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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Case No. 98067-5

On review from:

Court of Appeals No. 35901-8-III

STATE OF WASHINGTON, Respondent,

v.

LELAND HONN KNAPP IV, Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. INTRODUCTION

Leland Knapp testified that his sexual intercourse with Brandy Spaulding was consensual. He requested jury instructions stating that the State bore the burden of disproving consent beyond a reasonable doubt and defining forcible compulsion as non-consensual. The Court of Appeals refused the trial court's refusal to give the instructions. Because the pattern instruction failed to clearly assign the burden of proving forcible compulsion to the State, Knapp's conviction should be reversed.

II. ASSIGNMENTS OF ERROR

1. The Court of Appeals erred in holding that the jury instructions given in Knapp's trial for second degree rape were adequate when they failed to inform the jury that the State bore the burden of disproving his defense of consent beyond a reasonable doubt as part of its proof of the essential element of forcible compulsion.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014) require the State to prove non-consent beyond a reasonable doubt?

2. Does WPIC 18.25, by permitting but not requiring the jury to consider consent in determining whether forcible compulsion has been proven, relieve the State of its burden of proving non-consent beyond a reasonable doubt?
3. Do the jury instructions clearly communicate that the essential element of forcible compulsion and consent are mutually exclusive, such that the jury would be compelled to find the State failed to prove forcible compulsion beyond a reasonable doubt if it had a reasonable doubt as to consent?
4. Were the proposed defense instructions legally correct?

IV. STATEMENT OF THE CASE

It was a classic case of “he said, she said.” Leland Knapp testified that Brandy Spaulding, a “friend with benefits” he had known since high school, offered him sex in exchange for drugs. IV RP 613-14, 638, 642-43. But after he agreed and had sex with her, he could not find the drugs he had promised her. IV RP 643-44.irate, Ms. Spaulding kicked him out and told him she would call the police to report him for rape. IV RP 644. He was arrested walking in a park just minutes after police responded to Ms. Spaulding’s report. III RP 473, 478-79, 482-83.

Ms. Spaulding's testimony differed substantially. She disputed that they had ever had a romantic or sexual relationship, but said that on the day in question, Mr. Knapp propositioned her and tried to kiss her, but left after she refused his advances. IV RP 615-16, 625. A short time later he returned under the pretext that he left a bandana inside and she let him back in. IV RP 616-17. Ms. Spaulding claimed he then physically attacked her and forcibly raped her. IV RP 617-21.

The corroborative evidence was mixed, with some reason to believe each party's account. Ms. Spaulding's sexual assault examination revealed bruising and abrasion around her vaginal area and a tear to the posterior fourchette, but the injuries were not inconsistent with consensual sex. III RP 533, 540. She described a significant physical struggle with Mr. Knapp on her carpeted floor, but she bore no carpet burns or other bruising or abrasions on her body. III RP 539, IV RP 617, 619-21, 628. She screamed when she heard neighbors leaving, but they did not hear her even though she was able to hear them talking. IV RP 619, 631. Lastly, she claimed he used both hands to gag her with a bandana but also said he was able to overpower her and remove her belt and jeans. IV RP 632-33.

On the other hand, police did retrieve a bandana from Ms. Spaulding's home that contained her saliva and skin cells, but they

inadvertently left the bandana in an unsealed evidence bag on her kitchen counter for several hours before returning to collect it. III RP 466-67, 490, 572-77. They observed disarray in the living room such as a spilled cup of coffee and a coffee table that was out of position. III RP 458-63, IV RP 623-24. Mr. Knapp spontaneously told police, “It’s her word against mine” when they arrested him, despite not telling him what they were arresting him for. III RP 479, 484, 487 And the State argued Mr. Knapp made inconsistent statements about why he went to Ms. Spaulding’s house that day, initially telling police he stopped to tell her he had cancer, but testifying at trial he had gone to invite her to a birthday party and to repay her some money he owed her. III RP 509, IV RP 638.

