defense could lie upon the fact that witness Patrick Ryan heard shots fired before he witnessed Jordan shoot Jackson. 4RP 18-19. Defense counsel also theorized that in the heat and chaos of the situation, Jordan may have fired his gun to defend himself without intending to shoot Jackson. Defense counsel elicited evidence that while being transported by a police officer, Jordan made statements that suggested he acted in self-defense. 9RP 68.

Further, instructions on the lesser included offense of manslaughter were warranted: the jury, confronted with the uncontroverted evidence

that two shots were fired before Ryan looked out of his window, could have believed that either Jackson or one of his associates could have fired those shots (or that Jordan mistakenly believed this was so), and that Jordan responded with excessive force. This is described as “imperfect self defense,” requiring instructions on both self-defense and Jordan’s proposed lesser included offenses. State v. Schaffer, 135 Wn.2d 355, 357-58, 957 P.2d 214 (1998) (Where a person is prosecuted for premeditated or intentional murder and the evidence supports the inference that he acted recklessly or negligently in defending himself, the court must instruct the jury on the lesser included offense of manslaughter); State v. Jones, 95 Wn.2d 616, 623, 628 P.2d 472 (1981) (same).³

The Court of Appeals held Jordan to an unduly high burden of production, thereby denying him his right to a defense. This Court should grant review.

4. THIS COURT SHOULD REVIEW THE IMPORTANT
CONSTITUTIONAL QUESTION WHETHER
PROSECUTORIAL MISCONDUCT DENIED
JORDAN A FAIR TRIAL.

The prosecutor has an ethical obligation to ensure an accused person receives a fair and impartial trial. Berger v. United States, 295

³ The Court also claimed Jordan did not offer argument regarding the lesser included offense instructions, Slip Op. at 15 n. 58, but this assertion is incorrect. See Br. App. at 35-37.

U.S. 78, 88, 55 S. Ct. 629, 79 L.Ed. 1314 (1935); State v. Charlton, 90 Wn.2d 657, 665, 585 P.2d 142 (1978); U.S. Const. amends. V; XIV; Const. art. I, § 3.

A prosecutor violates the Sixth Amendment right to counsel if she personally attacks defense counsel, impugns defense counsel's integrity or character, or disparages the role of defense attorneys in general. State v. Fisher, 165 Wn.2d 727, 771, 202 P.3d 937 (2009) (Madsen, J., concurring); Warren, 165 Wn.2d at 29-30. Such arguments are improper because they "seek[] to draw the cloak of righteousness around the prosecutor in [her] personal status as government attorney and impugn[] the integrity of defense counsel." State v. Gonzales, 111 Wn. App. 276, 283, 45 P.3d 205 (2002) (quoting United States v. Frascone, 747 F.2d 953, 957 (5th Cir. 1984)).

Likewise, it is improper for a prosecutor to personally comment on a witness's credibility or to solicit such an opinion from a witness. See State v. Jones, 117 Wn. App. 89, 91, 68 P.3d 1153 (2003) (finding "no meaningful difference" between permitting an officer to testify directly that he does not believe a witness and in allowing the State to elicit evidence that allows the jury to draw that inference).⁴

⁴ The prosecutor's comments here are particularly ironic given her insistence to the trial court that Jordan's statements during the pretrial interview comprised the 'real' story.

Finally, it is a fundamental premise of our system of justice that the State obtain convictions based on the strength of the evidence adduced at trial, and not on considerations external to the record or on arguments that inflame jury passions. Belgarde, 110 Wn.2d at 507; State v. Boehning, 127 Wn. App. 511, 522, 111 P.3d 899 (2005).

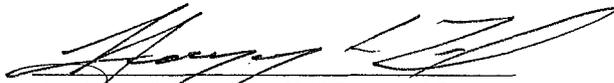
This prosecutor committed misconduct by disparaging the role of defense counsel, by asking a witness to comment on the credibility of another witness, and by seeking a conviction based on improper appeals to the jury's passions and prejudices, rather than the evidence. The Court of Appeals found that either there was no misconduct or Jordan's claims were waived. This Court should grant review.

