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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 95603-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

MICHAEL HENDERSON,

Respondent.

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CORRECTED

**SUPPLEMENTAL BRIEF OF PETITIONER**

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A. ISSUES PRESENTED

1. Whether “accident” can be a defense to felony murder when allowing such a defense defeats the purpose of the felony murder doctrine, which is to punish accidental killings committed during commission of a felony.

2. Whether RCW 9A.16.030 sets forth a defense or simply defines a category of homicide that is not a crime.

3. Whether the trial court properly refused an instruction defining excusable homicide where viewing the evidence in the light most favorable to the defendant there was no credible evidence that Henderson accidentally shot the victim without criminal negligence.

4. Whether the trial court’s jury instructions were sufficient where Henderson was able to argue his theory of the case and the State was required to prove an intentional shooting.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged Michael Henderson with the crime of felony murder in the second degree while armed with a firearm, and unlawful possession of a firearm. CP 1-2. The felony murder was

based on assault in the second degree with a deadly weapon.

CP 56. The jury found Henderson guilty as charged. CP 71-73.

## 2. FACTS OF THE CRIME.

On October 11, 2015, 20-year-old Abubaker Abdi was socializing with friends. RP 207, 209, 252. They went to a restaurant and then proceeded to a gas station across the street. RP 263, 269. Abdi started an argument with Nekea Terrell, a woman he had never met, at the gas station. RP 271-73.

Terrell was extremely drunk. RP 133-34, 138. She was purchasing alcohol at the gas station when Abdi called her a "fat bitch" and told her to hurry up. RP 143. This started a prolonged verbal altercation between Abdi and Terrell that continued across the street. RP 143-46.

An acquaintance of Terrell's, known as "Spoon," tried to calm her down. RP 147. One of Abdi's friends, Siyad Shamo, tried to calm Abdi down. RP 276-77, 291. Terrell testified that she thought that there was going to be a fight between herself and Abdi. RP 163-65. She testified that Abdi did not display a weapon and made no mention of having a weapon. RP 169, 173. She added that she was not afraid of Abdi, and was ready to fight him. RP 184.

Michael Henderson was acquainted with Terrell because she had previously dated his cousin. RP 135. Terrell knew Henderson by his street name, "Evil." RP 135. Henderson joined the small group that was gathered around Abdi and Terrell as they continued arguing. RP 152, 165, 293. Henderson and Abdi exchanged profanity. RP 296. At that, Henderson drew a handgun out of his rear pants pocket, pointed it directly at Abdi, and pulled the trigger at close range. RP 296-98. The shooting was captured on surveillance tape. Ex. 25, 26, and 27. After the shooting, Henderson can be seen casually strolling away, as Abdi lays on the ground, motionless. Ex. 25, 26 and 27.

The single bullet entered Abdi's left shoulder, travelled through his upper arm, reentered his body through the left chest wall, lacerated his left lung, lacerated his aorta and then lodged in his vertebral column. RP 515. Abdi likely died within seconds of being shot. RP 517-19. He had no pulse when firefighters arrived on the scene. RP 383-88.

Henderson testified in his own defense. RP 663. He admitted to shooting Abdi. RP 666. He characterized the Rainier Valley, where the shooting took place, as a "war zone." RP 669. He testified that despite being a convicted felon he was carrying a

gun for protection because he had been shot twice before.

RP 668-69. Henderson had not been with Terrell that evening, but witnessed her argument with Abdi at the gas station. RP 676. He approached the group and told Abdi's friends that they should tell him to go away because he was drunk. RP 679. He testified that the argument continued, but that he was not involved in the argument. RP 680. He testified that Abdi suddenly became very aggressive and "lunged forward" and that is when Henderson decided to pull out his gun and fire a single shot at Abdi. RP 683. He essentially testified that he did not intend to shoot Abdi but he intentionally fired the gun in Abdi's direction. RP 683. He testified that, "I fired a warning shot. It just so happened it lined up in the direction of Mr. Abdi." RP 683.

