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Wednesday, May 25, 2016

To
The court of Appeals
of the State of WA. Division I
One Union Square
600 University, Street
Seattle, WA 98101-4170

Reference: Cause No. 73069-0-I

Thomasdinh Bowman,

DOC 379719
Clallam Bay Corrections Center
1830 Eagle Crest Way,
Clallam Bay, WA 98326

Subject:

Statement Of Additional Grounds For Review

Hi,
Please find my enclosed of the Statement Of Additional Grounds For Review and consider my request for a fair trial.

I appreciate and thank you very much for your time and your consideration.

Best Wishes,
Sincerely and respectfully,

Thomasdinh Bowman,
379719
Clallam Bay Corrections Center
1830 Eagle Crest Way,
Clallam Bay, WA 98326

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON,

Respondent,

v.

THOMASDINH BOWMAN,

Appellant.

Cause No. 73069-0-I

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

I, Thomasdinh Bowman, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

CERTIFICATE OF SERVICE

I, Thomasdinh Bowman, do hereby declare that I have served all parties my Statement of Additional Grounds by US Mail and / or in person as follows:

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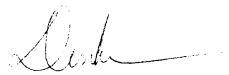
The court of Appeals
of the State of WA. Division I
One Union Square
600 University, Street
Seattle, WA 98101-4170

Respectfully submitted this 25th day of May, 2016.

Signature: 

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5, 6, 13, 15, 16, 17, 21, 23, 24, 44, 115, 230, 237, 238, 239, 250, 313, 320, 249, 321, 278, 280

Report of Proceedings Citation Style

References to the report of proceedings are written as: [*RP:Month/Day:Page.Line*]

Example: December 9th 2012, Page 32 line 1 would be cited as: [RP:12/9:32.1]

For multiple citations to the same date, succeeding references are written as: [Id. at Page.Line]

Example: Page 104, Line 24 of the day of the previous citation's would be cited as: [Id. at 104.24]

For Supplemental Report of the Proceedings, the tag "Sup" is appended to the day.

Example: November 19th Supplemental, Page 85, Line 17 would be cited as: {RP:11/19Sup:85.17]

1.0 Introduction

ThomasDinh Bowman was charged with KillCraft. More specifically, charged as a "Student of Murder" in a case described as a premeditated "Thrill Kill." This KillCraft struck the same emotional notes that WitchCraft did in Salem, Massachusetts. Despite the veneer of rules and processes, human tendencies haven't changed and we hold the same prejudiced fears that wreaked havoc during the witch hunts.

Mr. Bowman was on his way home from work for an anniversary date with his wife. Heading north on I-5 from downtown Seattle, he accidentally cut-off Mr. Noll as Noll entered the freeway from Capitol Hill. Over the next few minutes, Noll chased and attacked Bowman attempting to "fuck him up."

While stopped at a red light, Bowman was struck from behind with a wine bottle thrown by Noll. When Bowman looked over, he was confronted with a violently angry yelling madman within a few feet of him. Noll appeared to be reaching for a gun to finish off his threats. Bowman did what anyone in his position might have done: he drew his weapon and fired to defend himself.

Without waiting, Bowman drove into oncoming traffic, through the red light of a busy intersection, and sped away to escape further attack. This was a terribly traumatic and tragic event for everyone involved.

Mr. Bowman made the critical mistake of not immediately contacting the police once he got to safety. This caused the State to begin their investigation with prejudice and made it all the more difficult to come forward.

Mr. Bowman believed that he would be able to clarify the misunderstandings to a jury at trial. Unfortunately the truth was not able to overcome prejudice on the scales of justice. This appeal asks this Court to examine the evidence and rulings with an interest towards fairness.

The limitations of space and time prevent a complete presentation of the prejudice, lies, and failures that turned this case into a witch trial worthy of Salem. This document will show the untenable standard and misconduct that prevented Bowman from a fair trial. Mr. Bowman's conviction should be reversed and the case dismissed as it was within his rights to defend himself from that violent attack.

2.0 Objections

2.1 Failure to Object

In the issues brought before the Court in this document, there will often be the question of why Defense did not object to the State's misconduct. In some instances, there were already attempts to object which were overruled and further attempts would have only served to highlight the impropriety. Occasionally the Defense's objections were not even acknowledged [RP:11/19Sup.92.25]. In other instances, there should have been an objection raised. To minimize repetition, an Ineffective Assistance of Counsel claim will be held for all issues of this case as the record should have been protected.

The State's improprieties were so rampant that an objection to every act of misconduct would have made progress impossible. The State systematically infected the trial with their misconduct such that no amount of curative instructions could have balanced the prejudice.

2.2 Useless to Object to Testimony-as-Questions

The State was allowed unfair discretion in their ability to form implicit testimony as questions. The Defense attempted to object to the issue several times but was overruled. The Court even justified the State's tactics as using "a leading question" and overruled Defense's objection [RP:12/9:36.23].

The Defense was not allowed matching discretion as even asking innocuous questions such as "And this is the teriyaki place?" were met with sustained objections by the State [RP:12/8:147.7].

If Defense had objected to every instance of the State's improper questions, the significance of the statements would only be highlighted to the jurors. The State's systematic introduction of testimony through questioning was given the blessing of the Court. This was unfairly prejudicial to Mr. Bowman's right to a fair trial.

3.0 Computer Evidence

Mr. Bowman worked in the technology industry; he operated multiple servers including the system brought before the Court containing over 10 terabytes of information. In the two years of preparation for trial, the Seattle Police Department was only able to get through 4 terabytes [RP:10/31:7.18]. One of the seven storage drives [RP:12/2:10.9] contained a folder "Library" and a subfolder "Reference" which contained 350 gigabytes [Id. at 74.6] of electronic books and videos.

The Library contained material on a broad spectrum of topics including Architecture, Cooking, and Sewing [Id. at 126.8]. The Library also contained material on Self-Defense, Forensics, Medical Science, and Military Combat. The jury was instructed to infer a desire to kill, a motive of thrill, and a plan of action through Mr. Bowman's access to the Library.

It is not disputed that after the event Mr. Bowman accessed the Library. Those portions of the Library were relevant to the case. But the Library contained a massive quantity of content that Mr. Bowman hadn't seen and had no relationship to the case. Specifically, there were two books which were unfairly prejudicial and were introduced to flame the passions of the jury. This section will focus on these two Books.

3.1 The Books

The Death Dealer's Manual by Bradley Steiner, Exhibits 250 & 320. The original pamphlet had approximately 114 pages. This book was located on the Seagate drive in the folder Library/Reference/. The file was created: August 9th, 2011 and was last accessed: "May 19th, 2012 at 38 hours but it doesn't say if it was viewed for 30 seconds, half hour or anything" [RP:11/5:86.14].

Murder Inc by Jack the Rippa, Exhibits 249 & 321. The author of this book appears to have copied most, if not all, of this book's content from other sources. Much of the content of this book was copied from The Death Dealer's Manual so there are many places where the two books discuss the same topic using the same, exact words. There is also content from other unknown sources. This book consists of approximately 62 pages. Copies of this book were located "in three places" [RP:11/4:77.14] on the Seagate Drive.

Location 1:Seagate/Library/Reference/Mischief/ "The copy in that folder was created on October 10, 2011, and last accessed on June 21st, 2012" [Id. at 77.16].

Location 2:Seagate/Library/Reference/Combat/ "second copy located within a subfolder called Combat that was created on August 9, 2011, and last accessed on May 19, 2012" [Id. at 78.1].

Location 3:Seagate/Library/Reference/Firearms/ "a third copy of Murder Inc in a subfolder called Firearms that was created on August 27, 2008, and last accessed on May 29, 2012" [RP:11/4:78.3].

3.2 Foundation

3.2.1 Non-Standard Computer

The trial Court used *Tegland 5C* Section 901.22 [RP:11/10:7.11] for guidance: "Computer generated evidence must be authenticated by a showing that the computer equipment is standard and the evidence is trustworthy" [Id. at 7.14]. The Court concluded that "[T]his is not a standard computer, no question about it. But that does not make the computer unreliable, at least for the purpose that it's being used for in this case" [Id. at 8.15].

The Court misunderstood what issue was in question. The question shouldn't be whether a physically printed copy of a digital file was reliably the same. It was whether the digital file's MetaData reliably showed ownership and access.

There were two primary issues that directly affected the MetaData:

- **Hard Drive Portability** - In a standard computer, a single hard drive is associated with the operating system and storage of data. This system had seven drives in the computer when it was discovered [RP:12/2:10.9] including a unique PCI SSD and a 4-drive RAID array [id]. The computer was found with the case open for Mr. Bowman to be able to move hard drives from one machine to another. The reliability of the filesystem's MetaData is affected by each system the hard drive is mounted on. An example would be if the drive was temporarily mounted in a system with an improperly set clock. The file access timestamp could become prior to the file's creation timestamp. Or more than likely, indicate the wrong year, day, and time which were key elements used in the authentication.

- **Multiple Operating Systems** - Each operating system treats filesystem MetaData slightly differently. On a standard computer with a single operating system, the context and meaning of MetaData can be assumed consistent. But this computer was setup as a triple-boot: depending on use, it would boot either Mac OSX, Windows 7, or ArchLinux (a version of Unix). The operating systems were stored on different hard drives but they all had access to each other. If the computer forensic detective turned the machine on with the Windows hard drive plugged in, it would have booted Windows 7. The system also utilized Virtual Machines which allowed multiple operating systems to run simultaneously and access the same hardware.

Mr. Bowman repeatedly made notes for his counsel to make a record of these issues. In not representing these issues to the Court, Mr. Bowman was rendered Ineffective Assistance of Counsel

3.2.2 Filing Cabinet Analogy

The trial court used an invalid analogy to decide on the admissibility of evidence: "Let's assume that all of the material in State's Exhibit 1 were found in a file cabinet in Mr. Bowman's office instead of on a computer" [RP:11/10:4.16]. "[T]he question becomes does the fact that the materials came from a computer rather than a file cabinet change the analysis. And the Court concludes that with one possible exception, the answer is no" [RP:11/10:5.9]. While acknowledging "The material in Exhibit 1 is a tiny percentage of the approximately 1.5 billion pages apparently stored on Mr. Bowman's computer" [RP:11/10:3.14].

- Our circuit has commented that "Searches of computers therefore often involve a degree of intrusiveness much greater in quantity, if not different in kind, from searches of other containers.
[*U.S. v. Payton*, 573 F.3d 859, 862-63 (9th Cir. 2009)].

Other circuits have considered such analogies and noted "Facile analogies of forensic examination of a computer or smartphone to the search of a briefcase, suitcase, or trunk are no more helpful than analogizing a glass of water to an Olympic swimming pool because both involve water located in a physical container." [*U.S. v. Saboonchi,* 990 F.Supp.2d 536, 561 (D. Md. 2014)].

This section will examine the major flaws that make this analogy specifically unsuitable.

3.2.2.1 Scale

Scale is important because it allows the trier of fact to infer probable knowledge. A document in a personal filing cabinet is different from a book in a public library in terms of what the jury can infer the defendant had knowledge of. A library card might be used to bolster probable knowledge of the library's contents, but the large scale of a library reduces the probability that the card owner has intimate knowledge of any single book.

Mr. Bowman's Library was reported to have approximately 3,500,000 pages of documents [RP:12/2:124.19]. Assuming 3 minutes to read a page, this would take around 175,000 hours of continuous reading. The computer forensics detective opined that the library was organized in May 2012 [RP:12/2:76.3]. If Bowman read continuously eight hours a day, Monday through Friday, for the four months, he could have gotten approximately 640 hours of reading in. Given the 175,000 hours required to complete this herculean effort, there is a 0.366% chance that Bowman read any random page. This is well below any reasonable probability that could link Bowman to any given document. Considering Bowman maintained his normal workload throughout this period, it is untenable to even suggest this improbable statistic applied.

The Court downplayed the scale issue by adopting the diminutive term "Mr. Bowman's Computer" "to refer to a number of devices including two hard drives, called the Seagate and Rosewill drives, a PCI card, and a laptop" [RP:11/10:4.16]. This term ignores the amount of information in question. The computer forensics detective testified that there was over 12 terabytes of storage and that it was "very unlikely" that Mr. Bowman read all of it [RP:12/2:97.14]. When a detective was asked if he had any idea if Mr. Bowman read any of the books on the computer, he said: "I don't think anybody could" [RP:12/3:149.10]. This is similar to referring to the Library of Congress as a Book Shelf.

Probability of knowledge is the issue. A minimum level of probability is required for relevance. The Court abused its discretion when it allowed the State to admit evidence without a reasonable foundation of probability. The Court effectively commented to the jury that it had reason to believe these Books were highly likely to have been read by Mr. Bowman.

3.2.2.2 Curation

A filing cabinet implies personal curation and absolute control of its contents. "There's no evidence whatsoever, and the State's relying on the point that Mr. Bowman knew the material was there because he himself organized it, but there's no evidence whatever that Mr. Bowman actually organized the structure" [RP:11/6:16.28].

From the offering of "Murder Inc" it is apparent that no single curator managed the Library as it "is actually in three places within the defendant's file folder system" [RP:11/4:77.13].

Mr. Bowman testified that he downloaded thousands of e-books at a time [RP:12/4:20.15]. This is like purchasing bookstores and merging the aisles together. To imply detailed knowledge of Mr. Bowman's Library as one might their personal filing cabinet is an unfair distortion of the facts.

3.2.2.3 Access

The filing cabinet analogy implies privileged and exclusive access to its contents. All the files in question were downloaded from public Internet sites. The files in Mr. Bowman's Library were also shared through Peer-To-Peer file sharing. This made Mr. Bowman's Library part of the global library of material and therefore available to anyone.

From the perspective of a user at "Mr. Bowman's Computer", there was no effective difference in accessing the files on the local filesystem or the global Internet. When searching, it is actually faster and better to use an Internet search engine as it caches search data and contains the union of all Libraries. When the search engine found a "hit" it would not be readily apparent that the "hit" was located in Mr. Bowman's Library or in another Library.

Another term commonly used to describe this decentralized network of Libraries is Cloud Computing. Cloud Computing allows users to store data on a remote server for easy access from a computer or call phone, "giv[ing] users 'anywhere access' to applications and data stored on the Internet." [David A. Couillard, *Defogging the Cloud: Applying Fourth Amendment Principles to Evolving Privacy Expectations in Cloud Computing*, 93 Minn. L.Rev. 2205, 2216 (2009)]. The fact that Bowman's Library was accessible through "anywhere access" further limits the similarity to a filing cabinet.

Using the filing cabinet analogy, when the file cabinet is part of the Global Library on the Internet, creates a very dangerous standard. Imagine a file cabinet that could produce any document available in any library in the world. Wish for the material, reach in, and instantly have a local printed copy for access. The filing cabinet analogy becomes a magical filing cabinet standard and provides no protection from the State entering into evidence what might otherwise be described as fabricated evidence.

By admitting evidence under this standard, the Court commented to the jury that Mr. Bowman had unique access to the Books substantially greater than the general population. This is not true and was unfair to Mr. Bowman.

3.2.3 Personal vs. Public

There was a lack of clarity in distinguishing personal data from public data, specifically with regards to the "Seagate" drive. It contained a public Library under the folder "Library". In other areas of the same drive there were private files and backups. This is like owning land with multiple buildings. One building was used for the public Library, and others were used for personal and business purposes. Everyone on the Internet held keys to access Mr. Bowman's Library. Only Mr. Bowman held keys to his private and personal storage.

In examining the admissibility of the Library, the Court unfairly used a standard that assumed a personal association with all the material on the computer.

3.2.4 MetaData

3.2.4.1 Permissions

The State presented expert testimony that files in the Library had filesystem permissions that indicated "Dinh" was the owner and had exclusive access [RP:12/2:76.19]. This misrepresented the probative value of this MetaData and confused the Court.

The permission attribute described is only relevant within the context of a single operating system and a non-portable hard drive. The attribute stored in the filesystem maps to a user number associated with the operating system. If the hard drive was mounted on a different operating system with the default owner of "Bob", then "Bob" would be listed owner of the files.

This also ignores the fact that any operating system administrator or default user would have full access to these files. The Court was misled by the State's expert who said "permissions granted to everyone else are zero,

which is no permissions" [RP:12/2:77.4]. A "zero" in the permissions attribute does mean "no permission" but any default user or administrator would have full access regardless. Any server application, such as Peer-to-Peer file sharing ones, could also share these files without regard to filesystem permissions. So these permission attributes don't reflect that the files in the Library were accessible to the global Internet.

3.2.4.2 Timestamps

The State relied heavily on filesystem timestamp MetaData to establish a probable link between Mr. Bowman and specific files. This MetaData was used to mislead the Court when in fact it had little probative value. The State used phrases such as "computers don't magically open file[s] by themselves" [RP:11/6:23.25] to bolster the nexus between these timestamps and Mr. Bowman. This ignored the fact that "As Detective Hansen testified, there's no correlation between timestamps and physical user activity ... and [t]his can be shown by the fact that Detective Hansen booted up the computer which automatically modified a significant list of timestamps." [RP:11/6:15.16]

The State suggested to the jury that the access timestamps proved the reading of the Books admitted. But outside of the jury, the State offered "Detective Hansen explains that he was scrolling through multiple places, and every time you scroll and touch and look, it logs on an access date. So that's the explanation for how so many of them can show up at the same date and time -- is it's a scrolling through folders" [RP:11/4:92.16].

Filesystem access times, creation times, and modification times are subject to the specific context of its host operating system. There is no direct correlation between user activity and these timestamps, although certain actions will likely cause timestamps to be updated. The filesystem MetaData is useful in analyzing the computer operating system's activity, but cannot be used to reliably infer the computer user's activity.

3.2.5 Foundation Conclusion

The circumstances of this case are complicated. The lack of existing case law guidance combined with a non--standard computer made this issue difficult to judge. Unfortunately, the trial Court got lost in the complexity and abused its discretion in over admitting evidence from "Mr. Bowman's Computer."

Case law needs to be established to provide guidance for future courts as this problem will inevitably become more common with advances in computing technology.

The Court understood "There's no doubt that they are disturbing, and while arguably probative of motive and planning, they do run the risk of appealing to passion and prejudice" [RP:11/10:28.23]. The improper foundation tests applied to these two digital books improperly allowed them to be admitted into evidence. Because of their improper admittance, Mr. Bowman was unfairly prejudiced and should have his conviction reversed.

3.3 Relevance

The State argued that correlation meant causation with statements such as "[W]e can strongly infer that he did [read the Books] in this case circumstantially because he did what those articles suggested he do in committing this murder" [RP:11/6:9.18]. This form of argument is a logical fallacy called *Affirming the Consequent.* The argument assumes "If P, then Q. And asserts "If Q therefore P." In this case:

1. If [he read the Books], then [he did the things described in the Books].
2. [he did the things described in the Books],
3. Therefore, [he read the Books].

This form of argument is invalid as the conclusion can be false even when statements 1 & 2 are true. Since P is not the only sufficient condition for Q, other factors could account for Q. A specific example from this case,

1. If [Bowman read "Well-made handguns of suitable caliber are undoubtedly the best short-range tool for killing known to man"], then [Bowman shot someone with a handgun].
2. [Bowman shot someone with a handgun],
3. Therefore, [he read "Well-made handguns ...."]

Obviously if Bowman was well acquainted with firearms and carried a self-defense handgun regularly, the use of a handgun should not allow anyone to "strongly infer" he read that passage. This form of argument can be superficially convincing and all the more dangerous as it is easy to toss around:

1. If [I have the flu], then [I have a sore throat].
2. [I have a sore throat],
3. Therefore, [I have the flu].

It is easy to attribute a sore throat to the flu, but the common cold, strep throat, and others could also be the culprit. The Court and the jurors were misled by such logical fallacy. The Court accepted this logic and ruled "In general, the Court has taken the approach of allowing in certain prescriptions in these manuals that coincide with how the shooting of Yancy Noll was accomplished" [RP:11/10:29.2].

In this case, the State relied heavily on two books which had no objective relationship with the case. The State selected phrases that supported their theory and redacted the immediate context which disproved their theory. In the instances where the facts directly contradicted their theory, the State simply misrepresented the facts to the jury.

3.3.1 Reading Material

The two books at issue were presented by the State as textbooks for how to commit murder and as direct evidence of Bowman's motive, plan, and intent. The State argued that because Mr. Bowman might have accessed the Books several months before the incident, they demonstrated Bowman's premeditated intent to act them out.

The Court admitted being "concerned about the jury seeing this language and simply [s]eeing this as character evidence, that Mr. Bowman is associated with being a professional killer" [RP:11/10:29.18]. The Court gestured a remedy by declaring "I'm going to let it in, and we're going to put the word shooter in for killer" [RP:11/17:26.10].

The following sections will outline a number of cases that support how the Court abused its discretion in admitting material from the Books.

3.3.1.1 Libraries are Full of Criminal Depictions

Authorities have commented on the fact that the depiction of illegal conduct is abundant in normal society:

- Criminal activity is a wildly popular subject of fiction and nonfiction writing -- ranging from the National Enquirer to Les Miserables to In Cold Blood. Any defendant with a modest library of just a few books and magazines would undoubtedly possess reading material containing depictions of numerous acts of criminal conduct. Under the government's theory, the case against an accused child molester would be stronger if he owned a copy of Nabokov's Lolita, and any murder defendant would be unfortunate to have in his possession of a collection of Agatha Christie mysteries or even James Bond stories. Woe, particularly, to the son accused of patricide or incest who has a copy of Oedipus Rex at his bedside.
  [*People Territory of Guam v. Shymanovitz*, 157 F.3d 1154, 1159 (9th Cir. 1998)]

- No inference of any kind can be drawn about a person's character from the kinds of books that he reads. We have no basis in human experience to assume that persons of "good" character confine their reading matter to "good" books, or that persons who read peaceful books are peaceful people, or that persons who read books involving violence are violent people.
  [U.S. v. Giese, 597 F.2d 1170, 1207 (9th Cir. 1979), Hufstedler, J., dissenting]

- To allow prosecutors to parade before the jury snippets from a defendant's library -- the text of two magazine articles and descriptions of four magazines -- would compel all persons to choose the contents of their libraries with considerable care; for it is the innocent, and not just the guilty, who are sometimes the subject of good-faith prosecutions. [Shymanovitz, supra]

- [W]e observe that a defendant's choice of reading material will rarely have a particularly significant probative value. Thus, attempts to use such evidence against a defendant must be viewed and reviewed with a careful and skeptical eye. [*U.S. v. Waters*, 627 F.3d 345, 355 (9th Cir. 2010)]

Mr. Bowman's possession of these books was not probative of intent. The distance in time between the supposed readings (access timestamps) and the incident further diminished the probative value of possession.

3.3.1.2 Lack of Similarity

The similarity between the instructions in the Books and the incident needed to be evaluated by the Court with a finding of unmistakably shared traits supported by the Doctrine of Chance:

- Evidence of extrinsic misconduct can be admitted only where such evidence is highly distinctive, highly similar, and with a strong showing of repetition. [Comment, 61 Wn. L. Rev at 1234]

- [A] book such as The Great Train Robbery would not necessarily be relevant and admissible in a run-of-the-mill theft case. On the other hand, if the crime charged happened to be theft of a money shipment from a train, then possession of the book might possibly be relevant -- depending on the precise facts and circumstances of the case. [*U.S. v. Curtin*, 489 F.3d 935, 956 (9th Cir. 2007)]

- When a prior criminal act is relied upon to prove intent or knowledge, similarity between the two events must be shown to establish the threshold requirement of relevance. We can reasonably infer, for example, that a person who has knowingly carried marijuana in a backpack across the border on one occasion will know that he is carrying marijuana in his backpack when he is caught carrying marijuana in the same way as he crosses the border on a later occasion. The greater the dissimilarity of the two offenses, the more tenuous is the relevance. [*U.S. v. Hernandez-Miranda*, 601 F.2d 1104, 1108 (9th Cir. 1979)]

- The "similarity" requirement is closely related to the relevancy issue: if introduced to show "knowledge" or "intent," the prior bad act must be similar to the offense of which the defendant is charged. [See, *U.S. v. Viscarra-Martinez*, 66 F.3d 1006,1014 (9th Cir. 1995) (finding possession of drug not to be admissible as proof of intent under Rule 404(b) due to lack of similarity to charged offense of drug manufacture)]

- [T]he relationship between the other act and the crime for which the defendant is charged must be singularly interwoven. A general motive, such as greed or lust, shared by all with similar drives, is insufficient. For if the motive of greed were sufficient to establish the independent relevance required by [the rule], any time a person is charged with doing something criminal to acquire a pecuniary gain, ... any act in which he has evinced a similar state of mind would be admissible. So, too, would any lustful act be admissible against a defendant charged with a sexual crime. There should be more. There should be some connexity between this defendant and this crime. It should be some motive sufficiently unique that it point unerringly at this defendant. [*Knowledge, Intent, System, and Motive: A Much Needed Return to the Requirement of Independent Relevance*, 55 La. L. Rev. 179, 207 (1994), Comment by Huey L. Golden]

There are little to no similarities between the Books and the events of this case. The Court abused its discretion by accepting the State's offer of proof without thorough review,

3.3.1.3 Knowledge vs. Conduct

The Court failed to distinguish between Bowman's potential knowledge and his intentional conduct in admitting the Books. Knowledge and conduct are uniquely different:

- The mere possession of reading material that describes a particular type of activity makes it neither more nor less likely that a defendant would intentionally engage in the conduct described and thus fails to meet the test of relevance under Rule 401.
[*People Territory of Guam v. Shymanovitz*, 157 F.3d 1154, 1158 (9th Cir. 1998)]

- We have long held that evidence of motive requires more than a general propensity to commit a type of crime but rather a motive to commit the crime charged against the particular victim. [See *U.S. v. Brown*, 880 F.2d 1012, 1015 (9th Cir. 1989) (finding evidence of "thrill from creating violence" to be inadmissible as motive evidence for murder charge)]

- [N]either knowledge of the illegality of the conduct of which he was accused nor knowledge of the nature of the specific acts identified by the prosecutor constituted an element of the offense. More important, such knowledge would in no way tend to prove his guilt on any of the charges brought against him.
[*Shymanovitz*, supra, 1157]

- [T]here is simply no doubt that a wide gulf separates the act of possessing written descriptions or stories about criminal conduct from the act of committing the offense described. [*Shymanovitz*, supra, 1159]

There was no evidence to support the leap from possessing knowledge to acting on that knowledge. The State was unfairly allowed to argue that the mere possession of the Books created an irresistible power which caused Bowman to act.

3.3.1.4 Failure to Review

The Court was required to thoroughly review the Books in their entirety and then perform its analysis of relevance and prejudice:

- The trial court is required to read every word of the proposed material when exercising its balancing discretion pursuant to Rule 403 to determine whether their potential for undue prejudice substantially outweighs their probative value. [See *U.S. v. Curtin*, 489 F.3d 935, 956-957 (9th Cir. 2007)]

- After determining relevancy, the court must then weigh the prejudicial effect and where the decision is doubtful, the scale must tip in favor of the defendant and the exclusion of the evidence. [*State v. Smith*, 106 Wn.2d 772, 775-76, 725 P.2d 951 (1986); *State v. Bennett*, 36 Wn. App. 176, 180, 672 P.2d 772 (1983)]

- In U.S. v. Ellis, 147 F.3d 1131 (9th Cir. 1998), for example, we reversed a conviction after the government introduced a copy of "The Anarchist's Cookbook" into evidence. Id. at 1136 ("The government' s reliance on this evidence created a grave danger that the defendant's guilt was established not by evidence relevant to the particular offense being tried, but rather by evidence that was wholly unrelated to these offenses." (internal quotation marks omitted)). [*U.S. v. Waters*, 627 F.3d 345, 359 (9th Cir. 2010)]

- In this light, we hold as a matter of law that a court does not properly exercise its balancing discretion under Rule 403 when it fails to place on the scales and personally examine and evaluate all that it must weigh. Relying only on the descriptions of adversary counsel is insufficient to ensure that a defendant receives the due process and fair trial to which he is entitled under our Constitution, as this case demonstrates.
  [*Curtin*, supra, 958]

Because the Court relied on the State's proposed excerpts from the Books, the Court failed to conduct its relevance tests based on the intended meaning and context of the material. An analogy would be the offering of the excerpt "Then God said: Take your son Isaac, your only one, whom you love, and go to the land of Moria. There offer him up as a burnt offering on one of the heights that I will point out to you." [Genesis 22:2, New American Bible].

An analysis of that biblical excerpt without an understanding of the context would be unwise and provide inaccurate conclusions. The contextual material in the Books were highly probative to the relevancy analysis and often contradicted the State's suggested inferences. By ignoring the intended message of the material, the State was able to use the Books as a pretext for their own fabricated manual for murder. This was an abuse of discretion.

3.3.2 Motive

The State described Mr. Bowman to the jury as "Someone for whom the murder was the motive" [RP:11/19Sup:85.21]. Defense objected and was overruled regarding this speculation. The Court ruled that material from these Books was "directly relevant to the motive the State is ascribing to Mr. Bowman in this case." [RP:12/8:9.12].

- If a defendant had a particular reason to accomplish a crime and the crime was effected, proof of defendant's motive renders more probable the fact that he was the actor. In order to have independent relevance, the motive reflected by other crimes should be factually peculiar to the victim and the crime charged.
  [George W. Pugh, Louisiana Evidence Law 33-34 (1974)]

- The requirement that the evidence be distinctive or unusual insures that the evidence is relevant. The greater the distinctiveness ... the higher the probability that the defendant committed the crime.
  [*State v. Coe*, 101 Wn.2d 772, 777-78, 684 P.2d 668 (1984)]
- Mere similarity of crimes will not justify the introduction of other criminal acts under the rule. There must be something distinctive or unusual in the means employed in such crimes and the crime charged.
  [5 R. Meisenholder, Wash. Prac. § 4, at 13 (1965)]

The material in the Books provided generic statements that many might describe as common sense. Even by cherry-picking select passages, the events of this case shared little similarity with the actions suggested in the Books.

- The greater the overlap between propensity and motive, the more careful the district judge must be about admitting under the rubric of motive evidence that the jury is likely to use instead as a basis for inferring the defendant's propensity, his habitual criminality, even if instructed not to.
  [*US, v. Cunningham*, 103 F.3d 553, 556-57 (7th Cir. 1996)]

These books were admitted under the pretext of motive, but their actual value was their function as propensity evidence. The State argued that because Bowman had these books in his possession, he was more than likely to be a "student of murder." "He's studied it. And his motive is murder." [RP:12/9:90.16).

A book alone cannot cause a person to act. A person with no desire to act in conformity with a book's content will not suddenly be driven otherwise. Motive is a force that does not originate in a how-to manual. Motive causes a person to read a manual, not the other way around. The Court abused its discretion in allowing material from these books to be introduced for the purposes of motive.

3.3.3 Student of Murder

The Court overruled objections to the State's accusations that Mr. Bowman was a "student of murder" [RP:11/19Sup:85.13]. The State used the Books as "supportive of the State's theory in this case that he was a student of murder. He is an engineer. He went to the University of Washington at a very young age. He's probably brilliant. And he wanted to learn something from the inside out and then put what he had learned to use. All that is corroboration for the fact that he read it if that were a requirement" [RP:11/6:10.2]. The State presented a good student and a curriculum for being a professional assassin. The Court abused its discretion in allowing the State to create a "thrill kill" motive that made the student study that curriculum.

The State argued:

- **Evidence**: An academically inclined engineer had access to the Books about professional hit men.
- **Inference**: Mr. Bowman was a student of murder and read the Books to achieve the "fulfillment of a quest [to] know what it would be like to kill someone" [RP:11/19Sup:92.23].
- **Conclusion**: Mr. Bowman was more likely to have committed premeditated murder than self-defense.

This conclusion was illogical and relieved the State of the burden to prove tenable relevance. This was an abuse of discretion.

3.3.4 Titles

Initially "The State did not intend to offer the name of [the Books] because it's the content of it that matters" [RP:11/10:42.13]. Later the Court ruled that "The titles support the State's theory that Mr. Bowman carefully studied how to kill before he encountered Mr. Noll" [RP:12/8:8.13]. The truth is the contents of the Books contradict the State's theory that Mr. Bowman carefully studied them before he encountered Mr. Noll. Admitting the titles was unfair because it encouraged the jurors to literally judge the Books by their covers. The titles were highly prejudicial and did not help the jurors in determining the relevance of the Books' contents. The State used the name "Death Dealer's Manual" in front of the jury over 15 times and "Murder Inc" over 10 times.