Mr. Knapp proposed jury instructions that read:

Forcible compulsion exists when both of the following elements are present: (1) a person has not consented to sexual intercourse, (2) that person has been subjected to physical force that overcomes resistance, or a threat, express or implied, that places the person in fear of death or physical injury to oneself or another person or in fear of being kidnapped or that another person will be kidnapped. If after your deliberations you find beyond a reasonable doubt that both elements 1 and 2 exist, you are satisfied beyond a reasonable doubt that the State has proven the element of forcible compulsion. If, on the other hand, you have a reasonable doubt as to the existence of element 1 or 2 or as to both elements 1 and 2, then the State has not proven the element of forcible compulsion.

CP 32, and:

Consent means that at the time of the act of sexual intercourse there are actual words or conduct indicating a freely given agreement to have sexual intercourse. The Defendant has no burden to prove that sexual intercourse was consensual. It is the State's burden to prove the absence of consent beyond a reasonable doubt.

CP 33. He argued that because consent negates the element of forcible compulsion, the State bore the burden to disprove consent beyond a reasonable doubt. IV RP 672. Mr. Knapp contended that newly-amended WPIC 18.25,¹ which states, “Evidence of consent may be taken into consideration in determining whether the defendant used forcible compulsion to have [sexual intercourse] [sexual contact],” was inadequate because it did not inform the jury who had the burden of proof or make it clear that if the jury did not find the State had foreclosed the possibility of consent beyond a reasonable doubt, they were required to return a verdict of not guilty. IV RP 680-81.

The trial court denied Mr. Knapp’s proposed instructions and instead gave WPIC 18.25, as well as a “to convict” instruction and a definition of forcible compulsion that did not reference consent. IV RP

¹ Washington State Supreme Court Committee on Jury Instructions, WASHINGTON PATTERN JURY INSTRUCTIONS – CRIMINAL, 11 Wash. Prac., Pattern Jury Instr. Crim. (4th ed., Oct. 2016 update). Hereafter, unless a prior version of the pattern instructions is referenced, any reference to “WPIC” throughout this brief refers to this volume and edition.

682; CP 427, 429, 430. The jury convicted him. CP 435. On appeal, the Court of Appeals affirmed the conviction, concluding that the instructions were consistent with *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014). *State v. Knapp*, 11 Wn. App. 2d 375, 377, 453 P.3d 1006 (2019), *review granted*, 195 Wn.2d 1014 (2020). The Court of Appeals read *W.R.* not to hold that the State has the burden to disprove consent beyond a reasonable doubt and concluded that to instruct the jury that the State bore the burden to disprove consent was an incorrect statement of law. *Id.* at 382-83. And it concluded that the instructions given in the case permitted Mr. Knapp to argue his theory of the case “that Ms. Spaulding consented to sexual intercourse and the State failed to prove forcible compulsion beyond a reasonable doubt.” *Id.* at 383.

This Court accepted review of the following issue: Did the trial court’s instruction relieve the State of its burden of proving the essential element of forcible compulsion? *Petition for Review* at 1; *Order*, filed April 29, 2020.

V. ARGUMENT

Knapp’s proposed jury instructions were legally accurate and helpful to the jury. An instruction clearly defining forcible compulsion as incompatible with consent and expressly allocating the burden of proof is

consistent with the preferred practice reflected in nearly every other pattern instruction on a legal defense. Furthermore, the pattern instructions given are unclear about how the jury must resolve doubts arising from conflicting evidence and the proposed instructions make the jury's duties clear. By clarifying that consent is not implied by merely failing to resist or object, the proposed instructions address concerns that allocating the burden of proof to the State is a regression in our conception of rape.

- I. Knapp's proposed instructions were legally accurate as to the mutually antagonistic relationship between forcible compulsion and consent and the State's burden to disprove consent as part of its proof of forcible compulsion.

As recognized in *State v. W.R.*, 181 Wn.2d 757, non-consent has always been inherent in the crime of rape. Washington originally defined rape as an act of intercourse against the will and without the consent of the victim. Former RCW 9.79.010 (1909); *State v. Thomas*, 9 Wn. App. 160, 163, 510 P.2d 1137 (1973). Consent was not freely given if it was brought about by fear or apprehension, and a lack of resistance could be evidence of consent if not brought about by force or fear. *Thomas*, 9 Wn. App. at 163-64; *State v. Marable*, 4 Wn.2d 367, 374-75, 377, 103 P.2d 1082 (1940). Because even reluctant consent disproved a charge of rape, the State bore the burden of proving the absence of consent. *Marable*, 4

Wn.2d at 374; *Thomas*, 9 Wn. App. at 163; *State v. Chambers*, 50 Wn.2d 139, 140, 309 P.2d 1055 (1957).