On cross-examination, Henderson stated that he pulled his gun when Abdi "flinched" and "backed up to reach in his waist." RP 739. He admitted that he did not see anything in Abdi's hands. RP 739. Although there was some evidence that Abdi had a screwdriver in his pocket that night, Henderson never saw the screwdriver. RP 307, 739. Henderson admitted that he intentionally aimed the gun at Abdi and intentionally pulled the trigger, which is also apparent in the surveillance video.

RP 742-43, 748; Ex. 25, 26, 27. He knew he had shot Abdi when he walked away. RP 754-56. When interviewed by police, he lied and denied any involvement in the shooting. RP 759-60, 787. On redirect, he contradicted himself and testified that he did not intentionally pull the trigger. RP 790.

C. ARGUMENT

1. ACCIDENT IS NOT A DEFENSE TO FELONY MURDER.

Henderson contended that he shot Abdi in self-defense. The jury was therefore appropriately instructed as to justifiable homicide. Nonetheless, Henderson contends that the trial court should also have given an instruction defining excusable homicide. However, accident is not a defense to felony murder. The felony murder doctrine is intended to punish accidental killings that occur during the course of a felony. Thus, excusable homicide is not a proper defense to the charge of felony murder.

RCW 9A.32.010 defines homicide by using five categories: “the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.” Not all homicides are crimes. While

(1)-(3) delineate the homicides that are crimes, (4)-(5) delineate the homicides that are not crimes.

RCW 9A.16.030 defines the term "excusable homicide" used in RCW 9A.32.010: "Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or with any unlawful intent." RCW 9A.16.030 essentially states that a homicide that is not classified as murder (which is either committed with intent or extreme indifference or committed during the course of a felony), homicide by abuse (committed with extreme indifference), manslaughter (which is either committed with criminal negligence or recklessness) or committed in lawful self-defense (which is committed with intent), is excusable and not a crime.

WPIC 15.01, requested by Henderson, is based on RCW 9A.16.030 and reads:

It is a defense to a charge of [murder] [manslaughter] that the homicide was excusable as defined in this instruction.

Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent.

The State has the burden of proving the absence of excuse beyond a reasonable doubt. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

WPIC 15.01. The comment to WPIC 15.01 reads,

Unlike other defenses, the “defense” of excusable homicide adds little if anything to the jury’s analysis. “[T]he statutory definition of excusable homicide is merely a descriptive guide to the general characteristics of a homicide which is neither murder nor manslaughter. The characteristics of excuse do not have to be independently proved or found.” State v. Baker, 58 Wn. App. 222, 226, 792 P.2d 542 (1990). In many cases, an instruction on excusable homicide will confuse the jury without providing any meaningful guidance.

11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 15.01 (4th Ed).

The felony murder doctrine is intended to punish accidental killings committed during the course of a felony. The felony murder doctrine requires the State to prove a killing by the defendant and that the killing was done in connection with the underlying felony, in this case, assault in the second degree (with a deadly weapon).

State v. Craig, 82 Wn.2d 777, 782, 514 P.2d 151 (1973). The State does not need to prove the state of mind of the defendant at the time of the killing beyond the mens rea of the underlying felony. Id.

The State does not need to prove that the homicidal act was committed with malice, design or premeditation. State v. Bolar, 118 Wn. App. 490, 78 P.3d 1012 (2003). This Court has long held that the purpose of the felony murder doctrine is to “deter felons from killing negligently or accidentally by holding them strictly

responsible for killings they commit” in the course of committing enumerated felonies. State v. Leech, 114 Wn.2d 700, 708, 790 P.2d 160 (1990).

In State v. Harris, 69 Wn.2d 928, 932, 421 P.2d 662 (1966), this Court explained the common law origin of the felony murder doctrine:

As early as 1536, it was held that if a person was killed accidentally by one of the members of a band engaged in a felonious act, all could be found guilty of murder.