F. CONCLUSION

The published portion of the Court of Appeals' opinion fundamentally misconstrues and narrows this Court's settled jurisprudence on comparability of prior offenses and self-defense, meriting review under RAP 13.4(b)(1), RAP 13.4(b)(3), and RAP 13.4(b)(4). The unpublished portion should be reviewed based on its erroneous determination of significant constitutional issues. Accordingly, Erick Jordan respectfully requests this Court grant his petition for review.

DATED this 1st day of December, 2010.

Respectfully submitted:



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

STATE OF WASHINGTON,)	No. 63016-4-1
)	
Respondent,)	
)	
v.)	
)	
ERICK DESHUM JORDAN,)	PUBLISHED IN PART
)	
Appellant.)	FILED: November 1, 2010
)	

Ellington, J. — Comparability of out-of-state convictions depends on the elements of the crimes, not the available defenses. A difference in the laws of self-defense does not render a conviction incomparable, and Erick Jordan’s Texas conviction for voluntary manslaughter was properly included in his offender score. Finding no merit in his remaining claims, we affirm his conviction and sentence.

BACKGROUND

A loud disturbance involving 10 to 15 people erupted outside a bar late at night, attracting the attention of several neighbors, two of whom called 911. Someone fired two shots, and the crowd dispersed. Several witnesses then saw Erick Jordan pointing a gun at Maurice Jackson. Jackson was silent, unarmed and unthreatening, with his arms at his sides, and was standing or backing away from Jordan. One witness heard Jordan say, “Do you want me to shoot you, motherfucker?”¹ Jordan then shot Jackson

in the face and chest, killing him. Jordan was apprehended with a .38 caliber revolver in his pocket, which was later determined to have fired the bullets that killed Jackson.

The State charged Jordan with murder in the second degree with a firearm enhancement and unlawful possession of a firearm in the first degree. The State alleged murder by the alternative means of intentional murder or felony murder with a predicate of assault in the second degree. A jury found Jordan guilty as charged.

At sentencing, the court found Jordan's Texas conviction for voluntary manslaughter comparable to second degree murder in Washington, and included the offense in his offender score. Based on a score of 8, the court imposed a standard range sentence of 417 months on the murder conviction, including the firearm enhancement, and 75 months on the firearm conviction.

DISCUSSION

Comparability Of Texas Conviction

Under the Sentencing Reform Act of 1981 (SRA), an out-of-state conviction is included in a defendant's criminal history if it is comparable to a Washington felony.² The comparability analysis requires two steps. First, the sentencing court must compare the elements of the out-of-state offense with the elements of potentially comparable Washington crimes.³ If the elements of the out-of-state offense are substantially similar to the elements of a Washington offense, the out-of-state offense is legally comparable and properly included in the defendant's offender score.⁴ If the

¹ Report of Proceedings (RP) (June 10, 2008) at 6.

² RCW 9.94A.030(11), .525(3).

³ State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998).

foreign statute is broader than the Washington definition of the particular crime, the sentencing court must decide whether the offense was factually comparable by determining whether the defendant's conduct would have violated a Washington statute.⁵

Jordan contends his Texas conviction is not comparable to any Washington felony because in Texas, the defense of justifiable homicide is available in narrower circumstances than in Washington.⁶ His argument rests on two premises: first, that the absence of self-defense is an element of the crime for purposes of comparability analysis, and second, that an out-of-state conviction is not comparable to a Washington offense if defenses available in Washington are not identical to those available in the other state. We reject both propositions.

When a defendant raises self-defense, the State bears the burden to disprove it.⁷ Some decisions describe this principle as creating "another element of the offense which the State must prove beyond a reasonable doubt."⁸ This language originated in

⁴ Id.

⁵ Id.

⁶ In particular, at the time the Texas crime was committed, Jordan was entitled to use deadly force to protect himself only if he perceived it necessary to repel the use or attempted use of deadly force against him and only "if a person in his situation would not have retreated." Clerk's Papers at 53. In Washington, a person has no duty to retreat when he is assaulted in a place where he has a right to be. State v. Redmond, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003). Additionally, in Texas, a defendant must present affirmative proof of self-defense to be entitled to a jury instruction. Saxton v. State, 804 S.W.2d 910, 913–14 (Tex. 1991). In Washington, a defendant is entitled to an instruction so long as there is some evidence, from whatever source, to support the defense. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).

