NO. 94618-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WILLIAM BARRY SELLEY

v.

STATE OF WASHINGTON

PETITION FOR DISCRETIONARY REVIEW
FROM THE COURT OF APPEALS DECISION TERMINATING REVIEW
FILED IN NO. 75631-1-I ON MAY 8, 2017

By
Barbara Corey
Attorney for Appellant
WSB #11778

902 South 10th Street
Tacoma, WA 98402
(253) 779-0844

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal

State

Statutes

Constitutional Authority

Rules and Regulations

A. IDENTITY OF PETITIONER

BARRY WILLIAM SELLEY, appellant below, seeks the relief designated in part B.

B. CITATION TO COURT OF APPEALS DECISION:

Selley asks this court to grant this petition for discretionary review of the decision of the Court of Appeals – Division One unpublished opinion affirming his conviction for second degree murder and the exceptional sentence imposed therewith filed on May 8, 2017. A copy of that opinion is attached.

C. ISSUES PRESENTED FOR REVIEW

This Court should accept discretionary review of Selley's case because the decision satisfies three of the four criteria set forth in Rule of Appellate Procedure [RAP] 13.4.(b):

(1) The decision of the Court of Appeals is in conflict with a decision of the Supreme Court;

(2) The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals;

(3) The case presents a significant question of law under the Constitution of the State of Washington of the United States.

In this case, the Court of Appeals misapprehended the record at trial. The trial court denied Selley his constitutional rights to adduce evidence of KS's chronic alcoholism and/or significant alcohol use at time of specific case events. The chronic alcohol use affected her liver, compromising her metabolism, the coagulation/clotting process, the rapidity which she would bruise, etc. All of these factors should have been made known to the fact finder. In addition, her alcohol use affected her ability to perceive and her credibility. Selley was prohibited from cross-examining her hearsay statements admitted through other witnesses. These statements were in stunning contrast to her own statements made at the hospital when she had not had alcohol for several days and she averred (outside of Selley's presence) that he had never hurt her and that she felt safe to go home.

These and the Court of Appeals' rulings on prosecutorial misconduct and sufficiency of the evidence form the basis for this petition for discretionary review.

D. STATEMENT OF THE CASE:

Exactly how KS died remains unknown. Pierce County Medical Examiner Thomas Clark wrote on the death certificate that she was "beaten to death by another."

However, the fatal injury was not ever identified. She was believed to have a perforated colon which was first noted when she was in surgery days after she had been hospitalized. RP14 2068. It was not visible as scar tissue had been formed and it could not be clearly seen. RP 14 2070. He could not opine with reasonable medical certainty when it would have occurred, but stated that the perforation to the bowel ...

> . . . might have occurred at the time of trauma , or sometime thereafter but certainly prior to her arriving at our hospital. Due to all the bile staining, the, the perforation had been there likely longer than 12 hours, perhaps even 24 -48 hours." RP 15 2074.

Dr. Jacoby stated that there is a "golden hour of trauma" during which she would have survived that injury. RP14 2135. That was the one sole injury that led to the necrosis that resulted in her death.

Dr. Jacoby, the sole medical professional who saw the injury, testified *to a reasonable medical certainty* that KS's injuries were consistent with a fall

down the stairs. RP14 2158. In KS's medical chart, an admitting physician Dr. Hannigan had noted that KS had fallen down the stairs three days prior to the 28th [September 28th]. RP14 2120-2121.

Dr. Jacoby also considered KS's other injuries in the context of her fall down the flight of stairs and acknowledged that they were consistent with that as well as consistent with getting out of a car while extremely intoxicated, requiring assistance, stumbling, falling multiple times, being dropped, swaying from side to side and falling, as well as later falling and hitting her head on the side of a glass table. RP14 2124, 2125. He testified she would have had been able to walk albeit with pain and difficulty, or even assistance, even after receiving these injuries. RP14 2131.

KS denied that anyone at home, including Selley, had hurt her, and that it was safe for her to go home. RP9 1262.

The prosecutor claimed that "Kate's dye was cast" because Selley did call for medical care for her in a timely fashion. RP2 142-143, 148. Thus the prosecutor argued to the jury that the Selley killed her by failing to provide medical care for her.

In fact, KS was a longtime serious alcoholic who also was Selley's live-in girlfriend for several years before her death. RP19 2692-2693.