3.3.5 Murder Inc & The Death Dealer's Manual

The State explained to the Court "this whole article is about being a professional hit man, being a killer, whether it's in the context of working for the CIA or an illegal context. Most of the discussion, though, is really about legal hit men. The introduction talks about Navy Seals, Special Forces, CIA, et cetera. We're not offering that" [RP:11/6:83.20]. The State argued the following were relevant issues to prove unlawful intent:

- Psychology of Killing [RP:11/6:72.14 and 84.3]
- Temple of head as a good target [RP:11/6:72.18 and 84.11]
- Disassembly and disposal of the handgun [RP:11/6:72.22 and 84.13]
- Killer unknown to the target [RP:11/6:84.14]
- Difficulty in identifying killer if there is no motive [RP:11/6:84.16]
- Adventure being a motivation for killing [RP:11/6:84.23]
- Garrotte [RP:11/6:84.19]
- Cameras that might capture you [RP:11/6:73.5]
- Credit Cards and Paper Trails [RP:11/6:73.6]
- Dressing normally [RP:11/6:74.5]
- Hiding transport [RP:11/6:74.7]
- Glock 19 [RP:11/6:74.10]

3.3.6 Psychology of Killing

The Death Dealer's Manual [Exhibits 250 & 320] was introduced to the jury with the quote "Is killing wrong? That depends on your personal philosophy and your way of viewing life" [RP:12/8:76.8]. This generic statement, presented "to address the psychological aspects of killing" [RP:12/8:8.23], has no probative value. This topic has been considered by nearly all students of Philosophy or Religion, not just students of Murder. It became unfairly prejudicial through the use of a heavily redacted page and allowed the State to further emphasize the prejudicial title "The Death Dealer's Manual" to the jury.

3.3.7 Temple

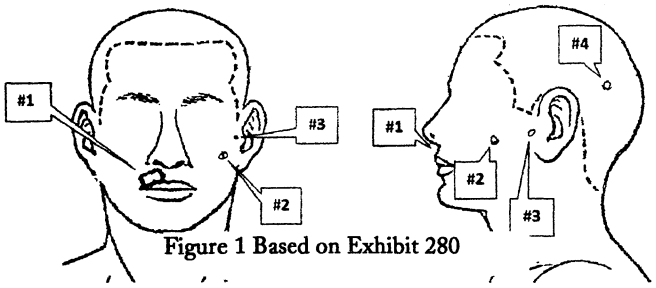

Figure 1 Based on Exhibit 280

The State repeatedly mentioned the importance of the link between references in the Books of attacking the temple and the supposed "fact" that Mr. Noll was shot in the temple. This was unfairly prejudicial because it was a misrepresentation of the facts.

Fact One: The Books recommend attacking the temple as an important target in hand-to-hand combat. As a small aside, the Books mention "It's also a great target for small arms fire, too." The State redacted the context of the Books' instructions and misrepresented the contents of the Books as a discussion about handguns.

Fact Two: Noll was never shot in the temple. Referring to the medical examiner's testimony starting in RP:12/3:63.10, the only reference to "temple" is in regards to the recovery location of the bullet that entered "Left Mid-Cheek" [RP:12/3:74.19]. The medical examiner described the final location as in the "temporalis muscle" [RP:12/3:77.15] which the State called "the temple" [RP:12/3:91.6] [See Appendix for excerpts].

Fact Three: Based on the "trend in how all those bullets went because they all went in a similar course" [RP:12/3:71.15], the third shot entered "right in front of the ear" [RP:12/3:85.22]. This bullet went through the base of the skull "without entering the cranial cavity" [RP:12/3:79.14]. Therefore, this was not the primary target and less likely to be lethal.

The State emphasized in closing the instructions to "aim for the temple" [RP:12/9:86.23] and "aim at the temple" [Id. at 92.19]. Yet in the State's listing of bullets that hit Noll [RP:11/19Sup:82.2], Bowman couldn't have aimed at, yet alone seen, Noll's temple when he began firing. The first bullet was described as entering "to the right of the upper lip" [RP:12/3:69.4] which traveled "front to back, of course, slightly left to right, and upward" [Id. at 72.13]. The front of Noll's face was "addressing the muzzle of the gun" [Id. at 71.7]. The evidence did not support any inference that Bowman aimed at or could see Noll's temple. In fact, on Page 4 of The Death Dealer's Manual, the State specifically selected the reference to the temple, and specifically excluded the following references to the same diagram: "on Page 4: 4. Bridge of the nose - An instantly fatal target for a bullet..., 5. Eyes – Excellent targets for small arms fire..., on Page 6: 7. Larynx... Good spot for a knife thrust, bullet, and so on, on Page 7: Cardiac plexus... A bullet in the heart is obviously fatal." Since Mr. Noll's received his first wound while directly facing the muzzle of the gun, any of these other vital areas fit better with the Book's contents, but seemingly they were redacted because nowhere in the evidence is there a reference to "nose", "eye", "larynx" or "heart".

The Court blindly accepted the State's comment that the temple was relevant to the case with "to the extent that a manual recommends shooting somebody in the temple and this crime involved shooting somebody in the temple, I think that there['s] a connection there that is reasonable and not inappropriate" [RP:11/10:29.5]. This connection required some evidence that the temple was the intended target. No evidence was offered to support this connection other than the State's theory which was contradicted by the physical evidence.

By not examining the probative value of this evidence the Court abused its discretion. By allowing the State to argue its merits, the jury became confused with the importance of the Books which unfairly prejudiced Mr. Bowman.

3.3.8 Disposal of Handgun

The State emphasized the relevance of the Books because they discussed disassembly and disposal of a handgun [RP:12/8:91.7]. Mr. Bowman did testify to throwing away the barrel, but he kept the majority of the handgun in his possession. The State should not be allowed to argue that the rest of gun had been disposed of simply because they were unable to find it. The fact is that the frame and slide of the gun were at Mr. Bowman's place of business, and that the detectives were not thorough in their search.

The Court allowed the admission of material relating to the complete disposal of a handgun [RP:11/10:33.21] even though the gun was never disposed of and in Mr. Bowman's possession. Even, assuming what the State says is correct, the fact that Mr. Bowman did not dispose of the slide shows he didn't follow the Books' instructions. The only reason portions of the Book were allowed to be admitted were because they tracked the case. Because this doesn't track the case, it was an abuse of discretion to admit this material to the jury.

3.3.9 Unknown Target

The Books speak of professional assassins. The Books do not speak about selecting random unknown targets for a "thrill kill". The Court allowed the jury to hear "The killer should be someone unknown to the target. This is imperative" [RP:11/17:20.18] to explain "why a stranger who had no contact with Mr. Bowman might have been a target" [RP:11/17:26.19]. The Book says Target does not know Killer, which is different than Killer does not know Target. In fact, Page 1 of the Death Dealer's Manual was also offered to the Court to review for admission and the last sentence in the first paragraph reads "the killer undertakes to learn everything he can possibly acquire in the way of personal information about the individual he is assigned to kill." The Book's logic was consistent but the Court's logic was flawed.

The process of redaction changed the context and allowed the State to falsely suggest a different meaning. This was an unfair abuse of discretion by the Court that prejudiced the jurors towards Mr. Bowman.

3.3.10 Adventure

The State argued that adventure was a motivation for this killing. [RP:11/6:84.23 and 12/8:9.8 and 12/9:89.8] This has no basis in fact. The only place this is mentioned is in The Death Dealer's Manual in the context of government employees for service in the Military, Special Forces, CIA, etc.

3.3.11 Avoiding Camera & Identification

The State argued that the passages relating to avoiding cameras and identification were relevant because the defendant acted in accordance. The evidence suggests that Mr. Bowman did exactly the opposite of what the Books advised. He drove by several traffic cameras and numerous highway traffic cameras on the way to the scene. Mr. Bowman also drove by a reservoir, with multiple cameras obviously visible, after leaving the scene. And at the Kalama Chevron Mr. Bowman was videoed inside and outside the convenience store where he purchased gasoline on the trip to Portland.

A lead detective acknowledged that Mr. Bowman wasn't following the offered advise [RP:12/3:153.9] by driving an M-Series BMW Roadster that "stands out" [Id. at 152.19] with the top down [Id. at 164.24] on a "crowded street" [Id. at 164.16].

3.3.12 Credit Cards & Paper Trails

Murder Inc explicitly describes the importance of avoiding the use of credit cards. The State argued this was relevant because Mr. Bowman used cash to purchase replacement glass and tires. The Court unfairly accepted this theory without any evidence to support it.

There is no evidence to suggest that occasionally using cash was unusual to Mr. Bowman's typical behavior and would suggest a compliance with The Books outside of the Doctrine of Chance.

Mr. Bowman used his credit card around two hours after the incident at Red Robin [RP:11/24:107.22 and Exhibit 84]. He then used it to purchase gas the following day at the Kalama Chevron [RP:12/8:90.4]. Mr. Bowman also used his credit card for dinner at Otto's in Portland [RP:11/24:109.16 and Exhibit 86], and to purchase gas on the way home [RP:12/8:90.6].

3.3.13 Hiding Transport

The State argued this section of Murder Inc was relevant to highlight the connection between Mr. Bowman not driving the BMW daily and his knowledge of the Book. One of the primary detectives couldn't even describe Mr. Bowman's actions as consistent with the concept of "stashing the car": "Q: Would you consider driving a car with a broken-out window from being shot, driving that car from Seattle to Portland stashing the car?" "A: No." [RP:12/3:171.2]

There is another a key problem here. The use of the word "transport" in the Book is completely different than the use of the word transport in this case. Mr. Bowman has now learned that "transport" as used in Murder Inc, refers to the transportation used to get to the point where the mission starts. The transport might be a car or a bike. From there you might walk minutes or miles to get to the "site" of the hit. Murder Inc does not advise to use the "transport" to get to the "site" of the hit. And it was extremely poor reasoning to conclude Mr. Bowman acted in accordance with Murder Inc's advice when he drove to the "site" of the hit using the "transport" he drove daily to work.

Neither Murder Inc nor The Death Dealer's Manual has any discussion on shooting from a car to kill someone. The inference that Mr. Bowman's BMW fit the "transport" described in Murder Inc was untenable.

3.3.14 Handgun Selection

The State argued that the Books talk about "a 9 millimeter Glock 19, which just happens to be the slide that was found in this case in Mr. Bowman's office, is good for close range kills" [RP:11/6:74.10]. The Books focus on hand-to-hand combat but Murder Inc does include references to a multitude of firearms. Glocks just happen to be extremely popular in the United States. [See attached Popular Mechanics article written by Erin McCarth: The Glock debuted in the 1980s, and now it's everywhere. How did it become so popular so quickly?]

The sections that were admitted to the jury were even less probative: "Well-made handguns of suitable caliber are undoubtedly the best short-range tools of killing known to man" [Exhibits 249 & 321] and "caliber 9mm auto pistols are effective close-in weapons for killing" [Exhibits 250 & 320]. This was as probative as stating "Cars are a good means of transportation." They became unfairly prejudicial because of the emphasis on the words "killing" and the opportunity for the State to emphasize the titles of the Books.

3.3.15 Garrotte

The State argued that because the word "garrotte" was used to describe a movie prop in Mr. Bowman's journal, he had read Murder Inc and The Death Dealer's Manual. See Appendix for related excerpts. The Court accepted that this single use of the word was sufficient to impeach Mr. Bowman's testimony that he hadn't read the manuals and thereby allowed the introduction of material that was previously deemed to be too prejudicial,.

This use of Bowman's journal writings is immediately questionable as "A writer of crime fiction, for example, can hardly be said to have displayed criminal propensities through works he or she has authored." [*State v. Hanson*, 46 Wash. App. 656, 662, 731 P.2d 1140 (1987)]. In *Hanson*, "The crime charged was a random, brutal act of violence for which there was no apparent motive. By suggesting that the defendant's character conformed to the violent acts in his writings, the State supplied the jury with an improper explanation for why the defendant would have committed the crime charged." [supra, at 662].

It was the province of the Court to examine the proposed evidence and make a ruling on the relevance of admitting garrotte-related material to the trial. A reasonable test would have been to compare the description of the garrotte in the manuals to the depiction in Mr. Bowman's journal. The Death Dealer's Manual states "the garrotte needs to be a manufactured weapon, constructed according to the specifications presented here." [Exhibits 250 & 320]. The test would determine if a reasonable person could infer that it was more likely that the person who wrote the journal had read these specifications. But since the specifications were redacted, the jury could only rely upon the Court's rulings and the State's comments regarding the manual's contents.

A comparison between The Death Dealer's Manual, Mr. Bowman's journal, and Wikipedia [Appendix] suggests that Mr. Bowman's drawings were not based on the manual. Mr. Bowman's drawing approximates the garrottes of 19th century Spain, Mexico, and the Philippines, not the modern depiction in the manual. See Appendix.

The case for Murder Inc's inclusion of "Garrotte Kill" [Exhibits 249 & 321] was more tenuous as it offered no probative value to the jurors. It provided no information that the jury could have used to conclude Mr. Bowman was more likely to have read this manual. The redactions encouraged the jurors to let their imaginations run wild and allowed the State to fuel their prejudices.

The single use of an SAT word [See Appendix] should not have qualified to link Mr. Bowman's journal with any document. The fact that Mr. Bowman's drawing and description did not match the proposed impeaching evidence should have prevented the admission. The admission of excerpts from the manuals with suggestive redactions exacerbated the issue. These were errors of the Court and an abuse of discretion that unfairly prejudiced Mr. Bowman.

3.4 Abuse of Redactions

The process of redacting the Books before presenting them to the jury failed to cure the prejudicial nature of them. The redactions highlighted the notion that surrounding each allowed phrase was a plethora of unacceptably prejudicial material "without a sufficient, countervailing beneficial effect" [See *People v. Ames*, 186 A.D.2d 747, 589 N.Y.S.2d. 60 (2d Dept. 1992)].

The Court claimed to want to offer the "general context" [RP:12/8:8.12] of the passages. But the redacted versions became more prejudicial. The redactions removed the context of the selected phrases and cast the surrounding unknown text as undisputed evidence of guilt. This was unfair because the context usually contradicted the inference they were admitted to provide.

By allowing these materials in, the judge commented to the jury that these were credible and that the context, which was removed, applied to this case but were too prejudicial to show.

The Books were filled with either factually inaccurate or common sense knowledge. The State presented the Books as authoritative textbooks and let the juror's imaginations run wild with what was hidden under the redactions. The redaction process removed significant verbs and nouns from sentences and only served to highlight the inflammatory language of the Books. By redacting the context of the phrases and substituting it with the prosecutor's framing, the jurors were prevented from drawing their own understanding of the material.

In the case of putting "the word shooter in for killer" [RP:11/17:26.11], it became an obvious alteration of content instead of only redaction. The courts have noted that "Redactions that simply replace a name with an obvious blank space or other similarly obvious indications of alteration" are dangerously implicating [*Gray v. Maryland*, 523 U.S. 185, 192 (1998)]. Many of the redacted documents submitted to the jury were "dangerously implicating" because they had only a single line of text and the rest of the page was redacted. See Appendix.

The redaction process used denied the jury the opportunity to make an independent evaluation of weight of the document presented for consideration.

3.4.1 The Death Dealer's Manual

The very first page of the Death Dealer's Manual contradicts the State's key issues and justifications for introducing the Book into evidence:

- The Killer knows and studies the Target. The Target is not unknown.
- The intent is to kill only the proper target. Random strangers are not targets.
- This book is primarily a book about hand-to-hand Combat – and not firearms.

When done correctly, redactions remove offensive, inflammatory, or unfairly prejudicial material to allow the jury to view the contents and form their own understanding of a document. In this case, redactions were used to tailor contents to fit the State's theory of the case.

Most of the Court's redactions removed references to hand-to-hand Combat and other topics which distorted the context to make the Book appear to be a discussion of handguns and relevant to this case. The redactions also removed statements that contradicted the State's Theories, and retained words that have a superficial tangency to this case such as 9 mm autopistol and garrottes.

Except for patently obvious, common sense advice such as "attack with total surprise", when the text submitted to jury is read in context it typically has no relevance to this case.

For each portion of carefully selected text, there is other information in the Books that shows the selected text is not the optimal choice. For example, Mr. Bowman owns a 9mm Glock 19, so the State chose those portions of the Books that fit this case. But on page 29 of The Death Dealer's Manual the .22 semiautomatic pistol is so highly thought of that it is given a separate section for discussion. And silencers are mentioned multiple times in both Books and they are considered a "great aid" as mention on page 80. Chapter 4 of Murder Inc includes instructions for making several types of silencers, that. The significance of this is the State excluded these references to conceal the fact that the Books advise the use of silencers.

The Death Dealer's Manual Page 1

I. THE TARGET

Uppermost on the list of must items to be covered in the training course undertaken by a professional killer, to prepare him for the eventualities of his work, is a thorough understanding of and analysis of the human body in general. Later, when a specific target is being zeroed in on, the study becomes more specific: the killer undertakes to learn everything he can possibly acquire in the way of personal information about the individual he is assigned to kill.

To kill efficiently and proficiently one must thoroughly master the subject of anatomical vulnerability. This means that the killer who is truly a professional has a grasp of vital body organs, nerve centers, pressure points, and so forth. Unlike the more conventional student of arts like ju-jitsu and karate, the student of killing does not spend time studying vital points that merely inflict discomfort or minor pain. The assassin studies death targets. He becomes familiar with the areas of the human body that will render even the most powerful person helpless, and that will instantly disable (at the very least), or more often, kill outright. Note: when disabling tactics are executed they are done to set the target up for the kill, or they are used when expedient to silence someone who perhaps gets inadvertently in the way of the scheduled hit. Rarely will a genuine professional even one who works for organized crime interest – kill anyone other than the proper target of elimination.

All content that was obviously related to hand-to-hand Combat was removed to avoid the inference that the information presented was taken out of context.

The second sentence was redacted because it strongly supports the inference that Mr. Bowman had not read this Book. The Book says that the Killer knows and studies the Target but the Target does not know the Killer. Even though Mr. Bowman did not erase the contents of his computer, no evidence was found showing that Mr. Bowman had studied Mr. Noll. The second sentence was also redacted because it contradicts the State's theory.

The last sentence on page 1 clearly indicates that random strangers are not targets and should not be killed.

Even after reading the underlined sentences on Page 1, the Court still permitted the State to use this Book to support a Thrill Kill theory. Even though the Book clearly states: The Killer knows and studies the Target and the objective is to kill only the proper target.

The Court redacted the following: "When executing a hit, it is necessary to bear in mind that no substantial case can be made against anyone following the killing if no weapon can be found. That means that once the job is done, the professional completely destroys and eliminates from existence any firearm they have used in a job. Getting rid of a piece is always top priority after completing a hit. With the exception of a military sniper, no professional would ever keep a weapon that had been used in the commission of a hit." [RP:11/10:33.5]

[COURT] "While the point that it's important to get rid of the weapon I think may be relevant, the implication that Mr. Bowman is a professional killer I think is unnecessary, particularly since there are other parts of the article that make the same point without this inflammatory language.[RP:11/10:33.15]

Rather than carefully redacting the statement from the Book that truly emphasized the importance of getting rid of the handgun, which was what the State wanted to emphasize, the Court chose to use language that explains how easy it is to dispose of a handgun [RP:11/10:33.21]. This did not retain the Book's true message. It also allowed the jury to infer that Mr. Bowman was not diligent and lacked follow-through rather than infer Mr. Bowman completely ignored the "top priority". There was a huge difference between these inferences. These redactions were an abuse of discretion.

These are more examples of misrepresenting the context of the Books. Among other pages, the State offered pages 25-28 of The Death Dealer's Manual for admission. The Court saw the following on page 27:

> While on the subject of Mafia methods, it is as good a place as any at this point to discuss some other crucial factors that go into the making of a professional, non-detectable hit.
>
> First of all, the killer should not be someone known in the area where he effects the kill. Ideally, he should be imported for the assignment, and then whisked quickly away following termination of the target.
>
> Second, and most important: the killer should be someone unknown to the target. This is imperative. Remember that it is standard operational procedure...

The Court did not read the first two paragraphs into the Record but did read the third paragraph into the Record. The third paragraph was admitted and presented to the jury in detail at three separate times. The redaction given to the jury did not retain the context, meaning or spirit of the Book. And even more concerning is the Court admitted content that supported the State and from the same offered pages specifically excluded content that supported Defense. Defense steadfastly maintained these documents were inadmissible and apparently did not participate in the redaction effort to avoid an inference of agreement with the redactions in any way. These biased redactions were an abuse of discretion by the Court.

This is an example of combined Ineffective Assistance of Counsel and prosecutorial error: The State had this line redacted from the "MythBusters" page in Mr. Bowman's work journal [Exhibit 313]: "Call me on anything that is unrealistic or impossible" [RP:12/2:104.21] This brief note fits perfectly within the context of promoting a TV Show Concept for a MythBusters-type program that would look exclusively at action films and evaluate their special effects for authenticity. Removing this line distorted the total message on the page to align with the State's bias.

The redactions given to the jury distorted the context of the original documents and created the impression that Mr. Bowman had acted in accordance with the advice given in the Books. This misled the jurors and unfairly prejudiced Mr. Bowman making it impossible to receive a fair trial.

3.5 Death Death Death

The State used these Books to weave into their narrative the idea that Mr. Bowman had an infatuation with Death and Killing. This was unsupported by the facts and was unfairly prejudicial. Mr. Bowman's counsel even made a point of it to the Court [RP:12/2:146.22].

The State repeatedly emphasized this characterization, infecting the trial and poisoning the minds of the jury. See Appendix. This was prosecutorial error. By allowing the State to make such references without a tenable foundation, was an abuse of discretion by the Court.

3.6 Impeachment

The State argued that "He's portrayed himself as someone uninterested, frankly, in death, and the reference library proves precisely the opposite" [RP:12/4:103.7]. This is not only a misrepresentation of the Library, but is an attempt to characterize Mr. Bowman by his access and not his actions. Mathematical probability suggests that Mr. Bowman is unlikely to have read any specific book in the Library, and there is no evidence to suggest any fascination with death.

The State claimed that Mr. Bowman's testimony of not knowing what methadone was, was in fact perjury because "if he has an article on meth, he would know it's different than methadone" [RP:12/04:104.15]. The fact that "[t]here is a folder in his reference library that deals extensively with various kind of drugs and drug addiction, including meth" [RP:12/04:104.10] offered little probable nexus to Mr. Bowman's knowledge of methadone. The State's reasoning was also another instance of using the invalid logic of *Affirming the Consequent:*

1. If [he knows meth is different than methadone] then [he has the article].
2. [he has the article],
3. Therefore, [he knows meth is different than methadone].

Which is obviously invalid because a person does not need to have the article to know the difference between meth and methadone. And having the article does not guarantee someone will know its contents. And consider the following:

1. If [he read the Books] then [he knows the word "garrotte"].
2. [he knows the word "garrotte"],
3. Therefore, [he read the Books].

The reasoning above is obviously flawed because a person does not need to have read the Books to know the word "garrotte". For example, a high school student preparing for the Student Aptitude Test (SAT) might also learn the word. See Appendix. The Court erred when it used this invalid logic and allowed the State to impeach Mr. Bowman's testimony based on the single appearance of the word "garrotte" in one of Mr. Bowman's work journals.

3.7 Jack the Rippa

The Court ruled that "we will certainly exclude the reference to the Jack the Rippa" [RP:11/10:30.21] and "there's no need to refer to Jack the Rippa" [RP:11/10:31.2]. The State ignored this ruling and used it with tonal inflection for emotional effect [RP:12/8:49.11]. The Court was informed of the error [RP:12/8:50.9] but no corrective action was taken. See Appendix for relevant excerpts.

The Court clearly ruled that "Jack the Rippa" was an unfairly prejudicial reference. The State directly violated the Court's ruling. This was prosecutorial error. The Court acknowledged the error but no remedy was issued. This was an error of the Court.

3.8 Garrotte

The State asserted that Mr. Bowman "drew a very elaborate manufactured Garrotte in [his] journal" [RP:12/9:32.12]. This instructed the jury that Mr. Bowman's drawing mirrored the manual's specifications. Because of the redactions the jurors were prevented from making their own inferences from the evidence. The jury relied on the State's outside knowledge of the implied similarity.

The State provided the graphic depiction that "A Garrotte actually cuts the jugular. Slices through the neck" [RP:12/9:33.9]. This statement is unsupported by any definition of garrotte [See Appendix]. If the State had examined the evidence they offered they would have known this was a misstatement of fact. This statement struck at the emotions of the jurors.

The State's repeated assertions of the strength of the link between Mr. Bowman's journal and the redacted contents misled the jurors and unfairly prejudiced Mr. Bowman. The jury was asked to consider a graphical and emotionally shocking method of murder and associate it with Mr. Bowman's interests. This was unfairly prejudicial and had no relevance to the case. This was prosecutorial error.

3.9 Computer Evidence Conclusion

The Court understood that the State's case was based heavily on "the items on his computer" [RP:11/10:14.5]. The Court abused its discretion by ruling "the fact that Mr. Bowman had an article on forensic interpretation of glass evidence on his computer is really only relevant in light of the fact that glass evidence was left at the scene of the crime. What inference can or cannot be drawn from the presence of this particular journal, in addition to the defense argument there's no evidence that he read it, is for the jury to decide" [RP:11/10:14.10].

The Court, in allowing the State to admit the Books, unfairly commented on their probative value to the case. The Court abused its discretion in not balancing the probative and prejudicial value of the Books with a skeptical eye. The State committed misconduct when they knowingly used the Books to fabricate their theory of the case without any basis in fact.

By the standard used in this case, the State is allowed to create a fantastical theory for their case, find select phrases in books accessible by anyone, and argue with the blessing of the Court that they have provided sufficient evidence to convict.

The Court failed to rule on relevance and improperly shifted the duty to the jury by stating: "that there is no evidence that Mr. Bowman knew the documents were on the computer, that he downloaded them or that he accessed them or for how long. These are trial issues" [RP:11/10:7.1].

The admittance of The Death Dealer's Manual and Murder Inc was unfairly prejudicial and requires a reversal of Mr. Bowman's conviction. Case law needs to be established for these issues to prevent further miscarriage of justice.

4.0 Sufficiency of Evidence

The evidence in this case is insufficient for a rational trier of fact to find Mr. Bowman guilty of first degree murder beyond a reasonable doubt. The evidence supports the following inferences: Mr. Bowman never planned to commit murder; Mr. Noll was the aggressor and assaulted Mr. Bowman; Mr. Bowman defended himself in fear for his life; and Mr. Bowman tried to conceal his involvement in the incident afterwards.

Mr. Bowman should have contacted the police immediately after getting to safety. This failure increased the suspicion and prejudice of the State. But this does not alter the fact that Mr. Bowman justifiably defended himself during Mr. Noll's assault.

This section will examine the events before, during and after the incident to show that all logic-based inferences either support the claim of self-defense or are patently equivocal.

4.1 Legal Precedence

This challenge to the sufficiency of evidence is based on the precedence set by the following cases:

- In a first degree murder prosecution, the State must bear the burden of proving absence of self-defense beyond a reasonable doubt. [*State v. McCullum*, 98 Wn.2d 484, 496, 656 P.2d 1064 (1983)]

- Inferences drawn from circumstantial evidence "must be reasonable and cannot be based on speculation" [*State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013)]. See also *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (holding that triers of fact may draw only reasonable inferences); *Bailey v. Alabama*, 219 U.S. 219, 31 S. Ct. 145, 55 L. Ed. 191 (1911) ("To justify conviction, it was necessary that this intent should be established by competent evidence, aided only by such inferences as might logically be derived from the facts proved, and should not be the subject of mere surmise or arbitrary assumption.").

- Intent may not be inferred from conduct that is patently equivocal. Intent may be inferred from conduct that plainly indicates such intent as a matter of logical probability.
  [*State v. Lewis*, 69 Wn.2d 120, 124, 417 P.2d 618 (1966)]

4.2 Burden of Proof

The State had the burden to provide evidence that proved the following beyond a reasonable doubt:

- Mr. Bowman acted with the intent to cause the death of Mr. Noll.
- Mr. Bowman premeditated and deliberately formed a design to take a human life.
- Mr. Bowman was the aggressor.
- Mr. Bowman did not believe he was in danger of great personal injury.

The evidence presented in this case did not and could not prove any let alone all of these issues.

4.3 The Planner

The State spent a lot of time and effort to establish facts about Mr. Bowman's background and abilities. The State summarized their findings as:

- "[Mr. Bowman] is a man who uses every little bit of his intelligence to learn about things from the inside out. From every angle to the point of becoming something of an expert at whatever he's interested in at that moment, and then he moves on to the next thing. A one man research and development department" [RP:12/9:58.15].
- [Mr. Bowman] researches [what] he is interested in, inside and out. Becomes something of an expert. He wants to know everything about it, and so he learns all that through reading or talking to other people or experts or whatever" [Id. at 80.4].
- [Mr. Bowman's] background is something of a prodigy in computers and electronic" [Id. at 80.13].
- [Mr. Bowman] is clearly a man obsessed with detail" [Id. at 80.17].

These statements outlined Bowman's modus operandi (MO) and establish a baseline that his actions can be tested against. If Mr. Bowman designed a plan, the plan should be consistent with this MO. If Mr. Bowman's actions are not consistent with this MO, a reasonable trier of fact would infer there was no plan.

Mr. Bowman testified to an interest in make-up [RP:12/4:152.20]. He had a professional make-up kit for fashion and movie sets which included the ability to create latex appliances and fake hair. Mr. Rowe, a friend of Bowman, also testified to Bowman's interest in make-up [RP:12/1:44.16 and 54.25]. From this, it would be reasonable to infer that if Bowman wanted to avoid facial identification with some kind of disguise, he could easily have done so.

The State described Mr. Bowman as a "student of murder" and introduced numerous books on the topics of assassination, crime, forensics, and avoiding detection by witnesses and the police. These documents are contested elsewhere in this document, but for the purposes of this argument we will consider them as asserted by the State. Given Mr. Bowman's MO, the logical extension is that Mr. Bowman was an expert in all of these topics.

If Bowman was planning on "killing someone and getting away with it" [RP:12/9:59.1], his actions should have been consistent with those of an expert.

4.4 The Plan

The following is a summary showing the undisputed evidence of Mr. Bowman's actions and compares each action to the hypothetical actions of a person consistent with Mr. Bowman's MO who planned to commit murder and get away with it:

- Mr. Bowman shot out his own passenger window, leaving evidence and damaging his vehicle.
  - ➢ An Expert would have rolled down his window.

- Mr. Bowman drove 200 miles to Portland, Oregon the day after the shooting to purchase a non-BMW replacement window.
  - ➢ An Expert would have purchased an original BMW replacement window ahead of time.

- Mr. Bowman used a semi-automatic pistol which left shell casings at the scene which were traced back to him.
  - ➢ An Expert would have used a revolver.

- Mr. Bowman used a firearm registered in his name.
  - ➢ An Expert would have used an unregistered firearm.

- Mr. Bowman used an unsilenced weapon which attracted the attention of witnesses.
  - ➢ An Expert would have used a silencer that could have been made easily in Mr. Bowman's shop.

- Mr. Bowman kept the weapon's slide and frame at his work space.
  - ➢ An Expert would have disposed of the entire weapon.

- Mr. Bowman left tire tracks and burned rubber at the scene which attracted attention and was traceable to him.
  - ➢ An Expert would have left the scene calmly and slowly.

- Mr. Bowman created a false identity and purchased a new phone after the incident in order to avoid identification.
  - ➢ An Expert would not have needed to do this because he would have purchased the replacement window ahead of time.

- Mr. Bowman used a high-profile car with the top down which allowed easy identification.
  - ➢ An Expert would have used a non-descript, non-convertible car.

- Mr. Bowman committed the event at a busy intersection during rush hour in daylight.
  - ➢ An Expert would have found an isolated location with the cover of darkness.

- Mr. Bowman was easily identified because he looked the same as he did in all photos and to all acquaintances.
  - ➢ An Expert would have worn some kind of disguise.

- Mr. Bowman drove recklessly into oncoming traffic and through a red light at a busy intersection endangering his life and risking capture. This highly irregular action caught the attention of the witnesses.
  - ➢ An Expert would have waited for the light to change or would have gone a different route.

- Mr. Bowman took a longer and riskier route home.
  - ➢ An Expert would have taken the shortest route with the least visibility.

- Mr. Bowman committed the event moments before an anniversary date with his wife.
  - ➢ An Expert would have done it when he had no immediate obligations.

- Mr. Bowman's time and location were tracked by his cell phone records.
  - ➢ An Expert would have turned the phone off or left the phone at work/home to establish an alibi.

- Mr. Bowman accepted having his phone calls recorded in order to speak with window sales representative.
  - ➢ An Expert would not have needed to speak on recorded lines.

- Mr. Bowman used credit cards multiple times in transit and while in Portland, Oregon.
  - ➢ An Expert would have used cash exclusively.