⁷ State v. Acosta, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984).

⁸ McCullum, 98 Wn.2d at 493–94.

cases interpreting the old criminal code, under which a killing was murder or manslaughter unless it was “excusable or justifiable.”⁹ Under the modern code, the absence of justification is not a true “element” of murder or manslaughter.¹⁰

References to the absence of self-defense as an element serve as shorthand for the principle that the State bears the burden to disprove the defense once it is properly raised.

Jordan argues there is no basis to differentiate between lack of self-defense and the statutory elements in the context of a comparability analysis. We disagree. Because self-defense negates an element of the crime, due process demands that the State disprove the defense as part of its burden to prove guilt beyond a reasonable doubt.¹¹ Comparison of out-of-state offenses in calculating an offender score, however, is a statutory mandate, not a constitutional one. The SRA requires it, to ensure “that defendants with equivalent prior convictions are treated the same way, regardless of whether their prior convictions were incurred in Washington or elsewhere.”¹²

The second foundation for Jordan’s argument is that the comparability of a foreign conviction depends in part on whether defenses available in Washington were available in the state of conviction. Jordan relies on In re Personal Restraint of Lavery¹³ and In re Personal Restraint of Carter.¹⁴ In Lavery, the court held that federal

⁹ Id. at 491 (citing Laws of 1909, ch. 249, §§ 140, 141, 143).

¹⁰ Id. at 491–94.

¹¹ Acosta, 101 Wn.2d at 616.

¹² Morley, 134 Wn.2d at 602 (internal quotation marks omitted) (quoting State v. Villegas, 72 Wn. App. 34, 38–39, 863 P.2d 560 (1993)); RCW 9.94A.525.

¹³ 154 Wn.2d 249, 111 P.3d 837 (2005).

¹⁴ 154 Wn. App. 907, 230 P.3d 181 (2010).

bank robbery is not legally comparable to first degree robbery in Washington because the mens rea elements differ. While federal bank robbery is a general intent crime, second degree robbery requires a specific intent to steal.¹⁵ To illustrate the practical differences between the two elements, the court pointed out several defenses available to rebut the mens rea of specific intent to steal, including intoxication, diminished capacity, duress, insanity, and claim of right.¹⁶ The court did not hold that differences in the available defenses would render two offenses incomparable. Rather, its holding was confined to the offenses in question: “Because the elements of federal bank robbery and robbery under Washington’s criminal statutes are not substantially similar, we conclude that federal bank robbery and second degree robbery in Washington are not legally comparable.”¹⁷

Similarly, in Carter, Division Two of this court held the California crime of assault on a peace officer with a firearm was not legally comparable to second degree assault in Washington because the former offense is a general intent crime, whereas assault in Washington requires specific intent to create apprehension of bodily harm or to cause bodily harm.¹⁸ As in Lavery, the court observed that in light of the differing intent elements, certain defenses available in Washington were not available in California. And as in Lavery, the court’s conclusion that the offenses were not comparable was based on the differences in the elements themselves, not the availability of defenses.¹⁹

¹⁵ Id. at 255–56.

¹⁶ Id. at 256.

¹⁷ Id.

¹⁸ Carter, 154 Wn. App. at 922–23.

¹⁹ Id. at 924 (“Carter’s California assault is not legally comparable to second degree

Lavery and Carter provide Jordan no support.

Jordan's argument would require Washington sentencing courts to examine the jurisprudence of the state of conviction to ensure there were no defenses available here that were unavailable there.²⁰ This is contrary to 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*."²¹ The statute contains no language suggesting that defenses must also be identical.