Both Selley and her family were aware of her severe alcoholism. E.g.,

RP 2450,

On September 11, 2009, when KS was working at her job at a Goodwill donation station, she suffered an accident. She went to the hospital and her blood alcohol was higher than .20. She had sustained concussion, unspecified; sprain of neck; sprain of unspecified site of shoulder and upper arm; contusion of elbow; contusion of knee.

In December 2010 [the same day that her sisters took her to Tacoma General Hospital to be examined for one of the incidents of alleged domestic violence that the State had charged as an aggravator and for which Selley received an exceptional sentence], her sisters also wanted to take her to Alcoholics Anonymous because her drinking was so out of control. KS had made statements that she routinely drank at last one half a fifth per day. However, KS refused to go because she did not want her parents to know that she was drinking again. RP 2450.

On September 23, 2012, Selley and the victim KS went out for drinks at a Puyallup bar. RP19 2692, 2693. During this course of the evening, she consumed approximately seven drinks, switching between vodka and Crown and Coke. RP19 2807. She became extremely intoxicated and fell off the bar

stool, appearing dazed for a minute and then eventually standing up. RP19 2807-2809; RP20 2869-70. She refused medical care. RP19 2810.

She was unable to walk to the car without assistance when they left the bar. RP19 2811, 2814. When they reached their Gig Harbor residence, she was so intoxicated she could not get out of the car. RP20 2877. Selley tried to help her out of the car but when he managed to get her out, she immediately fell over because she was so drunk. RP 2877-2878. Because he had been painting earlier in days, she fell on painting equipment such as ladders and scaffolding that was in front of the house. RP20 2379-2880.

When Selley again tried to support her, she stumbled and fell into a garbage can and a recycle bin. RP10 2379. She fell into additional objects and somehow hooked herself up in a ladder. RP20 2880. Selley succeeded in getting her into the house only by using a "fireman's carry", that is, dragging her into the house. RP 20 2884.

KS continued to be very intoxicated the next day and hit her head on a glass table when she got up. RP20 2887.

On Tuesday, KS perhaps experienced one "ground fall", when she fell down the stairs. RP20 2931, 2932.

On Thursday, KS became and could not walk without assistance. RP20 2947. When Selley assisted her in walking out of the bathroom, she fell and knocked her head, possibly on the bathroom counter. RP20 2947.

Medics who responded to the scene testified that alcohol consumption affects blood clotting, the formation of bruises, and vital signs. RP7 878-879, 920. Every medical witness testified about KS' vital signs.

The court denied Selley's motion for reconsideration for reconsideration of evidence of KS's alcoholism where KS's body exhibited numerous bruises that appeared to be and patterns consistent with blunt force trauma when in fact KS's alcoholism well may have contributed both to the resolution of those bruises and to the patterns [due to clotting issues] of those bruises. RP 2456. The jury was deprived of this significant testimony.

The State never thought that KS's injuries resulted from "ground falls." Rather, the State belittled Selley's explanations for KS's injuries as mere "ground falls" incapable of causing those injuries. Rather, the State's theory was that Selley had assaulted KS and had beaten her to death. RP2 140, The State put on a registered nurse who testified that a "ground level fall" is "falling from a walking position" and that the the majority of such falls seen at hospital involved the elderly RP9 1287.

The State's expert registered nurse testified that extreme intoxication could be relevant to ground level falls because such intoxication could make it easier to fall, harder to get up, and increase the likelihood of additional falls. RPP9 1288. She also agreed that such falls could result in more injuries on different planes of the body. RP9 1289. The nurse nurse agreed that "ground falls" could result in the kinds of injuries KS had exhibited.

Dr. Jacoby, the trauma surgeon, testified he never heard anyone attribute her injuries to a common ground fall. RP14 2126.

Dr. Jacoby testified to a reasonable medical certainty that KS's injuries were consistent with a fall down the stairs. RP14 2158, 2124; consistent with getting out of a car while extremely intoxicated , requiring assistance, stumbling, falling down multiple times, being dropped, trying to stand up and being unable to do so, swaying from side to side and falling on objects as well as later falling and hitting her head on the edge of a table. RP14 2125.

Surgeons were unaware of any bowel perforation until after they began surgery. RP16 2443. A perforation could be caused by lack of blood flow or disease RP16 2467. Pierce County Medical Examiner Thomas Clark testified that these factors could not be eliminated in this case. RP16 2467.