- Mr. Bowman was caught on surveillance at a gas station based on a credit card transaction.

- An Expert would have used cash, or brought enough gas for the entire trip, or completely avoided the trip by having a replacement window on hand.

- Mr. Bowman painted his wheels and purchased lower-performance replacement tires.
  - An Expert would have used a separate set of wheels and tires to appear unique and leave different tracks.

- Mr. Bowman had to change his commute schedule because he could no longer drive the BMW on the road.
  - An Expert would not have used his daily-driver vehicle.

- Mr. Bowman did not erase the Computer Evidence used in this trial.
  - An Expert would have treated that evidence the same as the weapon and eliminated it completely.

Use a silencer, only use cash, completely dispose of the gun and avoid cameras were explicitly advised in Mr. Bowman's supposed study books as things not to do. By comparing Mr. Bowman's actions with actions that would be consistent with a plan, it is clear that his actions were inconsistent with any level of forethought. There is insufficient evidence for any rational trier of fact to conclude that Mr. Bowman acted according to a plan.

4.5 Immediately Before

In the moments before the shooting, Mr. Bowman's testimony was the primary source of evidence [RP:12/4:40.24 through 67.11]. The State offered no contradicting evidence.

All of the evidence of the events that immediately preceded the gunfire directly contradict any inference of plan. No rational trier of fact could conclude from this that Mr. Bowman acted with premeditated intent. It is plain that Mr. Bowman had reason to fear for his safety.

4.6 At the Scene

The scene of the incident can be understood from Exhibits 44, 13, 15, 16, 17, 21, 23, 24 and 222. Mr. Bowman left the tire marks shown in Exhibits 44, 17, and 21. The proximity of Mr. Bowman's BMW to Mr. Noll's Subaru can be inferred from the tire tracks through the glass seen in Exhibits 16 and 23 as gray scratches in the roadway.

See Exhibits 15 & 222, the lead detective agreed "that Mr. Noll's car was quite far to the left [...] from the curb" [RP:12/1:68.5]. See Exhibit 44, the white traffic line does not extend to where the Subaru was. But by using a ruler, this line can be extended and it can be seen that Mr. Noll's Subaru was almost in the BMW's lane. Mr. Bowman's tire tracks in Exhibit 17 indicate his BMW was nearly centered in his lane. The BMW's glass debris in Exhibits 13 and 16 indicates the approximate position of Mr. Bowman's car. Keep in mind that debris was disturbed by the First Responders.

Assuming that vehicles have a neutral position when centered in their lanes, much can be inferred from the relative positions of the BMW and Subaru. The BMW was nearly centered in its lane but the Subaru was almost in the BMW's lane. The Subaru was dominating its lane and exerting pressure on the BMW.

Given two vehicles with windows facing each other, the open or closed state of the windows signifies the occupant's intentions. A closed window indicates a desire for isolation and an open window indicates a desire to interact. It was undisputed that Mr. Bowman's windows were rolled up and Mr. Noll had all windows up except his driver's window facing Mr. Bowman's BMW. The Subaru's window being open is consistent with Mr. Noll being the aggressor. The BMW window being closed is consistent with Mr. Bowman being in fear of Mr. Noll.

The NRA self-defense video [Exhibit 237] shows the instructor firing six shots in less than two seconds. This rate of fire is consistent with all of the ear-witness reports. It can then be inferred that Mr. Bowman's five or six shots and firing rate are consistent with someone acting in self-defense.

The NRA video explains "After that first shot or two, the glass does not interfere" [Exhibit 237 at time 1:20 to 1:25] meaning the first bullets shatter the glass. In doing this they are deformed, lose energy and their trajectories are changed. See Exhibit 24, this exhibit shows the line of sight from Bowman's position to the "defect" in the fence above the "L-shaped" mark shown beyond. The bullet from Mr. Bowman's first shot almost certainly would have been deformed from shattering his window. The second shot might have also been affected by the glass.

The entrance wounds of the bullets that hit Mr. Noll offer insight into his state of mind. Specifically the first bullet to hit him, which can be inferred from the "trend in how all those bullets went" [RP:12/3:71.15] as being the one that entered above "the lip to the right [of] midline" [Id. at 73.16]. The medical examiner explained that Mr. Noll's "face was addressing the muzzle of the gun" [Id. at 71.7].

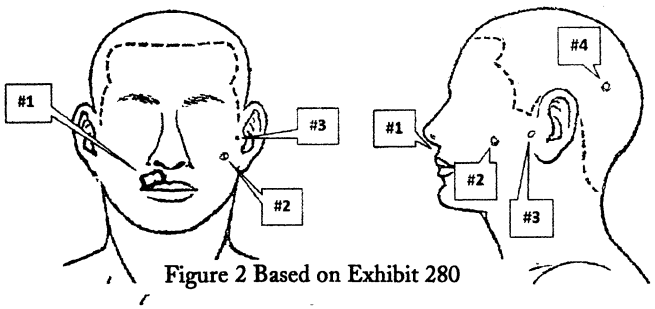

Figure 2 Based on Exhibit 280

If Mr. Noll was caught unaware or was in a defensive posture, then almost certainly Mr. Noll would not have received his first wound while facing directly into the muzzle of the gun and his first wound would not have been "to the right [of] midline" [Id. at 73.16]. He would have turned his head or ducked for cover which would have almost certainly put his first wound to the left of midline.

A very strong argument can be made that Mr. Noll's first wound was not from the first bullet fired. Mr. Noll was hit four times. None of the entrance wounds were described as being from a bullet that was deformed prior to hitting Mr. Noll. The medical examiner described Wound #1 as being "an irregular entrance" wound [RP:12/3:69.11]. The medical examiner attributed the irregularity to the bullet's angle of entry and the bone under the layer of skin [Id. at 69.24] and [Id. at 74.2]. The State made a third attempt to connect this wound with a deformed bullet but the medical examiner explained again how the abrasion rim changes with angle of entry. The medical examiner did say a deformed bullet will make an irregular entrance wound but he didn't change his testimony regarding Wound #1 [Id. at 75.5].

Based on the medical examiner's testimony above, none of the bullets that hit Mr. Noll were the first bullet fired because the first bullet fired almost certainly was deformed as it shattered the BMW's passenger window.

If Mr. Noll was not hit by the first bullet then Mr. Noll had the time interval between the 1st and 2nd shot to react and turn his face to his right. It is possible Mr. Noll even had the time interval between the 2nd and 3rd shot because the NRA video said it's the 1st and 2nd shot that can be affected by the glass.

Mr. Noll did not try to protect himself by turning his head or by ducking for cover. The fact that Mr. Noll received his first wound while directly facing the muzzle of the gun is consistent with an enraged attacker mentally prepared to meet resistance and fight. Mr. Noll's most probable state of mind was that of the aggressor.

An undisputed fact is that Mr. Noll did not pick up his dinner order but instead drove right past the restaurant. The State's theory was that Mr. Bowman had harassed Mr. Noll to such an extent that Mr. Noll decided to drive home to seek refuge. If this were true then Mr. Noll arrived at the intersection first and pulled into the curbside lane. Then when Mr. Bowman, a known threat, stopped directly alongside of him, instead of taking measures to protect himself, Mr. Noll kept his window rolled-down and exposed himself even further by looking directly at Mr. Bowman. If the State's theory were true, then Mr. Noll's first wound would not have been on the right side of his face. He would have done something to protect himself by either turning away from his attacker or ducking for cover.

From the evidence at the scene, a rational trier of fact can only conclude that Mr. Noll was the aggressor. There is insufficient evidence to support the charges against Mr. Bowman.

4.7 Immediately After

The moments immediately following the incident are indicative of Mr. Bowman's state of mind. Intent may be inferred from all the facts and circumstances surrounding the commission of an act. [*State v. Lewis*, 69 Wn.2d 120, 123, 417 P.2d 618 (1966), citing *State v. Willis*, 67 Wn.2d 681, 685, P.2d 669 (1966)].

Immediately after the gunfire, Mr. Bowman rapidly accelerated into oncoming traffic and through the cross-traffic of a busy intersection. This act left additional evidence at the scene, called unwanted attention to himself, risked his life, and increased his chance of a crash and immediate capture. These actions are not consistent with any plan to commit a crime and get away with it.

At the intersection Mr. Bowman had to choose a route. See Exhibit 6.

- Eastbound on NE 75th Street.
  - Shortest route (10 blocks / 0.6 miles according to Google Maps)
  - Four-lane arterial with few obstacles
  - Driving quickly is less likely to attract attention
  - No video cameras on route
  - ➢ Consistent with: planned action

- Southbound on 15th Ave NE;
  - Longer route (approximately 1.2 miles according to Google Maps)
  - Required travel on one-lane "streets where there's cars parked on both sides" [RP:11/19Sup:84.5]
  - Driving quickly through residential streets attracts attention
  - Video camera captured Bowman at the reservoir
  - ➢ Consistent with: fearful flight

Mr. Bowman headed southbound on 15th Ave NE instead of turning left at the intersection and heading eastbound on NE 75th Street. This choice of routes was significant as it is plain that he was not acting with any plan. Mr. Bowman's actions are consistent with someone wildly running for his life.

The record clearly shows that Mr. Bowman had extensive firearms and driving experience. If he were the aggressor, he would have been in control and would not have panicked. Mr. Bowman's panicked flight is only consistent with him being in a defensive and fearful state of mind.

4.8 Sufficiency of Evidence Conclusion

After a thorough and careful analysis of the evidence, no rational trier of fact could begin with the assumption of innocence and conclude the evidence was sufficient to support the charges. The State shifted the burden of proof by repeatedly misrepresenting the basis on which the jury could acquit. The jury based their verdict on a standard that wouldn't acquit the innocent.

Mr. Bowman's conviction was not based on a sufficiency of evidence and should therefore be reversed and the case dismissed.

5.0 Misrepresentations, Misquotations, and Fabrications

5.1 Unfortunate Coincidence

The State crafted the term "unfortunate coincidence" and attributed it to Mr. Bowman as his explanation of the State's evidence. The Appendix highlights the State's methodical approach of implanting it into the minds of the jury. On the final day of cross examination, the State directly denied ever suggesting the term and asserted that it was entirely Mr. Bowman's explanation. This was a methodical effort to poison the jurors' memory of Mr. Bowman's testimony. This deceptive tactic was prosecutorial error.

5.2 NRA Self-Defense Video

The State used an NRA self-defense training video as proof of planning for an attack on a stranger. The Court accepted "The relevance of this material, according to the State, is, one, that Mr. Bowman was a student of murder, two, that he had the skills to carry out the August 31 shooting and escape from the scene, and three, that the crime was committed exactly as described in the manuals on his computer, including that the shooter shot through the passenger window of the shooter's car at the victim who was driving the car next to the shooter. In short, the evidence is being offered as direct evidence of the crime" [RP:11/10:12.2].

By redacting the context of the video to only show the instructor "demonstrating how to shoot from the driver's seat of a car through the passenger window of the shooter's car at a target next to the shooter's car" [RP:11/10:11.20] the State explained that the "NRA video shows and tells the person studying it that shooting through glass only affects the first part.....He was putting that theory to test" [RP:11/6:37.18]. The State argued this video was "an example of what we're talking about with regard to him studying and trying to put it to use" [RP:11/6:37.25].

The Court ruled "The NRA video is highly relevant because it demonstrates a shooting technique consistent with the State's theory of how the August 31 shooting occurred namely, that the shooter was a driver who shot through his own passenger window at Yancy Noll, the driver of the vehicle sitting to the right of the shooter's vehicle." [RP:11/10:20.23]

This is misrepresentation of the evidence and an improper comment on the evidence's purpose. To begin, there was no evidence that Mr. Bowman had watched this video and he denied ever doing so in testimony. Mr. Bowman had no incentive to deny watching a self-defense video given that he readily acknowledged his interest in safety and self-defense. On the surface, the precedent that this sets is that any video depicting a similar event is

admissible. If this was a car theft, any movie involving car theft, such as "Gone in Sixty Seconds", would be admissible. At a deeper level, this precedent suggests that self-defense training can be admitted to rebut self-defense.

Mr. Bowman was driving a convertible with the top down and windows down. The State presented the NRA Video to imply that Mr. Bowman raised his window to test the theory that Physics 101 applied when performing a thrill kill. This is after reading a 300 page treatise on glass forensics to determine that glass evidence is not traceable [RP:11/6:101.13]. Mr. Bowman raised his window to put something between him and Mr. Noll to protect himself.

To knowingly shoot out one's window is akin to shooting oneself in the foot. If a video was presented showing "How to Protect Yourself While Being Shot At" it would hardly seem proper to admit it as proof that "the defendant shot himself in the foot to test the video's theory while committing murder". Admitting the NRA Video was an abuse of discretion and prosecutorial error.

5.3 Five vs. Six Bullets

The State opened their case asserting that Mr. Bowman "fired five shots, and four of them hit Yancy Noll" [RP:11/19Sup:82.16]. For the entire trial it was undisputed that five shots were fired in total. During closing argument, the State argued that six shots were fired. See Appendix for excerpts from the State and Witness statements.

The sixth bullet they counted was "on the dashboard of the car" [RP:12/9:89.14]. The primary CSI detective described the evidence on the dashboard as a "bullet fragment" [RP:11/20:195.12] and clarified that it was only "part of a bullet" [RP:11/20:203.3]. It was never clarified that this was not a part of one of the other bullets that were counted.

The State unfairly argued both five-shot and six-shot theories to suit the context of their arguments and to bolster their case. This was unfairly prejudicial in several ways:

- Vouching - The State knew the witnesses would testify to five shots. By telling the jurors that there were five shots fired by the defendant, the State vouched for the authenticity of their witnesses' memories.
- Accuracy - The State used the statistical analysis that four out of five shots hitting their target was more consistent with an intentional action than a fear-based response. Four out of five is an 80% hit rate versus a 67% accuracy with four out of six. The State bolstered their accuracy assertion by 13%.
- Length of Time - The State repeatedly dramatized the firing of each shot with pauses. The rapid burst of fire was drawn out into a long methodical event. By adding an additional shot and more time, the State misrepresented the temporal dimension of the event and implied additional opportunity for premeditation.

5.4 Painting Murder

The State used their cross examination of Mr. Bowman to testify by asking presumptuous questions. The most common method was by implicitly testifying with a yes/no request and ignoring the answer. This allowed the State to introduce unsworn false testimony. The Appendix highlights the most egregious examples.

By implicitly testifying, the State sidestepped the requirement to base their case on facts in evidence. The State repeatedly rung the bell of "killing" and primed the jury to unconsciously associate Mr. Bowman with someone obsessed with killing.

Objections were routinely overruled with the assertion that as long as it had a question mark at the end, anything the State said was blessed by the Court. [RP:12/8:75.10]

The jurors reasonably believed the State knew their evidence and formed questions based on fact. By throwing the prestige of their office with authoritative manners, the jurors were misled to believe the State had the facts to support their questions. The State unfairly implicated Mr. Bowman as a liar by his denial of [fabricated] facts not in evidence.

The State painted untenable assertions over Mr. Bowman's testimony and used attribution error to let the jurors believe it was Mr. Bowman's testimony. This was systematically deceptive and prosecutorial error.

5.5 Traffic

The State argued in closing "Everybody was at a stoplight. Those lanes were completely open" [RP:12/9:93.16] to imply Mr. Bowman could have retreated if there was a true threat as he claimed. There was no evidence to suggest that the lanes were empty.

Traffic light controlled intersections are usually never all in a stopped state. One witness testified to being "in the middle of the intersection" [RP:11/20:24.21] waiting "for the cars to subside oncoming to turn" [RP:11/20:23.5]. Witness KW said "there were cars going across [on NE 75th St] as it was still a red light."

[RP:11/19:54.18]. The lead detective described the scene as having "heavy traffic" [RP:11/20:85.11]. The State contradicted their own witnesses and basic logic to mislead the jurors to conclude that Mr. Bowman was lying. This was prosecutorial error.

5.6 Movie Planning as Premeditation

Bowman testified that the journal excerpts in Exhibit 313 were in the context of video production [RP:12/4:34.12] and creating a "MythBusters for action films" [Id. at 34.22]. The State misrepresented Mr. Bowman's work journal as his premeditation of murder.

In *State v. Hanson*, 46 Wn. App. 656, 731 P.2d 1140 (1987), it was ruled that "A writer of crime fiction, for example, can hardly be said to have displayed criminal propensities through works he or she has authored." It is difficult to offer written works without the juror's inferences of character. *Hanson* warns "Absent an obvious reason why Hanson would have committed the crime, the jury may have seized on the correlation between certain elements of his fiction and aspects of his personal life, to conclude that Hanson was a violent person who was likely to commit this violent crime. By suggesting that the defendant's character conformed to the violent acts in his writings, the State supplied the jury with an improper explanation for why the defendant would have committed the crime charged." *Hanson* also acknowledge the possibility of writing evidence being admissible under ER 404(b), but that it "must be shown to be logically relevant." The court found that even if the writings had been probative, the value was overwhelmed by unfair prejudice because the assault was random and the writings provided an improper explanation of the crime's commission.

The State asserted "There can't be any nothing more relevant to the issue of premeditation than the defendant's own thought processes about killing people in motor vehicles in various ways and making movies about it." [RP:12/4:112.14] The Court accepted this argument and ruled the journal entries as reflective of planning and intent with "extremely high" probative value [RP:12/4:118.21 through 119.14]. The Court also described the journal entry "We all like a good action movie with cars, guns, and science fiction. I'm here to science non-fiction" -- a line to be used in the opening sequence of a TV show -- as probative of Mr. Bowman's plan of murder [RP:12/2:104.7].

The journal entries made no direct references to committing violence or harmful acts towards people. The context clarified this was not intended as planning a murder. There was no logically relevant nexus between anything in the journal and the events of this case. This case sets the precedence that anyone involved with the movie or television industry can have their professional work used against them as premeditation of personal criminal acts.

By heavily redacting the journal and allowing the State to assert the contents showed Mr. Bowman's fascination with violence, Mr. Bowman was unfairly prejudiced.

5.7 Flying Bottles

Mr. Bowman testified that a water bottle was thrown into his car during a stop and go segment of traffic [RP:12/4:49.10]. He also testified that he was hit with a wine bottle while at a stop [RP:12/4:62.21]. No evidence was presented to dispute these statements. The bottles were thrown prior to the gun shots, and the witnesses only testified to events that happened after the gun shots.

In cross examination the State referenced the bottles as "phantom bottles that you threw away" [RP:12/8:106.14]. In closing statements the State referred to these two bottles as "flying wine bottles" [RP:12/9:73.16], "phantom wine bottle" [RP:12/9:68.24], "one magic wine bottle with wings" [RP:12/9:74.10], and "another magic flying bottle" [RP:12/9:83.4]. These characterizations were unwarranted and an example of the State's attempt to will away exculpatory evidence.

The State described the wine bottle as having to have been "tossed in the perfect arch" [RP:12/9:73.25]. "Coming out of the driver's side in a perfect arch up and over the window that's been rolled up, and have it land on the back of the defendant's head perfectly all without anyone seeing what happened." [RP:12/9:74.6] This misrepresents Mr. Bowman's testimony that his attacker was "To my right and a little bit behind me." [RP:12/4:62.25]. From this location his attacker had a direct line through the large gap between seats to Mr. Bowman's head [See Exhibit showing rear of BMW]. The attacking off-road Subaru Forester was also taller and elevated above Mr. Bowman's BMW sports car and was therefore looking down on him. The State offered no evidence to dispute Mr. Bowman's testimony or the likelihood of being hit with a wine bottle when thrown from just out of arm's reach.

The State clarified to the jury that the "magic flying [water] bottle" that hit his dashboard occurred "while they are driving on the freeway weaving in and out" [RP:12/9:83.4]. This was fabricated by the State seemingly with the permission of the Court [RP:12/8:112.13]. This is a misrepresentation of the testimony that it occurred in "inching back and forth while trying to get ahead type of traffic" [RP:12/4:48.11].

These misrepresentations of evidence and inflammatory characterizations were prosecutorial error.

5.8 Water Bottle Level

The State misrepresented Mr. Bowman's testimony about the water level in the bottle thrown at him. This was done to unfairly discredit Mr. Bowman and to paint him as a liar in the eyes of the jurors. The State asserted that "the defendant testified that originally that it was half full, and then he chan[g]ed that and said no, it was full. So he can't even keep his own story straight" [RP:12/9:74.1]. The State also explained to the jury "A half empty bottle he comes up with because presumably a full one might be seen as too heavy to successfully throw from a moving car. Maybe he figured out the physics of that" [RP:12/9:83.16]. Yet nowhere in the record did Mr. Bowman change his testimony about the level in the bottles.

5.9 Battery Level

In closing, the State asserted "The batteries weren't low" [RP:12/9:74.22]. The only evidence regarding the battery level was by the defendant indicating "I looked at the phone and it was in the red zone and so [I] turned it off to save the battery" [RP:12/4:77.1]. The State offered no contradicting evidence to support their assertion.

The State then claimed "In all the months before the records show he's never had that phone off for that period of time" [RP:12/9:74.23]. The testimony being referenced only claimed reviewing three weeks of records [RP:12/3:25.25]. The State in questioning their witness confirmed there is not a direct relationship between phone activity and battery levels [RP:12/3:24.20].

The State misrepresented the coverage of their evidence and suggested it supported an inference which it could not. They used this untenable evidence to cast doubt on Mr. Bowman's testimony. This was prosecutorial error.

5.10 Peephole

The existence and purpose of a peephole became a significant issue in the State's case. In the record, the term peephole was used over 100 times [See Appendix]. Bowman testified that the peephole in his garage door had been there since he purchased the house over 14 years prior [RP:12/4:14.4 and 162.9]. Bowman remodeled the house eight years prior and kept extensive photo documentation [RP:12/4:163.5].

Between four and six years prior, Bowman upgraded the original peephole to a wide-angled one he purchased from Home Depot [RP:12/4:165.22 through 166.10]. From the outside, the older peephole was painted white and flush with the garage door [RP:12/4:168.25]. The newer one was several times larger, black, and protruded from the surface.

The State found a compressed low-resolution photo [RP:12/4:164.20, 165.15, and 166.21] to suggest that Bowman installed the peephole after the incident. Bowman testified that he had a "super picture archive" [RP:12/4:166.24] on the RAID drive in evidence with images of both sides of the door before and after his upgrade [RP:12/4:163.5, 164.25, and 165.6]. The State never contradicted Bowman's assertions of exculpatory photos in their possession. Bowman's remodel photos were grouped together, tagged with "remodel" and the address of the house, and in the same folder structure as the rest of his photos. It is difficult to believe that of the hundreds of possible photos, the State could only find ones of low enough resolution to make the peephole difficult to see. The State effectively looked at a sample of photos of airplanes in the sky and selected the blurriest photos to argue that they found UFOs.

Bowman's Defense explained to the Court that they would be willing to extract the exculpatory photos from Bowman's computer and present them [RP:11/25:206.14 and 207.9]. The Defense never followed through despite Bowman's persistent prodding. This was Ineffective Assistance of Counsel.

Bowman testified that immediately after getting to his garage after the incident, he looked out the peephole [RP:12/4:73.16 and 132.9]. The State called Bowman a liar [RP:12/9:67.2] and his testimony about the existence of the peephole as a "bizarre story that he is making up" [RP:12/9:65:18]. These were personal opinions and improper comments.

In closing, the State argued "First of all, who puts a peephole on the garage door unless they are hiding from the police" [RP:12/9:65.14]. Continuing with "he installed a peephole in his garage door to make sure the police don't find out that he is trying to cover up what he did" [RP:12/9:66.6]. No evidence was presented to allow the jurors to infer any state of mind from the existence of a peephole. As Defense noted "there's peepholes everywhere, even on the judge's door" [RP:12/9:98.18]. The State's comments on the peephole were personal opinions not based on facts in evidence.

The State used the peephole as a pretext for slandering Bowman as a liar with a guilty conscience. This was prosecutorial error that infected the entire trial which no timely instruction could have corrected.

5.11 Rummaging

Bowman testified that he saw his attacker "ruffling" [RP:12/4:67.25] for what he believed to be a gun. The State misrepresented this testimony as being Mr. Bowman's testimony of his own actions [RP:12/8:59.22]. Mr. Bowman also testified that the gun he was carrying was holstered in his bag and "easy to get to" [RP:12/8:131.17].

During the entire trial, Mr. Bowman never said the word "rummaging" or any variation of that word.

In closing, the State instructed the jurors that "[Premeditation] must involve more than a moment in time" [RP:12/9:90.7]. Immediately following the State asserted "At the scene is within this definition. A moment in time. He reaches for his bag, he says. He rummages around and picks up the gun. How many moments in time did that take?" [RP:12/9:90.18].

The State used their implicit and false testimony to instruct the jurors that Mr. Bowman had ample time to premeditate murder while "rummaging" for his gun. The State's methodical approach prevented any objection or instruction from correcting the error. This was prejudicially unfair prosecutorial error.

5.12 Who Was The Aggressor

The State explained in closing "Doesn't it make far more sense that Yancy was going to Lake City Way, headed to pick up his teriyaki that he had called in, and the defendant was following him on purpose" [RP:12/9:85.15] and "The BMW that's been stalking him pulls up right beside him" [RP:12/9:91.21]. The State never provided any evidence to infer this conclusion other than pure unfounded speculation. The State's lead detective testified that there was no way of determining who pulled up next to who [RP:11/25:38.14]. The only testimony to who was the aggressor was by Mr. Bowman who stated that Noll was chasing him.

If no evidence is provided to counter witness testimony, it is prosecutorial error to assert to the jury, immediately before deliberation, that there is reasonable doubt to disbelieve exculpatory evidence.

5.13 When and Where was the Phone Turned Off

The State asserted to the jury that "We know the phone was turned off two minutes after Yancy Noll was killed. It was turned off at 7:27. Defendant wasn't home" [RP:12/9:74.20]. The phone was definitely not turned off at 7:27 and there was no evidence that would allow anyone to discern the exact location or time the phone was turned off. Without information to suggest otherwise, basic logic applied to the evidence would imply that Mr. Bowman was home when the phone was turned off.

The 20 block route from the intersection to Mr. Bowman's home is approximately 1.2 miles according to Google Maps. Anyone can drive 1.2 miles in two minutes driving an average speed of 36 miles per hour. If Mr. Bowman had maintained an average speed of 36 miles per hour it is unlikely anyone would have taken notice of him. Calculation = 1.2 miles divided by (2/60) hours = 36 mph

The cell records being referenced [Exhibit 115. RP:12/3:25.19], show the timestamps of data transferred to or from the phone. A State's expert witness testified that Mr. Bowman's phone communicated with a tower at 7:28 PM. [RP:12/3:25.2]. If the phone was turned off at 7:27 as stated, this record would not exist.

The records indicate the phone was not heard from between 7:28 PM and around 5 AM [RP:12/3:24.18]. That doesn't mean it was turned off from 7:28 PM to 5 AM. Under normal operation without signal interference, it can be inferred that at some time after 7:28 PM the phone was turned off. It is impossible to make a claim as to when exactly because the phones are not in constant contact with the towers.

The cell phone records provide no useful information for Mr. Bowman's location at 7:25 PM. The reason for this is cell phones periodically determine the closest tower and direct their transmissions towards it. The closest tower determination typically lags behind the actual closest tower when the phone is moving quickly. Given the route, location of the towers, the short time span, and a rapidly moving phone, it is impossible to determine the phone's location at the resolution the State asserts. The cell data for Aug 31, 2012 at 7:24 PM and 7:26 PM shows connection to the Green Lake Tower. Mr. Bowman drove right past the tower near the scene on 15th Ave NE at 7:25 PM but it was not until 7:28 PM did that tower connect to Mr. Bowman's phone. This data could falsely be used to prove that Mr. Bowman was not at the scene of the incident at 7:25 PM.

The State misrepresented the facts of the case to the jurors. There is no data point in Exhibit 115 for 7:27 PM on Aug 31, 2012. The data point for 7:28 PM shows the same cell tower location as when Mr. Bowman was at home during typical sleeping hours [See Appendix]. Data from page 5 of Exhibit 115 indicates when Mr. Bowman

was home his phone pinged that tower hourly. Based on testimony and the data in Exhibit 115, the only true statement that can be made about the status of Mr. Bowman's phone is this: Mr. Bowman's phone was either turned off or its battery died sometime after 7:28 PM and most probably before 8:28 PM. The information the State presented was unfairly deceptive to the jury.

Another misrepresentation of the cell phone data occurred when a detective testified that at 7:26 PM Mr. Bowman's phone was using the cell tower north of the scene [RP:12/3:24.8]. But page 8 of Exhibit 115, Item Line 152 for 7:26 PM indicates the same Cell Tower Location GPS coordinates as for the 7:24 PM ping which was the Green Lake Tower. See Appendix.

The State emphasized "It was so important to do that while he was flying down residential streets, and escaping the scene where he had just killed someone" [RP:11/20:74.25]. The State continued with "If he has the wherewithal and the presence of mind to turn off that phone it destroys everything he's saying" [RP:12/9:75.9] and "he remembered to turn off his phone so he couldn't be traced" [RP:12/9:75.14]. The State misrepresented the time for the last data point and the conclusion that can be made from that data The State's comments were not based on any evidence and were prejudicially misleading to the jurors.

The State used this untenable logic to explain "So why does he lie about that? Well, again, it hurts his fictional narrative. He lies because turning off the phone is inconsistent with being in a blur, and so scared that he didn't realize what was going on" [RP:12/9:75.4]. This characterization of Mr. Bowman as a liar and his testimony as a "fictional narrative" was unfairly prejudicial because it assumed a false premise.

The State used a fabricated "fact" that Mr. Bowman turned his phone off in transit at 7:27 PM to improperly bolster their theory of the case. This was prosecutorial error.

5.14 False Fake Number

The State introduced a witness who testified regarding being given a phone number by Mr. Bowman. The State then fabricated testimony regarding a "fake phone number" which was repeatedly presented as proof of Mr. Bowman's criminal intent. The record is highlighted in the Appendix. It shows that Haskett clearly indicated there was no fake number and that the State understood. If this was simply a mistake, Mr. Bowman's clarification should have ended the "fake phone number" theory. The repeated emphasis afterwards shows that it was intentional.

The State knowingly used fabricated testimony to unfairly characterize Mr. Bowman as evasive and a liar. This was prosecutorial error.

5.15 Follow Through

The State asked their witness GR, a friend of Bowman, about how Bowman was at completing things [RP:12/1:44.23]. GR testified that Bowman was "pretty good at that, pretty good at completing things" [Id. at 44.25].

In closing, the State changed GR's testimony to support their theory: "Even with a somewhat shoddy effort at covering it up. That fits too. Because you remember GR said defendant's not so great on follow through once he's completed his project" [RP:12/9:59.15].

The State argued that Bowman was a methodical expert when it fit their purpose, and then misquoted their own witness to create support when it didn't fit their purpose. This was prosecutorial error.

5.16 Contradicting Escape Philosophies

The State argued in closing that "You are not going to stop your car in a small parking lot of a strip mall and get out when somebody like that is right behind you." [RP:12/9:86.5]. Yet in cross with Bowman, the State suggested "would it not be worth it to ram the car in front of you to get help? If your life is in danger?" [RP:12/8:119.11]. The implication being that if Bowman was telling the truth, he should have rammed the cars stopped at the light to get to the Safeway "about five hundred feet away" [RP:12/8:123.14] and then run from the south side of the block to the "only entry doors [on] the north side" [RP:12/8:124 .7].

The State asked Bowman "Weren't you worried about him following you home?" [RP:12/8:116.21], yet in closing they argued the opposite to suggest Bowman *was* the aggressor: "He [Noll] needed to get the heck out of there . He skirts his teriyaki and he tries to head home. He wanted to get away, and that's the direction he was headed. That's why he didn't stop to pick up his food. And it confirms who was chasing who" [RP:12/9:88.7].

The State suggested in cross that Bowman was lying because he did not crash his car and go straight to a parking lot. In closing, the State argued Bowman was lying because a real victim would not go to a parking lot. By using contradicting theories, the State played "Heads I Win, Tails You Lose". This was unfair because it framed Bowman as a liar and at the same time misled the jury in their analysis of the evidence. This was prosecutorial error.

6.0 Personal Opinions and Character Slander

6.1 Creepy Scary

In keeping with the State's movie theme, the State linked Mr. Bowman with the serial killers of the movies by suggesting he kept the slide as a "Souvenir. Trophy" [RP:12/9:71.22] and later that "He kept the one souvenir only. The slide" [Id. at 72.11]. The damage of this personal opinion is compounded because it was a new theory of the evidence that was only presented during closing. The Defense did not have proper opportunity to respond.