Further, Jordan's approach conflates the two steps of the established analysis for determining comparability. As described above, the first step is to compare the elements of the two offenses. Only where the elements of the Washington crime and the foreign crime are not substantially similar does the sentencing court consider whether undisputed facts show the defendant's conduct would have violated a comparable Washington statute.²² But under Jordan's proposed analysis, comparison of the elements would itself depend upon facts, i.e., whether the defendant conceivably acted in self-defense. As the Lavery court observed, "[a]ny attempt to examine the underlying facts of a foreign conviction, facts that were neither admitted or stipulated to,

assault in Washington because of the different intent elements.").

²⁰ Jordan contends we may treat self-defense differently because it negates an element of the offense, unlike other defenses that merely excuse unlawful conduct. But self-defense is not unique in that respect. For example, in a robbery case, the defense of good faith claim of title negates the element of intent to steal. State v. Hicks, 102 Wn.2d 182, 184, 683 P.2d 186 (1984).

²¹ (Emphasis added.)

²² Lavery, 154 Wn.2d at 255 (citing Morley, 134 Wn.2d at 606).

nor proved to the finder of fact beyond a reasonable doubt in the foreign conviction, proves problematic.”²³ Jordan’s approach would require courts to engage in speculation about possible defenses and evidence outside the record of the prior sentencing. This is clearly at odds with the purpose of the SRA “to ensure that defendants with equivalent prior convictions are treated the same way, regardless of whether their prior convictions were incurred in Washington or elsewhere.”²⁴

So long as an out-of-state conviction is for a crime with elements comparable to a Washington felony, it is properly counted in the offender score.

Affirmed.

The balance of this opinion having no precedential value, the panel has determined it should not be published in accordance with RCW 2.06.040.

Jordan argues his Texas conviction for voluntary manslaughter is not comparable to Washington’s murder in the second degree because the intent elements are different.²⁵ The State concedes this point, but argues that the conviction is properly included in Jordan’s offender score because the Texas offense is legally comparable to Washington’s manslaughter in the first degree. We agree.

At the time, Texas defined voluntary manslaughter as follows:

A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of

²³ Id. at 258.

²⁴ Morely, 134 Wn.2d at 602 (internal quotation marks omitted) (quoting Villegas, 72 Wn. App. at 38–39).

²⁵ A person may be convicted of voluntary manslaughter in Texas if he or she “knowingly causes the death of an individual.” Former Tex. Code Crim. Proc. Ann. (TCCPA) § 19.02 (1992). In Washington, a person is guilty of murder in the second degree if he or she intentionally causes the death of another person. RCW 9A.32.050(1)(a).

this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.^[26]

Former section 19.02(a) provided that one commits murder if he or she:

- (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 voluntary or involuntary 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.^[27]

Jordan contends the Texas statute is “substantially broader than any potentially comparable Washington statute” because it permits conviction if a person merely “knowingly” causes the death of another.²⁸ As Jordan himself points out, however, the Texas definition of “knowingly” is similar to the definition of “recklessness” in Washington. Texas defined the term “knowingly” as follows:

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.^[29]

Washington defines “recklessness” as:

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.^[30]

²⁶ Former TCCPA § 19.04(a) (1992).

²⁷ Former TCCPA § 19.02(a).

²⁸ Br. of Appellant at 18.

²⁹ Former TCCPA § 6.03(b) (1992) (emphasis added).

³⁰ RCW 9A.08.010(c) (emphasis added).

In Washington, a person is guilty of manslaughter in the first degree if he or she "recklessly causes the death of another person," i.e., if he causes another's death by acting in a way he knows engenders a substantial risk that the person will be killed.³¹ In Texas in 1992, a person was guilty of voluntary manslaughter if he caused the death of another by acting in a way he knew was reasonably certain to kill the person.³² The offenses are comparable and the conviction was properly included in Jordan's offender score.³³

Competency

Shortly before trial, Jordan's counsel advised the court he had recently "had some problems communicating with my client. And there has been the issue raised of competency, although I'm not sure that's what it is, or what is going on."³⁴ Counsel explained that Jordan had been attacked in jail and was now on suicide watch. "I went up to visit him twice yesterday, but I couldn't tell whether he was understanding what I was telling him, because he would go from being very uncommunicative to focused on things outside of the issues we had to deal with at trial."³⁵ For this reason, counsel asked the court to conduct a "competency colloquy . . . to see if we should proceed."³⁶

³¹ RCW 9A.32.060(1)(a).