In 1975, the legislature amended the rape statutes and provided for different degrees of the offense depending upon the circumstances surrounding the lack of consent. Laws of Wash. ch. 14 §§ 4-6 (1st. ex. sess. 1975). First and second degree rape replaced the “without consent” requirement of the previous law with a “forcible compulsion” element. *Id.* at §§ 4-5. Third degree rape did not require proof of forcible compulsion but could be established by showing the victim did not consent and expressed the lack of consent through words or conduct. *Id.* at § 6. However, consent always remained a defense to any degree of rape. *State v. Camara*, 113 Wn.2d 631, 636, 781 P.2d 483 (1989), *overruled by W.R.*, 181 Wn.2d 757.

The distinction between degrees of rape based upon the circumstances of non-consent continues to be reflected in the law. RCW 9A.44.040; 9A.44.050; 9A.44.060. However, the statutory definitions and the jury instructions that incorporate them do not clearly and unambiguously establish forcible compulsion and consent as an opposing binary. “Forcible compulsion” means:

[P]hysical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

RCW 9A.44.010(6). “Consent,” on the other hand, means

[T]hat at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

RCW 9A.44.010(7).

In *W.R.*, this Court recognized that because consent and forcible compulsion are “conceptual opposites,” proof of consent negates forcible compulsion, requiring the State to bear the burden of disproving consent beyond a reasonable doubt as part of its proof of forcible compulsion. 181 Wn.2d at 766-67, 768. If a person freely consents, there is no forcible compulsion and no rape. *Id.* at 765 (“There can be no forcible compulsion when the victim consents.”). Knapp’s proposed instruction on forcible compulsion therefore accurately stated that forcible compulsion requires the absence of consent, and reasonable doubt as to consent means the State has failed to prove forcible compulsion. CP 32.

Likewise, Knapp’s proposed instruction on consent is accurate in light of *W.R.*’s central holding that the State bears the burden of proving the absence of consent, as with all negating defenses. 181 Wn.2d at 763.

The proposed instruction defined consent and expressly allocated the burden of proof to the State. CP 33.

The *W.R.* Court suggested that because the proper focus is on whether the State has met its burden of proof on the forcible compulsion element, a separate instruction on consent need not be required. 181 Wn.2d at 767. However, the pattern instructions post-*W.R.* fail to clearly and unambiguously set forth the State's burden or reconcile the concepts of forcible compulsion and consent in a way that makes the jury's duties clear. Requiring instructions such as the ones proposed in this case, and the resulting clarification of the applicable standards, would benefit both the defendant and victims of rape.

II. The proposed instructions resolve ambiguities in the current pattern instructions concerning how to resolve conflicting evidence and would eliminate the inconsistency between consent and all other negating defenses in how burdens are allocated.

As the Court of Appeals noted below, WPIC 18.25 was amended after *W.R.* It previously stated, in pertinent part:

A person is not guilty of [rape] ... if the [sexual intercourse] ... is consensual. Consent means that at the time of the act of [sexual intercourse] ... there are actual words or conduct indicating freely given agreement to have [sexual intercourse]....

The defendant has the burden of proving that the [sexual intercourse] ... was consensual by a preponderance of the

evidence. Preponderance of the evidence means that you must be persuaded, considering all of the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

11 Wash. Practice: Washington Pattern Jury Instructions: Criminal (WPIC) 18.25 (3d ed. 2008); *State v. Ortiz-Triana*, 193 Wn. App. 769, 772, 373 P.3d 335 (2016). After *W.R.*, it was amended to read:

Evidence of consent may be taken into consideration in determining whether the defendant used forcible compulsion to have [sexual intercourse].

WPIC 18.25.

While instructions will be affirmed if a jury could understand the burden of proof from the instructions as a whole, the better practice is to give an instruction clearly allocating the burden of proof to the State because the defendant is entitled to a correct statement of the law and should not have to argue what the law is to the jury. *State v. Acosta*, 101 Wn.2d 612, 621-22, 683 P.2d 1069 (1984). Consistent with this superior approach, nearly every pattern instruction on a defense expressly allocates the burden of proof to either the State or the defendant. *Appendix A*. In terms of its language, WPIC 18.25 most closely resembles the two pattern instructions that do not allocate a burden of proof – voluntary intoxication and diminished capacity. WPIC 18.10, 18.20. But critical differences

between the nature of the defenses and the reasons for the instructions undermine the rationale for describing them similarly to the jury.