Id. at 931 (quoting The Felony Murder Doctrine and its application under the New York Statutes, 20 Cornell L.Q. 288, 289 (1935); Mansell & Herbert’s Case, 2 Dyer 128b (1536)). As the Court of Appeals has also explained, “Even if the murder is committed more or less accidentally in the course of the commission of the predicate felony, the participants in the felony are still liable for the homicide.” Id. (citing Leech, 114 Wn.2d at 708). It is not a defense that the defendant accidentally killed the victim during the course of a felony. Thus, excusable homicide cannot be a defense to felony murder. Allowing such a defense would defeat the purpose of the felony murder doctrine.

The plain language of RCW 9A.16.030 demonstrates that a homicide committed in the course of a felony cannot be excusable

homicide. A homicide is “excusable” only when the death occurs while the defendant was “doing any lawful act by lawful means.” RCW 9A.16.030. But a person engaged in a felony is not doing a lawful act by lawful means.

In a felony murder case, an excusable homicide instruction adds nothing that is not already included in a proper “to convict” instruction. If the jury concludes the defendant was committing the enumerated felony and the victim was killed in the course of that felony, the defendant is guilty of felony murder. If the jury concludes the defendant was not committing the felony, the defendant is not guilty. If the victim was killed accidentally while the defendant was committing the felony, and the victim was killed in the course of the felony, or during the defendant’s flight, the defendant is still guilty of felony murder and the jury would be required to convict. If the victim was killed accidentally and the underlying felony was not proven, then the jury would be required to acquit of felony murder. As the WPIC comment states, an excusable homicide instruction adds nothing to the jury’s analysis that is not sufficiently covered by the “to convict” instruction.

State v. Brightman, 155 Wn.2d 506, 122 P.3d 150 (2005), and State v. Slaughter, 143 Wn. App. 936, 186 P.3d 1084 (2008),

do not support Henderson's argument that accident is a defense to felony murder. Brightman was alternatively charged with premeditated first degree murder and felony murder based on robbery. Brightman, 155 Wn.2d at 512. The trial court refused to instruct the jury as to excusable homicide or justifiable homicide. Id. On appeal, this Court clarified in dicta that the proper defense for an accidental killing is excusable homicide, not justifiable homicide, without specifying which alternative means of murder that defense would apply to. Id. at 525. This Court noted that an excusable homicide instruction *might* be warranted on remand, without specifying whether the defense was applicable to premeditated murder or felony murder. Importantly, the conviction was reversed due to an open courts violation. Id. at 518. This court did not hold in Brightman that failure to give an excusable homicide instruction to a felony murder charge was error.

In Slaughter, the defendant was also similarly charged with intentional second degree murder and second degree felony murder based on assault. 143 Wn. App. at 941, 945. The jury was instructed on excusable homicide based on Slaughter's contention that he accidentally stabbed the victim in a struggle over a knife. Id. The Court of Appeals affirmed the conviction. Id. Because an

excusable homicide instruction was given in that case, there was no discussion of whether it was actually necessary, or whether it applied to both alternative means of murder. Id. at 945-57.

An excusable homicide instruction is not warranted where, as here, the only charge before the jury is felony murder. The trial court did not err in refusing to instruct the jury as to excusable homicide.

2. RCW 9A.16.030 DOES NOT SET FORTH A DEFENSE TO MURDER OR MANSLAUGHTER.

Under modern statutes, RCW 9A.16.030 does not provide a defense to murder, homicide by abuse or manslaughter. The statute merely defines the circumstances under which a homicide is not a crime. If the jury is properly instructed as to the elements of murder, homicide by abuse or manslaughter, the definition of excusable homicide is unnecessary, and potentially confusing.