³² The court noted that the additional Texas element that the defendant was acting in sudden passion would operate in Washington only as a possible mitigating circumstance for sentencing purposes.

³³ The State points out that murder in the second degree and manslaughter in the first degree are scored the same, so the court's error would not result in any change to Jordan's offender score or sentence.

³⁴ RP (May 29, 2008) at 4.

³⁵ Id.

The court asked Jordan whether he had met with counsel, understood the charges, and understood it was important to cooperate with his attorney. Jordan had

³⁶ Id. at 5.

met with counsel several times and understood that “whatever they say I’m charged with, I’m charged with.”³⁷ In a somewhat inarticulate and confusing response, Jordan apparently expressed concern at being associated with a gang and what it would mean to his son.³⁸ He also described his concern with “the court, up above” and indicated “I ain’t going to try to get away with nothing I done.”³⁹

The court asked counsel whether there was anything further. Jordan’s counsel said no. Based on the colloquy, the court concluded, “[T]his is not a competency issue, but perhaps understandable frustration in the situation.”⁴⁰

Jordan contends the court denied him due process by failing to order a competency evaluation. We disagree.

“The determination of whether a competency examination should be ordered rests generally within the discretion of the trial court.”⁴¹ The court may consider the “defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.”⁴² The

³⁷ Id. at 7.

³⁸ In response to the court’s question whether Jordan understood it was important to cooperate with his attorney, Jordan said: “I’m talking about the fact that it is like being befriended to the case, being befriended and especially gang around, like be nice to you, gain information out of you. And I’m thinking to myself, like I’m not a member of a gang. What if they get to my son, who is 13? He might want to get in a gang, and that hurt me when I heard that. I ain’t with no gang. That’s the type—there is already enough stuff going on. Don’t use anything to try to incriminate me. And that’s the thing that bothers me the most. I feel bad about this. You are all just a small fragment of what is going on. This is nothing, you feel me. That’s the court, up above, and I ain’t going to try to get away with nothing I done. This is not the whole case.” Id. at 7–8.

³⁹ Id. at 8.

⁴⁰ Id. at 9.

⁴¹ In re Pers. Restraint of Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001).

opinion of counsel as to the defendant's competency and ability to assist the defense should be given considerable weight in determining whether to order a competency hearing.⁴³ If there is a reason to doubt a defendant's competency, the court must follow the procedures of the competency statute to determine his or her competency to stand trial.⁴⁴ The procedures outlined in RCW 10.77.060 "are mandatory and not merely directory," and failure to observe them is a violation of due process.⁴⁵

Here, counsel was equivocal at best as to whether there was a competency issue. His concern was that Jordan alternated between being uncommunicative and being "focused on things outside of the issues that we had to deal with at trial."⁴⁶ Counsel did not claim Jordan was unable to understand the nature of charges or was incapable of assisting in his defense. After the court's colloquy, counsel was apparently satisfied with Jordan's competence.

The situation is in marked contrast to State v. Marshall,⁴⁷ on which Jordan relies. There, the Supreme Court vacated the defendant's guilty plea because he presented "substantial evidence calling [his] competency into question."⁴⁸ Undisputed expert evidence showed Marshall had brain damage as well as bipolar mood or manic depressive disorder. Additionally, he was diagnosed as paranoid schizophrenic a few

⁴² Id. (quoting State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)).

⁴³ State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991).

⁴⁴ Id. (citing RCW 10.77.060).

⁴⁵ Fleming, 142 Wn.2d at 863.

⁴⁶ RP (May 29, 2008) at 4.

⁴⁷ 144 Wn.2d 266, 27 P.3d 192 (2001).

⁴⁸ Id. at 281.

weeks before entering his plea, at which time he was unmedicated and suffering from psychotic depression.⁴⁹ Further, counsel in Marshall contested competency before the guilty plea was entered as well as during motion proceedings to withdraw the plea.⁵⁰

The colloquy indicates confusion and frustration, but it does not indicate that Jordan lacked the ability to understand and assist with his defense, and counsel's apparent satisfaction with Jordan's competence supports the court's decision not to pursue the matter. On this record, the court did not abuse its discretion by failing to launch a formal inquiry into Jordan's competency.