The State offered the opinion "For him, I would submit, that's part of the fun" [Id. at 67.4]. They also described how Mr. Bowman presumably viewed the event as "it's fun." [Id. at 93.25]. These are both improper personal opinions of Mr. Bowman's feelings that are not in the record.

In the immediate aftermath of defending himself, Mr. Bowman testified that he saw what he thought was a blemish [RP:12/8:140.17] and [RP:12/4:69.12] which turned out to be the entrance wound of the first bullet. The State explained to the jury that this was a reflection of Mr. Bowman's character: "He saw a blemish. What is he showing you when he says that? People say all kinds of things, but what do they show you? He shows you that he saw a blemish. An imperfection. Not a man dying in his car with his hands on the wheel and his life leaving him. He saw nothing. Nobody. A nameless, faceless target that he had just successfully shot four times" [RP:12/9:124.14] and "the fact that he calls it a blemish. That a blemish is chilling enough." [id 91.7] These were inflammatory comments, based on speculation, designed to prejudice the jury against Mr. Bowman.

The State attacked Mr. Bowman's ethical and moral beliefs with personal opinions: "he had done something very, very bad. He knew it... Well, he may not have known it was bad, but he knew he could get in trouble" [Id. at 69.19].

In direct contrast to the evidence, the State asserted "He wasn't afraid. He wasn't upset. Because he hadn't acted in self-defense. He wasn't even sorry" [Id. at 124.25]. It was improper to suggest Mr. Bowman should be sorry for having almost been killed.

Without any evidence to support it, the State told to the jury: "He was the aggressor. He's the spirited driver who flips people off. And maybe Yancy cut him off. Maybe Yancy flipped him off. Who knows. Entirely possible. He did something to get the defendant mad. Spitting mad. Maybe even foaming mad" [id 85.22]. This was the first time this theory was presented. It is a fictionalized depiction intended only to paint Mr. Bowman as an unstable violent attacker.

These comments were unfairly prejudicial and were meant to encourage the jury to decide the case based an irrational speculation rather than probative evidence and sound reasoning.

6.3 Everything is a Movie

Mr. Bowman testified that his interest in movies was professional: "I wrote a business [plan] on [how] to do a TV show that involved kind of a cross between Top Gear, sort of MythBusters , kind of, Project Runway and Top Shot" [RP:12/9:40.22]. The notes and sketches in Mr. Bowman's work journal [Exhibit 230] relate to these interests.

The State mischaracterized Mr. Bowman to the jury as someone "who thinks in terms of everything like that as a potential movie" [RP:12/9:59.5]. The State fabricated testimony to misrepresent Mr. Bowman as someone who lives "in his own reality, his own world" [id 72.19]. A review of the record shows that these assertions are unsupported by evidence and only supported by the State's implicit testimony.

Bowman testified that the event was "completely surreal in like, a nightmare... there's some horrible thing happening" [RP:12/4:68.10], "surreal nightmare" [id 75.17], "completely surreal" with "tunnel vision" [id 131.23], "Panicked" [id 136.15], "freaked out" [id 69.21], "a horrible thing that was happening" [id 136.18], and a "crazy night--day nightmare" [id 161.17].

Bowman also testified that his memory at one point was like "I'm seeing myself overhead kind of -- seeing myself from overhead kind of ducking down" [RP:12/4:68.14]. An out-of-body memory of an event like this is a classic example of dissociative depersonalization which is the mind's "most direct defense against overwhelming traumatic experience .... that allows the person to continue functioning under fierce conditions." [Dissociative Subtype of PTSD, Lanius et al]. Mr. Bowman described his attacker's behavior "as just violent hatred that you would - I had only seen in the movies" [RP:12/4:65.2].

The State, not Mr. Bowman, first referred to the shooting being like a movie when they asserted "He testified two or three times that this was like a movie to him. It was." [id 111.7] and then explaining "Shooting Yancy Noll is like a movie. He was -- it was as if he was looking at himself from overhead and watching it unfold. You could also call that fantasy. [id 112.4]

The State then testified that journal entries "in the context [of] a movie" meant "Everything is a movie" [RP:12/8:79.12] and "it was all about making movies" [id 95.15]. When asked directly "So this entire event must have felt like a bad event. Sort of a horror movie to you?", Mr. Bowman responded "I don't know if I described it as a horror movie like that, but it was like a surreal nightmare" [id 96.10].

In closing, the State emphasized their movie characterization theme with "It was like a movie for him" [RP:12/9:123.24], "it was like all those movies he told you about" [id 124.1], "It was like a movie" [id 124.10], "The Death Dealer's Manual says, this adventure is a valid motivation for the Killer. Adventure. Movies." [id 89.7], "Monster movie" [id 69.15], "it's like a bad action movie" [id 62.2], and in contrast "This is not a movie" [id 72.17].

Memories can be grouped into Semantic and Episodic types. A semantic memory is of the facts without sensory context. Episodic memories, the kind most common to witness testimonies, integrate time and sensory details in a cinematic and visceral way. Our autonoetic consciousness provides us with the faculties to recall episodic memories and experience them cinematically. The State argued that Bowman's episodic memories were perverse by their very nature. This was a generic accusation that did not advance the "twofold aim of which is that guilt shall not escape or innocence suffer."
[Berger v. U.S., 295 U.S. 78, 88 (1935)].

By tracing the record, it is apparent that the State unfairly characterized Mr. Bowman as someone disconnected from reality and someone who thought of the horrible event as a movie. The State presented personal opinions of how Mr. Bowman thought without any basis in evidence. These statements acted as unfairly prejudicial character slander. This was prosecutorial error that could not be balanced by any instruction.

6.4 No Feeling No Humanity

During closing remarks, the State characterized Mr. Bowman as: "someone who has no feelings. Someone who cannot feel" [RP:12/9:56.7], "Cold. Empty" [id 125.7], "He has no feeling." [id 63.24], "chilling" [id 64.25], "a lack of emotional intelligence and common sense" [id 80.20], "his arrogance" [id 82.22], "He's calm. He's unruffled. And he's arrogant" [id 65.9], "evil or pitiable" [id 94.18], "immature, obsessive, 32 year old man who lives in his own world. A fantasy world of guns, and cars, and movies, and arrogance, and entitlement." [id 58.4], "No remorse... appears to have no empathy. No compassion. No emotion" [id 58.11], and "Our humanity, yes. Not his. He does not have any" [id 95.1].

The first [id 56.6] and last [id 94.25] statements of the State's closing remarks are malicious characterizations of Mr. Bowman. The State unfairly slandered Mr. Bowman's character and encouraged the jury to decide the case based on these characterizations.

The State commented that "when he couldn't even fake it on the stand that's your best circumstantial evidence" [id 80.21] and "He can't fake it. He can't even fake being surprised that he is being charged with murder" [id 77.24]. It is unfair to suggest Mr. Bowman needed to fake something in order to prove his innocence.

When asked directly about his feelings of the event, Mr. Bowman described them solemnly as "it's tragic" [RP:12/8:144.13] and that he has cried and prayed for Mr. Noll and his family [id 144.23]. Immediately afterwards the State commented "You know, it's interesting, Mr. Bowman, in all your testimony over the course of the two days you never once talked about the fact that someone lost their life except the effect that it had on you" [id 145.2]. This statement denied Mr. Bowman's testimony of his compassion for those affected. It was aimed squarely at the jury to characterize Mr. Bowman as cold and self-centered based on what he had *not* been questioned about.

The State claimed "when arrogance and entitlement are thrown in on top of that, it creates a scenario where you commit a murder confidant that you won't get caught. But you are. You commit murder confidant that you won't be convicted. But he will be" [RP:12/9:80.23], "It's almost as if his arrogance, his supreme confidence that no one was or is smart enough to figure it out took away his judgment" [id 81.22], "he's arrogant enough to think that no one can see through what he is saying" [id 65.10]. Arrogance, entitlement, and confidence are subjective matters not in the record. These were personal opinions about Mr. Bowman's character that were unfairly prejudicial.

The slander campaign was so rampant that no instruction could have balanced its harm. This was gross prosecutorial misconduct.

6.5 Not Sorry

Regardless of the fact that Mr. Bowman did express that this was a tragic event for everyone involved and he cried for Mr. Noll "continuously" [RP:12/9:144.23], the State argued that Bowman exhibited "No remorse" (RP:12/9:58.10] and "wasn't even sorry" [Id. at 125.2], and therefore he was not acting in self-defense.

It was improper for the State to give the jury the flawed logic of *Affirming the Consequent* for determining Mr. Bowman's guilt:

1. If [he did not act in self-defense], then [he exhibits no remorse].
2. [he exhibits no remorse],
3. Therefore, [he did not act in self-defense].

The argument above is obviously invalid because an innocent person has many reasons for not making a public display of remorse. And if Bowman had cried incessantly while testifying then the State would have said he was faking it and that proves he was not acting in self-defense. This was another "Heads I Win, Tails You Lose" argument.

The jury should not have to validate the logic of every argument the State makes. It was prosecutorial error for the State to instruct the jury to deliberate using invalid logic.

6.5 Lesser Humans

The State improperly suggested to the jury that Mr. Bowman thought "Lesser humans surely would be annoyed that someone could be so fortunate. I can imagine a scenario where that might occur, he said yesterday" [RP:12/9:82.21]. This misrepresented Mr. Bowman's response to the State's question: "Do you think people ever get jealous of you having a fancy car? A $70,000 car? [RP:12/8:33.17]. The State's question also misrepresented Mr. Bowman's testimony that his $32,000 car might have cost $70,000 new [RP:12/8:24.9 & 15].

The combination of the State expressing their personal opinions and misrepresenting testimony was prosecutorial error that prejudiced Mr. Bowman.

6.6 Strength of Case

The State described their case to the jury as "overwhelming evidence of the defendant's guilt" [RP:12/9:56.11]. This is a biased personal opinion not based on the record. The State used rhetorical assertions to vouch for their evidence: "Is there overwhelming proof that Dinh Bowman murdered Yancy Noll? Yes. Is there overwhelming proof that he did it with premeditated intent? Yes...Is there overwhelming proof that he did not act in self-defense? Yes. Is he guilty of murder in the first degree? Yes" [id 57.20].

The State presented opinions about Mr. Bowman's actions based on opinions of their own case with: "He had to in the face of that strong circumstantial proof. He had no choice." [id 61.15] and "He knows he can't credibly argue that he didn't do it. The evidence is too strong for that" [id 82.6]. The State also characterized Mr. Bowman's testimony of his shirt color and glasses style as a need to "cast [doubt] on them because they are strong witnesses. Strong witnesses to disprove his claim of self-defense" [id 73.4]. None of the witness testimony disproves self-defense even in the light most favorable to the State.

The State vouched for the search efforts of the police by asserting "They wanted the gun. That's what police do" [id 72.3]. Since the police never produced the gun hidden in a box "in that massive space" [id 72.1], the State opined "he's lying. It's not there" [id 72.10]. The State should have offered Mr. Bowman's possible motivation for lying about this because Mr. Bowman had no reason to lie.

The State expanded their opinions to include the wishes of others: "Everyone in this courtroom wishes this was about road rage. Yancy's friends and family wish this was about road rage. Seattle wishes this was about road rage. Because if this was about road rage Yancy would be alive. And if this case was about road rage we would not have to face the terrifying truth that this man killed Yancy Noll because he wanted to know what it would be like" [id 120.23]. No evidence was ever presented on what Mr. Bowman wanted to know. The "terrifying truth" is that this is the State's speculation and an unfairly prejudicial personal opinion.

These comments by the State were incurable and unfair prosecutorial misconduct.

6.7 Integrity of Defendant's Testimony

The State expressed personal opinions about the credibility of Mr. Bowman's testimony by qualifying their statements with "frankly" in "frankly are laughable" [RP:12/9:62.3], "he is frankly a liar" [id 62.5], and "a fantastic and frankly offensive story" [id 123.20].

The State used "staggering" to characterize their case with regards to their opinions on what Mr. Bowman and the jury believed: "It's sort of staggering how easy it is to poke holes in so much of what he thought he would get away with and what we would believe" [id 81.15]. But the State offered no specifics to justify this opinion.

The State opined about the credibility of Mr. Bowman's testimony and misrepresented it at the same time: "The story is bunk, and it doesn't even meet self-defense, if it isn't" [id 85.1].

The State repeatedly expressed personal opinions about Mr. Bowman's credibility with: "his story is insane" [id 87.10], "defendant's fantastic version of events" [id 122.11], "A fantastic tale that he wove and re-wove" [id 123.16], and "Not one word he said was believable. Not one claim he made is to be trusted. And that includes his badly written fairy tale" [id 62.6].

These statements invaded the province of the jury by expressing personal opinions on questions of credibility. This was prosecutorial misconduct.

6.8 Instructions to Convict

The State used personal opinions of what they speculated were Mr. Bowman's beliefs to instruct the jurors to convict: "You commit a murder confident that you won't be convicted. But he will be. You assume a jury and everyone else in the courtroom will ignore the evidence and believe what you say. But they don't" [RP:12/9:81.1] and "he almost got away with it. Don't let him" [id 125.10].

These statements ignored the actual evidence because there was no specificity to credible evidence here or anywhere in the closing statement. These were instructions for the jury to convict based on the personal opinions of the State. This was prosecutorial error.

6.9 Liar Liar Liar

The State expressed their personal opinion that Mr. Bowman's testimony was a lie many different ways in closing. They used the terms "tale", "story", and "fictional" to attack his credibility. They also used the terms "lie", "lying", "lied" and "liar" numerous times..

The State also asserted that Mr. Bowman had a propensity for lying with "Lies come very easily to him" [RP:12/9:65.7] and "He had no trouble sitting here and telling you a tale" [id 123.15]. These statements are obviously opinions because the State did not present any supporting facts.

The State did not use inconsistencies in Bowman's testimony to support their labeling of Bowman as a liar. The State directly shifted the burden of presenting any support by telling the jury "And you know the inconsistencies. You heard them. I don't need to tell you what they were." [id 123.17]. This was vouching for the jury's memory of the alleged inconsistencies and an implication that the jurors must have heard a bell that was never rung. If it is improper to call someone a liar without referencing supportive evidence, it is highly improper to call someone a liar based on evidence that does not exist.

The credibility of Mr. Bowman's testimony was the province of the jury. By using the theme that Mr. Bowman's testimony was a lie without explaining the falsehoods, the State encouraged the jurors to base their decision on the State's personal opinion. This was systematic prosecutorial misconduct that was incurable by any instruction.

6.10 In the Shoes

The State asked the jurors to step into the shoes of the State's fictionalized victim. They asked "How heart stopping would that be? Yancy sees the BMW has stopped right next to his car and left a space in front. That BMW is targeting him" [RP:12/9:92.6]. They wanted the jurors to respond emotionally in fear of Mr. Bowman with "there's the defendant stalking him with his BMW because he pissed him off somehow. A driver who is acting in a way far beyond normal traffic anger, which can be scary enough on its own." [id 87.22].

Yet the lead detective testified "there's no way of determining who pulled up next to who first" [RP:11/25:38.14]. No evidence was presented -- because it is factually untrue -- that Mr. Bowman was stalking Mr. Noll. It was unfairly prejudicial to appeal to the jury's emotions using theories unsupported by evidence.

The State appealed to the jury's emotions by asking "What must it have been like? What was Yancy Noll thinking when he looked to his left and saw the semiautomatic, 9mm Glock pistol aimed at his head? And in that split second did he know that his life of friends, and family, and wine, and his dog Lola was about to be snuffed out? Did he have time to think? Did his brain, which was about to be destroyed by the defendant's bullets, register what was about to happen to him?" [RP:12/9:56.19]. The State is not allowed to urge the jurors to place themselves in Noll's shoes. [*Hawthorne v. U.S.*, 476 A.2d 164, 172 (DC 1984)].

The State presented fictional thoughts attributed to Mr. Bowman to support their theory of the case: "Did [Bowman] get up on the morning of August 31st, 2012 and say this is the day? No. But did he know that that day would come? He did know" [id 123.6]. If it was improper to step into Noll's shoes, it was far more improper to step into Bowman's shoes. [*State v. Pierce*, No. 40777-9-II, 2012 WL 2913290, at paragraph 55 (Wash. Ct. App. July 17, 2012)].

The State used dramatic characterizations such as "It's ripping the skin, and the tissue, and the teeth, and the skull. It tore through that window, and sent that bullet spinning, and that made it burst into this hideous entrance wound, and that means Yancy was looking at the defendant when the defendant killed him. He's scared" [id 91.14]. Again, the only evidence regarding Mr. Noll's emotional state showed that he was in a violent rage attacking Mr. Bowman.

The State painted Mr. Bowman's fear against him by reassigning Mr. Bowman's fear to his attacker and then asked the jurors to imagine Mr. Bowman as the violent stalker. Combined with an emphasis on creating a visceral response from the jury, this was prosecutorial error.

7.0 Misconduct and Improper Comments

7.1 "We" vs. "He"

In the closing statements, the State used the terms "we", "us", and "our" 62 times to implicitly align itself with the jurors against Mr. Bowman. See Appendix. The State repeatedly formed their statements adversarially as "we" versus "he". This shifted the attention of the jury from an evaluation of the State's case to an instruction of guilt based on the side of "we".

Case law has established that the phrase "we know" is an error when used for purposes other than marshalling evidence admitted to trial. [See *State v. Robinson*, No. 71929-7-I, 2015 WL 5098707, (Wash. Ct. App. Aug. 31, 2015); *U.S. v. Younger*, 398 F.3d 1179, 1191 (9th Cir. 2005)]

In this case, "we" was used to communicate to the jurors that they are not independent but share the same side as the State. Using "we know", the jury was informed of the State's opinions, inferences, and knowledge as if it was evidence with an implied truthfulness.

The State liberally asserted "we know" to logically untenable inferences, facts not in evidence, and opinions of guilt. The State aligned itself with the jurors and misled them in their role as independent triers of fact. The State also misrepresented their theory of the case as evidence known to be true using the authority of their office and the implied investigational powers available to them. This was prosecutorial error.

7.2 Fancy $70,000 Car

Mr. Bowman testified that he purchased his 2006 BMW Roadster around 2008/09 for $32,000 [RP:12/4:37.21]. The State acknowledged this valuation [RP:12/8:24.9] and inquired the retail price [id 24.14]. Bowman estimated it cost $60-70,000 new [id 24.15].

The State then began describing it as "a fancy car" and "A $70,000 car" [id 33.18]. In referring to the wheels, the State even emphasized the retail price: "the wheels of this $70,000 car" [id 94.21]. In closing, the State described the wheels more impressively as "the wheels of this $70,000 jewel that he cherishes so much" [RP:12/9:71.14].

If a car depreciates from $70,000 to $32,000 in two years, a reasonable representation would be that it is worth even less four years later. The estimated value was in the mid-$20k range at the time of the incident. The State represented Bowman's $25,000 daily-driver to the jury as a cherished $70,000 jewel. This was a significant misrepresentation of the facts.

The State used Bowman's "fancy car" to further their distinction of "We" vs. "He". The court in *State v. Reed* ruled that it was grievously improper to attack defense as outsiders who drove expensive cars [102 Wn.2d 140, 147 (Wash.1984)]. This was prosecutorial error.

7.3 Opening Statement Anchors

The State opened the trial with arguments not a summary of the evidence to come. Objections were futile [RP:11/19:35.13] and only highlighted the improprieties [RP:11/19Sup:79.16]. This was an abuse of discretion by the Court and unfair conduct by the State. The State assured the Court that they intended to prove everything said in opening [RP:11/19:36.9]. A thorough review of the record shows that, starting from the presumption of innocence, no logical reasoning would allow any rational juror to conclude what the State asserted.

These arguments, presented to the jurors as a summary of facts, unfairly set the context that the jurors would view all future evidence. Cognitive psychologist, and progenitor of genetic epistemology, Jean Piaget studied this problem. Everything we know and understand is filtered through our current frame of reference. By comparing all new information against this frame of reference, we judge and adapt it to fit with our existing knowledge.

By allowing the State to anchor the jury's frame of reference with the State's extreme theory, Mr. Bowman was prevented from having a fair trial. The jurors viewed all new evidence in the light of the State's theory and not with the presumption of innocence. This was an abuse of discretion by the Court and prosecutorial error by the State.

7.4 Ostrich Approach to Evidence

The State instructed the jury "Remember no one saw a disturbance. Heard a disturbance. Heard any words being exchanged. Nobody saw flying wine bottles. They heard nothing unusual until they hear the pop, pop, pop of the gunshots that killed Yancy Noll" [RP:12/9:73.14]. Though questionably characterized, these statements are based in fact. But they are meaningless because the witnesses were not paying attention to anything relevant to this case until after the gun shots. No evidence disputed Mr. Bowman's testimony of the interactions between Mr. Noll and himself.

The State emphasized their point with "His own story doesn't support what you are tasked with finding that would constitute self-defense. That's because his own testimony is unsupported by any witness that was there" [RP:12/9:121.18], and "The witnesses saw nothing that is consistent with what the defendant said" [RP:12/9:121.25]. The witnesses had conflicts with details in their memories, but as a whole there was nothing inconsistent among the witnesses' and Bowman's testimony. The primary conflict was the color of the shirt Mr. Bowman was wearing and whether he was wearing sunglasses or his regular glasses. The witnesses couldn't even clearly identify where the BMW was before it sped off.

The most relevant and critical testimony in the case was Mr. Bowman's. He was the only witness to the events that escalated to his shooting in self-defense. The State vouched for their witnesses by removing Mr. Bowman from "any witness that was there". The State discredited Mr. Bowman's testimony because he was the only witness to the key element of the case. This was prejudicially deceptive and systemic prosecutorial error.

7.5 Shooting Range Video

The Court admitted video of Bowman at a gun range [Exhibit 239] to show "familiarity with firearms, suggesting that he had the skill to carry out the crime" [RP:11/10:20.13]. There was cumulative evidence including Bowman's own testimony of his familiarity and skill with firearms. This was an undisputed issue.

The State played this video during closing argument, not to summarize Bowman's familiarity, but to graphically emphasize their appeal to the jury's emotions: "How heart stopping would that be? Yancy sees the BMW has stopped right next to his car and left a space in front. That BMW is targeting him. And so Yancy turns his head and he looks. He looks at the BMW with the defendant inside. At the defendant who wins shooting contests. Who has fired guns since before he was a teenager. Who hits targets with ease. Here we go. (DVD played in open court.) Yeah, he was in a haze all right." [RP:12/9:92.6].

- [V]isual arguments manipulate audiences by harnessing rapid unconscious or emotional reasoning processes and by exploiting the fact that we do not generally question the rapid conclusions we reach based on visually presented information. (Lucille A. Jewel, *Through a Glass Darkly; Using Brain and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. Cal. Interdisc. L.J., 237, 289 (2010)]

- [T]he danger in using emotionally vivid imagery is not that it is subliminally persuasive, but that it tends to generate emotionally driven reactions that can unconsciously effect a decision-maker's thought process. [Id. at 254]

The State improperly used the video to comment on Bowman's state of mind during the heat of the incident. This showing of the video encouraged the jury to visualize Bowman as the attacker in the State's fictional account. This was prosecutorial misconduct.

7.6 Driving Video

The video showing Bowman driving in an autocross event [Exhibit 238] was introduced in anticipation of the need to prove Bowman had the skill to drive away from the incident as described by the eye witnesses. The purpose of the video was for identification. Since Bowman testified to being the driver, the purpose for the video no longer existed.

The State played this video at closing to portray Bowman as an adventure seeker in support of their theory "adventure is a valid motivation for the killer" [RP:12/9:89.8].

It was prosecutorial misconduct to introduce this video for one purpose and then use it for a different one.

7.7 Friends, Family, and a Dog named Lola

The State used Noll's friends, family, and dog to pander to the emotions of the jurors. In opening, the State described Noll as "Rick's best man and trusting climbing partner. He was Annie's friend. He was Jody's boyfriend, Mike's cousin, Trina's brother" [RP:11/19Sup:80.5]. While then speculating that Bowman "did not see the brother, the friend, the loving boyfriend. The defendant saw a stranger, a nameless, faceless target" [id 80.12].

In closing, the State asked "in that split second did he know that his life of friends, family, and wine, and his dog Lola was about to be snuffed out?"[RP:12/9:56.22]. The State later described Bowman as "snuffing out the life of a vital 40 year old man with a host of friends and loved ones" [id 75.17]. The State even described Noll's Subaru with "a dog named Lola in it" [id 82.15].

The State also shared that Noll's "friends and family wish this was about road rage" [id 120.24]. These are all issues not relevant to the jury's duty. The State systematically appealed to the jury's emotions and created incurable prejudice in their minds. This was prosecutorial error.

7.8 Duty To Retreat

The State summarized to the jurors "The defendant, as soon as he killed Yancy Noll, pulled out on to coming lanes and got out of there. And he wants us to believe that he couldn't do that before? Those lanes were completely open" [RP:12/9:93.13].

This statement was designed to have the jurors infer Mr. Bowman lied and there was an opportunity to retreat. And then conclude Mr. Bowman committed murder because he did not retreat as he should have.

The traffic conditions in those lanes were completely unknown to Mr. Bowman when he accelerated blindly southbound into the northbound lane. Mr. Bowman had no duty to retreat and to comment otherwise was a misstatement of the law. This was prosecutorial error.

7.9 Two Years to Craft a Tale

The State used the fact that it took two years to arrive at trial as an attack on Mr. Bowman's credibility. "Has had two years to think through every detail of what he thought would be the most compelling and believable story for a jury" [RP:12/9:82.9]. They used Mr. Bowman's rights to an adequately prepared counsel and due process as his opportunity to craft a lie: "Two years to come up with a story, and that's what he came up with" [RP:12/9:83.14].

These statements attacked Mr. Bowman's constitutional right to remain silent. By generically commenting that Mr. Bowman's silence was relevant to his credibility was constitutional error.

7.10 Two Years of Lies

After the incident, Mr. Bowman did not want to involve or implicate anyone else, so he didn't speak about it to protect his family and friends. The State accused Bowman of "Lying by omission" [RP:12/4:126.25] because he "did not talk to them about it" [RP:12/4:127.2]. This definition was misleading as it makes anyone who doesn't share every detail of their life a liar.

Unable to explain the details of the case to his family and friends, in cross examination Bowman over-accepted that he had lied to them [RP:12/4:126.15]. Bowman immediately brought this to the attention of his Defense, but it was never reexamined. This was Ineffective Assistance of Counsel.

Mr. Bowman was detained in the county jail for the two years prior to trial. Except for protected lawyer-client communication, all contact in the county jail was monitored and recorded. If Mr. Bowman wanted to retain his constitutional right to remain silent, he would not be able to speak to anyone other than his lawyers regarding his case. When speaking to family and friends, Mr. Bowman never lied and simply explained "We'll get things straightened out."

The State's witness GR, a friend of Bowman, testified that Bowman explained "I'm going to get this cleared up soon" [RP:12/1:53.2]. The State later changed this testimony to "I didn't do this" [RP:12/4:159.1] and "I didn't have anything to do with this" [RP:12/4:159.8]. The State misrepresented their own witness's testimony to create a lie which they could accuse Bowman of.

The State used Mr. Bowman's right to remain silent against him by appealing to the jury's sense that a son should not lie to his parents: "For two years he lied to his parents. No qualms. No problem. According to him this trial is the first time he ever told [his parents] he acted in self-defense" [RP:12/9:62.21]. The State knew that if Bowman spoke to his parents about the case he would have voluntarily given up his right to remain silent. Commenting on Bowman's lack of communication with his parents about the case is the equivalent of a comment on silence. The State pandered to the emotions of the jury while improperly commenting on Bowman's constitutional rights.

- A prosecutor unconstitutionally misleads the jury when he tries to impeach a defendant who has offered at trial an innocent explanation for his conduct by insinuating that the defendant's failure to tell the police the exculpatory account after being giving Miranda warning following his arrest suggests that his testimony was a fabrication concocted specially for the trial. [Bennett L. Gershman, *The Prosecutor's Duty to Truth*, 14 Geo. J. Legal Ethics 309 (2001), citing Doyle v. Ohio, 426 U.S. 610 (1976)].

These statements were part of the State's systematic campaign to slander Bowman as a liar. This was unfairly prejudicial prosecutorial misconduct and constitutional error.

7.12 Defendants are Liars

The State used Bowman's presence at trial against him. In cross examination it was emphasized that Bowman's testimony "was after you had sat through all of the State's testimony, and figured out that identification was not going to be an issue" [RP:12/8:18.15]. The State insisted Bowman's claim of self-defense was tailored with assertions such as "So you have brought forward your self-defense claim because you have no defense to identification at this point" [RP:12/8:19.12].

Bowman accepts that a defendant who testifies is subject to this line of questioning. But the State, in their cross examination, did nothing more than make a generic accusation of tailoring. If generic tailoring is improper in closing then it should be equally improper during cross examination because the defendant can only respond to the questions asked. How could the jury determine the guilt or innocence of a defendant based on the response to: "So you have brought forward your self-defense claim because you have no defense to identification at this point"? The only purpose for injecting this innuendo was to bolster the State's claim that Bowman was lying about self-defense. And their technique saved the State from presenting any facts to justify the assertion.

These comments to the jury were unfairly prejudicial where no answer or instruction could balance the harm. It was Bowman's right to testify when he did and it was improper to suggest to the jury that his sworn testimony was influenced by it. It was unfairly prejudicial to comment that Bowman is a liar because he is the defendant.

In closing, that State explained to the Jurors "How does he know he intended to shoot him but not to kill him? Because that's what will get him acquitted. That's how he knows. That's why he says it." [RP:12/9:89.23]. This issue is addressed in *State v. Martin*, 171 Wn.2d 521 (2010) with "when a generic argument is offered on summation it cannot in the slightest degree distinguish the guilty from the innocent. It undermines all defendants equally and therefore does not help answer the question that is the essence of a trial's search for truth: Is this particular defendant lying to cover his guilt or truthfully narrating his innocence?" [citing *Portuondo v. Agard,* 529 U.S. 61, 79 (2000), Ginsburg, J., dissenting]

The jurors were unfairly asked to view Mr. Bowman's testimony in the light of a criminal lying to get away with it. This denied Mr. Bowman the presumption of innocence and the right to due process. This was prosecutorial error.

7.13 Lying Questions

During the State's cross examination of Mr. Bowman, a number of questions were raised that put Bowman's credibility directly against the State's. The Court in *People v. Wagner* observed that the impropriety of the State's questions in cross examination are not cured by the fact that the question elicited a negative answer. "By their very nature the questions suggested to the jurors that the prosecutor had a source of information unknown to them which corroborated the truth of the matters in question. ... it is reasonable to assume that, in spite of [the] negative responses in the instant case, the jurors were lead to believe that, in fact," the insinuations of the questions were true. [13 Cal.3d 612, 619-20, 532 P.2d 105 (1975)].

The "fake phone number" [RP:12/8:90.22] was presented as a fact which Bowman denied, but the insinuation lingered and was reinforced twice in closing. [RP:12/9:63.24 & 71.13 See Appendix].

The State asserted that Bowman followed the Books and only used cash immediately after the incident [RP:12/8:89.8]. When Bowman mentioned the number of times that he used his credit card [id 89.22], the State denied it by bringing up a completely different transaction by his wife [id 89.25]. The gas receipts were never entered as evidence, but the Otto's restaurant [Exhibit 86] and Red Robin [Exhibit 84] receipts clearly show that it was Bowman's not his wife's credit card. The State misrepresented the facts of the case to conform to their theory and misled the jury through deceptive questioning.

The State accused Bowman of lying to his friend witness GR in telling him "I didn't do this" [RP:12/4:159.1] and "I didn't have anything to do with this" [id 159.8]. These two statements carry a completely different meaning than the actual testimony of "I'm going to get this cleared up soon." [RP:12/1:53.2]. "The prosecutor is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties." [*Donnelly v. DeChristoforo*, 416 U.S. 637, 650-51 (1974), Douglas, J., dissenting].

While discussing the Library, The State asked Bowman, "where in your reference library that we have discussed is there any other reference to general science?" [RP:12/8:64.12]. Bowman explained "there's many other sciences in there, There's chemistry. There's biology ..." but was cut off by the State's assertion "not in the reference library there's not" [id 64.15]. The State knew of the vast collection of sciences and even referenced "articles on chemistry" [RP:11/19Sup:86.11] during opening and "a folder called Chemistry" [RP:11/20:144.3] in a discussion with the Court outside of the jury's presence. The State's computer's forensic detective testified to the Chemistry section without the jurors present [RP:12/2:51.4]. The State knew this was misrepresentation but the jurors could not.