KS's chronic alcoholism had medical effects on her body. It affected the blood's ability to clot or coagulate blood. RP16 2448-2449, 2452. This can

result in "easy" bruising. RP 2452. Alcohol abuse causes both temporary and permanent liver damage, including impairment of coagulating and limitations of metabolism. RP 2448-2452.

Medical Examiner Clark opined that there may well have been changes to her liver due to her alcoholism but that there were not present at autopsy. RP 2454.

Moreover, when the State's pervasive misconduct through its insistence on calling Selley's version of how KS got into the house just a series of "ground falls" and her falls within the residence "ground falls", the State purposefully minimized and mischaracterized the defense evidence. The State also, from its opening argued that "the dye was cast" because Selley held her captive in the house and refused to get her medical treatment" and then persuaded the trial court to refuse to give an instruction that he had no duty to do so.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED:

Both the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington Constitution guarantee the criminal defendant's right to present a defense. *State v. Starbuck*, 189 Wn. App. 740, 750, 355 P.3d 1167 (2015), review denied, 185 Wn.2d 1008 (2016). Alleging

that a ruling violated the defendant's right to a fair trial does not change the standard of review from abuse of discretion, but an erroneous evidentiary ruling that violates the defendant's constitutional rights is presumed prejudicial unless the State can show the error was harmless beyond a reasonable doubt. *State v. Franklin*, 180 Wn.2d 371, 377 n.2, 325 P.3d 159 (2014); *State v. Dye*, 178 Wn.2d 541, 548, 309 P.3d 1192 (2013).

An error is harmless only if the reviewing court cannot reasonably doubt that the jury would have arrived at the same verdict in its absence. *State v. Jones*, 168 Wn.2d 713, 724, 230 P.3d 576 (2010) (quoting *State v. Smith*, 148 Wn.2d 122, 139, 59 P.3d 74 (2002)).

Inherent in the Sixth Amendment is the criminal defendant's right to confront witnesses against him. That right also is secured in Wash. Const., Wash. Const. Art. I, § 22

A criminal defendant's right to examine witnesses certainly extends to the opinions of expert witnesses. Because evaluating the credibility of expert testimony is within the province of the jury, it is imperative that the defendant receives his right to fully cross-examine the witness. E.g., State v. Ortiz, 119 Wash. 2d 294, 311 831 P.2d 1060, (1992). In this case, the trial court prohibited Selley from asking the medical doctors about significant factors that would have affected the formation, coloration, and appearance of the

bruises. Where the state emphasized time and again how KS was covered from head to toe with bruises, Selley should have been able to adduce testimony that because of her chronic alcoholism, her blood did not clot readily, she was clumsy, and bruised easily. She had sustained many bruises prior to her hospitalization and Dr. Jacoby, a trauma surgeon who actually treated her (as opposed to the medical examiner), testified with reasonable medical certainty that all of these injuries were consistent with accidental trauma, including blunt trauma. The trial court's failure to permit such cross-examination thus was prejudicially fatal to defense.

In this case, the trial court abused its discretion when it denied defense repeated motions to cross-examine medical witnesses regarding the effect of KS's chronic alcohol use on her injuries. *Significantly, the Court of Appeals opinion did not even reach this issue.* The trial court's ruling resulted in Selley's inability to put on evidence regarding KS's stunning lack of coordination at the during the week prior to her death, the effect of her calamitous journey from the car to house where she was incapable of self-locomotion and was assisted by Selley, who was also intoxicated. During this time, she was dropped on numerous hard objects, she tried to stand and fell and then could not stand up. Ultimately Selley had no choice but to drag her into the house, over a step and threshold.

Because she was a chronic alcoholic, her liver likely was unable to metabolize alcohol normally, her blood did not coagulate normally and she bruised easily. Her bruising patterns were affected by the lack of normal clotting. She was uncoordinated and she fell as uncoordinated individuals do. Her vital signs would have been affected. Her chronic alcoholism would have created other medical issues that the jury should have known about.

Without this evidence the trial court's ruling caused prejudice to Selley that could not be cured. The jury simply lacked the proper context in which to evaluate the State's evidence.