First, voluntary intoxication is not strictly an affirmative defense but a statutory acknowledgement that intoxication may be relevant in determining whether the defendant acted with the requisite mental state. *State v. Coates*, 107 Wn.2d 882, 891-92, 735 P.2d 64 (1987). Indeed, the statute employs the permissive language that intoxication “may be taken into consideration” that is included in WPIC 18.10. RCW 9A.16.090. This instruction is both accurate and logical because intoxication does not necessarily negate the mental state element – the degree of intoxication and its effect on the defendant determine whether criminality is negated by the defendant’s drunkenness. *Coates*, 107 Wn.2d at 891. That is distinctly different than the defense of consent, which is not a matter of degree but an all-or-nothing proposition that entirely defeats a rape charge.

Similarly, with the codification of degrees of culpability into statute, it became necessary to instruct the jury on the relationship between the defendant’s mental illness and his ability to form the requisite mental state. *State v. Griffin*, 100 Wn.2d 417, 418-19, 670 P.2d 265 (1983). However, diminished capacity is not an independent defense; mental illness is merely a fact for the jury to consider, with others, in evaluating

whether the State has proven the mental state element. *See State v. James*, 47 Wn. App. 605, 608-09, 736 P.2d 700 (1987); *State v. Fuller*, 42 Wn. App. 53, 55, 708 P.2d 413 (1985), *review denied*, 105 Wn.2d 1008 (1986); *but c.f. State v. Eakins*, 127 Wn.2d 490, 496, 902 P.2d 1236 (1995) (characterizing diminished capacity as an affirmative defense due to the foundational requirements imposed on the defendant). Thus, while it is necessary to instruct the jury to ensure it understands the relationship between mental illness and the ability to form the required mental state, the State's burden of proof on the mental state element is adequately contained in the to-convict instruction. *Griffin*, 100 Wn.2d at 419-20; *State v. Marchi*, 158 Wn. App. 823, 835-36, 243 P.3d 556 (2010), *review denied*, 171 Wn.2d 1020 (2011).

Both the voluntary intoxication and diminished capacity instructions inform the jury how to make use of specific evidence presented at trial to evaluate whether it undermines an element of the charge. Consent, by contrast, is not merely evidence – it is the conclusion. Unlike intoxication and mental illness, which can co-exist with criminal intent, consent is not a matter of degree that may or may not undermine an element. The jury can accept that a defendant is mentally ill but still find him guilty of possessing criminal intent. A jury cannot have reasonable

doubt whether there was consent and convict of rape – it must be convinced beyond a reasonable doubt that the victim did not consent.

Instructing the jury specifically as to the burden of proof is, therefore, consistent with the preference expressed in *Acosta* and the practice of doing so in all other pattern instructions dealing with negating defenses.² Indeed, the *Acosta* Court acknowledged previous opinions approving instructions that did not expressly assign the burden of disproving self-defense to the State when the jury was instructed that it must find beyond a reasonable doubt that the killing was not excusable or justifiable. 101 Wn.2d at 620-21. However, it disapproved a previous ruling concluding that the jury could infer the burden of proof from the definitional instructions, announcing that the better practice is to simply

² Washington is not alone in addressing the question of how a jury should be instructed to reconcile forcible compulsion and consent. In Illinois, which similarly defines criminal sexual assault as an act of penetration by use or threat of force, the pattern instruction committee reached the opposite conclusion as Washington's committee and recommends that the jury be expressly instructed that the State must disprove consent beyond a reasonable doubt. *People v. Rollins*, 539 N.E.2d 1251, 1252-53 (Ill. Ct. App. 2d), *appeal denied*, 575 N.E.2d 921 (1991). Although the *Rollins* court concluded the failure to give the instruction was not error in that particular case, the jury was instructed that consent was a defense to the crime and was given a definition of consent – both of which instructions are excluded in a forcible rape case under Washington's pattern instructions. *Id.* at 1254; WPIC 18.25, Note on Use (“Do not use WPIC 45.04 [Consent – Definition] with this instruction.”); WPIC 45.04, Comment (“An instruction on consent is generally not appropriate in prosecutions for first or second degree rape.”).

inform the jury that the State bears the burden of proof on the question. *Id.* at 620, 622 (“[C]ontrary to what was said in *Hanton*, we now believe that the better practice is simply to give a separate instruction clearly informing the jury that the State has the burden of proving the absence of self-defense beyond a reasonable doubt.”).