The concept of excusable homicide was reflected in the Criminal Code of 1909 which, like RCW 9A.32.010, divided homicides into categories. Rem. & Bal. Code § 2390 (1909) stated "Homicide is the killing of a human being by the act, procurement or omission of another and is either (1) murder, (2) manslaughter, (3) excusable homicide, or (4) justifiable homicide." Prior to 1975,

the criminal code defined murder in the first and second degree, but did not affirmatively define manslaughter except as follows: "In any case other than those specified in sections 2392 [murder in the first degree], 2393 [murder in the second degree] and 2394 [killing in the course of fighting a duel], homicide, not being excusable or justifiable, is manslaughter." REM. REV. STAT. § 2395 (1941); Former RCW 9.48.060 (1974) (attached as Appendix A). See also State v. Hedges, 8 Wn.2d 652, 656, 113 P.2d 530 (1941). Thus, when a defendant was charged with manslaughter, the jury had to be instructed as to excusable or justifiable homicide.

With the enactment in 1975 of the new criminal code, the definition of manslaughter changed. Manslaughter was no longer defined as a homicide that was not excusable. Instead, the manslaughter statutes, RCW 9A.32.060 and 9A.32.070, now define the two degrees of manslaughter without reference to excusable homicide. The definition of excusable homicide remains in RCW 9A.16.030 because RCW 9A.32.010 continues to divide homicide into categories, one of which is excusable homicide. But excusable homicide is simply a homicide that is not murder, homicide by abuse, manslaughter, or an intentional killing in lawful self-defense. Because excusable homicide is no longer necessary in defining

manslaughter, there is no need to instruct the jury as to the definition of excusable homicide in *any* homicide case. It is not a defense.

An excusable homicide instruction is merely duplicative of the elements of the crimes of murder and manslaughter, and potentially confusing to the jury. This Court has already recognized this in State v. Burt, 94 Wn.2d 108, 110, 614 P.2d 654 (1980), stating “the statutory definition of excusable homicide is merely a descriptive guide to the general characteristics of a homicide which is neither murder nor manslaughter. The characteristics of excuse do not have to be independently proved or found.” For example, in an intentional murder case, the finding of premeditation or intent necessarily means the homicide is not excusable because it was not accidental. Similarly, in a murder by extreme indifference or homicide by abuse case, the finding of extreme indifference to human life necessarily means that the homicide is not excusable because it was not committed without criminal negligence. In a felony murder case, the finding of commission of a felony necessarily means the homicide is not excusable because it was not committed while doing a lawful act by lawful means. In any manslaughter case, the finding of criminal negligence or

recklessness necessarily means that the homicide was not excusable because it was not committed without criminal negligence.

As the WPIC Committee has noted in the comment to WPIC 15.01, the definition of excusable homicide adds nothing beyond what is already set forth in the “to convict” instructions for murder, homicide by abuse and manslaughter. This Court should end the considerable confusion surrounding excusable homicide by holding that excusable homicide is not a defense, and no excusable homicide instruction is required when the elements of murder, homicide by abuse or manslaughter are properly set forth in the “to convict” instructions.

3. THERE WAS NO CREDIBLE EVIDENCE TO SUPPORT AN EXCUSABLE HOMICIDE INSTRUCTION.

Even if excusable homicide is a defense, and applies to a charge of felony murder, there was insufficient factual support for the instruction in this case. To be entitled to an instruction on a defense, the defendant must produce evidence supporting the defense. State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). While the threshold burden of production for a defense instruction is low, it is not nonexistent. State v. Janes, 121 Wn.2d

220, 237, 850 P.2d 495 (1993). The trial court must view the evidence in the light most favorable to the defendant. State v. Fisher, 185 Wn.2d 836, 849, 374 P.3d 1185 (2016). This Court has repeatedly formulated the burden as requiring “credible evidence” of the defense, viewing the evidence in the light most favorable to the defense. Id. (quoting State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); Brightman, 155 Wn.2d at 520; State v. Walker, 136 Wn.2d 767, 780, 966 P.2d 883 (1998); State v. Roberts, 88 Wn.2d 337, 346, 562 P.2d 1259 (1977)). This Court’s repeated use of the “credible evidence” standard presumably means that there must be evidence that a rational juror could view as credible, not just any evidence. A trial court’s factual determination that a defense instruction is not warranted is reviewed for abuse of discretion. Walker, 136 Wn.2d at 772.