The State went on to claim that the Library focused on "killing" [RP:12/8:65.3] and "Death" [id 65.8]. Before this, Defense made a point outside of the jury's presence, that "architecture, drawing, design, engineering, chemistry, sewing, cooking, photography, philosophy, astronomy, machining, robotics, electronics, automotive, craft" [RP:12/2:147.3] were among the many topics in the Library and that the State should not be allowed to misrepresent the contents as revolving around death" [id 146.22]. The jurors were not provided with the opportunity to view the contents of the Library and had to rely on testimony to the actual contents. The jury accepted the State's outside knowledge as evidence and the insinuation that Bowman was lying about the contents of his Library.

The jury had the dilemma of either believing Bowman or the State's officers. The State ignored the evidence and repeatedly insinuated Bowman's guilt when a truthful analysis shows the opposite. This was prosecutorial error.

7.14 Logic Fallacy used to Shift the Burden of Proof

The State had the burden to disprove self-defense. The State shifted the burden of proof to Bowman by incessantly emphasizing Bowman's credibility and then by framing the trial on the following invalid logic of *Affirming the Consequent:*

4. If [he is liar], then [he has lied before].
5. [he has lied before],
6. Therefore, [he is a liar].

1. If [he is lying about self-defense], then [he is a liar].
2. [he is a liar],
3. Therefore, [he is lying about self-defense].

The two arguments of logic above are obviously invalid because a liar may not be lying about self-defense and having told a lie does not make a person a liar.

The State pseudo-disproved self-defense using flawed logic. Given this false framework, to be acquitted Bowman had to prove his self-defense to counter the State's case.

The trial became disingenuously focused on Bowman's credibility. Consider the amount of time dedicated to discussing the irrelevant peephole: "Peephole" was said over 100 times in trial [See Appendix].

The State could not disprove self-defense and it was prosecutorial error to go to trial knowing that and using a case built on fallacious logic that shifted the burden of proof to the defendant.

7.15 Misstatements of Law

Immediately before dismissing the jury for deliberation the State made several serious misstatements of law. Their subtle nature and superficial correctness made it impossible to immediately identify and address them with instructions from the Court.

7.15.1 Time for Premeditation

The State argued in opening that "this is an unusual case in that there is premeditation that occurred long in advance of August 31st, 2012, and there is premeditation that occurred on August 31st, 2012." [RP:11/19Sup:81.16], and mirrored in closing "We have premeditation way before, and we have premeditation at the scene." [RP:12/9:90.12]. Premeditation was a key element to prove as it "is a separate and additional element to the intent requirement for first degree murder."
[*State v. Brooks*, 97 Wn.2d 873, 651, P.2d 217 (1982)]

The State argued that evidence of access to reading material proved "He is reading, studying, learning how to do it. Arming himself. Waiting for the right opportunity. He is ready to go, He's studied it." [Id. at 90.14]. Premeditation at the scene was shown through a pantomimed and factually inaccurate depiction of the time required to draw a weapon and fire it [Id. at 90.18].

The Court of Appeals has ruled that "to allow a finding of premeditation only because the act takes an appreciable amount of time obliterates the distinction between first and second murder. Having the opportunity to deliberate is not evidence the defendant did deliberate, which is necessary for a finding of premeditation. Otherwise, any form of killing which took more than a moment could result in a finding of premeditation, without some additional evidence showing reflection.
[*State v. Bingham*, 105 Wn.2d 820, 719 P.2d 109 (1986)].

The State used only the passage of time and the opportunity to premeditate to conclude "That is premeditated murder [Id. at 91.1]. The State misstated the law and confused the jurors. This was prosecutorial error.

7.15.2 Premeditation Negates Self-Defense

The State instructed the jury "you know that he did not act in self-defense because of the evidence he acted with premeditation. Both at the scene and before" [RP:12/9:122.12). Following up with "premeditation disproves self-defense" [Id. at 122.16].

The precedence is "Since proof of self-defense negates the element of intent in first-degree murder, requiring an accused to prove self-defense places on him or her the burden of proving absence of an unlawful criminal intent. ... Accordingly, we hold that in a first degree murder prosecution, the State must bear the burden of proving absence of self-defense beyond a reasonable doubt"
[*State v. McCullum*, 98 Wn.2d 484, 496, 656 P.2d 1064 (1983)].

The justifiable homicide jury instruction [WPIC 16.02] overrules premeditated murder in the first degree [WPIC 26.02]. Self-defense could be said to disprove premeditated murder, but not the reverse. Because there was no bridging language in the to-convict instruction [Instruction #10] such as "and the acts were not justified as defined elsewhere in these instructions, "the State's comments were more damaging.

The State wrongly asserted that their speculation of premeditation disproved self-defense beyond a reasonable doubt. Bowman's claim of self-defense specifically addressed intent not premeditation. Intent and premeditation are not synonymous. They are separate and distinct elements of the crime of murder in the first degree. [See RCW 9A.32.030(1)(a) and 9A.32.050(1)(a)]. Premeditation and intent are different issues that do not disprove each other.

In an alternative argument, first degree murder requires premeditation and criminal intent. It is possible for someone to premeditate but act with lawful intent. Because premeditation can occur with both criminal and lawful intent, premeditation cannot prove or disprove intent. The State's assertion that premeditation disproves a lawful self-defense intent, was wrong and misleading. This was prosecutorial error.

7.15.3 There Was No Self-Defense

The State described self-defense as "[W]hat a reasonably prudent person would use under the same circumstances as they appeared to him."[RP:12/9:84.21]. They then diminished Bowman's claim of self-defense as "A reasonably prudent person shooting six rounds from a semiautomatic weapon because someone threw a water bottle at him, if you believe the defendant's story." [Id. at 84.22]. This misrepresented Bowman's testimony and improperly stepped into the province of representing Bowman's defense.

The State suggested that "because his own testimony is unsupported by any witness that was there" [Id. at 121.21] that the jury could not acquit him. Besides this being factually wrong and misleading, it was misconduct for the State to argue that in order to believe Bowman's testimony, the jury must find the State's witnesses were wrong. [See *State v. Flaming*, 83 Wn.App. 209, 213, 921 P.2d 1076 (1996)]. The jury would not have to find the witnesses mistaken or lying in order to acquit; instead, they are required to acquit unless they have an abiding conviction in the truth of the State's charges beyond a reasonable doubt. [See supra].

The State asserted "The story is bunk, and it doesn't even meet self-defense, if it isn't." [Id. at 85.1]. The State reiterated later "His own story doesn't support what you are tasked with finding that would constitute self-defense." [Id. at 121.18]. Bowman testified extensively about the events that led to his belief that his life was in imminent danger. Specifically, "I was scared. ...at that point I felt it was, if I didn't do something right then, I was going to die." [RP:12/4:66.22].

The State ignored the evidence and instructed the jury "The law says you must have a reasonable belief that you are going to be killed or grievously injured. And that belief, even under the defendant's fantastic version of events, was not there." [Id. at 122.10].

The State wrongly instructed the jury that self-defense was not even an option. If the jurors believed the State's understanding of the law, Bowman could not be acquitted. Misstating the basis on which a jury can acquit insidiously shifts the requirement that the State prove the defendant's guilt beyond a reasonable doubt. [*State v. Fleming*, supra, at 213] This was prosecutorial error.

8.0 Missing Experts

8.1 Computer Forensics Expert

This case required an extensive analysis of computer forensic data. The State had multiple experts working on the case for close to two years and one who provided several days of testimony.

Mr. Bowman's Defense failed to call upon computer forensic experts for investigation or during trial. The issues were technically complex and had little legal precedence. When Mr. Bowman was on the stand, the State prevented him from making comments using the forensic reports [RP:12/9:15.1].

Mr. Bowman was denied the opportunity to provide expert testimony on critical issues of foundation and relevance. Without an expert Mr. Bowman was unable to counter the State's expert testimony and evidence regarding filesystem MetaData, permissions, and file system folder structure. The whole issue of the "peephole" could have also been resolved by having an expert simply locate the relevant pictures that were on Mr. Bowman's computer.

The failure to utilize a computer forensics expert was Ineffective Assistance of Counsel.

8.2 Peritraumatic Dissociation Expert

Mr. Bowman suffered a traumatic experience when he defended himself on August 31, 2012. His testimony reflected symptoms of peritraumatic dissociation. Examples of this being derealization and/or depersonalization (his out-of-body experience), emotional numbing, reduction in awareness of one's surroundings, amnesia, and an inability to bring usually accessible information into conscious awareness [In Appendix See *Recent developments in the theory of dissociation*, World Psychiatry, 5:2 June 2006; *The expectancy of threat and peritraumatic dissociation*, European Journal of Psychotraumatology 2013, 4:21426; *Dissociation and Post Traumatic Stress Disorder (PTSD)*, PTSD Research Quarterly, Volume 17, Number 1, Winter 2006].

The jury was not expected to have personal traumatic experiences which they could have used to evaluate the integrity of the evidence. Mr. Bowman was prevented from providing expert testimony to allow the jurors to understand the unique psychological effects of traumatic situations. The State called Mr. Bowman's trauma-induced dissociation a "fantasy" [RP:12/4:112.7] and his actions as not being those of "a reasonably prudent person" [RP:12/9:84.21]. The State repeatedly attacked Mr. Bowman's memory, emotions, and actions. Testimony from an

expert in the field of Peritraumatic Dissociation would have been able to provide facts to counter the State's accusations.

Suppose there was a situation where, in order to prove you were innocent, you had to physically run away from the situation. Now suppose you are innocent and you are a quadriplegic. It would be inappropriate to argue that a quadriplegic person should run if they are innocent. The logically similar issue applies here but with a medical condition that is invisible and less understood.

Mr. Bowman's memory and credibility were pivotal issues in this case. In the face of the State's repeated attacks of Bowman's memory, it was Ineffective Assistance of Counsel for Bowman's Defense to not provide testimony from an expert in the field of Peritraumatic Dissociation.

9.0 Conclusion

On August 31, 2012 at 7:25 PM Mr. Bowman acted in self-defense based on his fear for his life. After a fair and thorough evaluation of the evidence, Mr. Bowman's conviction should be reversed and the case dismissed. It is objectively impossible to have sufficient evidence to prove anything but self-defense in this case.

Mr. Bowman was not only the victim of a violent attack during the incident in question, but he was also the victim of the State's elaborate KillCraft prosecution. The cumulative errors of this trial prove that Bowman was denied his constitutional guarantee of due process. In the alternative of complete dismissal, Bowman's convictions should be reversed and the case remanded for a new and fair trial.

10.0 List of Appendices

3.1a The Books – The Death Dealers Manual VI
3.1b The Books – Murder Inc VII
3.5 Death Death Death VIII
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3.3.15 Garrotte X
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5.0 Misrepresentations, Misquotations, and Fabrications XIII
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LIAR XXX
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Temple XXXI

2.2 Useless to Object

The State was allowed unfair discretion in their ability to form implicit testimony as questions. The Defense attempted to object to the issue several times [see Append1x ????} but was overruled

[RP:12/8:75.4]

Q. Okay. Well, Death Dealer's Manual deals with killing people. It deals with some of the psychology of killing people?

MR. BROWNE: This is testimony. I object to both.

MS. RICHARDSON: Excuse me. This is cross.

MR. BROWNE: Excuse me, your Honor.

THE COURT: I'm going to allow the question as long as it's a question.

[RP:12/8:89.8]

Q. So the fact that this tracks exactly what happened is just another unfortunate coincidence --

MR. BROWNE: Objection.

THE COURT: Overruled.

[RP:12/8:112.16]

Q. Yeah, that won't work, will it? If the water bottle is flying by at 55?

A. That's a different time.

MR. BROWNE: That's a misstatement. I object.

THE COURT: Actually, it was formed as a question.

(RP:12/9:31 .20)

Q. Okay. So the Garrotte you said you don't have any idea why a Garrotte has anything do with this case. Well, in fact, it has to do with this case because it's talked about in the Death Dealer's Manual and Murder Inc and you are denying ever having used or ever looked at either of those, correct?

MR. BROWNE: That's not a proper question. It's testimony.

THE COURT: Just a minute. Overruled.

(RP:12/9:36.19]

MR. BROWNE: Excuse me. Counsel was testifying.

MS. RICHARDSON: Counsel is allowed to testify on cross. So...

THE COURT: Let's not have any arguments between counsel. It's a leading question. The objection is overruled.

[RP:12/8:126.5]

[MS. RICHARDSON] Okay. If your life is in danger, and you're driving on the shoulder, you could hit 120 miles an hour, right?

[BOWMAN] I think that would be physically impossible on that route.

And then ignores the answer:

[MS. RICHARDSON] Okay. So you turn on 15th, but there is no relief because you see that Subaru charge around the corner, the way you put it, on to 15th following you still, right?

12/8

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Line 7 to 19

Well, if one person kills another person, and that person is a stranger, it's harder for the police to find a motive, would you agree?

A. I don't think I -- I don't think I would agree to that, and I don't think I should speculate on what the police would think.

Q. Well, would you'd agree probably that motive is always an issue in killings? I mean, you have done enough reading to know that?

A. I think that most people do things for a reason.

Q. Okay. The Death Dealer's Manual also says that 9mm like you used, used close in are an effective means of killing someone. Were you aware of that?

[RP:12/4:128.9]

[MS. RICHARDSON] So what has happened today is that you testified that you remember everything in great detail --

[BOWMAN] Yeah.

[MS. RICHARDSON] -- except the part that constitutes murder in the first degree; is that correct ?

[MR. BROWNE] Your Honor, there needs to be a foundation as to what that even is.

(What IS murder in the first degree ? JHB was right, you did not know what she was referring to... how can you answer a question that you don't know the criteria ?)

[THE COURT] Overruled.

[MS. RICHARDSON] Is that correct, Mr. Bowman ?

[BOWMAN] I don't really understand the question.

[MS. RICHARDSON] Well, you remember everything that happened before the shots that obliterated Yancy Noll's head and you remember everything that happened after the shots except for the escape. You don't remember the shots that comprise the crime; is that correct ?

[BOWMAN] I still feel like it's --- there's a lot of assumptions in that question.

(The shots did not comprise the crime if you are presumed innocent until proven guilty. The shots were part of your self defense. .... MS. R misstated the issue in front of the jury)

A. I still feel like it's -- there's a lot of

2 assumptions in that question.

3 Q. Okay. Let's talk about it.

4 A. I don't understand.

5 Q. Tell me what I'm assuming that I shouldn't

6 be. You're obviously smarter than me, so --

7 MR. BROWNE: Your Honor.

8 MS. RICHARDSON: -- go ahead.

9 THE COURT: Sustained.

10 MS. RICHARDSON: Go ahead.

11 THE WITNESS: What would you like me to

12 tell you?

13 BY MS. RICHARDSON:

14 Q. What are you taking as assumptions that I'm

15 making?

16 A. Maybe I don't -- I didn't understand the
17 question properly.
18 Q. Okay. I'll ask it for a third time.
19 MR. BROWNE: Your Honor, I would -- it
20 was a compound question.
21 MS. RICHARDSON: Okay. I'll -- I'll ask
22 it as simply as I can.
23 BY MS. RICHARDSON:
24 Q. You remember what happened in great detail up
25 to the point of firing the gun, correct?
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1 A. I remember what I stated that I remembered up
2 to that point.
3 Q. The point of firing the gun.
4 A. Everything that I've said up till -- like,
5 everything that I have said has been true. So if what
6 you're asking is that I would call it great detail or
7 not great detail, I -- I -- I can't say -- speak to
8 that.
9 Q. Okay. I'll take the word "great" off detail.
10 A. Okay.
11 Q. You remember in detail everything that
12 happened up to the point of pulling the trigger on the
13 gun -- actually getting the gun out of the bag I think
14 you said, right?
15 A. I can't say that I know everything that
16 happened.
17 Q. Okay. Do you remember -- what you testified
18 to is what led up to this, right?
19 A. What I testified to, I --
20 Q. The weaving in and out --
21 A. -- agree with.
22 Q. The weaving in and out on the freeway,
23 Mr. Noll foaming at the mouth, screaming epithets,
24 waiving his hands, making a gun pointing motion.
25 A. Yes.
130
1 Q. You remember all that.
2 A. Those -- those are all true, yes.
3 Q. Okay. You do not remember pulling the

trigger and killing him.
A. That is -- that is true.
Q. You do remember after you pulled the trigger and killed him what happened.
A. That was all very blurry still.
Q. Okay. Well, you didn't make that clear in your testimony. So at what part does it become --
MR. BROWNE: Your Honor.
BY MS. RICHARDSON:
Q. -- not clear?
MR. BROWNE: Your Honor, it's improper to say something that "you didn't make that clear in your testimony." It's not a question.
MS. RICHARDSON: He said it's blurry.
THE COURT: Overruled.
BY MS. RICHARDSON:
Q. I haven't heard that word before, Mr. Bowman. So what do you mean by "blurry"?
A. I mean, it was -- I would describe it as, like, tunnel vision, and -- I mean, it -- it all seems just completely surreal. Like I -- I wouldn't describe it as, like, feeling myself here now. It -- it almost

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seemed like -- it just seemed confusing in that way.
Q. I understand that. But you remember driving home.
A. I mean, this is all -- I -- I somehow got home and I was driving.
Q. Okay. You remember showering when you got home.

"Death Dealer's Manual" was said 20 times in front of the Jury

[RP:11/5:58.15] "did you find a PDF called Death Dealer's Manual?"

[RP:11/5:86.14] "And also, this Death Dealer's Manual"

[RP:11/5:93.24] "It says: Death Dealer's Manual, Seagate; correct?"

[RP:12/1:215.14] [Exhibit] "250, which is formerly the Death Dealer's Manual now called The Manual, is it affected by what's described in [Exhibit] 252?"

[RP:12/8:49.4] "So what would the Death Dealer's Manual have come from that you downloaded as part of something you were interested in?"

[RP:12/8:57.9] "Okay. And is that what Murder Inc and the Death Dealer's Manual were under or were they under forensics?"

[RP:12/8:73.25] "It's actually called the Death Dealer's Manual"

[RP:12/8:75.4] "Okay. Well, Death Dealer's Manual deals with killing people."

[RP:12/8:75.18] "The Death Dealer's Manual offers advice on how to kill people, correct?"

[RP:12/8:80.24] "the Death Dealer's Manual says, the Garrotte needs to be a manufactured weapon"

[RP:12/8:81.14] "So I guess it's just another bad coincidence that the Death Dealer's Manual talked about what you drew in your own journal?"

[RP:12/8:86.2] "I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual."

[RP:12/8:86.14] "So in the Death Dealer's Manual the author talks about"

[RP:12/8:87.17] "The Death Dealer's Manual also says that 9mm like you used"

[RP:12/9:31.22] "it's talked about in the Death Dealer's Manual and Murder Inc"

[RP:12/9:32.6] "the Garrotte is mentioned in Murder Inc, and the Death Dealer's Manual, right? You're claiming you never read those?"

[RP:12/9:79.8] "In the Death Dealer's Manual, more coincidences."

[RP:12/9:86.16] "use the 9mm that was suggested in the Death Dealer's Manual"

[RP:12/9:86.20] "Just like the Death Dealer's Manual instructs."

[RP:12/9:89.7] "The Death Dealer's Manual says, this adventure is a valid motivation for the killer."

"Murder Inc" was said 14 times in front of the Jury

5-Nov-2014 "Murder Inc" counted 2 times:

[RP:11/5:58.6] On the Seagate drive on the reference library, did you find a PDF called Murder Inc? Yes.

[RP:11/5:85.21] the Murder Incorporated by Jack the Rippa, Seagate Mischief folder -- right?

1-Dec-2014 "Murder Inc" counted 1 time:

[RP:12/1:215.7] which has been redacted to be called The Book, which is formally Murder Inc,

8-Dec-2014 The word "Murder Inc" counted 9 times:

[RP:12/8:49.11] How about Murder Inc by Jack the Rippa.

[RP:12/8:57.9] And is that what Murder Inc and the Death Dealer's Manual were under or were they under forensics?

[RP:12/8:71.10] It's actually called Murder Inc, the book, correct?

[RP:12/8:76.16] there's that word Garrotte that we saw in Murder Inc, correct?

[RP:12/8:86.2] I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual.

[RP:12/8:87.21] So Murder Inc, again, talks about the need for total surprise.

[RP:12/8:88.13] The Murder Inc book also says a handgun is easy to carry and use and dispose of.

[RP:12/8:88.23] The Murder Inc book also says if there is identification of the killer it will be by accident like being caught on camera.

[RP:12/8:91.7] Murder Inc also says to throw pieces of evidence away at different times? Again, I haven't read that, but if that's what you're saying.

9-Dec-2014 The word "Murder Inc" counted 2 times:

[RP:12/9:31.20] Well, in fact, it has to do with this case because it's talked about in the Death Dealer's Manual and Murder Inc

[RP:12/9:32.6] They were both mentioned in murder -- the Garrotte is mentioned in Murder Inc, and the Death Dealer's Manual, right?

3.5 Death Death Death

Asked Gabe about Bowman obsession with killing

Asked Bowman about obsession with killing and death

Said about the roll bar: That is about Life and Death

Will look for more.

[RP:12/8:22.25] through [RP:12/8:23.11]

[MS. RICHARDSON] And you actually built a roll bar for a car, right?
[BOWMAN] That's correct.
[MS. RICHARDSON] And that's what protects the car if something should happen, and you get in an accident and roll over it
protects you?
[BOWMAN] Yes, it's mandatory for all those race events.
[MS. RICHARDSON] And you did that by learning how to weld to the point that you felt knowledgeable enough that you could put a
safe roll bar on a car?
[BOWMAN] That is correct.
[MS. RICHARDSON] Okay. And that's a life or death safety issue, right?
[BOWMAN] Yes.

[RP:12/8:64.25] through [RP:12/8:65.9]

Q. So the reference library, how many topic areas would you say that it had?
A. Many screen fulls.
Q. Okay. And a lot of them have to do with killing; is that correct?
A. No.
Q. No?
A. No.
Q. Death?
A. No.

3.7 Jack the Rippa

[RP:11/10:42:11] [THE COURT] Murder Inc is not highlighted. Does that have any significance?

[MS. MCCOY] The State did not intend to offer the name of it because it's the content of it that matters, and so we'll simply be preparing a document that will show that it is -- I mean we're not going to type it up onto a separate piece of paper. We'll show blank pages except for the portions that the Court has allowed in, and we won't offer the title of it being Murder Inc.

[THE COURT] Okay, I think that answers the question. [MR. BROWNE] Thank you.

[THE COURT] And I assume the same thing applies to the Death Dealer's Manual.

[MS. MCCOY] That's correct.

During cross-examination: Murder Inc

[RP:12/8:49.11] [MS. RICHARDSON] In the Presence of the Jury "How about Murder Inc **by Jack the Rippa**. How would that have gotten in there? "

[RP:12-8/50:9] [MR. BROWNE] Outside of the Jury " I do not believe you allowed them to get in by Jack the, as the counsel said, Rippa."

[THE COURT] That is correct.

[MR. BROWNE] So I would object to that, and ask the jury to disregard that.

[MS. RICHARDSON] That's the title of the book.

[THE COURT] What's that?

[MS. RICHARDSON] That's the title of the book. We are not talking about the warning on the top page, but that's the title of the book.

[THE COURT] My intention, and I realize I was not as clear about this as I might have been, was simply to include Murder Inc.

[MS. RICHARDSON] Okay.

3.3.15 Garrotte

Webster's New World College Dictionary 5th Ed: gar•rote [Sp, orig., a stick used to wind a cord] 1a) a method of execution, formerly in Spain, with an iron collar tightened about the neck by a screw b) the iron collar so used. 2a) a cord, thong, or length of wire for strangling a robbery victim, enemy sentry, etc. in a surprise attack 2b) a disabling by strangling in this way; strangulation.

Merriam-Webster:*garrote* *1a* : a method of execution by strangulation *b*: the apparatus used. *2*: an implement (as a wire with a handle at each end) for strangulation

Dictionary.com *garrote* http://www.dictionary.com/browse/garrote 1. a method of capital punishment of Spanish origin in which an iron collar is tightened around a condemned person's neck until death occurs by strangulation or by injury to the spinal column at the base of the brain. 2. the collar like instrument used for this method of execution. 3. strangulation or throttling, especially in the course of a robbery. 4. an instrument, usually a cord or wire with handles attached at the ends, used for strangling a victim.

GradeSpelling.com
Free SAT Word Lists

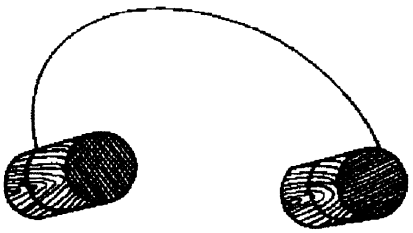
Lesson 11	Lesson 12	Lesson 13	Lesson 14	Lesson 15
1. distraught	1. monotony	1. pedestrian	1. decimal	1. original
2. propeller	2. conversion	2. collector	2. influence	2. linear
3. vacate	3. legitimate	3. repellent	3. fervent	3. ambush
4. incidentally	4. machinist	4. surveyor	4. staid	4. facsimile
5. revere	5. elicit	5. miscount	5. agrarian	5. foremost
6. treachery	6. dissection	6. exclamation	6. dehydrate	6. pennant
7. respondent	7. susceptibility	7. terminate	7. immaculate	7. coddle
8. folio	8. polemics	8. inopportune	8. physiognomy	8. concerto
9. recurrent	9. litigate	9. anemia	9. secrecy	9. suffrage
10. counterbalance	10. autonomy	10. flippant	10. gyrate	10. vitality
11. disown	11. deleterious	11. appraise	11. dissension	11. diverse
12. tipsy	12. abeyance	12. misdemeanor	12. accompaniment	12. medallion
13. federate	13. plenipotentiary	13. extort	13. insufficiency	13. chiffon
14. genealogist	14. finite	14. acerbity	14. overrun	14. convolution
15. seclusion	15. fabricate	15. protrusion	15. crusade	15. vendition
16. riddance	16. impropriety	16. taxidermy	16. contumacious	16. carouse
17. essence	17. garrote	17. terminus	17. seethe	17. privateer
18. extremity	18. inaccessible	18. momentous	18. contingency	18. beneficiary
19. irrefrangible	19. cipher	19. transact		19. transcendent
20. absorption	20. indivertible	20. Arthurian		20. thrall
				21. sebaceous

Lesson 16	Lesson 17	Lesson 18	Lesson 19	Lesson 20
1. readily	1. angelic	1. peddle	1. autobiography	1. conceit
2. missal	2. wintry	2. rapid	2. consonant	2. imminent
3. consecrate	3. loam	3. contraband	3. penchant	3. disinterested
4. aroma	4. vertex	4. pension	4. relinquish	4. clearance
5. singe	5. perseverance	5. insignificant	5. heinous	5. subtrahend
6. kimono	6. abominate	6. ecstatic	6. resonate	6. prolong
7. unavoidable	7. promoter	7. pavilion	7. dissent	7. animadversion
8. extradite	8. atone	8. enhance	8. conferee	8. formidable
9. evince	9. antemundane	9. enormity	9. Milky Way	9. chastise
10. ante	10. efflorescence	10. paramount	10. transcript	10. symphonic
11. liquefacient	11. suffuse	11. pedant	11. grotesque	11. lexicon
12. gratuitous	12. venerate	12. officious	12. disavow	12. neuter
13. capillary	13. prima	13. cessation	13. photometry	13. rejuvenescence
14. divert	14. impiety	14. impalpable	14. legacy	14. persuadable
15. brigand	15. erudite	15. diplomacy	15. introductory	15. coincident
16. interdict	16. irritant	16. inborn	16. junta	16. paroxysm
17. sibilant	17. gaiety	17. fallible	17. convivial	17. invulnerable
18. vegetative	18. gossamer	18. ponderous	18. nettle	18. prescience
19. germane	19. vernacular	19. reproduction	19. arboreal	19. heresy
20. stratagem	20. libel	20. abscond	20. vapid	20. lithesome

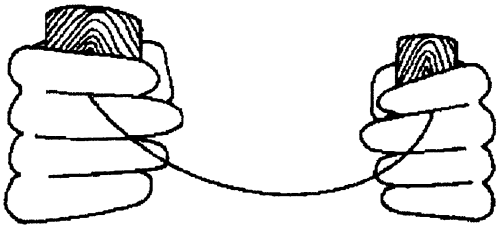
Lesson 21	Lesson 22	Lesson 23	Lesson 24	Lesson 25
1. accuracy	1. intelligence	1. reprobate	1. unique	1. variable
2. soprano	2. sympathetic	2. precaution	2. petrify	2. kiln
3. bombard	3. excursion	3. masterpiece	3. mythology	3. covenant
4. rebuild	4. facial	4. wee	4. atrocious	4. brine
5. superintendent	5. satyr	5. fortitude	5. usury	5. rapine
6. conscientious	6. gnash	6. disinfectant	6. depositor	6. keepsake

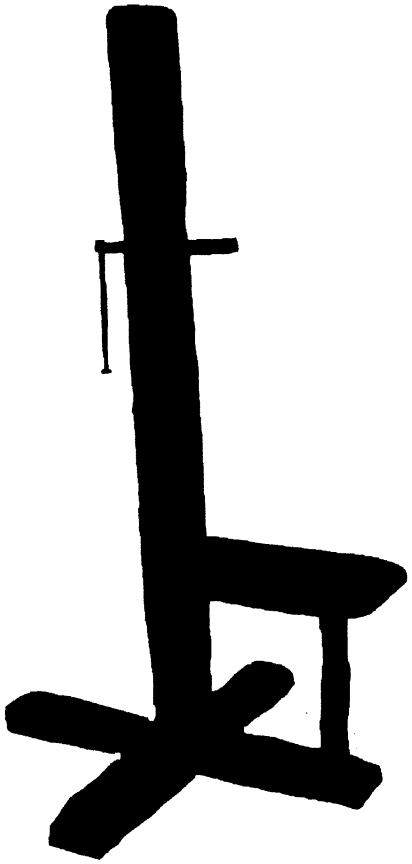
Word Lists By: www.BigIQkids.com

3.3.15 Comparing Garrottes

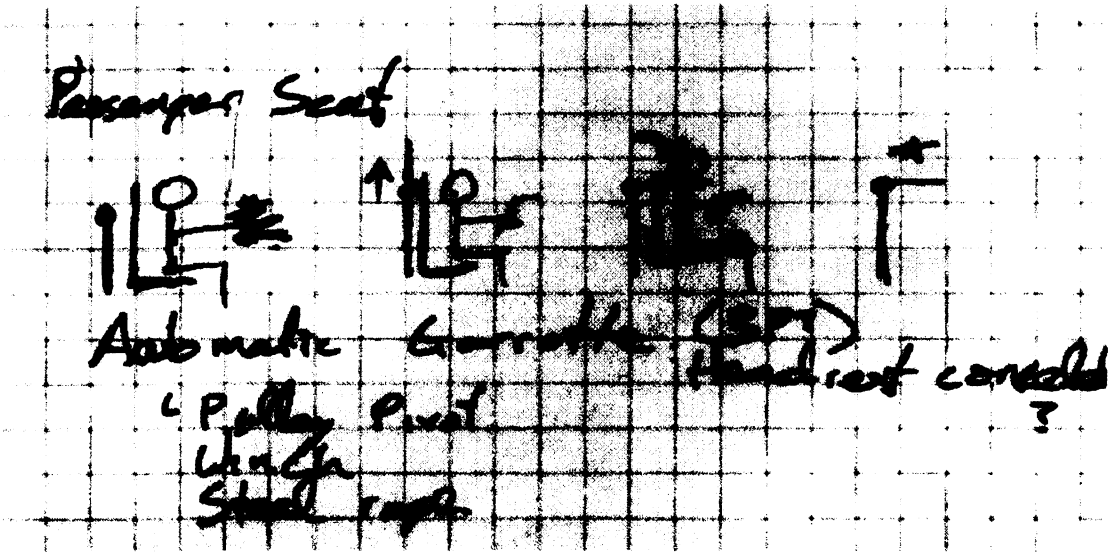


This is a sample garrote, prepared by and for a pro. Two small, solid wooden dowels and a three foot length of medium thickness piano wire are required for construction. The wire is run through a small hole that has been drilled in each dowel, and is then permanently affixed. Dowels may be taped.





The graphic above to the left was taken from page 65 of The Death Dealer's Manual Exhibits 250 & 320. The graphic to above right is from https://en.wikipedia.org/wiki/Garrote. Below is the "Automatic Garrotte" from Mr. Bowman's work journal Exhibit 313.



5.0 Misrepresentations, Misquotations, and Fabrications

5.1 Unfortunate Coincidence

[RP:12/8:70.20] [MS. RICHARDSON] So it's just a bad **coincidence** that this book advises you to do just what you did?

[BOWMAN] I think that correlation does not mean causation.

