

69527-4

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No. 69527-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

GARY WADE,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 APR -1 PH 4: 23

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary I. Yu

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT

MR. WADE WAS ENTITLED TO JURY  
INSTRUCTIONS ON FIRST AND SECOND DEGREE  
MANSLAUGHTER

In its response, the State, while apparently staying course and noting that there was no evidence to establish what happened in the apartment other than Ms. Thornton was killed by strangulation, nevertheless contends that Mr. Wade was not entitled to lesser degree instructions for first and second degree manslaughter. Brief of Respondent at 27-28. In so doing, the State ignores the relevant test for determining whether lesser degree instructions are warranted.

In reviewing whether the evidence is sufficient to warrant the inferior degree instruction, this Court views the supporting evidence *in the light most favorable to the party requesting the instruction*. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000). Under this standard, Mr. Wade was entitled to the inferior degree instructions since the evidence raised an inference that only the inferior degree offenses were committed. *Id.* at 455.

The State contends that Mr. Wade could “point to no evidence that raises a reasonable inference that only the crime of manslaughter was committed in this case.” Brief of Respondent at 27. Despite a

complete lack of any evidence establishing what happened in the apartment, the State continues to argue “[t]he question is in this case was thus not whether intentional murder was committed, but who murdered Michelle Thornton.” *Id* at 28 (emphasis omitted). But in making this argument, the State ignores that Mr. Wade was entitled the manslaughter instruction “where the evidence raise[d] an inference that only the inferior degree offense was committed.” *Fernandez-Medina*, 141 Wn.2d at 455.

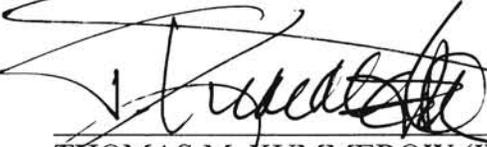
Given the utter lack of evidence concerning *how* Ms. Thornton was killed, it was as much a possibility that she died as a result of reckless conduct or accident as it was intentional conduct. The State’s argument that the evidence established Ms. Thornton’s death resulted from intentional conduct because she was strangled ignores the fact she could have been strangled by conduct of a lesser quality than intentional conduct. Mr. Wade carried his burden of establishing he was entitled to lesser degree instructions. The evidence at trial raised an inference that only manslaughter was committed. Mr. Wade was entitled to the manslaughter lesser degree instructions.

B. CONCLUSION

For the reasons stated in this reply brief as well as the previously filed Brief of Appellant, Mr. Wade asks this Court to reverse his conviction and remand for a new trial.

DATED this 31<sup>st</sup> day of March 2014.

Respectfully submitted,



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DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69527-4-I
v.	)	
	)	
GARY WADE,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 31<sup>ST</sup> DAY OF MARCH, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<p>[X] DEBORAH DWYER, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104</p>	<p>(X) ( ) ( )</p>	<p>U.S. MAIL HAND DELIVERY _____</p>
<p>[X] GARY WADE 362423 WASHINGTON STATE PENITENTIARY 1313 N 13TH AVE WALLA WALLA, WA 99362</p>	<p>(X) ( ) ( )</p>	<p>U.S. MAIL HAND DELIVERY _____</p>

**SIGNED** IN SEATTLE, WASHINGTON THIS 31<sup>ST</sup> DAY OF MARCH, 2014.

X \_\_\_\_\_ 

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