In the present case, even viewing the evidence in the light most favorable to Henderson, there was no credible evidence that Henderson accidentally fired the gun toward Abdi. No rational juror could have credited Henderson’s assertion that he pulled the trigger accidentally when he admitted in both direct examination and cross examination that he intentionally aimed toward Abdi and intentionally pulled the trigger at close range.

In direct examination, Henderson stated:

“I fired a warning shoot. It just so happened it lined up in the direction of Mr. Abdi.”

RP 683. On cross-examination, he admitted that he pulled out his gun, aimed it directly at Abdi, and intentionally pulled the trigger:

“Q. It’s true, is it not, Mr. Henderson, that when you initially pulled the gun out, you pointed at Mr. Abdi?

A. Yes.”

RP 740.

“Q. I’m going to back it up one more time. When you first pull the gun out, isn’t it true you first raise it above your shoulder, point it at Mr. Abdi, and then reposition the gun below so as not to shoot Mr. Shamo?

A. Yes, it is.

Q. Because you were aiming the gun at Mr. Abdi?

A. Yes, I was.”

RP 750.

“Q. You pointed your arm directly at Mr. Abdi and fired, correct?

A. Yes.”

RP 751.

“Q. So you did intentionally pull the trigger?

A. Yes.”

RP 752. Then, on redirect, the following exchange occurred:

“Q. Did you purposely pull the trigger?

A. No.

Q. Did you purposely point the gun at Mr. Abdi—

A. No.

Q. –for the purpose of shooting him and striking him with a bullet?

A. No.”

The video of the shooting, which can be viewed frame-by-frame in Ex. 26, shows Henderson pointing the gun directly at Abdi from a few feet away and pulling the trigger, as he admitted. Ex. 26, Frames 925-1032.<sup>1</sup> Even viewing the evidence in the light most favorable to the defense, the attempt to characterize the shooting as “an accident” could not have been credited by a rational juror. There was no “credible evidence” that Henderson shot Abdi accidentally while doing a lawful act by lawful means.

Even if there was credible evidence that Henderson accidentally pulled the trigger, there was no evidence to support an inference that Henderson did not act with criminal negligence. Thus, this Court’s decision in State v. Griffith, 91 Wn.2d 572, 589 P.2d 799 (1979), is instructive. In that case, the defendant retrieved a gun after a neighborhood dispute over a basketball and shot the victim. Id. at 573-74. The court instructed the jury that as a matter of law the homicide was not excusable.<sup>2</sup> Id. at 574. This Court affirmed, stating that excusable homicide was not available

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<sup>1</sup> Ex. 26 contains 1420 frames. The shot and resulting muzzle flash can be seen in frame 978.

<sup>2</sup> The crime occurred on May 4, 1975, before the effective date of the new criminal code, which was July 1, 1976. Id. at 573. RCW 9A.04.010(1).

because even if Griffith had been acting lawfully when he obtained and displayed his gun he “failed to exercise ordinary caution in the discharge of the firearm.” Id. at 575.

Even if excusable homicide is a defense to felony murder, the trial court did not abuse its discretion in refusing to give an excusable homicide instruction in this case. There was no credible evidence of an accidental shooting committed without criminal negligence.

4. THE COURT'S INSTRUCTIONS ALLOWED HENDERSON TO ARGUE HIS THEORY OF THE CASE.

This Court has long adhered to the rule that jury instructions are adequate if they allow each party to argue its theory of the case and do not mislead the jury or misstate the law. State v. Aguirre, 168 Wn.2d 350, 363-64, 229 P.3d 669 (2010); State v. Stevens, 158 Wn.2d 304, 308, 143 P.3d 817 (2006); State v. Dana, 73 Wn.2d 533, 537, 439 P.2d 403 (1968). Here, the trial court's instructions were adequate to allow the defense to argue that he should be acquitted unless the State proved that he intentionally shot the victim.