[RP:12/8:71.3] [MS. RICHARDSON] So that was just a **coincidence**?

[BOWMAN] I believe that you found that with a coincidence, yes.

[MS. RICHARDSON] **An unfortunate one for you.**

[RP:12/8:81.14] [MS. RICHARDSON] So I guess it's just another bad **coincidence** that the Death Dealer's Manuel talked about what you drew in your own journal?

[BOWMAN] I don't believe it actually speaks to what is drawn in the journal.

[RP:12/8:86:2] [MS. RICHARDSON] I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual. And see -- I think yesterday when you testified you said that you were surprised that the NRA video mirrored this event so closely when you saw it, right?

[BOWMAN] Yes. [MS. RICHARDSON] Okay. So that was another **unfortunate coincidence** for you?

[BOWMAN] I don't know if it was -- I wouldn't speak to it being unfortunate, but it seemed like that was -- that showed very similarly what happened.

[RP:12/8:89.8] [MS. RICHARDSON] So the fact that this tracks exactly what happened is just another **unfortunate coincidence** --

[MR. BROWNE]: Objection. [THE COURT] Overruled.

[MS. RICHARDSON] Another **unfortunate coincidence**?

[RP:12/9:27.8] [MS. RICHARDSON] Okay. Now, so you have testified again that since you weren't familiar with any of those things we are stuck again with these, **what you called yesterday, unfortunate coincidences.** That so much of what happened to Yancy Noll tracks what's in those books, correct?

[BOWMAN]. I have never said that. Those are your words.

[MS. RICHARDSON] **I believe you used the word unfortunate,** Mr. Bowman. I would never use that word to describe what happened. What I'm asking --

[MR. BROWNE] Your Honor, this is not proper. [THE COURT] Sustained.

[RP:12/8:30.5] [STATE] But why wash the outside at all?

[BOWMAN] Because there was a lot of bugs on the trip down.

[STATE] Okay. So it had nothing to do with the fact that you had shot a man to death?

[BOWMAN] Why would that have anything to do with it?

[RP:12/8:45.24] [STATE] You're also interested in how to kill people, right?

[BOWMAN] I don't believe so, no.

[STATE] Well, especially haw to kill people in cars, right?

[BOWMAN] I would not say that either.

[RP:12/8:64.25] [STATE] So the reference library, how many topic areas would you say that it had?

[BOWMAN] Many screen fulls.

[STATE] Okay. And a lot of them have to do with killing; is that correct?

[BOWMAN] No. [STATE] No? [BOWMAN] No. [STATE] Death? [BOWMAN] No.

[RP:12/8:67.14] [STATE] The bottom line is you had a lot of documents in your folder that deal with how police solve crimes, right?

[BOWMAN] I don't think that's the case.

[RP:12/8:75.18] [STATE] The Death Dealer's Manual offers advice on how to kill people, correct?

[BOWMAN] I have not read it. I cannot speak to it.

[STATE] It offers advice on the psychology of killing, correct?

[BOWMAN] I have not read it. I cannot speak to it.

[RP:12/8:82.6] [STATE] How about the Glock that you used to kill Yancy Noll? How many bullets did that hold?

[BOWMAN] I don't remember.

[RP:12/8:86.14] [STATE] Okay. So in the Death Dealer's Manual the author talks about -- must be obvious that when at all possible the element of total surprise should accompany. The surprise factor will eliminate any chance of the targets becoming alerted, and aided by his adrenaline flow. Are you telling us that you have not read that either?

[BOWMAN] That's correct.

[STATE] By using the element of total surprise whenever possible a lethal attack can be rather quickly executed against the following vital areas of the target's body. You have not read that either?

[BOWMAN] Anything in that book I have not read.

[STATE] Okay. So when it says the shooter should be someone unknown to the target, this is imperative, because the police look for motive, means, and character. And basically if there's a stranger there's no motive. Does that make sense to you?

[BOWMAN] I'm not clear what the actual question was.

[STATE] Well, if one person kills another person, and that person is a stranger, it's harder for the police to find a motive, would you agree?

[BOWMAN] I don't think I -- I don't think I would agree to that, and I don't think I should speculate on what the police would think.

[STATE] Well, would you'd agree probably that motive is always an issue in killings? I mean, you have done enough reading to know that?

[BOWMAN] I think that most people do things for a reason.

[STATE] Okay. The Death Dealer's Manual also says that 9mm like you used, used close in are an effective means of killing someone. Were you aware of that?

[BOWMAN] I have not read those books.

[STATE] So Murder, Inc., again, talks about the need for total surprise. And it says that the temple of the head is great target for small arms fire; would you agree with that?

[BOWMAN] It's -- I don't think I would -- if I was to write something like that that would not be the first thing that came to my head.

[STATE] The temple?

[BOWMAN] Yeah.

[STATE] Isn't a good place to kill someone?

[BOWMAN] Is that what you are thinking it would be?

[STATE] Well, that's what I'm asking you.

[BOWMAN] I haven't read those books, and I don't think that that would be the -- that's not what I would believe.

[STATE] What do you think would be the best way to kill someone, other than a Garrotte?

[BOWMAN] I haven't really put much thought into that.

[STATE] Okay. The Murder, Inc. book also says a handgun is easy to carry and use and dispose of. You can dismantle it in 15 minutes; is that accurate?

[BOWMAN] I would think that you could probably – somebody familiar with a handgun could probably dismantle it sooner, and take it apart. You know, cleaning is usually done in a short time.

[STATE] Okay. Well, you dismantled this gun. How long did it take you?

[BOWMAN] I really don't remember.

[STATE] Okay. The Murder, Inc. book also says if there is identification of the killer it will be by accident like being caught on camera. Use cash. Don't leave a paper trail. And don't use a check or credit when in transit. Were you aware of that that the book says that?

[BOWMAN] I have not read either of those books. You could just as well be reading lines from any of the hundred of thousand other books that are on the computer and --

[STATE] Okay. [BOWMAN] -- I wouldn't know.

[STATE] So the fact that this tracks exactly what happened is just another unfortunate coincidence

[RP:12/8:108.17] [STATE] Because DNA and fingerprints are notoriously difficult to get off the grips of guns, right?

[BOWMAN) I have never heard that.

[RP:12/8:144.10] [STATE] And how do you feel about the fact that you fired four bullets into his brain, and obliterated his mind, and his skull, and his being? How do you feel about that?

[BOWMAN] I think that's - it's tragic.

[RP:12/8:145.2] [STATE] You know, it's interesting, Mr. Bowman, in all your testimony over the course of the two days you never once talked about the fact that someone lost their life except the effect that it had on you. Were you aware of that?

[BOWMAN] I'm not sure what the question is.

[STATE] Okay. It doesn't matter. Thank you

5.7 Flying Bottles

[RP:12/4:48.5] [MR. BROWNE] -- how long after that were you hit with something?

[BOWMAN] Fairly shortly afterwards. [MR. BROWNE] Okay. Okay. So how long did you and Mr. Noll remain side by side? [on I-5]

[BOWMAN] Not very long. I mean, it was kind of – it was that -- you know, the inching back and forth while trying to get ahead type of traffic [on I-5].

[RP:12/8:112.8] [STATE] Okay. And how fast do you think you were going at that point?

[BOWMAN] Just under the speed limit. [STATE] So 55'ish?

[BOWMAN] Yeah. 40, 50.

[STATE] Okay. And the water bottle comes flying in your car?

[BOWMAN] No. At that point that was later. So we were going significantly slower when the water bottle happened.

[STATE] Yeah, that won't work, will it? If the water bottle is flying by at 55?

[BOWMAN] That's a different time.

[MR. BROWNE] That's a misstatement. I object.

[THE COURT] Actually, it was formed as a question.

[STATE] Is that correct?

[BOWMAN] What was the question?

[STATE] A water bottle doesn't fly very well through the air going 55 miles an hour?

[BOWMAN] Well, we weren't going -- I mean, so the 45 to 50 was when I had accidentally cut him off. And then later when he threw the water bottle we were going much slower.

[STATE] Okay. And how fast do you think you were going? [BOWMAN] I -- 30.

[RP:12/9:73.14] [THE STATE] Remember no one saw a disturbance. Heard a disturbance. Heard any words being exchanged. Nobody saw flying wine bottles. They heard nothing unusual until they heard the pop, pop, pop of the gunshots that killed Yancy Noll.

[RP:12/9:68.24] [THE STATE] phantom wine bottle.

[RP:12/9:70.23] [THE STATE] And if you believe him about these bottles that came hurling into his car, he dumped the only evidence that could help him corroborate his story.

[RP:12/9:73.23] [THE STATE] And of course heaving a wine bottle into the defendant's car. Nice touch. Wine steward. That bottle would have had to be tossed in a perfect arch.

[RP:12/9:74.4] [THE STATE] So that full bottle, which has some weight to it, would have to be tossed by Yancy's left hand presumably, right? Coming out of the driver's side in a perfect arch up and over the window that's been rolled up, and have it land on the back of the defendant's head perfectly all without anyone seeing what happened. That's one magic wine bottle with wings.

[RP:12/9:83.2] [THE STATE] The water bottle that supposedly came from Yancy's Subaru, and landed squarely on the dashboard. This is another magic flying bottle. And this is while they are driving on the freeway weaving in and out. And while Yancy is screaming about fancy cars, and spitting mad, and red in the face, it's a pretty good flight through the wind resistance, that bottle. And Yancy's aim, again, having to reach out the driver's window with his left hand, keep his hand on the wheel on the freeway, aim it, account for the speed of the cars, toss it in the air, over the freeway pavement, several feet away into a moving car, and it lands right on the dashboard. Wow.

5.8 Water Level

[RP:12/4SUP:12.5] [MR. BROWNE] The next things that happens is Mr. Bowman remembers he hears this noise which is, he'll describe to you, as a (made noise) and a water bottle comes flying into his car from Mr. Noll's car and hits Mr. Bowman's dashboard and hits him after it 10 ricochets off the dashboard.

[RP:12/4SUP:16.8] [MR. BROWNE] After he puts up his windows, he hearing another noise, which he will describe as a louder thwop, and he gets hit in the head with a wine bottle. Half -- we -- there's liquid in the bottle. Dinh does not remember right now. He later got rid of it. We'll talk about that. But there was liquid in it, and he gets hit on -- on his head right about here (pointing). He doesn't know what hit him, but he knows whatever hit him really hurt him.

[RP:12/4SUP:25.19] [MR. BROWNE] When they come back from Red Robin, it's about 11 o'clock I believe, and he looks through his BMW and sees glass everywhere, glass for the window. He sees a water bottle that's half full, is his memory, three-quarters full, and he sees the wine bottle.

[RP:12/4:49.1] [BOWMAN] No. I -- I -- the -- I might have kind of mouthed "Sorry," but that would be the -- that would be extent of it.

[MR. BROWNE] Okay. So what happened -- how do you and Mr. Noll separate from being parallel driving next to each other?[on I-5] How does that happen?

[BOWMAN] He was -- so we had that exchange, and then traffic on my lane started picking up, thankfully, and I started to be able to move a little bit further ahead. And that was when there was the (made sound) in -- in the car.

[MR. BROWNE] And do you know where Mr. Noll's car was when that -- I assume this is the water bottle?

[BOWMAN] This is the water bottle, yes.

[MR. BROWNE] Did you know what it was when you first saw it or heard it?

[BOWMAN] Not really.

[MR. BROWNE] And what did the water bottle hit?

[BOWMAN] The front -- like, the console dash on the -- on my car.

[MR. BROWNE] Was there water in it?

[BOWMAN] There was some water in it, yes.

Stopped on 15th Ave NE [RP:12/4:62.23] [MR. BROWNE] -- well, first of all, where is Mr. Noll's car when something hit you?

[BOWMAN] To my right and just a little bit behind me.

[RP:12/4:63.9] [MR. BROWNE] Did you know at the time what you got hit with?

[BOWMAN] No.

[RP:12/8:100.24] [THE STATE] Okay. In fact, that wine bottle, and it was half full, I think you said, right?

[BOWMAN] The water bottle was half full.

[THE STATE] Was the wine bottle --

[BOWMAN] I think it was like a new wine bottle.

[THE STATE] Full?

[BOWMAN] Yeah.

[RP:12/8:114.9 [STATE] And it hit the dash, and you remember there was water in it?

[BOWMAN] Yes. [STATE] How much water? [BOWMAN] I really didn't look.

[STATE] Okay. Well, you threw it away later. Would you say it was half full, more than half full?

[BOWMAN] Sure. Half full.

[STATE] Half full. And that's when you rolled up your windows?

[BOWMAN] I rolled them up after the bottle came in.

[RP:12/9:74.1] [STATE] Well, first of all, the defendant testified that originally that it was half full, and then he chan[g]ed that and said no, it was full. So he can't even keep his own story straight.

[RP:12/9:83.14] [STATE] Two years to come up with a story, and that's what he came up with because the -- because Yancy has tons of water battles in his car. Perfect. A half empty bottle he comes up with because presumably a full one might be seen as too heavy to successfully throw from a moving car. Maybe he figured out the physics of that.

5.10 Peephole - "Peephole" was said 102 times in Trial

24-Nov-2014 The word "peephole" counted 10 times

[RP:11/24:95.10] A peephole, like one would have in their front door to see who was at your front door

[RP:11/24:95.15] Are those pictures of that peephole?

[RP:11/24:95.24] is the dark circle the peephole?

[RP:11/24:96.5] the one with the peephole or without the peephole?

[RP:11/24:96.6] The one with the peephole which would be the right-sided one.

[RP:11/24:96.9] And then looking at 60, is that a close-up of the peephole?

[RP:11/24:105.4] In this, do you -- do you see the peephole?

[RP:11/24:174.8] do you see the peephole that you've earlier described?

[RP:11/24:174.16] You ever seen a peephole in a garage door?

[RP:11/24:174.8] is just another view of the peephole.

25-Nov-2014 The word "peephole" counted 44 times:

[RP:11/25:39.11] Let's talk a little bit about the peephole in the garage. Okay?

[RP:11/25:39.14] investigations and living, probably, you haven't seen many garage doors with peepholes?

[RP:11/25:39.1] Did you try to contact the previous owners of this house and find out whether they installed that peephole?

[RP:11/25:53.20] First is that Mr. Browne was asking about the peephole in the garage door.

[RP:11/25:53.22] [MR. BROWNE]: About the what? [MS. McCOY]: Peephole. [MR. BROWNE]: Yes.

[RP:11/25:54.7] she was not aware of the peephole.

[RP:11/25:54.11] "Did you bother to ask the previous owners of that garage if there was a peephole?"

[RP:11/25:54.16] she was not aware of the peephole

[RP:11/25:55.3] "Did you contact the previous owners to determine whether the peephole was installed or not?"

[RP:11/25:55.14] "Did you talk to the previous owners about whether the peephole was there or not?"

[RP:11/25:56.3] from the defendant's computer of the house without the peephole

[RP:11/25:59.24] So we have the issue of the peephole.

[RP:11/25:60.9] I may not be able to make a ruling on the peephole thing until I see what you have to show me,

[RP:11/25:170.7] we also have the peephole issue.

[RP:11/25:170.12] The peephole issue, the opening the door issue.

[RP:11/25:201.9] Let's start with the peephole in the garage door issue.

[RP:11/25:201.17] Let's talk about peephole in the garage, okay?

[RP:11/25:201.19] you haven't seen many garage doors with peepholes.

[RP:11/25:202.5] and find out whether they installed that peephole?

[RP:11/25:202.16] What's the peephole going into the garage?

[RP:11/25:202.16] I don't know about the peephole in the garage.

[RP:11/25:203.1] she was unaware of the peephole

[RP:11/25:203.6] defense's inference that the peephole was there when they bought the house.

[RP:11/25:203.18] that shows the house without the peephole

[RP:11/25:203.20] if he's got evidence that this peephole was there

[RP:11/25:204.7] whether the investigators had talked to the previous owners about the peephole, that the defense was suggesting perhaps an inadequate investigation as to this issue.

[RP:11/25:205.16] somebody has a peephole in their garage

[RP:11/25:206.1] there's a peephole in the garage

[RP:11/25:206.3] if that peephole was there

[RP:11/25:206.12] which purportedly shows a garage door with what the State believes is no peephole

[RP:11/25:206.15] they bought the house, the peephole was there.

[RP:11/25:206.20] the detective is suspicious because there's a peephole in the door.

[RP:11/25:206.24] was a peephole in the door then?

[RP:11/25:207.3] I know there was no peephole there, that that peephole was put in by my husband, we'd be having a whole different discussion right now.

[RP:11/25:207.13] I wasn't there, or, Mr. Bowman put the peephole in,

[RP:11/25:207.19] She's just denying the existence of the peephole.

[RP:11/25:207.25] the investigation and not infer that the peephole has been there the whole time,

[RP:11/25:208.1] investigation and not infer that the peephole has been there the whole time

[RP:11/25:208.8] I don't know about a peephole.

[RP:11/25:208.10] I don't know about a peephole in the garage

[RP:11/25:208.13] this woman had a peephole in her garage

[RP:11/25:209.5] I don't know about any peephole

[RP:11/25:209.8] the Bowmans had put in the peephole

1-Dec-2014 The word "peephole" counted 11 times:

[RP:12/1:21.16] I was just talking about the peephole when we stopped

[RP:12/1:73.19] when we were talking about a peephole --

[RP:12/1:73.23] Did you examine that peephole?

[RP:12/1:74.1] the wood around the peephole?

[RP:12/1:74.3] The wood around the peephole looked as if it was freshly made.

[RP:12/1:74.4] The wood didn't look old and corroded around the peephole.

[RP:12/1:74.5] It looked like it was fresh wood around the peephole

[RP:12/1:74.8] Did you ask Mrs. Bowman about the peephole

[RP:12/1:74.11] Was Mrs. Bowman aware of the peephole?

[RP:12/1:74.11] Was Mrs. Bowman aware that peephole was in the garage door?

[RP:12/1:74.19] Can you point out in your report where you talked about the peephole looking like it was put in freshly?

2-Dec-2014 The word "peephole" counted 6 times:

[RP:12/2:94.21] Do you see any peephole in that garage door?

[RP:12/4:23.19] He looks through the peephole that was there when they bought the house, although he had made it bigger when he went to Home Depot one time and realized that he could buy a peephole that was -- made things bigger.

[RP:12/4:24.7] He worked there. UPS delivered things there on a daily basis. And he would utilize the peephole to see who was out there

[RP:12/4:24.9] he did look through the peephole to see if Mr. Noll was chasing him

[RP:12/4:24.11] He looked through the peephole later on that evening because he thought the police might be. He doesn't know what to do at this point

4-Dec-2014 The word "peephole" counted 13 times:

[RP:12/4:14.2] is there a peephole in the garage?

[RP:12/4:73.15] I -- that's sort of a habit. I always do that at the same time. And I got out of the car and went to -- went to the peephole to see that -- I -- I was completely expecting, based on everything else that had happened,

[RP:12/4:73.19] that I was going to look in the peephole and see them drive down 25th and pull into the driveway.

[RP:12/4:132.9] You remember looking out the peephole when you got home.

[RP:12/4:162.11] Okay. -- putting the peephole in?

[RP:12/4:162.20] Have you ever visited another house with a peephole in the garage?

[RP:12/4:164.18] Where's the peephole, Mr. Bowman?

[RP:12/4:165.3] Okay. The back side after you put the new peephole in? Before that -- before the newer peephole was put in, like, or the wide angle one, and after.

[RP:12/4:165.6] So I think I have photos before and after -- Okay. -- the peephole.

[RP:12/4:166.8] Did you putty it, or this paint over the old peephole?

[RP:12/4:166.9] You could see still out the old peephole, but it was kind of dirty.

[RP:12/4:168.18] So, Mr. Bowman, when you look at this picture the peephole is quite apparent, is it not? Yeah, this is the new, bigger, wide-angle one.

9-Dec-2014 The word "peephole" counted 15 times plus 3 “people” total 18

[RP:12/9:65.13] For example, the people [peephole] on the garage door.

[RP:12/9:65.14] who puts a peephole on the garage door unless they are hiding from the police.

[RP:12/9:65.16] why gets fixated on denying that he installed the peephole.

[RP:12/9:66.2] Why is he lying about something as dumb as a peephole

[RP:12/9:66.6] he installed a peephole in his garage door to make sure the police don't find out that he is trying to cover up what he did

[RP:12/9:66.15] he can't quite deny that. But a peephole?

[RP:12/9:66.22] Gets the door down, and looks out the peephole to make sure the monster isn't coming for him in his driveway.

[RP:12/9:67.1] because his life was in danger. So in lying about the peephole.

[RP:12/9:67.8] He wasn't even sure he had shot someone, and in terror checking the peephole.

[RP:12/9:67.18] The showering, the dressing, the looking through the peephole

[RP:12/9:68.1] He doesn't dress, he doesn't look through the peephole

[RP:12/9:69.7] did he have time to go home, look through the peephole

[RP:12/9:69.15] he looked through the peephole worried.

[RP:12/9:98.16] Peephole has nothing to do with this case.

[RP:12/9:98.18] there's peepholes everywhere.

[RP:12/9:113.17] What does the people [peephole] have to do with this case?

[RP:12/9:113.18] I guess people [peephole],

[RP:12/9:113.21] they turned it into something about him lying about the peephole's.

5.11 Rummaging

[RP:12/4:67.24] [MR. BROWNE] What's the next thing you remember?

[BOWMAN] So I remember him -- he was ruffling – or searching for something and then when he came back -- and I remember him kind of turning back towards me and kind of feeling like that was -- this was the moment, and I -- I was watching his lips as he was yelling at me and then I stopped hearing things. It just went completely quiet. And then a moment, like a -- a half moment later, it just went -- I stopped seeing what was going on...

[RP:12/8:59.22] [MS. RICHARDSON] Well, in your testimony yesterday, I believe it was, you said, you remember rummaging in your bag to find the gun, right? And then the next thing you know you wake up, and you're holding a gun, and the window has been shot out. Does that sound right?

[BOWMAN] No. That's not what I said. [MS. RICHARDSON] That's not right?

[BOWMAN] No.

[RP:12/8:130.1] [MS. RICHARDSON] And you said if someone, one of the meth people is threatening you, you would have to open the bag, and find the gun in order to pull it out; is that right?

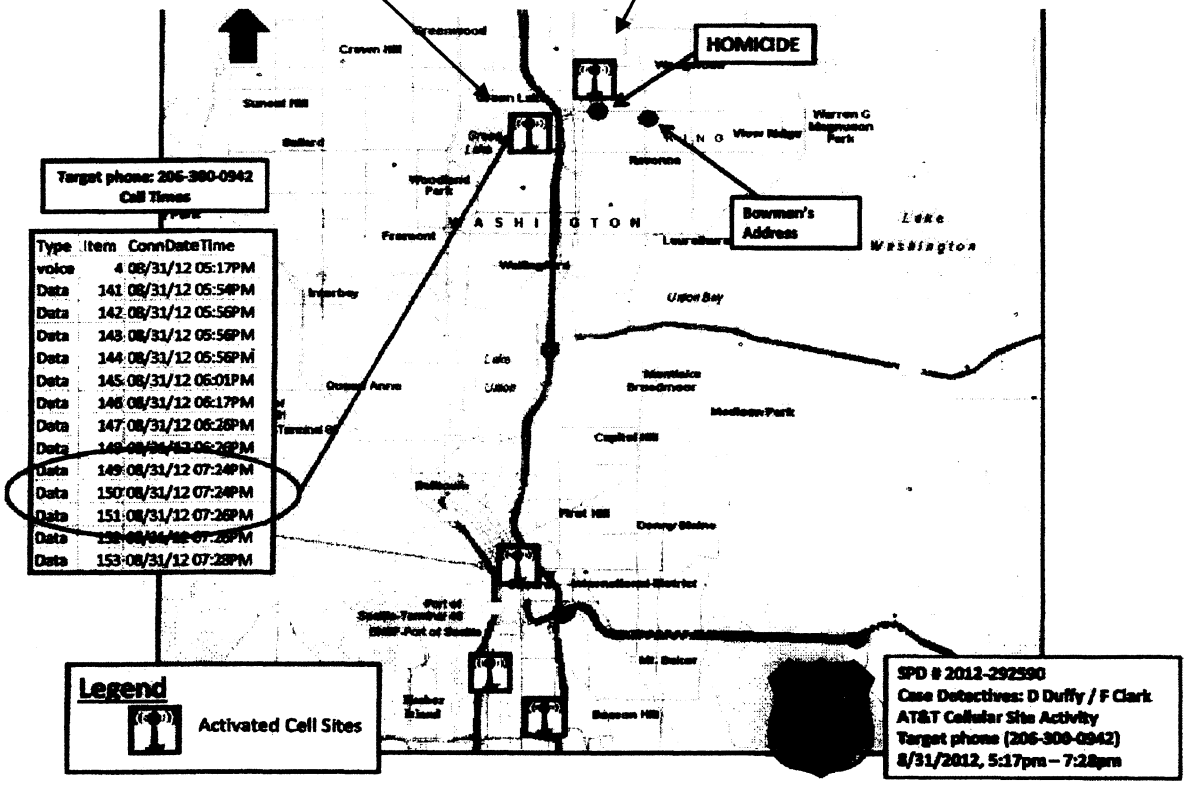
[BOWMAN] I don't remember ever saying anything like that.

[RP:12/9:90.18] [MS. RICHARDSON] At the scene is within this definition. A moment in time. He reaches for his bag, he says. Rummages around and picks up the gun. How many moments in time did that take? He raises his arm, he aims, he pulls the trigger once. How many moments in time did that take? Twice. How many moments in time? Three times. How many moments in time? Four times. How many moments in time did that take to kill Yancy Noll? He shot him in the head, in the temple where he did because he meant to kill him. That's premeditated murder.

5.13 Cell Phone Data Based on Exhibits 278 & 115

Green Lake Tower
Cells = 42981 & 52050
GPS Coordinates =
47.68083,-122.32389

Bowman's "home" Tower 42980 Tower is located on 15th Ave NE approx 100 feet south of NE 80th St. GPS Coordinates = 47.68636,-122.31197
Use Google Maps & GPS Coordinates to locate.



On August 31, 2012 there are data points at 7:24 PM, 7:26 PM and 7:28 PM. Mr. Bowman drove within a few feet of Cell Tower 42980 at about 7:24 PM but that Cell Tower does not show up in the data until 7:28 PM.

When close to home and during Sleeping Hours Bowman's cell phone communicates with Cell Tower 42980 located on 15th Ave NE near NE 80th Street.

Exhibit 115 page 5 below showing data for August 30, 2012. Phone pings tower approximately every 60 minutes

73	08/30/12	07:35P 12063000942	410:50	9569	10961	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
74	08/30/12	07:35P 12063000942	60:00	3376	3886	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
75	08/30/12	08:35P 12063000942	60:00	978	459	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
76	08/30/12	09:35P 12063000942	60:00	378	230	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
77	08/30/12	10:35P 12063000942	60:00	567	267	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
78	08/30/12	11:35P 12063000942	60:00	4190	6892	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
79	08/31/12	12:35A 12063000942	60:00	0	0	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
80	08/31/12	01:35A 12063000942	50:51	0	0	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
81	08/31/12	02:59A 12063000942	93:02	36008	66525	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
82	08/31/12	02:59A 12063000942	60:00	31876	61481	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
83	08/31/12	03:59A 12063000942	60:00	3990	5065	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]

Exhibit 115 page 8 below showing data for August 31, 2012. Phone was on at 7:28 PM. The battery died or the phone was turned off sometime before 8:28 PM.

150	08/31/12	07:24P 12063000942	1:45	23620	51457	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42981/11191:-122.32389:47.68083:115, 42981/11193:-122.32389:47.68083:355]
151	08/31/12	07:26P 12063000942	2:41	5146	9277	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[52050/21141:-122.32389:47.68083:115]
152	08/31/12	07:26P 12063000942	2:40	5146	9277	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[52050/21141:-122.32389:47.68083:115]
153	08/31/12	07:28P 12063000942	25:43	2155	822	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
154	08/31/12	07:28P 12063000942	25:45	2155	822	0120300063668120	310410218168145	phone	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]
155	09/01/12	05:07A 12063000942	4:02	1951	1233	0120300063668120	310410218168145	acds.voicem	_MOBILE_DATA_	[42980/11221:-122.31197:47.68636:130]

5.14 False Fake Number

[RP:11/25:71.6] [MR. HASKETT] He did end up bringing the wheels in when the tires came in. Because he had to pay for the tires up front, you know, and so we -- you know, we don't sell up front tires, you know, so he had to pay for them. He was notified. On that sheet -- that form you just showed me, you'll see that there's an erroneous phone number on it and no name. It's under carry out.

[RP:11/25:71.24] [MR. HASKETT] But I happen to have another sheet off to the side that I have to have a name and a number on because how am I going to get ahold of him and tell him his tires are in. And that's on a separate calendar sheet.

[RP:11/25:73.14] [MS. MCCOY] And you said something a minute ago about an erroneous phone number. Tell me about that.

[MR. HASKETT] Well, the phone number is not the same phone number that -- **this here is just a random number that Jared put in.** The only thing I know is this is Jared's sale. I stood there and watched him do it because he had a tire commission on this, a large one, and so I was not going to step in on it. I wanted to just make sure it was done right. And so those are his ID numbers on here.

[MS. MCCOY] So when **Jared** created that business record you've got right there, he **put in a different phone number than the defendant** -- [MR. HASKETT] Right.

[MS. MCCOY] -- gave you when he came into your store. [MR. HASKETT] Right.

[RP:12/8:90.22] [MS. RICHARDSON] Is that why you gave them a fake phone number?

[BOWMAN] You mean, the phone number that would have went straight to me?

[MS. RICHARDSON] The fake phone number? [BOWMAN] There is no fake phone number.

[MS. RICHARDSON] That Mr. Hasket testified to? [BOWMAN] He testified that his employee put in a random number because they didn't put it on the -- like the normal user account, but he had my phone number. He testified to that also.

[RP:12/9:63.24] [MS. RICHARDSON] Doug Hasket at Big O, handlebar mustache man, gave him a fake phone number according to Doug.

[RP:12/9:71.13] [MS. RICHARDSON] He gives them a fake telephone number.

5.16 Contradicting Escape Philosophies

During Cross Examination the State argued: "If you're being chased, go to a store for safety, drive your car into a nearby car for help, but definitely don't go home!"

[RP:12/8:116.20] [Ms. Richardson] Well, he clearly, from what you have described, was crazed. Weren't you worried about him following you home?

[Bowman] I didn't -- well, yes, I was worried like he would follow me. I -- it didn't really come across my mind that why somebody would want to follow me like that.

[Ms. Richardson] Well, what you have described, Mr. Bowman, is a man who's spitting and foaming at the mouth, red in the face, screaming at you, making gun pointing motions to you saying you are going to get fucked up, and he's right behind you on the 73rd Street exit, and you are not afraid of what he might do and follow you home?

[Bowman] So some of those things that you described happened later. But, yes, I was afraid. And that's why I also -- I mean, I didn't take the 73rd Street exit. I kept on going.

[Ms. Richardson] Okay. Well, you testified yesterday that you turned off of 73rd because he was about to ram you. Which is it? You were scared to go home or he was about to ram you?

[Bowman] Those are both true.

[Ms. Richardson] Okay. So I wasn't clear on what you thought might happen on 73rd, which is a fairly narrow street. It's one lane when it narrows down, right?

[Bowman] There's a -- on that exit there is a big shoulder, and then it kind of comes in and there's -- it narrows right before it essentially merges on to 73rd.

[Ms. Richardson] So it's almost like a residential street in terms of its width at that point?

[Bowman] It's more like a one lane residential street, yeah.

[Ms. Richardson] Why couldn't you continue to take the exit and get away that way? You ran stop signs all night. Why not run that one? [RP:12/8:118.15]

[Bowman] Because there were cars there backed up.

[Ms. Richardson] Where? [Bowman] At 73rd.

[Ms. Richardson] On 73rd? Really?

[RP:12/8:119.10] Well, if you are about to get rammed from behind, would it not be worth it to ram the car in front of you to get help? If your life is in danger? You are scared? This man is crazy?

[Bowman] I took the way that -- a route that was safest, and that was to go -- stay on Lake City.

[Ms. Richardson] Okay. You turned on to Lake City which has far more traffic than 73rd. You would agree with that, wouldn't you?

[Bowman] Not at that point.

[RP:12/8:122.24] [Ms. Richardson] So you were just -- you were going to take 73rd to go home. Just take the calculated risk that he might follow you, and then he's so close behind you that's when you decide to cut over to Lake City Way?

[Bowman] No. That's not true.

[Ms. Richardson] What made you not just take 73rd and go home? What did you think was going to happen if you stopped for traffic?