Moreover, when the State's pervasive misconduct through its insistence on calling Selley's version of how KS got into the house just a series of "ground falls" and her falls within the residence "ground falls", the State purposefully minimized and mischaracterized the defense evidence. The State also, from its opening argued that "the dye was cast" because Selley held her captive in the house and refused to get her medical treatment" and then persuaded the trial court to refuse to give an instruction that he had no duty to do so.

Further, the witness's use of alcohol at the time of the events in question is generally admissible to show that the witness may not remember the events accurately. E.g., *State v. Kendrick,* 47 Wn.App. 620, 786 P.2d 1079 (1987). That the person may have been under the influence at the time of the event goes to the person's credibility. State v. Hall, 46 Wn. App. 689, 732 P.2d 524 (1987)

In this case, the trial court abused its discretion, resulting in prejudicial error to Selley, when it refused to admit evidence of KS's alcoholism. KS, by her admission, consumed at least 1/s a fifth of alcohol a day. She was known to have had a blood alcohol level exceeding .20 when she was at work at her day job. She refused to go to Alcoholics Anonymous on the very day her sisters were taking to Tacoma General to report an alleged act of domestic violence by Selley because she did not want her parents to know she had "started" drinking again. It is noteworthy that her claim that Selley had thrown a large heavy television stand at her chest was not substantiated by medical examination – there was no bruising, no injury whatsoever. This strongly substantiates his testimony that nothing ever happened. Had the jury been able to hear about KS's chronic alcoholism the result likely would have been different.

Further, had the trial court sustained defendant's repeated objection to the patently irrelevant testimony about "ground falls", the State would not have been able to deprive Selley from presenting his defense. KS had significant bruising because she was a chronic alcoholic who often performed her daily activities with a blood alcohol level of about .20. She had fallen off a bar stool when her injuries began. She then received numerous additional bruises when she was unable to exit the car and enter the house without being "fireman dragged." She fell down the stairs during the next couple of days. At some point she sustained a perforated bowel which the trauma surgeon testified with reasonable medical certainty was consistent with a fall down the stairs. This was the only fatal injury. However, because it was untreated it resulted in a necrosis which resulted in the multi-systems failure.

The trial court's prejudicial exclusion of the evidence of alcoholism prevented Selley from explaining to the jury how KS's body responded to the physical insults from her fall from the bar stool, her inability to walk and staggering/dropping/crashing into objects on the sidewalk and driveway and falling down the stairs so as to affect bruising, metabolism, vital signs. It also prejudicially compromised his ability to impeach her statements regarding alleged acts of domestic violence he committed against her. She had not had any alcohol for days when she was admitted to Tacoma General on September

28, 2012, and Selley was not present. At that time, she candidly told medical staff that he had never hurt her and that it was safe for her to go home.

The prosecutor's improper comments impugning defense counsel and eliciting inadmissible testimony defendant's credibility provided cumulative evidence of misconduct denying Selley his Fourteenth Amendment right to Due Process.

F. SELLEY'S CONVICTION MUST BE REVERSED FOR FAILURE TO PROVE SECOND DEGREE MURDER BEYOND A REASONABLE DOUBT.

The sole injury that resulted in KS's demise was the bowel perforation. It was the lack of timely medical care that resulted in the spillage of bowel contents that resulted in necrosis that caused death.

No medical doctor could testify with reasonable medical certainty what caused the perforated bowel.

The trauma surgeon, Dr. Jacoby, who actually saw the site of the injury, could not identify the cause. He was unaware of any bowel perforation until after they began surgery. RP16 2443. Such a perforation could be caused by lack of blood flow or disease RP16 2467. *Pierce County Medical Examiner Thomas Clark testified that these factors could not be eliminated in this case.* RP16 2467.

It could not be concluded that this was the result of blunt force trauma. *Id.* Because this was the fatal injury that resulted in the necrosis,. the finding of death by being beaten beaten by another is not supported by the evidence.

Where a conviction rests on insufficient evidence, the remedy is generally to reverse and remand with instructions to dismiss the charge with prejudice *State v DeVries,* 159 Wn.2d 842, 845, 72 P.3d 748 (2003).

Because there is insufficient evidence to sustain the conviction, this Court must dismiss this case.

Alternatively, given the prejudicial evidentiary rulings and prosecutorial misconduct, this court should remand the matter for a new trial.