The felony murder charge in this case was based on assault in the second degree, with the only alternative means being assault

with a deadly weapon. CP 57. The only definition of assault given to the jury was “an assault is an *intentional shooting* of another person, with unlawful force, that is harmful or offensive.” CP 59. (emphasis added). As such, the instructions required the State to prove that Henderson intentionally shot Abdi. The instructions allowed Henderson to argue that he was not guilty if he did not intentionally shoot Abdi. The jury could not have convicted Henderson without finding beyond a reasonable doubt that Henderson intentionally shot Abdi.

In reversing the conviction, the Court of Appeals failed to acknowledge that the instructions required the State to prove an intentional shooting. The instructions allowed Henderson to argue he was not guilty if they failed to find that he intentionally shot Abdi. This is exactly what occurred. In closing argument, defense counsel presented both self-defense and accident as possible interpretations of the evidence:

Now, whether he intended to shoot the gun in the air and his arm was hit or whether he intended to fire a shot in the direction of Mr. Abdi to make a loud noise and to frighten him or if he felt it was necessary to shoot him to prevent harm from coming, that doesn't change the legal relationship in the instructions you have been given.

RP 905. The trial court's instructions read as a whole allowed Henderson to argue his theory of the case, and were sufficient.

D. CONCLUSION

The Court of Appeals decision should be reversed and Henderson's convictions should be affirmed.

DATED this 10th day of August, 2018.

Respectfully submitted,

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**APPENDIX TO SUPPLEMENTAL BRIEF OF  
RESPONDENT**

1974  
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**Volume 1**

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*For comprehensive list of miscellaneous crimes see list following Chapter 9.91 RCW digest.*

*Civil disorder, proclamation of state of emergency, governor's powers, penalties: RCW 43.06.200-43.06.270.*

*Criminal justice training commission—Education and training boards: Chapter 43.101 RCW.*

*Prisoners, jails, camps, labor, etc.: Chapters 36.63, 72.64 RCW.*

*Victims of crimes, compensation: Chapter 7.68 RCW.*

### Chapter 9.01 GENERAL PROVISIONS

#### Sections

- 9.01.010 Definition of terms.
- 9.01.020 Classification of crimes.
- 9.01.030 Principal defined.
- 9.01.040 Accessory defined.
- 9.01.050 Persons punishable.
- 9.01.055 Citizen immunity if aiding officer, scope—When.
- 9.01.060 Trial and punishment of accessories.
- 9.01.070 Attempts, how punished.
- 9.01.080 Attempt while armed with deadly weapon—Punishment.
- 9.01.090 Prohibited acts are misdemeanors.
- 9.01.100 Acts punishable under foreign law.
- 9.01.110 Omission, when not punishable.
- 9.01.111 Responsibility of children.
- 9.01.112 Duress as a defense.
- 9.01.113 Duress of married woman no defense.
- 9.01.114 Intoxication no defense.
- 9.01.116 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
- 9.01.120 Civil remedies preserved.
- 9.01.130 Sending letter, when complete.
- 9.01.150 Common law to supplement statute.
- 9.01.160 Application to existing civil rights.

p 182 § 12; 1869 p 200 § 12; 1854 p 78 § 12; RRS § 2392.]

*Railroads, damaging, sabotaging or stealing property: RCW 81.60-.070-81.60.090.*

**9.48.040 Murder in the second degree.** The killing of a human being, unless it is excusable or justifiable, is murder in the second degree when—

(1) Committed with a design to effect the death of the person killed or of another, but without premeditation; or

(2) When perpetrated by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a felony other than those enumerated in RCW 9.48.030.

Murder in the second degree shall be punished by imprisonment in the state penitentiary for not less than ten years. [1909 c 249 § 141; Code 1881 § 790; 1873 p 182 § 13; 1869 p 200 §§ 13, 14; 1854 p 78 § 13; RRS § 2393.]