Self-Defense And Lesser Included Offense Instructions

Jordan next argues the court erred by refusing to instruct the jury on self-defense and lesser included offenses. He contends the court declined to give the instructions based on its belief that Jordan's attorney was ethically bound not to argue self-defense because of Jordan's unsworn statement to the prosecutor that he was not acting in self-defense. But although the court philosophized about counsel's ethical obligations, it declined the instructions because there was no evidentiary support for them in the record.⁵¹ Where a court refuses to instruct on self-defense on that basis, its decision is reviewed for abuse of discretion.⁵²

⁴⁹ Id. at 279–80.

⁵⁰ Id.

⁵¹ RP (June 25, 2008) at 709 (“Based upon my review of the evidence, I do not believe there is a factual basis in this particular case to give either of those lesser included offenses. Similarly, I do not believe there is a factual basis here to give a justifiable homicide element in the instructions and I will decline to do that. The evidence, as I hear it, does not support either affirmatively or even an inference as to the giving of that particular instruction . . . and I respectfully decline to give such an instruction.”).

⁵² State v. Walker, 136 Wn.2d 767, 771–72, 966 P.2d 883 (1998).

There was no abuse of discretion here. A defendant is entitled to an instruction on justifiable homicide when there is some credible evidence to establish that the killing occurred in circumstances that meet the requirements of RCW 9A.16.050.⁵³ The statute provides that homicide is justifiable if “there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer . . . and there is imminent danger of such design being accomplished.”⁵⁴ If no credible evidence appears on the record to support a claim of justifiable homicide, then the court must refuse to give a justifiable homicide instruction.⁵⁵

Jordan contends he was entitled to the instruction because the evidence showed there were two shots fired before Jordan shot Jackson⁵⁶ and because defense counsel theorized that Jordan fired to defend himself in the heat and chaos of the situation without intending to shoot Jackson.

This is plainly insufficient. None of this evidence shows Jordan had an actual and reasonable fear that Jackson was about to harm him. The evidence showed the earlier shots were fired a full minute before and that the crowd responsible for any “heat and chaos” had dispersed. Further, there is no evidence that Jordan heard the

⁵³ State v. Brightman, 155 Wn.2d 506, 520, 122 P.3d 150 (2005).

⁵⁴ RCW 9A.16.050(1).

⁵⁵ Brightman, 155 Wn.2d at 520.

⁵⁶ Jordan told Officer Pendergrass that “I tapped at him, he tapped at me, [the] police . . . came, and I had to run.” RP (June 18, 2008) at 68. The State asserts this is a somewhat inaccurate paraphrase of Jordan’s actual recorded statement. The State provided a disk with Jordan’s recorded statement, but it will not play. The slight difference in the language used is not meaningful.

shots or was even present during the argument outside the bar. And while Jordan's statement to police suggests the two engaged in some type of physical altercation, it was one among several inconsistent statements, and the eyewitnesses observed no such thing immediately preceding the killing.

Further, the evidence that Jordan did not act in self-defense is overwhelming. Five people watched as Jordan shot Jackson. None testified that Jackson was threatening or that Jordan appeared frightened. Those who could see Jackson stated that he was unarmed, standing or backing away from Jordan, empty-handed, with his arms at his sides. One witness testified Jordan sounded angry, not frightened, when he said, "Do you want me to shoot you, motherfucker?"⁵⁷ just before he shot Jackson. Jordan then fired four times, shooting Jackson in the face and chest. Police found no weapons on or near Jackson.

There was no evidence suggesting Jordan actually and reasonably believed he was in imminent danger that Jackson or anyone else would commit a felony or do some great personal injury to Jordan. The court properly declined to give the self-defense instruction. Jordan's request for lesser included offense instructions depended on the theory that he used excessive force to protect himself. The court properly refused those instructions as well.⁵⁸

Prosecutorial Misconduct

Jordan contends the prosecutor committed reversible misconduct by casting

⁵⁷ RP (June 10, 2008) at 6.