[Bowman] So when I -- I had planned to take 73rd. It's my normal route home before that -- before I saw him coming up behind, and while I was still trying to figure out what he was doing behind me, you know, it kept on going up towards 73rd. And then when I saw that he was coming up to try and ram me, and that if I had continued on to 73rd there would be -- I mean, I would have to stop and he would ram me anyways.

[Ms. Richardson] Okay. And you would have been about five hundred feet away from a Safeway parking lot, correct?

[Bowman] Yeah, it's -- you're -- it's in a residential area that's -- I mean, it would be kind of like saying that's the distance from the freeway.

[Ms. Richardson] There's a Safeway right there, right?

[Bowman] I mean, the parking lot's on the other side of the block.

[Ms. Richardson] There's a Safeway right there, right?

[Bowman] It's -- I -- I'm not sure what we are -- I can point to it on the other map, and we can say that where that V is, and then where the parking lot for the Safeway is or are not on the same block.

[Ms. Richardson] The Safeway is right here, (Pointing.) right?

[Bowman] No. To your right. And the parking lot is to the north of that.

[Ms. Richardson] Okay. And I assume that it has entry doors on all sides, correct?

[Bowman] I have no idea. Actually, you know, what, there's -- I think the only entry doors are on the north side.

[Ms. Richardson] Really? Okay. So your life is in danger, and you have decided to cut over to Lake City Way, and have him follow you, which he does. And you get on to 80th?

Closing Argument "Don't stop at a store, go straight home!"

[Ms. Richardson] You are not going to stop your car in a small parking lot of a strip mall and get out when somebody like that is right behind you. He needed to get the heck out of there. He skirts his teriyaki and he tries to head home [RP:12/9:88.3]

6.3 Everything is a Movie

Movie or Movies said in Trial = 90 "Movie" said in front of jury = 40 times

[RP:12/3:146.1] a good action movie with cars, guns, and science fiction.
[RP:12/3:146.21] about making a movie or TV show, correct?
[RP:12/3:147.3] like a good movie, I think? A. I believe that was right.
[RP:12/4:34.8] regarding movies and movie directors and actually naming some
[RP:12/4:35.3] shots for a movie. Q. So going back now to August 31st.
[RP:12/8:77.12] to the movies. Movie making ideas.
[RP:12/8:79.1] movie. Q. Why on earth would you call it a Garrotte
[RP:12/8:79.13] I know. Your movie. A. - for a movie. Q. Yeah, I know. Everything
[RP:12/8:79.14] For a movie
[RP:12/8:79.15] Everything is a movie. I get that. Why did you call it a Garrotte,
[RP:12/8:79.16] do with a movie? A. Well, in the movie there's action things that
[RP:12/8:79.17] Well, in the movie there's action things that you would call,
[RP:12/8:79.19] people in the movie, the movie depicts that. So it -- I mean, we
[RP:12/8:79.19] the movie, the movie depicts that. So it -- I mean, we could easily
[RP:12/8:79.21] mean, in a movie we could have killed the actor off,
[RP:12/8:79.23] guy in the movie. Q. Okay. So it has two purposes. It can restrain
[RP:12/8:79.25] them in the movie?
[RP:12/8:80.7] someone in a movie? Is it a way to kill someone in a car
[RP:12/8:80.14] prop for a movie to do any of those types of things. But in
[RP:12/8:81.7] it's a standard movie prop. Q. Right. But it looks to me like this
[RP:12/8:83.14] maybe making a movie together; is that what you are talking
[RP:12/8:83.16] mean, this is movie ideas. Just sort of brainstormed out.
[RP:12/8:95.18] a good action movie with cars, guns, and science fiction.
[RP:12/8:95.25] seen in a movie?
[RP:12/8:96.3] seen in a movie; is that correct? A. I believe those are -- that's
[RP:12/8:96.11] of a horror movie to you? A. I don't know if I described it
[RP:12/8:96.12] as a horror movie like that, but it was like a surreal nightmare. Q.
[RP:12/9:19.18] A. Movie editing. Q. The Court would appreciate it and everyone, if
[RP:12/9:33.7] actors in a movie? A. That's a plot point.
[RP:12/9:38.23] that into a movie? And like how would you make the thing
[RP:12/9:39.6] references that the movie ideas and using Vague Industries
[RP:12/9:59.6] as a potential movie. He learned the best way to do it.
[RP:12/9:59.20] is not a movie. It is not a fantasy. And it's not a preschool
[RP:12/9:62.2] a bad action movie. Parts of it frankly are laughable.
[RP:12/9:69.15] after him. Monster movie term by the way.
[RP:12/9:72.18] is not a movie, and for someone like the defendant
[RP:12/9:111.22] And movies with movie directors in the same sentence
[RP:12/9:114.4] Tarantino made a movie in his life anywhere less than
[RP:12/9:123.25] was like a movie for him. He wasn't even sure that it
[RP:12/9:124.11] was like a movie. And after he shot Yancy Noll,

7.2 "We" vs. "He"

In the closing statement by the prosecution alone, there are at least 62 usages of "we", "us", and "our" with the implicit alignment of jurors with the State and against the Defense.

[RP:12/9:56.14] Because that's the way life works. It's not perfect. ***We*** can't ever answer every question. And there are questions about something that ***we*** will never really understand in this case that ***we*** will never know the answers to.

[RP:12/9:57.19] Because the reason ***we*** are here today is for the things that ***we*** can answer. Is there overwhelming proof that Dinh Bowman murdered Yancy Noll? Yes. Is there overwhelming proof that ***he*** did it with premeditated intent? Yes. Is there overwhelming proof that ***he*** did it with a firearm? Yes. Is there overwhelming proof that ***he*** did not act in self-defense? Yes. Is ***he*** guilty of murder in the first degree? Yes.

[RP:12/9:61.18] [T]hat is easily resolved, I would submit, based on what ***we*** know of him, and what ***he*** told us, and what ***we*** know of his world. And a lot of it is circumstantial proof because again ***we*** can't get in his head.

[RP:12/9:61.24] ***We*** know two things. First, that ***he*** tried to craft a tale of what happened that conforms to the proof.

[RP:12/9:62.1] And circumstantially ***we*** can see it's not only full of holes, but it's like a bad action movie. Parts of it frankly are laughable.

[RP:12/9:62.8] ***We*** know that not only from the bizarre story that ***he*** told about what happened, but from ***his*** willingness and ease at lying about other things, lies that ***he*** got caught in easily in some cases, and they are important not necessarily because of what each one is but because they tell us that ***he*** is completely comfortable, very comfortable with lying.

[RP:12/9:63.3] For our purposes, ***we*** need look only -- well, there is a lot of things ***we*** can look at, but his attempt to cover up what ***he*** had done.

[RP:12/9:63.10] what ***we*** know is that both those lies, even inconsistent as they are, are double lies...

[RP:12/9:64.12] Well, ***we*** know that's obviously a lie because ***he*** did it.

[RP:12/9:65.9] ***We*** saw that on the stand.

[RP:12/9:67.2] So in lying about the peephole, ***he***'s lying about something that might otherwise hurt the tale that ***he*** is telling, and ***he*** expects us to believe ***him.***

[RP:12/9:67.15] ***Let's*** look at the best possible case scenario for what ***he***'s saying.

[RP:12/9:67.22] ***Let's*** give ***him*** five minutes to get home. ***We*** will be generous.

[RP:12/9:68.4] Within five minutes of getting home, ***we*** are at 7:35, ***he*** says nothing to ***his*** wife at home,

[RP:12/9:68.16] ***let's*** assume it did take just an hour, and ***let's*** assume they immediately got seated in the restaurant.

[RP:12/9:69.10] ***let's*** subtract 20 from 47. That leaves 27 minutes for dinner. ***He*** is lying. ***He*** is not good at it. ***He*** says all that because ***he*** needs us to believe ***he*** was so terrified, and so distraught that this monster was coming after ***him.***

[RP:12/9:72.22] [H]ere's what ***we*** know. ***He*** lies about things that hurt ***his*** story, and that cast out on everything that ***he*** testified to.

[RP:12/9:73.10] And so ***he*** needs ***us*** to believe that no, I was wearing a white T-shirt and no sunglasses.

[RP:12/9:74.18] Again, ***he*** has admitted to the cover up, and ***we*** know from the phone records certain things. ***We*** know the phone was turned off two minutes after Yancy Noll was killed.

[RP:12/9:75.21] And ***he*** thinks ***we*** will believe it.

[RP:12/9:76.11] Because it shows ***us*** that ***he*** read the documents that ***he*** claims ***he*** never looked at. ***He*** knew

[RP:12/9:81.15] It's sort of staggering how easy it is to poke holes in so much of what he thought ***he*** would get away with and what ***we*** would believe. ***We*** have gone through some of them already.

[RP:12/9:82.5] This **defendant** has testified. So it's fair that ***we*** will get what ***he*** is saying. ***He*** knows ***he*** can't credibly argue that ***he*** didn't do it.

[RP:12/9:83.24] The **defendant** thinks ***we*** will believe that.

[RP:12/9:87.8] Now, ***we*** can figure out why. Because ***he*** would be lying to the police about what happened.

[RP:12/9: 87.19] ***We*** can use our common sense as to what really happened.

[RP:12/9:93.14] And ***he*** wants ***us*** to believe that ***he*** couldn't do that before?

[RP:12/9:94.25] Benjamin Israeli says fear makes us feel our humanity. ***Our*** humanity, yes. Not ***his***. ***He*** does not have any.

[RP:12/9:121.2] And if this case was about road rage ***we*** would not have to face the terrifying truth that this ***man*** killed Yancy Noll because ***he*** **wanted to know what it would be** like.

The medical examiner's testimony:

- [RP:12/3:71.4] in this case, the head is just a head, but it's on a -- but it's on a swivel.
- [RP:12/3:91.8] Q. The temple? A. Temporalis,
- [RP:12/3:91.6] A. The temporalis muscle is the muscle on the side of the head that helps us chew.
- [RP:12/3:77.14] A. That's called the temporalis muscle.
- RP:12/3:71.4] in this case, the head is just a head, but it's on a -- but it's on a swivel.
- [RP:12/3:69.3] A. The one that I have listed as number one on the autopsy report is the one to the right of the upper lip.
- [RP:12/3:74.19] A. The second shot I have noted on the left mid-cheek.
- [RP:12/3:78.4] A. Number three, I have listed on the left side of the head just in front of this -- this -- oh, I'm sorry -- just in front of this sticky outer part of the ear, which we call the tragus.
- [RP:12/3:80.5] A. Number four, I have as -- described as the left back of the head.

LIAR

[RP:12/9: 62.5] he is frankly a *liar*. And not a very good one

1. [RP:12/9: 62.11]but from his willingness and ease at *lying* about other things, *lies* that *he* got caught in
2. [RP:12/9: 62.20] when someone in your family commits murder and parents are one of them. For two years he *lied* to his parents.
3. [RP:12/9: 62.23] he ever told them he acted in self-defense. So he *lied* not only about doing it. We
4. [RP:12/9: 63.11] we know is that both those *lies*, even inconsistent as they are, are double *lies*
5. [RP:12/9: 64.15] Well, we know that's obviously a *lie* because he did
6. [RP:12/9: 64.15] He knew about this long ago, and *he lies* to
7. [RP:12/9: 65.7] he didn't show a thing. *Lies* come very
8. [RP:12/9: 65.11] He *lies* about stuff that really shouldn't matter it seems like.
9. [RP:12/9: 66.17] It's a good example of why he *lies*. He needs us to
10. [RP:12/9: 67.5] He *lies* about going home after killing Yancy Noll.
11. [RP:12/9: 72.22] So here's what we know. He *lies* about things that
12. [RP:12/9: 75.5] his fictional narrative. He *lies* because turning off the
13. [RP:12/9: 75.23] *He lies* about having read a manual on gunshot residue
14. [RP:12/9: 77.3] He *lies* about browsing through videos on gunsmithing
15. [RP:12/9: 62.11]but from his willingness and ease at *lying* about other things, *lies* that *he* got caught in
16. [RP:12/9: 62.15] he is completely comfortable, very comfortable with *lying*. And so you must take *his* story
17. [RP:12/9: 63.6] He gets an untraceable phone using a fake name. He's *lying*. His name is not Peter Nguyen.
18. [RP:12/9: 66.2] He is *lying*. Why is he *lying* about something as dumb as a peephole
19. [RP:12/9:67.2] So in lying about the peephole, he's *lying* about something that might otherwise hurt the tale that *he* is telling, and *he* expects us to believe *him*. [RP:12/9:67.2]
20. [RP:12/9: 69.12] He is *lying*. He is not good at it.
21. [RP:12/9: 72.9] that's because he's *lying*. It's not there. It went into
22. [RP:12/9: 87.9] he would be *lying* to the police about what happened.
23. [RP:12/9: 84.9] He is *lying*.
24. [RP:12/9: 87.9] he would be *lying* to the police about what happened.

Murder Inc

1. [RP:12/9: 86.17] The handgun suggested in Murder, Inc. for effective close range fire.
2. [RP:12/9: 86.24] To use cash to avoid detection. To try to look normal as Murder, Inc. advises
3. [RP:12/9: 109.23] The Murder, Incorporated book, which they never proved Mr. Bowman read whatsoever, emphasizes as does the other book that total surprise is the key to everything.
4. [RP:12/9: 112.14] I better get rid of this Murder, Inc. book. No. No. He keeps it.
5. [RP: 12/8:49.4] Q. How about ***Murder, Inc.*** by Jack the Rippa. How would that have gotten in there?
6. [RP:12/8:50.8] as far as ***Death Dealer's Manual*** and ***Murder, Inc.***. I do not believe you allowed them to get in by Jack the, as counsel said, Rippa.
7. [RP:12/8:50.20] THE COURT: My intention, and I realize I was not as clear about this as I might have been, was simply to include ***Murder, Inc.***
8. [RP: 12/8:57.9] Q. Okay. And is that what ***Murder, Inc.*** and the Death Dealer's Manual were under or were they under forensics?
9. [RP: 12/8:71.10] Q. So there was something else on your computer, and we have been referencing it as the book. It's actually called ***Murder, Inc.***, the book, correct?
10. [RP: 12/8:76.16] Q. And on page 63, again, there's that word Garrotte that we saw in ***Murder, Inc.***, correct?
11. [RP:12/8:86.1] Q. Okay. Mr. Bowman, when we left off we were talking about your journal. I would like to look at a couple of other things that show up in ***Murder, Inc.*** and the Death Dealer's Manual.
12. [RP:12/8:87.21] Q. So ***Murder, Inc.***, again, talks about the need for total surprise.
13. [RP:12/8:88.13] Q. Okay. The ***Murder, Inc.*** book also says a handgun is easy to carry and use and dispose of. You can dismantle it in 15 minutes; is that accurate?
14. [RP:12/8:88.23] Q. Okay. The ***Murder, Inc.*** book also says if there is identification of the killer it will be by accident like being caught on camera. Use cash. Don't leave a paper trail.
15. [RP: 12/8:91.7] Q. ***Murder, Inc.*** also says to throw pieces of evidence away at different times?

The Death Dealer's Manual

1. [RP:12/9: 79.8] In the ***Death Dealer's Manual***, more coincidences. The
2. [RP:12/9: 86.16] his research to use the 9mm that was suggested in the Death Dealer's Manual.
3. [RP:12/9: 86.1] Just like the Death Dealer's Manual instructs.
4. [RP:12/9: 89.6] Because he is so scared. The Death Dealer's Manual says, this adventure is a valid motivation for the killer.
5. [RP: 12/8:49.4] Q. So what would the ***Death Dealer's Manual*** have come from that you downloaded as part of something you were interested in?
6. [RP:12/8:50.8] as far as ***Death Dealer's Manual*** and ***Murder, Inc.*** I do not believe you allowed them to get in by Jack the, as counsel said, Rippa.
7. [RP: 12/8:57.9] Q. Okay. And is that what Murder, Inc. and the ***Death Dealer's Manual*** were under or were they under forensics?
8. [RP:12/8:73.24] Q. Mr. Bowman, this is what we have been referring to as the manual. It's actually called the ***Death Dealer's Manual***;
9. [RP: 12/8:75.4] Q. Okay. Well, ***Death Dealer's Manual*** deals with killing people. It deals with some of the psychology of killing people?
10. [RP: 12/8:75.18] Q. The ***Death Dealer's Manual*** offers advice on how to kill people, correct?
11. [RP:12/8:80.24] Q. Okay. So when the ***Death Dealer's Manual*** says, the Garrotte needs to be a manufactured weapon, would that apply?
12. [RP:12/8:81.14] Q. Okay. So I guess it's just another bad coincidence that the **Death De*aler's Manual*** talked about what you drew in your own journal?
13. [RP:12/8:86.1] Q. Okay. Mr. Bowman, when we left off we were talking about your journal. I would like to look at a couple of other things that show up in Murder, Inc. and the ***Death Dealer's Manual.***
14. [RP: 12/8:86.14] Q. Okay. So in the ***Death Dealer's Manual*** the author talks about -- must be obvious that when at all possible the element of total surprise should accompany.
15. [RP:12/8:87.17] Q. Okay. The ***Death Dealer's Manual*** also says that 9mm like you used, used close in are an effective means of killing someone. Were you aware of that?

Temple

[RP:11/19:Sup:4.9] [82.9] The defendant shot Yancy in his temple shattering bones there.

[RP:11/19Sup:8.23] [86.22] MS. McCOY: in the temple with a small-caliber firearm

[RP:11/20:47.13] and had fairly thick temples.

[RP:12/3:91.8] Q. The temple? A. Temporalis, yes.

[RP:12/3:140.12] A. "3. *Temple.* It's also a great target for small arms fire too.

[RP:12/8:87.22] Q. And it says that the *temple* of the head is great target for small arms fire; would you agree with that?

[RP:12/8:88.3] Q. The *temple*?

[RP:12/8:104.12] Q. You hit him four times in the head, including the *temple*, right?

[RP:12/8:87.22] And it says that the *temple* of the head is great target for small arms fire; would you agree with that?

[RP:12/8:88.3] Q. The *temple*?

[RP:12/8:104.12] Q. You hit him four times in the head, including the *temple*, right?

[RP:12/9:78.17]The *temple.* It's also a great target for small arms fire.

[RP:12/9:86.23] clearly set forth on that video from the NRA. To aim for the *temple.*

[RP:12/9:91.25] He shot him in the head, in the *temple* where he did because he meant to kill him.. That's premeditated murder.

[RP:12/9:92.18] Books telling him to use a stranger. And aim at the *temple.*

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON,

Respondent,

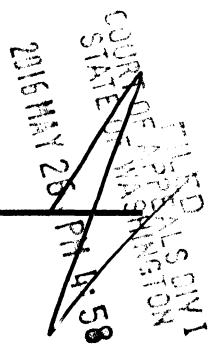
v.

THOMASDINH BOWMAN,

Appellant.

Cause No. 73069-0-I

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



To
The court of Appeals
of the State of Washington
Division I
One Union Square
600 University, Street
Seattle, WA 98101-4170

Enclosed is 39 pages inadvertently omitted from Statement Of Additional Grounds For Review that I submitted on Wednesday, May 25th, 2016

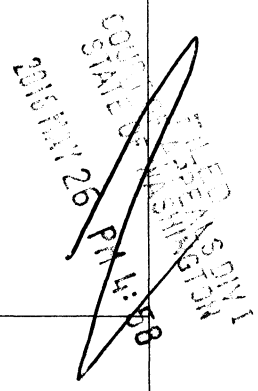
by,

Thomasdinh Bowman,
379719
Clallam Bay Corrections Center
1830 Eagle Crest Way,
Clallam Bay, WA 98326

Thursday, May 26, 2016

Wednesday, May 25, 2016

To
The court of Appeals
of the State of Washington
Division I
One Union Square
600 University, Street
Seattle, WA 98101-4170



Reference:	Cause No. 73069-0-I Thomasdinh Bowman, DOC 379719 Clallam Bay Corrections Center 1830 Eagle Crest Way, Clallam Bay, WA 98326	
	Add to file "Statement Of Additional Grounds For Review" Submitted 73 pages on May 25th, 2016	
Subject:	Statement Of Additional Grounds For Review Missing pages of the appendices list of May 25th 2016	
Attachments:	1 pages of	coversheet
	1 page of	Case number sheet
	36 pages of	Missing appendices inadvertently omitted from May 25th 2016 Submittal of Statement Of Additional Grounds For Review
	38	Total attached

10.0 List of Appendices

Death Death Death I
Jack the Rippa II
Garrotte III
Comparing Garrottes V
Unfortunate Coincidence VI
Five vs. Six VII
Painting Murder VIII
Lying Questions + Questions as Testimony XI
Flying Bottles XVI
Water Level XVII
Peephole - "Peephole" was said 102 times in Trial XIX
Rummaging XXII
When and Where was Phone turned off XXIII
False Fake Number XXIV
Contradicting Escape Philosophies XXV
Everything is a Movie XXVII
"We" vs. "He" XXVIII
Liar Liar Liar XXX
The Books – The Death Dealers Manual XXXII
The Books – Murder Inc XXXIII
Temple XXXIV

[RP:12/1:45.8] [State asking Witness GR about Bowman] Were you ever aware of him studying or researching death or murder?

[Witness GR] No.

[RP:12/8:22.25] through [RP:12/8:23.11]

[STATE] And you actually built a roll bar for a car, right?

[BOWMAN] That's correct.

[STATE] And that's what protects the car if something should happen, and you get in an accident and roll over it protects you?

[BOWMAN] Yes, it's mandatory for all those race events.

[STATE] And you did that by learning how to weld to the point that you felt knowledgeable enough that you could put a safe roll bar on a car?

[BOWMAN] That is correct.

[STATE] Okay. And that's a life or death safety issue, right?

[BOWMAN] Yes.

[RP:12/8:64.25] through [RP:12/8:65.9]

[STATE] So the reference library, how many topic areas would you say that it had?

[BOWMAN] Many screen fulls.

[STATE] Okay. And a lot of them have to do with killing; is that correct?

[BOWMAN] No.

[STATE] No?

[BOWMAN] No.

[STATE] Death?

[BOWMAN] No.

[RP:12/9:79.21] In closing, the State said "And it's not just the research library and the forensic manuals. And it's not just his accessing articles and videos dealing with killing people."

[There was no evidence or discussion of Mr. Bowman accessing articles and videos dealing with killing people]

During cross-examination: Murder Inc

[RP:12/8:49.11] [MS. RICHARDSON] In the Presence of the Jury "How about Murder Inc **by Jack the Rippa**. How would that have gotten in there? "

Outside of the Jury

[RP:12-8/50:9] [MR. BROWNE] "I do not believe you allowed them to get in by Jack the, as the counsel said, Rippa."

[THE COURT] That is correct.

[MR. BROWNE] So I would object to that, and ask the jury to disregard that.

[MS. RICHARDSON] That's the title of the book.

[THE COURT] What's that?

[MS. RICHARDSON] That's the title of the book. We are not talking about the warning on the top page, but that's the title of the book.

[THE COURT] My intention, and I realize I was not as clear about this as I might have been, was simply to include Murder Inc.

[MS. RICHARDSON] Okay.

[RP:11/10:30.20] [THE COURT] So let's go through some of the passages that have been highlighted, starting with Murder Inc., and we will certainly exclude the reference to the Jack the Rippa.

[RP:11/10:31.2] [THE COURT] And we will -- there's no need to refer to Jack the Rippa.

[RP:11/10:42:11] [THE COURT] Murder Inc is not highlighted. Does that have any significance?

[MS. MCCOY] The State did not intend to offer the name of it because it's the content of it that matters, and so we'll simply be preparing a document that will show that it is -- I mean we're not going to type it up onto a separate piece of paper. We'll show blank pages except for the portions that the Court has allowed in, and we won't offer the title of it being Murder Inc.

[THE COURT] Okay, I think that answers the question. [MR. BROWNE] Thank you.

[THE COURT] And I assume the same thing applies to the Death Dealer's Manual.

[MS. MCCOY] That's correct.

Garrotte

Webster's New World College Dictionary 5th Ed: gar•rote [Sp, orig., a stick used to wind a cord] 1a) a method of execution, formerly in Spain, with an iron collar tightened about the neck by a screw b) the iron collar so used. 2a) a cord, thong, or length of wire for strangling a robbery victim, enemy sentry, etc. in a surprise attack 2b) a disabling by strangling in this way; strangulation.

Merriam-Webster: ***garrote*** *1a* : a method of execution by strangulation *b*: the apparatus used. *2*: an implement (as a wire with a handle at each end) for strangulation

Dictionary.com ***garrote*** **http://www.**dictionary.com/browse/garrote 1. a method of capital punishment of Spanish origin in which an iron collar is tightened around a condemned person's neck until death occurs by strangulation or by injury to the spinal column at the base of the brain. 2. the collar like instrument used for this method of execution. 3. strangulation or throttling, especially in the course of a robbery. 4. an instrument, usually a cord or wire with handles attached at the ends, used for strangling a victim.

GradeSpelling.com
Free SAT Word Lists

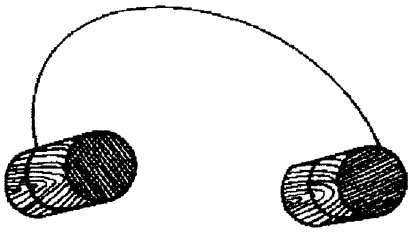
Lesson 11	Lesson 12	Lesson 13	Lesson 14	Lesson 15
1. distraught	1. monotony	1. pedestrian	1. decimal	1. original
2. propeller	2. conversion	2. collector	2. influence	2. linear
3. vacate	3. legitimate	3. repellent	3. fervent	3. ambush
4. incidentally	4. machinist	4. surveyor	4. staid	4. facsimile
5. revere	5. elicit	5. miscount	5. agrarian	5. foremost
6. treachery	6. dissection	6. exclamation	6. dehydrate	6. pennant
7. respondent	7. susceptibility	7. terminate	7. immaculate	7. coddle
8. folio	8. polemics	8. inopportune	8. physiognomy	8. concerto
9. recurrent	9. litigate	9. anemia	9. secrecy	9. suffrage
10. counterbalance	10. autonomy	10. flippant	10. gyrate	10. vitality
11. disown	11. deleterious	11. appraise	11. dissension	11. diverse
12. tipsy	12. abeyance	12. misdemeanor	12. accompaniment	12. medallion
13. federate	13. plenipotentiary	13. extort	13. insufficiency	13. chiffon
14. genealogist	14. finite	14. acerbity	14. overrun	14. convolution
15. seclusion	15. fabricate	15. protrusion	15. crusade	15. vendition
16. riddance	16. impropriety	16. taxidermy	16. contumacious	16. carouse
17. essence	17. garrote	17. terminus	17. seethe	17. privateer
18. extremity	18. inaccessible	18. momentous	18. contingency	18. beneficiary
19. irrefrangible	19. cipher	19. transact		19. transcendent
20. absorption	20. indivertible	20. Arthurian		20. thrall
				21. sebaceous

Lesson 16	Lesson 17	Lesson 18	Lesson 19	Lesson 20
1 readily	1. angelic	1. peddle	1. autobiography	1. conceit
2. missal	2. wintry	2. rapid	2. consonant	2. imminent
3. consecrate	3. loam	3. contraband	3. penchant	3. disinterested
4. aroma	4. vertex	4. pension	4. relinquish	4. clearance
5. singe	5. perseverance	5. insignificant	5. heinous	5. subtrahend
6. kimono	6. abominate	6. ecstatic	6. resonate	6. prolong
7. unavoidable	7. promoter	7. pavilion	7. dissent	7. animadversion
8. extradite	8. atone	8. enhance	8. conferee	8. formidable
9. evince	9. antemundane	9. enormity	9. Milky Way	9. chastise
10. ante	10. efflorescence	10. paramount	10. transcript	10. symphonic
11. liquefacient	11. suffuse	11. pedant	11. grotesque	11. lexicon
12. gratuitous	12. venerate	12. officious	12. disavow	12. neuter
13. capillary	13. prima	13. cessation	13. photometry	13. rejuvenescence
14. divert	14. impiety	14. impalpable	14. legacy	14. persuadable
15. brigand	15. erudite	15. diplomacy	15. introductory	15. coincident
16. interdict	16. irritant	16. inborn	16. junta	16. paroxysm
17. sibilant	17. gaiety	17. fallible	17. convivial	17. invulnerable
18. vegetative	18. gossamer	18. ponderous	18. nettle	18. prescience
19. germane	19. vernacular	19. reproduction	19. arboreal	19. heresy
20. stratagem	20. libel	20. abscond	20. vapid	20. lithesome

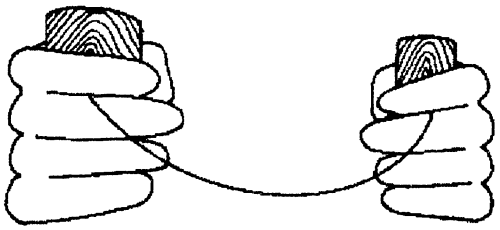
Lesson 21	Lesson 22	Lesson 23	Lesson 24	Lesson 25
1. accuracy	1. intelligence	1. reprobate	1. unique	1. variable
2. soprano	2. sympathetic	2. precaution	2. petrify	2. kiln
3. bombard	3. excursion	3. masterpiece	3. mythology	3. covenant
4. rebuild	4. facial	4. wee	4. atrocious	4. brine
5. superintendent	5. satyr	5. fortitude	5. usury	5. rapine
6. conscientious	6. gnash	6. disinfectant	6. depositor	6. keepsake

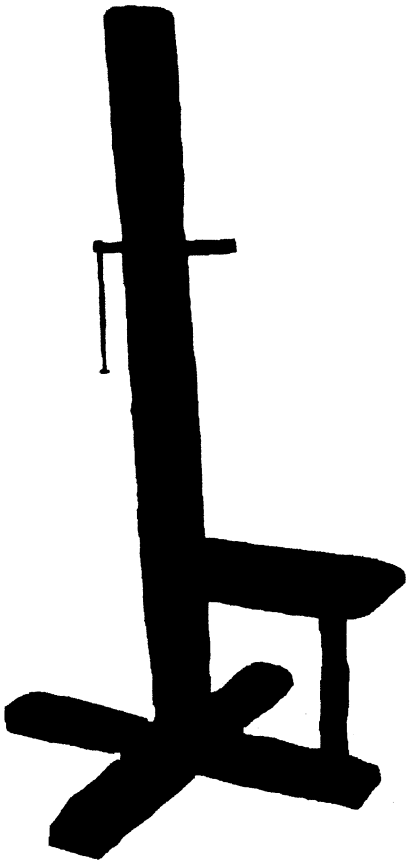
Word Lists By: www.BigIQkids.com

Comparing Garrottes

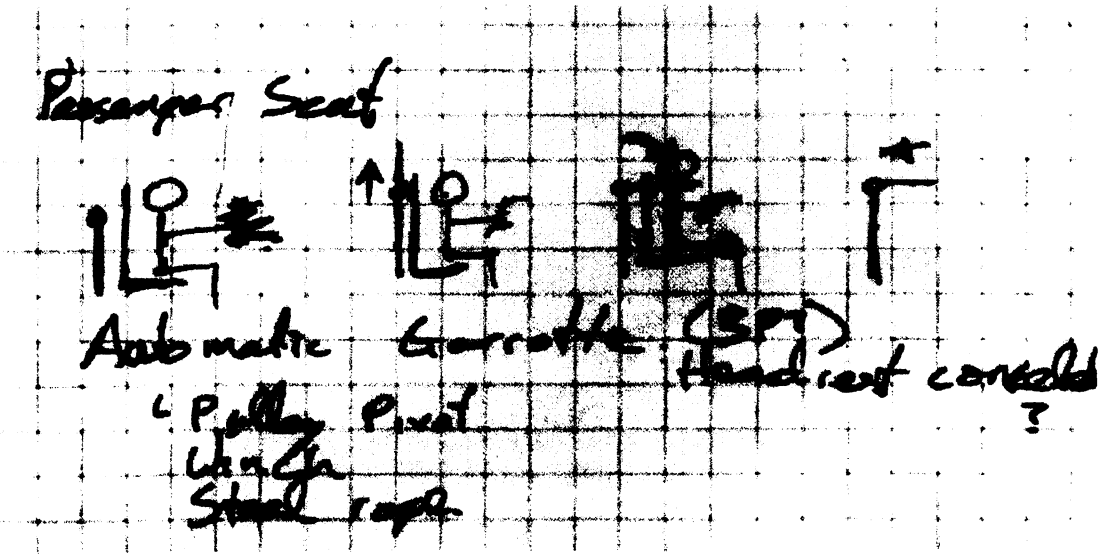


This is a sample garrote, prepared by and for a pro. Two small, solid wooden dowels and a three foot length of medium thickness piano wire are required for construction. The wire is run through a small hole that has been drilled in each dowel, and is then permanently affixed. Dowels may be taped.