**9.48.050 Killing in duel.** Every person who shall fight or participate in, as second or assistant, any duel within this state, in which any person is killed, or who, by previous appointment made within this state, shall fight or participate in, as second or assistant, any duel out of the state, in which any person is killed, shall be guilty of murder in the second degree; and, in the latter case, may be proceeded against in any county in this state. [1909 c 249 § 142; Code 1881 § 791; 1873 p 183 § 16; 1869 p 201 § 14; 1854 p 78 § 14; RRS § 2394.]

*Duelling prohibited: Chapter 9.30 RCW.*

**9.48.060 Manslaughter.** Any homicide other than, murder in the first degree, or murder in the second degree, and not being excusable or justifiable is manslaughter.

Manslaughter is punishable by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [1970 ex.s. c 49 § 2; 1909 c 249 § 143; 1891 c 69 § 2; Code 1881 § 793; 1873 p 183 § 18; 1869 p 201 § 16; 1854 p 78 § 16; RRS § 2395.]

**Severability—1970 ex.s. c 49:** See note following RCW 9.48.010.  
*Aiding suicide: RCW 9.80.030.*

**9.48.070 Killing unborn quick child.** The wilful killing of an unborn quick child, by any injury committed upon the mother of such child, is manslaughter. [1909 c 249 § 144; Code 1881 § 820; 1873 p 188 §§ 41, 42; 1863 p 209 §§ 37, 38; 1854 p 81 §§ 37, 38; RRS § 2396.]

*Abortion: Chapter 9.02 RCW.*

**9.48.080 Killing unborn quick child by administering drugs.** Every person who shall provide, supply or administer to a woman, whether pregnant or not, or shall prescribe for or advise or procure a woman to take any medicine, drug or substance, or shall use or employ, or cause to be used or employed, any instrument or other

means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman or of any quick child of which she is pregnant is thereby produced, shall be guilty of manslaughter. [1909 c 249 § 145; Code 1881 § 821; 1873 p 188 §§ 41, 42; 1863 p 209 §§ 37, 38; 1854 p 81 §§ 37, 38; RRS § 2397.]

*Abortion: Chapter 9.02 RCW.*

*Selling drugs, etc.: RCW 9.02.030.*

**9.48.090 Woman taking drugs.** Every woman quick with child who shall take or use, or submit to the use of, any drug, medicine or substance, or any instrument or other means, with intent to procure her own miscarriage, unless the same is necessary to preserve her own life or that of the child whereof she is pregnant, and thereby causes the death of such child, shall be guilty of manslaughter. [1909 c 249 § 146; RRS § 2398.]

*Pregnant woman attempting abortion: RCW 9.02.020.*

**9.48.100 Owner of vicious animal.** If the owner or custodian of any vicious or dangerous animal, knowing its propensities, shall wilfully or negligently allow it to go at large, and such animal while at large shall kill a human being not himself in fault, such owner or custodian shall be guilty of manslaughter. [1909 c 249 § 147; RRS § 2399.]

*Animals, crimes relating to: Chapter 9.08 RCW.*

**9.48.110 Killing by overloading passenger vessel.** Every person navigating a vessel for gain who shall wilfully or negligently receive so many passengers or such a quantity of other lading on board, that by means thereof such vessel shall sink, be upset or injured, and thereby a human being shall be drowned or otherwise killed, shall be guilty of manslaughter. [1909 c 249 § 148; Code 1881 § 795; 1873 p 184 § 20; 1869 p 201 § 18; 1854 p 78 § 18; RRS § 2400.]

*Navigation and harbor improvements: Title 88 RCW.*

**9.48.120 Reckless operation of steamboat or engine.** Every person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness or gross negligence, or for the purpose of excelling another boat in speed, shall create or allow to be created such an undue quantity of steam as to burst the boiler or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or applying steam, who, wilfully or from ignorance or gross negligence, shall create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is occasioned, shall be guilty of manslaughter. [1909 c 249 § 149; Code 1881 § 796; 1873 p 184 § 21; 1869 p 201 § 19; 1854 p 78 § 19; RRS § 2401.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.*

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