Consistent with this reasoning, even when definitions of crimes are expressly negated by a defense, it is still the practice in the pattern instructions to explicitly inform the jury of the defense and the State’s burden to disprove it. *Compare, e.g.*, WPIC 26.01, 26.03, 26.05, 27.01, 27.03, 28.01, 28.05 (defining all degrees of murder and manslaughter as being without excuse or justification); WPIC 16.02 (defense of self or others defined as “justifiable.”). And when instructions contain elements that are implicitly negated by a defense, it is still standard practice to spell out the nature of the negating defense and the State’s burden to disprove it. *See, e.g.*, WPIC 70.02, 70.06, 70.11, 70.13, 70.26 (setting forth elements of various degrees and types of theft as including “intent to deprive” the true owner); WPIC 19.08 (good faith claim of title defense); *see also* WPIC 60.01, 60.02 (both definitional instruction and elements instruction establish unlawful entry requirement); WPIC 19.06 (lawful entry defenses described and State’s burden to disprove expressly stated).

True, this Court has suggested that a separate instruction defining consent or allocating the burden of proof to the State may not be necessary. *W.R.*, 181 Wn.2d at 767, n. 3; *State v. Imokawa*, 194 Wn.2d 391, 400-01, 450 P.3d 159 (2019). In *Imokawa*, this Court concluded that the burden of proof must be explicitly stated only when the defense negates a component of the crime not contained in the “to convict” instruction. 194 Wn.2d at 402. But here, the pattern instructions on consent fall short of the *Imokawa* standard.

Imokawa concurs that the instructions must be considered as a whole in evaluating whether the burden is clearly allocated, holding that where an element of the crime is “proximate cause,” an instruction that a superseding intervening cause was not a proximate cause needed not expressly assign the burden of proof to the State for the burden to be clear. 194 Wn.2d at 401; *see also id.* at 397-98 (quoting instructions). Here, by contrast, consent is not clearly defined in the instructions as constituting the opposite of forcible compulsion; indeed, it is not defined at all. *See* WPIC 18.25, Note on Use; CP 427-30; IV RP 681-82. It was precisely this omission that Knapp’s proposed instructions sought to correct.

Ultimately, WPIC 18.25 fails to clearly and unambiguously establish that consent negates forcible compulsion. By informing the jury

that consent is merely a factor that it may consider in evaluating forcible compulsion, it muddies a plainly binary choice – if Ms. Spaulding consented, Mr. Knapp did not use forcible compulsion; if Mr. Knapp used force without her consent, he did. The plain meaning of “may” is permissive, not compulsory, suggesting the jury is free to disregard evidence of consent in evaluating the forcible compulsion element. *See State v. Pineda-Guzman*, 103 Wn. App. 759, 763, 14 P.3d 190 (2000), *review denied*, 143 Wn.2d 1021 (2001). The *Acosta* Court also recognized that when the absence of the defense is not clearly stated in the “to convict” instruction, giving a defense instruction afterwards may lead the jury to conclude by negative inference that the State bears no burden. 101 Wn.2d at 623.

Read as a whole, the pattern instructions given in this case do not provide a diligent, well-intentioned jury with the information it needs to knowingly apply the law to disputed facts. If a juror has doubts as to which party is telling the truth, the instructions do not clearly and unequivocally preclude her from deciding that the defendant did not prove consent beyond a reasonable doubt, and unjustly voting to convict.

III. Defining consent clearly as the opposite of forcible compulsion is beneficial to rape victims by informing the jury that a victim is not legally required to resist and consent requires an affirmative manifestation of agreement.