⁵⁸ Jordan offers no separate argument concerning the lesser included offense instructions.

aspersions on defense counsel, giving a personal opinion about Jordan's veracity, and making arguments designed to appeal to the jury's passions and prejudices.

To prevail on a claim of prosecutorial misconduct, the defendant must show the prosecuting attorney's conduct was both improper and prejudicial.⁵⁹ "Once proved, prosecutorial misconduct is grounds for reversal where there is a substantial likelihood the improper conduct affected the jury."⁶⁰ "Defense counsel's failure to object to the misconduct at trial constitutes waiver on appeal unless the misconduct is so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice incurable by a jury instruction."⁶¹

Jordan first contends the prosecutor impugned defense counsel by stating he was "trying to imply"⁶² Jordan's shifting story had confused a witness. This was not improper. The prosecutor's inquiry was directly responsive to, and accurately described, defense counsel's question on cross-examination: "During that conversation, would it be fair to say that you got kind of confused about what he was saying?"⁶³ Moreover, it did not cast counsel in a negative light because there is nothing negative about implying a witness was confused.

The prosecutor also asked Officer Pendergrass whether she had "ever been around somebody who is not telling the truth and the story keeps changing."⁶⁴ Jordan

⁵⁹ State v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009).

⁶⁰ Id.

⁶¹ Id. (internal quotation marks omitted) (quoting State v. Gregory, 158 Wn.2d 759, 841, 147 P.3d 1201 (2006)).

⁶² RP (June 18, 2008) at 67.

⁶³ Id. at 64.

⁶⁴ Id. at 68.

argues that this query elicited the witness's opinion as to Jordan's veracity. That is not so. The inquiry followed defense counsel's cross-examination in which he suggested Jordan's story was inconsistent because he was confused or disoriented.⁶⁵ The prosecutor did not ask Pendergrass' opinion as to whether Jordan was telling the truth. Rather, the prosecutor's questions sought an alternative explanation for Jordan's changing story.

Jordan also contends the prosecutor committed misconduct in his closing and rebuttal arguments. Allegedly improper statements should be reviewed in the context of the entire argument, the issues in the case, the evidence addressed in the argument, and the instructions given.⁶⁶

The prosecutor urged the jury to listen to the recording of Jordan's statement to police, arguing, "I think when you listen to it you will conclude that he is not telling us the truth about what happened in any way."⁶⁷ She then argued that when someone is not telling the truth, it is usually because they are guilty. Jordan suggests this was an impermissible comment on the defendant's guilt. But prosecutors are permitted to argue the defendant is guilty based upon inferences from the evidence.⁶⁸ The prosecutor here did nothing more.

Jordan next argues the prosecutor improperly appealed to the passions and

⁶⁵ See RP (June 18, 2008) at 63 (counsel asked Officer Pendergrass whether the conversation with Jordan "was a rather strange conversation" and whether she would "use the words 'disconnected thoughts' or something").

⁶⁶ Gregory, 158 Wn.2d at 841.

⁶⁷ RP (June 26, 2008) at 735.

⁶⁸ State v. McKenzie, 157 Wn.2d 44, 53-54, 134 P.3d 221 (2006).

prejudices of the jury in her rebuttal argument by arguing:

[T]he hardest thing about prosecuting a homicide or murder case is we all never get to meet the victim. For that I am sorry. We didn't get to know a lot about him. But the one thing I hope that you recall during your deliberations is he does matter. He matters the same that any of us matter. And he matters not only for what happened to him, but what matters about this case is for what is happening out in these neighborhoods, out on the city streets. People pulling out guns in public. You know why they do that? Because they are relying on the code of silence. You don't pull your gun out in public and shoot and kill somebody in a crowd, unless you think that nobody will tell on you. But the good news is that people are starting to tell. And we are thankful for that.⁶⁹

Jordan asserts this argument was an impassioned plea to vindicate the victim's rights.

There was no objection, however, and any possible prejudice would easily be obviated with a curative instruction. Indeed, the jury was instructed that argument of counsel is not evidence and that they must not decide the case based on sympathy or prejudice.