The graphic above to the left was taken from page 65 of The Death Dealer's Manual Exhibits 250 & 320. The graphic to above right is from https://en.wikipedia.org/wiki/Garrote. Below is the "Automatic Garrotte" from Mr. Bowman's work journal Exhibit 313.



[RP:12/8:70.20] [MS. RICHARDSON] So it's just a bad **coincidence** that this book advises you to do just what you did?

[BOWMAN] I think that correlation does not mean causation.

[RP:12/8:71.3] [MS. RICHARDSON] So that was just a **coincidence**?

[BOWMAN] I believe that you found that with a coincidence, yes.

[MS. RICHARDSON] **An unfortunate one for you.**

[RP:12/8:81.14] [MS. RICHARDSON] So I guess it's just another bad **coincidence** that the Death Dealer's Manuel talked about what you drew in your own journal?

[BOWMAN] I don't believe it actually speaks to what is drawn in the journal.

[RP:12/8:86:2] [MS. RICHARDSON] I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual. And see -- I think yesterday when you testified you said that you were surprised that the NRA video mirrored this event so closely when you saw it, right?

[BOWMAN] Yes. [MS. RICHARDSON] Okay. So that was another **unfortunate coincidence** for you?

[BOWMAN] I don't know if it was -- I wouldn't speak to it being unfortunate, but it seemed like that was -- that showed very similarly what happened.

[RP:12/8:89.8] [MS. RICHARDSON] So the fact that this tracks exactly what happened is just another **unfortunate coincidence** --

[MR. BROWNE]: Objection. [THE COURT] Overruled.

[MS. RICHARDSON] Another **unfortunate coincidence**?

[RP:12/9:27.8] [MS. RICHARDSON] Okay. Now, so you have testified again that since you weren't familiar with any of those things we are stuck again with these, **what you called yesterday, unfortunate coincidences.** That so much of what happened to Yancy Noll tracks what's in those books, correct?

[BOWMAN]. I have never said that. Those are your words.

[MS. RICHARDSON] **I believe you used the word unfortunate,** Mr. Bowman. I would never use that word to describe what happened. What I'm asking --

[MR. BROWNE] Your Honor, this is not proper. [THE COURT] Sustained.

[In the State's opening]

[RP:11/19Sup:81.7] fired his weapon five times. Not once, not twice, five times.

[RP:11/19Sup:81.19] The defendant fired 20 that Glock one, two, three, four, five times and killed Yancy Noll with premeditated intent.

[RP:11/19Sup:82.16] [MS. MCCOY] He fired five shots, and four of them hit Yancy Noll.

[RP:11/19Sup:82.24] [MS. MCCOY] the defendant fired five shots at Yancy Noll

In the State's closing: [RP:12/9:88.23] And witnesses describe hearing five shots, but we know there were actually six.

Ear Witnesses

[RP:11/19:51.17]

[STATE] Do you know how many you heard?

[WITNESS] Five.

[RP:11/19:57.10]

Q. Okay. Do you remember -- you said there were

11 five -- what you thought were five firecrackers.

12 A. Yes, ma'am.

13 Q. Do you remember how they went off?

14 A. Quick succession.

[RP:11/19:72.14]

A. We were stopped at the stop light, and I

15 heard -- I heard five audible pops,

[RP:11/19:73.13]

Q. Okay. When you heard those five pops, can

14 you tell us the sequence?

15 A. There was two right away and then there was a

16 little bit of a pause and then one, two, three more.

[RP:11/20:101.4]

[WITNESS] You know, I heard it what

5 at the time I thought I heard five.

[RP:11/20:130.16]

How many gunshots do you think you heard?

18 A. Five in rapid succession.

[RP:12/4:132.12]

Q. You remember going down to Red Robin and

13 having dinner two hours after you killed Yancy Noll.

14 You remember all of that.

15 A. I remember eating at Red Robins, yes.

16 Q. Okay. Was it two hours after you killed

17 Yancy Noll?

[RP:12/8:30.5] [STATE] But why wash the outside at all?

[BOWMAN] Because there was a lot of bugs on the trip down.

[STATE] Okay. So it had nothing to do with the fact that you had shot a man to death?

[RP:12/8:45.24] [STATE] You're also interested in how to kill people, right?

[BOWMAN] I don't believe so, no.

[STATE] Well, especially how to kill people in cars, right?

[RP:12/8:64.25] [STATE] So the reference library, how many topic areas would you say that it had?

[BOWMAN] Many screen fulls.

[STATE] Okay. And a lot of them have to do with killing; is that correct?

[BOWMAN] No.

[STATE] No?

[BOWMAN] No.

[STATE] Death?

[BOWMAN] No.

[RP:12/8:67.14] [STATE] The bottom line is you had a lot of documents in your folder that deal with how police solve crimes, right?

[RP:12/8:68.5]

[STATE] We just went through it. What you accessed that night at

midnight. Five hours after you killed Yancy Noll, and

you wiped the car down?

[RP:12/8:75.18] [STATE] The Death Dealer's Manual offers advice on how to kill people, correct?

[BOWMAN] I have not read it. I cannot speak to it.

[STATE] It offers advice on the psychology of killing, correct?

[RP:12/8:79.4]

[STATE] You called it a Garrotte. A Garrotte is what you kill people with, correct?

[MR. BROWNE] Your Honor, I'm not sure the tone is appropriate.

[THE COURT] Overruled.

[STATE] Correct?

A. So in -- this is in the context of --

[STATE] I know. Your movie.

A. -- for a movie.

[STATE] Yeah, I know. Everything is a movie. I get that. Why did you call it a Garrotte, if it has to do with a movie?

[RP:12/8:82.6] [STATE] How about the Glock that you used to kill Yancy Noll? How many bullets did that hold?

[RP:12/8:86.14] [STATE] Okay. So in the Death Dealer's Manual the author talks about -- must be obvious that when at all possible the element of total surprise should accompany. The surprise factor will eliminate any chance of the targets becoming alerted, and aided by his adrenaline flow. Are you telling us that you have not read that either?

[BOWMAN] That's correct.

[STATE] By using the element of total surprise whenever possible a lethal attack can be rather quickly executed against the following vital areas of the target's body. You have not read that either?

[BOWMAN] Anything in that book I have not read.

[STATE] Okay. So when it says the shooter should be someone unknown to the target, this is imperative, because the police look for motive, means, and character. And basically if there's a stranger there's no motive. Does that make sense to you?

[BOWMAN] I'm not clear what the actual question was.

[STATE] Well, if one person kills another person, and that person is a stranger, it's harder for the police to find a motive, would you agree?

[BOWMAN] I don't think I -- I don't think I would agree to that, and I don't think I should speculate on what the police would think.

[STATE] Well, would you'd agree probably that motive is always an issue in killings? I mean, you have done enough reading to know that?

[BOWMAN] I think that most people do things for a reason.

[STATE] Okay. The Death Dealer's Manual also says that 9mm like you used, used close in are an effective means of killing someone. Were you aware of that?

[BOWMAN] I have not read those books.

[STATE] So Murder, Inc., again, talks about the need for total surprise. And it says that the temple of the head is great target for small arms fire; would you agree with that?

[BOWMAN] It's -- I don't think I would -- if I was to write something like that that would not be the first thing that came to my head.

[STATE] The temple?

[BOWMAN] Yeah.

[STATE] Isn't a good place to kill someone?

[BOWMAN] Is that what you are thinking it would be?

[STATE] Well, that's what I'm asking you.

[BOWMAN] I haven't read those books, and I don't think that that would be the -- that's not what I would believe.

[STATE] What do you think would be the best way to kill someone, other than a Garrotte?

[BOWMAN] I haven't really put much thought into that.

[STATE] Okay. The Murder, Inc. book also says a handgun is easy to carry and use and dispose of. You can dismantle it in 15 minutes; is that accurate?

[BOWMAN] I would think that you could probably – somebody familiar with a handgun could probably dismantle it sooner, and take it apart. You know, cleaning is usually done in a short time.

[STATE] Okay. Well, you dismantled this gun. How long did it take you?

[BOWMAN] I really don't remember.

[STATE] Okay. The Murder, Inc. book also says if there is identification of the killer it will be by accident like being caught on camera. Use cash. Don't leave a paper trail. And don't use a check or credit when in transit. Were you aware of that that the book says that?

[BOWMAN] I have not read either of those books. You could just as well be reading lines from any of the hundred of thousand other books that are on the computer and --

[STATE] Okay. [BOWMAN] -- I wouldn't know.

[STATE] So the fact that this tracks exactly what happened is just another unfortunate coincidence

[RP:12/8:108.17] [STATE] Because DNA and fingerprints are notoriously difficult to get off the grips of guns, right?

[BOWMAN) I have never heard that.

[RP:12/8:144.10] [STATE] And how do you feel about the fact that you fired four bullets into his brain, and obliterated his mind, and his skull, and his being? How do you feel about that?

[BOWMAN] I think that's - it's tragic.

[RP:12/8:145.2] [STATE] You know, it's interesting, Mr. Bowman, in all your testimony over the course of the two days you never once talked about the fact that someone lost their life except the effect that it had on you. Were you aware of that?

[BOWMAN] I'm not sure what the question is.

[STATE] Okay. It doesn't matter. Thank you

The typical pattern: Ask a question to misrepresent a fact and then ignore the response.

The State misrepresented Mr. Haskett's testimony to insinuate that Mr. Bowman was lying. And then repeated the insinuation in closing.

[RP:11/25:75.23

STATE] Did you ask him [Bowman] why he was changing out those tires?

[Mr. Haskett] Yeah. He said his friend wanted the tires.

[STATE] Did he say any more detail about that?

[Mr. Haskett] Not about the tires, no.

[RP:11/25:79.18]

[Mr. Haskett] We took his old tires -- again, confirming that he was giving them away to a friend.

[RP:12/4:128.3]

[STATE] Did you not tell Mr. Haskett that you were getting new tires so that you could return them – the old ones to a friend?

[BOWMAN] I did not say that.

[STATE] You did not say that?

[BOWMAN] I don't believe so, no.

[RP:12/9:64.2] In the State's closing:

And he [Bowman] told Doug [Haskett], although the defendant denies this, because it doesn't make him look good that his friend wanted the old tires from the BMW, and that's why he was switching them out.

[RP:12/4:128.9]

[STATE] Okay. So what has happened today is that you testified that you remember everything in great detail--

12 A. Yeah.

[STATE] -- except the part that constitutes murder in the first degree; is that correct?

[Mr. Bowman did not remember certain moments when he was defending himself and those exact moments do not define murder in the first degree; it was the time before Mr. Bowman's memory gap that define intent and premeditation which are the elements that constitute first degree murder.]

[STATE] Well, you remember everything that happened

22 before the shots that obliterated Yancy Noll's head and

23 you remember everything that happened after the shots

24 except for the escape. You don't remember the shots

25 that comprise the crime; is that correct?

[The shots did not comprise the crime. The absence of lawful intent comprises the crime. No instructions were given to the jury to clarify this.]

[RP:12/4:140.11]

Q. So when you say "it would not surprise me,"

12 you use that phrase a lot, and it sounds like you're

13 using it in place of "yes."

14 Is that accurate?

15 A. Can you give me an example?

16 Q. Sure. You just said it. "It would not

17 surprise me if she noticed something was amiss."

18 A. Okay.

19 Q. Right?

20 "It would not surprise me if I had

21 looked at some of the forensic articles."

22 A. Sure.

23 Q. I -- "It would not surprise me if I had read

24 some of the books."

[Mr. Bowman testified on 12/4, 12/8 and 12/9. On 12/4 Mr. Bowman did say that "I wouldn't be surprised" if he read one of the articles after the incident but he never made statement remotely close to "It would not surprise me if I had read some of the books" as insinuated here by the State.]

[RP:12/4:158.22]Q. Now, [GR] came to visit you in the jail a

23 couple times, right?

24 A. Yes, I believe so.

25 Q. Okay. And you heard him testify that you

[RP:12/4:159.1]

said something to the effect of, "I didn't do this."

2 A. I don't believe that was the words that were

3 used in that.

4 Q. Okay. What is your memory of it?

5 A. I would ask for a transcript of the -- of --

6 if -- I mean, that's -- I can't say what I remembered

7 of him saying.

8 Q. But you don't think that it was "I didn't

9 have anything to do with this"?

10 A. I think I -- I believe I said something like,

11 you know, "We'll get this all cleared up."

12 Q. And you never told him that you were almost

13 killed by Yancy Noll?

14 A. I -- I wanted to -- I wanted to protect my friends from just this horrible thing.

[RP:12/8:18.9 to 19.16]

Q. When did you first tell your parents you had acted in self-defense?

A. I haven't told anybody until -- I mean, I have talked to my lawyers.

Q. Okay. But not until the trial?

A. Correct.

Q. And that was after you had sat through all the State's testimony, and figured out that identification was not going to be an issue, right?

A. I don't understand that question.

Q. Well, you're nailed in terms of identification. It was you who did the shooting, and that's been proven far beyond a reasonable doubt, agreed?

MR. BROWNE: Your Honor, object to the form of that question.

THE COURT: Sustained.

MR. BROWNE: And ask that it be disregarded.

THE COURT: That question will be stricken. And you may rephrase.

EXAMINATION BY MS. RICHARDSON:

Q. Mr. Bowman, you have sat through the trial, and you heard all the evidence showing that you're the one who did this?

A. Yes. And I have acknowledged that.

Q. Right. That's because it's been proven, right?

A. It -- that -- and there's no because of that. It's an and. I have brought that forward.

Q. Okay. So you have brought forward your self defense claim because you have no defense to identification at this point, correct?

A. No. I have brought forward -- I was brought here to tell what happened, and so I have expressed that.

[And then the State changes topics]

Q. Okay. Well, you have testified you are mostly interested in cars and computers, right? It's what you told Mr. Browne?

[RP:12/8:20.12]

Q. Okay. So like everything else that you become interested

in, really interested in, you want to learn it completely

so that you know everything from the inside out, and the

best way to do it and that applies to cars?

[This fits with the State's insinuations that Mr. Bowman has an obsession with death. The State had no evidence of this but insinuated it throughout the trial and then coupled that theory with the idea that Mr. Bowman had many interests and followed an interest to the point of becoming something of an expert in it and then moves on. The State's case was circumstantial and they used inferences such as this to piece their story together.]

[RP:12/8:21.21]

Q. In fact, you took pictures of your speedometer at 120

miles an hour, right?

A. I don't remember that, but if there's a picture I imagine

that's probably possible, yeah.

[The question above and the testimony on obstacle course/ race track driving all fit into the State's effort to portray Mr. Bowman as having an adventurist spirit. The State played Exhibit 238 - the driving video and Exhibit 239 - Bowman at the Shooting Range video, during closing to tie all these ideas together that Mr. Bowman has an adventurist spirit.

The State was given permission to quote this from The Death Dealer's Manual: "adventure is a valid motivation for the killer assuming that he is otherwise qualified and motivated" [RP:12/8:9.8]. Which, in closing, the State distorted to this: "The Death Dealer's Manual says, this adventure is a valid motivation for the killer. Adventure. Movies. Assuming he is otherwise qualified which he was. And motivated [RP:12/9:89.7].

The Death Dealer's Manual says nothing about movies. Using the video exhibits allowed the State to present a vivid image of Mr. Bowman as an Adventurer and then cleverly linked Mr. Bowman's professional interest in movies to The Death Dealer's Manual by quoting "Adventure" from the Book and then injecting "Movies" into the sentence.

[RP:12/8:30.5] [STATE] But why wash the outside at all?

[BOWMAN] Because there was a lot of bugs on the trip down. [from Portland]

[STATE] Okay. So it had nothing to do with the fact that you had shot a man to death?

[RP:12/8:37.2]

[STATE] Okay. Okay. What does it take for you to flip somebody

off on the freeway?

[RP:12/8:37.22 through 38.10]

[BOWMAN] Okay. Well, so I remember once where I was somewhere

and -- some long highway, and on I-5 probably. And there's, you know, I'm somewhere to the right of a car or a -- to a truck, and he gets over, and doesn't see me, and starts to drive me off the road. And so kind of started going off on the shoulder or slow down and get behind, and then I accelerated and passed him. And, you know, in that case I probably -- I was upset that I was almost run off the road. I don't think that -- I mean, looking back I could say that he probably didn't know, but in a large truck, and you are a little tiny ant I was upset about that. So I -- I think I ended up flipping him off as I passed him.

[STATE] That can get you killed in Seattle, did you know that?

[The State asked Mr. Bowman to testify extensively on his interests or projects. The pattern was: Bowman had an interest, developed expertise and then completed a project and then moved onto a new interest. Then the State asked the following question.]

[RP:12/8:45.24] [STATE] You're also interested in how to kill people, right?

[BOWMAN] I don't believe so, no.

[STATE] Well, especially how to kill people in cars, right?

[RP:12/8:59.4]

[STATE] The things that you forget that you have done --

A. Okay.

[STATE] -- are the things that are most damaging to you, do you realize that?

[Forgetting moment where Mr. Bowman discharged his weapon was not damaging evidence. Neither was Mr. Bowman's imperfect memory about what files he accessed/read after the incident. Intent and Premeditation were the elements of the crime that the State was obliged to prove. By asking these questions the State was telling the jury that Mr. Bowman was lying to protect himself because these were the elements of the crime. This undoubtedly confused the jury]

[RP:12/4:48.5] [MR. BROWNE] -- how long after that were you hit with something?

[BOWMAN] Fairly shortly afterwards. [MR. BROWNE] Okay. Okay. So how long did you and Mr. Noll remain side by side? [on I-5]

[BOWMAN] Not very long. I mean, it was kind of – it was that -- you know, the inching back and forth while trying to get ahead type of traffic [on I-5].

[RP:12/8:112.8] [STATE] Okay. And how fast do you think you were going at that point?

[BOWMAN] Just under the speed limit. [STATE] So 55'ish?

[BOWMAN] Yeah. 40, 50.

[STATE] Okay. And the water bottle comes flying in your car?

[BOWMAN] No. At that point that was later. So we were going significantly slower when the water bottle happened.

[STATE] Yeah, that won't work, will it? If the water bottle is flying by at 55?

[BOWMAN] That's a different time.

[MR. BROWNE] That's a misstatement. I object.

[THE COURT] Actually, it was formed as a question.

[STATE] Is that correct?

[BOWMAN] What was the question?

[STATE] A water bottle doesn't fly very well through the air going 55 miles an hour?

[BOWMAN] Well, we weren't going -- I mean, so the 45 to 50 was when I had accidentally cut him off. And then later when he threw the water bottle we were going much slower.

[STATE] Okay. And how fast do you think you were going? [BOWMAN] I -- 30.

[RP:12/9:73.14] [THE STATE] Remember no one saw a disturbance. Heard a disturbance. Heard any words being exchanged. Nobody saw flying wine bottles. They heard nothing unusual until they heard the pop, pop, pop of the gunshots that killed Yancy Noll.

[RP:12/9:68.24] [THE STATE] phantom wine bottle.

[RP:12/9:70.23] [THE STATE] And if you believe him about these bottles that came hurling into his car, he dumped the only evidence that could help him corroborate his story.

[RP:12/9:73.23] [THE STATE] And of course heaving a wine bottle into the defendant's car. Nice touch. Wine steward. That bottle would have had to be tossed in a perfect arch.

[RP:12/9:74.4] [THE STATE] So that full bottle, which has some weight to it, would have to be tossed by Yancy's left hand presumably, right? Coming out of the driver's side in a perfect arch up and over the window that's been rolled up, and have it land on the back of the defendant's head perfectly all without anyone seeing what happened. That's one magic wine bottle with wings.

[RP:12/9:83.2] [THE STATE] The water bottle that supposedly came from Yancy's Subaru, and landed squarely on the dashboard. This is another magic flying bottle. And this is while they are driving on the freeway weaving in and out. And while Yancy is screaming about fancy cars, and spitting mad, and red in the face, it's a pretty good flight through the wind resistance, that bottle. And Yancy's aim, again, having to reach out the driver's window with his left hand, keep his hand on the wheel on the freeway, aim it, account for the speed of the cars, toss it in the air, over the freeway pavement, several feet away into a moving car, and it lands right on the dashboard. Wow.

[RP:12/4Sup:12.5] [MR. BROWNE] The next things that happens is Mr. Bowman remembers he hears this noise which is, he'll describe to you, as a (made noise) and a water bottle comes flying into his car from Mr. Noll's car and hits Mr. Bowman's dashboard and hits him after it 10 ricochets off the dashboard.

[RP:12/4Sup:16.8] [MR. BROWNE] After he puts up his windows, he hearing another noise, which he will describe as a louder thwop, and he gets hit in the head with a wine bottle. Half -- we -- there's liquid in the bottle. Dinh does not remember right now. He later got rid of it. We'll talk about that. But there was liquid in it, and he gets hit on -- on his head right about here (pointing). He doesn't know what hit him, but he knows whatever hit him really hurt him.

[RP:12/4Sup:25.19] [MR. BROWNE] When they come back from Red Robin, it's about 11 o'clock I believe, and he looks through his BMW and sees glass everywhere, glass for the window. He sees a water bottle that's half full, is his memory, three-quarters full, and he sees the wine bottle.

[RP:12/4:49.1] [BOWMAN] No. I -- I -- the -- I might have kind of mouthed "Sorry," but that would be the -- that would be extent of it.

[MR. BROWNE] Okay. So what happened -- how do you and Mr. Noll separate from being parallel driving next to each other?[on I-5] How does that happen?

[BOWMAN] He was -- so we had that exchange, and then traffic on my lane started picking up, thankfully, and I started to be able to move a little bit further ahead. And that was when there was the (made sound) in -- in the car.

[MR. BROWNE] And do you know where Mr. Noll's car was when that -- I assume this is the water bottle?

[BOWMAN] This is the water bottle, yes.

[MR. BROWNE] Did you know what it was when you first saw it or heard it?

[BOWMAN] Not really.

[MR. BROWNE] And what did the water bottle hit?

[BOWMAN] The front -- like, the console dash on the -- on my car.

[MR. BROWNE] Was there water in it?

[BOWMAN] There was some water in it, yes.

[RP:12/8:100.24] [THE STATE] Okay. In fact, that wine bottle, and it was half full, I think you said, right?

[BOWMAN] The water bottle was half full.

[THE STATE] Was the wine bottle --

[BOWMAN] I think it was like a new wine bottle.

[THE STATE] Full?

[BOWMAN] Yeah.

[RP:12/8:114.9 [STATE] And it hit the dash, and you remember there was water in it?

[BOWMAN] Yes. [STATE] How much water? [BOWMAN] I really didn't look.

[STATE] Okay. Well, you threw it away later. Would you say it was half full, more than half full?

[BOWMAN] Sure. Half full.

[STATE] Half full. And that's when you rolled up your windows?

[BOWMAN] I rolled them up after the bottle came in.

[RP:12/9:74.1] [STATE] Well, first of all, the defendant testified that originally that it was half full, and then he chan[g]ed that and said no, it was full. So he can't even keep his own story straight.

[RP:12/9:83.14] [STATE] Two years to come up with a story, and that's what he came up with because the -- because Yancy has tons of water battles in his car. Perfect. A half empty bottle he comes up with because presumably a full one might be seen as too heavy to successfully throw from a moving car. Maybe he figured out the physics of that.

[RP:12/9:108.6] In closing, Defense said " the evidence in this case was Mr. Bowman said that the water bottle was about half full. And that the wine bottle was full. She [The State] suggested he changed his story about that.

[RP:12/9: 62.5] he is frankly a ***liar***. And not a very good one

1. [RP:12/9: 62.11]but from his willingness and ease at ***lying*** about other things, ***lies*** that ***he*** got caught in
2. [RP:12/9: 62.20] when someone in your family commits murder and parents are **one of them**. For two years he ***lied*** to his parents.
3. [RP:12/9: 62.23] he ever told them he acted in self-defense. So he ***lied*** not only about doing it. We
4. [RP:12/9: 63.11] we know is that both those ***lies***, even inconsistent as they are, are double ***lies***
5. [RP:12/9: 64.15] Well, we know that's obviously a ***lie*** because he did
6. [RP:12/9: 64.15] He knew about this long ago, and ***he lies*** to
7. [RP:12/9: 65.7] he didn't show a thing. ***Lies*** come very
8. [RP:12/9: 65.11] He ***lies*** about stuff that really shouldn't matter it seems like.
9. [RP:12/9: 66.17] It's a good example of why he ***lies***. He needs us to
10. [RP:12/9: 67.5] He ***lies*** about going home after killing Yancy Noll.
11. [RP:12/9: 72.22] So here's what we know. He ***lies*** about things that
12. [RP:12/9: 75.5] his fictional narrative. He ***lies*** because turning off the
13. [RP:12/9: 75.23] ***He lies*** about having read a manual on gunshot residue
14. [RP:12/9: 77.3] He ***lies*** about browsing through videos on gunsmithing
15. [RP:12/9: 62.11]but from his willingness and ease at ***lying*** about other things, ***lies*** that ***he*** got caught in
16. [RP:12/9: 62.15] he is completely comfortable, very comfortable with ***lying***. And so you must take ***his*** story
17. [RP:12/9: 63.6] He gets an untraceable phone using a fake name. He's ***lying***. His name is not Peter Nguyen.
18. [RP:12/9: 66.2] He is ***lying***. Why is he ***lying*** about something as dumb as a peephole
19. [RP:12/9:67.2] So in lying about the peephole, he's ***lying*** about something that might otherwise hurt the tale that ***he*** is telling, and ***he*** expects us to believe ***him***. [RP:12/9:67.2]
20. [RP:12/9: 69.12] He is ***lying***. He is not good at it.
21. [RP:12/9: 72.9] that's because he's ***lying***. It's not there. It went into
22. [RP:12/9: 87.9] he would be ***lying*** to the police about what happened.
23. [RP:12/9: 84.9] He is ***lying***.
24. [RP:12/9: 87.9] he would be ***lying*** to the police about what happened.

"Death Dealer's Manual" was said 20 times in front of the Jury

[RP:11/5:58.15] "did you find a PDF called Death Dealer's Manual?"

[RP:11/5:86.14] "And also, this Death Dealer's Manual"

[RP:11/5:93.24] "It says: Death Dealer's Manual, Seagate; correct?"

[RP:12/1:215.14] [Exhibit] "250, which is formerly the Death Dealer's Manual now called The Manual, is it affected by what's described in [Exhibit] 252?"

[RP:12/8:49.4] "So what would the Death Dealer's Manual have come from that you downloaded as part of something you were interested in?"

[RP:12/8:57.9] "Okay. And is that what Murder Inc and the Death Dealer's Manual were under or were they under forensics?"

[RP:12/8:73.25] "It's actually called the Death Dealer's Manual"

[RP:12/8:75.4] "Okay. Well, Death Dealer's Manual deals with killing people."

[RP:12/8:75.18] "The Death Dealer's Manual offers advice on how to kill people, correct?"

[RP:12/8:80.24] "the Death Dealer's Manual says, the Garrotte needs to be a manufactured weapon"

[RP:12/8:81.14] "So I guess it's just another bad coincidence that the Death Dealer's Manual talked about what you drew in your own journal?"

[RP:12/8:86.2] "I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual."

[RP:12/8:86.14] "So in the Death Dealer's Manual the author talks about"

[RP:12/8:87.17] "The Death Dealer's Manual also says that 9mm like you used"

[RP:12/9:31.22] "it's talked about in the Death Dealer's Manual and Murder Inc"

[RP:12/9:32.6] "the Garrotte is mentioned in Murder Inc, and the Death Dealer's Manual, right? You're claiming you never read those?"

[RP:12/9:79.8] "In the Death Dealer's Manual, more coincidences."

[RP:12/9:86.16] "use the 9mm that was suggested in the Death Dealer's Manual"

[RP:12/9:86.20] "Just like the Death Dealer's Manual instructs."

[RP:12/9:89.7] "The Death Dealer's Manual says, this adventure is a valid motivation for the killer."

"Murder Inc" was said 14 times in front of the Jury

5-Nov-2014 "Murder Inc" counted 2 times:

[RP:11/5:58.6] On the Seagate drive on the reference library, did you find a PDF called Murder Inc? Yes.

[RP:11/5:85.21] the Murder Incorporated by Jack the Rippa, Seagate Mischief folder -- right?

1-Dec-2014 "Murder Inc" counted 1 time:

[RP:12/1:215.7] which has been redacted to be called The Book, which is formally Murder Inc,

8-Dec-2014 The word "Murder Inc" counted 9 times:

[RP:12/8:49.11] How about Murder Inc by Jack the Rippa.

[RP:12/8:57.9] And is that what Murder Inc and the Death Dealer's Manual were under or were they under forensics?

[RP:12/8:71.10] It's actually called Murder Inc, the book, correct?

[RP:12/8:76.16] there's that word Garrotte that we saw in Murder Inc, correct?

[RP:12/8:86.2] I would like to look at a couple of other things that show up in Murder Inc and the Death Dealer's Manual.

[RP:12/8:87.21] So Murder Inc, again, talks about the need for total surprise.

[RP:12/8:88.13] The Murder Inc book also says a handgun is easy to carry and use and dispose of.

[RP:12/8:88.23] The Murder Inc book also says if there is identification of the killer it will be by accident like being caught on camera.

[RP:12/8:91.7] Murder Inc also says to throw pieces of evidence away at different times? Again, I haven't read that, but if that's what you're saying.

9-Dec-2014 The word "Murder Inc" counted 2 times:

[RP:12/9:31.20] Well, in fact, it has to do with this case because it's talked about in the Death Dealer's Manual and Murder Inc

[RP:12/9:32.6] They were both mentioned in murder -- the Garrotte is mentioned in Murder Inc, and the Death Dealer's Manual, right?

[Temporalis said 3 times in trial. All referring to the recovery location for bullet "Number two". The State called it the Temple]

RP:12/3:76.16] [STATE] Can you tell us the track of that bullet?

[Medical Examiner] Sure.

[STATE] Number two?

[Medical Examiner] This one went through, again, the bones of 21 the left face, again, the left skull base. It goes 22 across the left and then right temporal lobes of the 23 brain and then the part of the right temporal lobe. So 24 it's -- it's got more of an acute angle but it's still 25 going from left to right, so it's going more this way (drawing). Anyway, you get the idea.

[RP:12/3:77.11]

[Medical Examiner] Actually, this one [number 2] goes all the way through, 12 and there's a muscle out here in the outside part of 13 this -- the skull. It makes it through the skull and 14 is between the muscle and the skull out here. That's 15 called the temporalis muscle.

[RP:12/3:90.23] [Referring to Number two]

23 Q. And that one that is assigned a number -- I 24 don't know what it is, so I will find out -- 25 Mr. Browne's kindly stipulated to the entrance of these. 2 It says bullet from right temporal 3 muscle?

4 A. That's correct.

5 Q. The right temporal muscle is where?

6 A. The temporalis muscle is the muscle on the 7 side of the head that helps us chew.

8 Q. The temple?

9 A. Temporalis, yes.

The Medical Examiner identified the entrance wound locations as follow:

[RP:12/3:69.3] The one that I have listed as number one on the autopsy report is the one to the right of the upper lip.

[RP:12/3:74.19] The second shot I have noted on the left mid-cheek.

[RP:12/3:78.4] Number three, I have listed on the left side of the head just in front of this -- this -- oh, I'm sorry -- just in front of this sticky outer part of the ear, which we call the tragus.

[RP:12/3:80.5] Number four, I have as -- described as the left back of the head.

The State emphasized the Temple as the Target

[RP:11/19:Sup:4.9] [82.9] The defendant shot Yancy in his temple shattering bones there.

[RP:11/19Sup:8.23] [86.22] MS. McCOY: in the temple with a small-caliber firearm

[RP:12/3:91.8] Q. The temple? A. Temporalis, yes.

[RP:12/3:140.12] A. "3. ***Temple.*** It's also a great target for small arms fire too.

[RP:12/8:87.22] Q. And it says that the ***temple*** of the head is great target for small arms fire; would you agree with that?

[RP:12/8:88.3] Q. The ***temple***?

[RP:12/8:104.12] Q. You hit him four times in the head, including the ***temple***, right?

[RP:12/9:78.17]The ***temple.*** It's also a great target for small arms fire.

[RP:12/9:86.23] clearly set forth on that video from the NRA. To aim for the ***temple.***

[RP:12/9:91.25] He shot him in the head, in the ***temple*** where he did because he meant to kill him.. That's premeditated murder.

[RP:12/9:92.18] Books telling him to use a stranger. And aim at the ***temple.***