Although progress has been made, modern rape laws have failed to entirely eliminate “traditional assumptions regarding appropriate behavior of [virtuous] [men and] women” that were reflected in earlier formulations. *W.R.*, 181 Wn.2d at 773 (Owens, J., dissenting). This neglect is most apparent in the definition of forcible compulsion as “overcoming resistance,” harkening back to presumptions that a lack of resistance could be interpreted as proof of consent. *See, e.g., State v. McKnight*, 54 Wn. App. 521, 525-26, 774 P.2d 532 (1989) (discussing public policy reasons disfavoring “resistance” requirement including increased risk of harm to victim); *People v. Barnes*, 721 P.2d 110, 117-20 (Cal. Sup. Ct. 1986) (describing evolution away from common law “utmost resistance” standard based on distrust of woman’s testimony, particularly if she is “unchaste”); *State v. Wampler*, 3 Wn. App. 378, 380, 475 P.2d 316 (1970) (describing factors to determine whether victim has made “non-consent and actual resistance reasonably manifest” and recognizing that “her resistance need continue only until it becomes so apparently useless as to warrant its cessation.”); *State v. Baker*, 30 Wn.2d 601, 606, 192 P.2d 839 (1948) (jury instructed that unless victim was placed in fear of great bodily harm, “then resistance on her part to the

utmost of her capacity would be necessary to constitute rape.”); *State v. Mertz*, 129 Wash. 420, 422, 225 P. 62 (1924) (observing that a stronger showing of opposition is required from “an older and more intelligent female” than from a “girl [who] is very young, and of a mind not enlightened on the question.”). Indeed, although Washington courts have recognized that the only resistance necessary to establish forcible compulsion is “any clear communication of the victim's lack of consent,” neither the statutory definition nor the pattern jury instructions inform the jury that resistance is nothing more than communicated non-consent. *McKnight*, 54 Wn. App. at 525.

Properly defining consent and explaining that it is antithetical to forcible compulsion benefits victims of rape. Under the pattern instructions, the jury must infer the relationship between forcible compulsion and consent through the intermediary concept of “resistance,” which runs the risk of keeping alive misogynistic tropes that conflate non-consent with resistance. By contrast, the statutory definition of consent reflected in the former version of WPIC 18.25 establishes consent as requiring affirmative manifestation of agreement, not mere non-resistance:

Consent means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

RCW 9A.44.010(7).

Defining consent for the jury and establishing its irreconcilability with forcible compulsion ensures that jurors do not inappropriately conflate consent with lack of resistance, contrary to concerns that fully instructing the jury might inappropriately shift attention to the victim's conduct rather than the defendant's. Instead, the jury will be better equipped to evaluate the competing accounts and reach a conclusion that holds the State to its actual burden.

VI. CONCLUSION

For the foregoing reasons, this Court should REVERSE Knapp's conviction for second degree rape on the grounds that the instructions failed to unambiguously allocate the burden of disproving consent beyond a reasonable doubt to the State and remand the case for retrial.

RESPECTFULLY SUBMITTED this 29 day of June, 2020.

TWO ARROWS, PLLC



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CERTIFICATE OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Supplemental Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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

Signed this 29 day of June, 2020 in Kennewick, Washington.



Andrea Burkhart

APPENDIX A

APPENDIX A

Table of burden of proof allocation for defenses in Washington Pattern Jury Instructions

WPIC no.	Title	Nature of Defense	Burden assigned?	If So, To Whom?
15.01	Excusable Homicide	Accidental death	Yes	State
16.01	Justifiable Homicide	Peace Officer or others in aid of Peace Officer	Yes	State
16.02	Justifiable Homicide	Defense of Self and Others	Yes	State
16.03	Justifiable Homicide	Resistance to Felony	Yes	State
17.01	Lawful Force	Peace Officer or others in aid of Peace Officer	Yes	State
17.02	Lawful Force	Defense of Self, Others, Property	Yes	State
17.03	Lawful Force	Detention of Person	Yes	State
17.07	Physical Discipline of Child	Reasonable and moderate force to correct or restrain	Yes	State
18.01	Duress	Compulsion by another	Yes	Defendant
18.02	Necessity	Weighing of harms	Yes	Defendant
18.05	Entrapment	Unlawful inducement	Yes	Defendant
18.10	Voluntary Intoxication	Inability to form mental state	No	
18.20	Diminished Capacity	Inability to form mental state	No	
18.25	Consent	Willing intercourse	No	
19.01	Murder in Commission of Felony—First and Second Degrees—Multiple Participants—Defense	Lack of knowledge of risk of death or serious injury	Yes	Defendant
19.02	Kidnapping—Second Degree—Defense	Abduction by family member to obtain custody	Yes	Defendant
19.02.01	Luring—Defense	Reasonable conduct lacking intent to harm	Yes	Defendant
19.03	Rape (Second Degree) or Indecent Liberties (Victim Helpless or Incapacitated)—Defense	Reasonable belief in capacity of victim	Yes	Defendant
19.03.02	Rape (Second Degree) or Indecent Liberties (Health Care Provider)—Defense	Consent with knowledge intercourse is not for medical treatment	Yes	Defendant
19.04	Rape of a Child—Defense	Declarations of victim as to age	Yes	Defendant
19.04.01	Sexual Misconduct with a Minor—Defense	Declarations of victim as to age	Yes	Defendant