Jordan has demonstrated no improper conduct, and fails in any case to explain how any instance of alleged misconduct was likely to affect the jury. But even if he had, his failure to object is fatal because the prosecutor's remarks are in no way so flagrant and ill-intentioned that a curative instruction would not have obviated the prejudice.

Double Jeopardy

Jordan argues that his convictions for murder in the second degree and unlawful possession of a firearm, together with the firearm enhancement, "punish him thrice for the same offense, namely, his use of a firearm to cause the death of Maurice

⁶⁹ RP (June 26, 2008) at 811–12.

⁷⁰ Br. of Appellant at 45.

Jackson.⁷⁰ We disagree.

First, it does not violate double jeopardy to impose a firearm enhancement when use of a weapon is an element of the underlying crime.⁷¹ Contrary to Jordan's argument, this longstanding rule is unaltered by the decisions in Apprendi v. New Jersey⁷² and Blakely v. Washington.^{73 74} Jordan's conviction for second degree murder and the firearm enhancement did not violate double jeopardy.

Jordan's convictions for both unlawful possession of a firearm and murder in the second degree also do not violate double jeopardy. "In order to be the same offense for purposes of double jeopardy[,] the offenses must be the same in law and in fact."⁷⁵ If there is an element in each offense which is not included in the other, and proof of one offense does not necessarily also prove the other, the offenses are not the same and the double jeopardy clause does not prevent convictions for both offenses.⁷⁶

Unlawful possession of a firearm in the first degree requires that a person possess a firearm after being convicted of a serious felony offense.⁷⁷ Murder in the second degree requires that a person cause the death of another in the course or in

⁷⁰ Br. of Appellant at 45.

⁷¹ State v. Kelley, 168 Wn.2d 72, 78, 226 P.3d 773 (2010).

⁷² 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

⁷³ 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

⁷⁴ Kelley, 168 Wn.2d at 81 (characterizing a similar argument as "without merit" but "important to lay . . . to rest, however, because the Court of Appeals has recently been faced with a number of cases where defendants have made the same argument").

⁷⁵ State v. Calle, 125 Wn.2d 769, 777, 888 P.2d 155 (1995) (internal quotation marks omitted) (quoting State v. Vladovic, 99 Wn.2d 413, 423, 662 P.2d 853 (1983)).

⁷⁶ Id. (quoting Vladovic, 99 Wn.2d at 423).

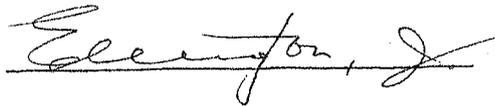
⁷⁷ RCW 9.41.040.

furtherance of a felony, including assault.⁷⁸ Being a convicted felon is not an element of murder, and causing a death is not an element of unlawful possession of a firearm. The offenses are not the same.

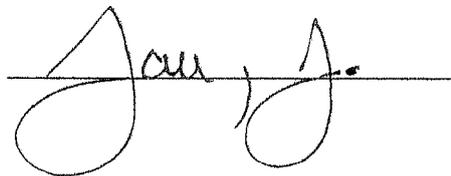
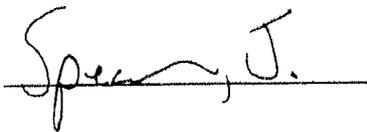
Likewise, the firearm sentencing enhancement requires the defendant to commit an eligible felony—here, murder in the second degree—while he or an accomplice is armed with a firearm.⁷⁹ Being a convicted felon at the time of the offense is not an element of the enhancement, and committing murder is not an element of unlawful possession of a firearm. Thus, there is no double jeopardy violation in being convicted of unlawful possession and receiving a firearm enhancement for the murder conviction.

Cumulative Error

Jordan finally argues that cumulative error deprived him of a fair trial. But he has failed to show any prejudicial error. Accordingly, we affirm.



WE CONCUR:



⁷⁸ RCW 9A.32.050(1)(b).

⁷⁹ RCW 9.94A.533.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 63016-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Donna Wise, King County Prosecuting Attorney-Appellate Unit

appellant

Attorney for other party



MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: December 1, 2010

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