19.04.02	Child Molestation— Defense	Declarations of victim as to age	Yes	Defendant
19.04.03	Communication with a Minor For Immoral Purposes—Sexual Exploitation of a Minor—Commercial Sexual Abuse of a Minor—Promoting Commercial Sexual Abuse of a Minor— Defense	Declarations of victim as to age	Yes	Defendant
19.04.04	Possession of or Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct— Defense	Declarations of victim as to age	Yes	Defendant
19.04.05	Custodial Sexual Misconduct—Forcible Compulsion—Defense	Forcible compulsion by another	Yes	Defendant
19.04.06	Prostitution—Defense	Victim of trafficking	Yes	Defendant
19.05	Reckless Burning— Defense	Sole ownership and lawful intent	Yes	Defendant
19.06	Criminal Trespass – First Degree – Defense	Lawful entry or belief in lawfulness of entry	Yes	State
19.07	Criminal Trespass – Second Degree – Defense	Lawful entry or belief in lawfulness of entry	Yes	State
19.08	Theft – Defense	Good faith claim of title – also applicable to robbery, taking motor vehicle without permission	Yes	State
19.09	Extortion – Second Degree – Defense	Wrongfulness of threat – reasonable belief in criminal act	Yes	State
19.12	Custodial Interference— Defense	Reasonable withholding	Yes	Defendant
19.14	Criminal Mistreatment— Financial Inability— Defense	Failure to pay for basic necessities	Yes	Defendant
19.15	Abandonment— Termination of Services—Defense	Reasonable notice given	Yes	Defendant
19.16	Escape—First and Second Degree—	No time or opportunity to report based on exigent circumstances	Yes	Defendant

	Uncontrollable Circumstances—Defense			
19.17	Bail Jumping— Uncontrollable Circumstances—Defense	No time or opportunity to report based on exigent circumstances	Yes	Defendant
20.02	Insanity – Burden of Proof	Inability to appreciate wrongfulness	Yes	Defendant
52.01	Unwitting Possession	Lack of knowledge	Yes	Defendant
52.02	Controlled Substance Obtained Directly from a Practitioner or Pursuant to a Valid Prescription	Valid prescription	Yes	Defendant
52.03	Delivery/Manufacture/Sale of a Controlled Substance Authorized by Law	Legal commercial activity	Yes	Defendant
52.10	Medical Marijuana— Qualifying Patient— Defense	Compliance with qualifying medical use requirements	Yes	Defendant
52.11	Medical Marijuana— Designated Provider— Defense	Compliance with qualifying medical use requirements	Yes	Defendant
92.14	Driving or Being in Physical Control While Under the Influence – Defense	Drinking or consuming alcohol after driving or physical control	Yes	State
92.15	Physical Control While Under the Influence— Defense—Safely Off the Roadway	Vehicle moved off road	Yes	Defendant
94.10	Attempting to Elude a Police Vehicle— Reasonable Belief that Pursuer Is Not a Police Officer—Defense	Reasonable driving and reasonable belief pursuer is not law enforcement	Yes	Defendant
96.20	Negligent Driving—First Degree—Prescription Drug Defense	Compliance with prescription instructions	Yes	Defendant

BURKHART & BURKHART, PLLC

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Transmittal Information

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Appellate Court Case Title: State of Washington v. Leland Honn Knapp IV
Superior Court Case Number: 17-1-00008-0

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