F. CONCLUSION:

For the foregoing reasons, petitioner Selley respectfully asks this Court to grant his timely petition for discretionary review.

DATED this 7th day of June, 2017

/s/ Barbara Corey
Barbara Corey, WSB #11778

I declare under penalty of perjury under the laws
of the State of Washington that the following is a true and correct: That on this date, I delivered via ABC- Legal Messenger a copy of this Document to: Appellate Division Pierce County Prosecutor's Office, 930 Tacoma Ave So, Room 946 Tacoma, Washington 98402 and via USPS to William Barry Selley Stafford Creek 191 Constantine Way, Aberdeen, WA 98520

6/7/17 **/s/ William Dummitt**
Date **Signature**

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. WILLIAM BARRY SELLEY, Appellant.	No. 75631-1-I DIVISION ONE UNPUBLISHED OPINION FILED: May 8, 2017

TRICKEY, A.C.J. — William Barry Selley appeals his conviction for the murder of Kathryn Southward. He argues that the prosecutor committed misconduct throughout the trial, that the court's exclusion of certain evidence interfered with his right to present a defense, that the trial court erred by refusing to give his proposed jury instruction on the lack of duty to seek medical care, and that there was insufficient evidence of a pattern of domestic violence to sustain both his conviction and his exceptional sentence. Finding no error, we affirm.

FACTS

On September 23, 2012, Selley went to a bar with his girlfriend, Southward, and his coworker, Todd McIntosh. The three arrived at the bar around 9:00 p.m. and left around midnight. At approximately 1:30 a.m., Selley's neighbors heard Selley yelling and cursing loudly and other loud noises coming from Selley's house.

Early in the morning on September 27, 2012, Selley called 911, reporting that Southward had fallen and needed medical attention. Emergency responders arrived shortly after 2:00 a.m. Selley met the ambulance outside and explained that Southward's injuries came from falling several times in the last few days, including falling onto a ladder on the way into the house and hitting her head when

she fell within the house. One paramedic heard him say, "It looks like I beat the shit out of her."[1] The paramedics found Southward inside on a couch, in critical condition. They rushed her to the hospital.

Doctors diagnosed Southward with a subdural hematoma, a partially collapsed lung, a lacerated liver, internal bleeding, rhabdomyolysis (a breakdown of muscle and tissue caused by staying too long in one position), a perforated colon, and liver and kidney failure caused by trauma. She had bruising over multiple areas of her body. Southward slipped into a coma within days of arriving at the hospital. She died on October 5, 2012.

The State charged Selley with second degree murder, alleging that the death was part of a pattern of domestic violence.

Selley testified that Southward had fallen down at the bar before they left. According to Selley, both he and Southward were very drunk when they arrived home, and Southward fell several times, including over a ladder, as he tried to help her into the house. He said that over the next few days she fell several more times in the house, including down the stairs.

Many witnesses who treated Southward, either at Selley's house or the hospital, testified to the serious nature of her injuries. Dr. Thomas Clark, the medical examiner, gave his opinion that Southward had died from being "beaten by another."[2] Several witnesses testified about Selley's previous acts of domestic violence against Southward.

Before trial, the court ruled that Selley could introduce evidence that

---

[1] 2 Report of Proceedings (RP) (Oct. 23, 2014) at 200.
[2] 16 RP (Nov.19, 2014) at 2436-37.

Southward was intoxicated on September 23, but could not introduce evidence that she was an alcoholic. Selley moved for a mistrial several times throughout the trial, on various grounds, but the court denied his motions.

Selley proposed an instruction informing the jury that he did not have to seek medical care for Southward if she did not want it. The court declined to include the instruction.

The jury found Selley guilty of second degree murder and found that the aggravating circumstance of a pattern of domestic violence existed. The trial court imposed an exceptional sentence. Selley appeals.

ANALYSIS

Prosecutorial Misconduct

Selley argues that the prosecutor committed multiple acts of misconduct throughout the trial. Specifically, Selley argues that the State repeatedly described Selley's theory of the case inaccurately, commented on Selley's credibility, and made improper comments about testimony during its rebuttal closing argument. We address each act of alleged misconduct in turn.

Selley's Defense

Selley argues that the State violated his right to due process by "deliberate[ly] twisting" Selley's "anticipated defense."[3] Specifically, Selley argues that, by repeating that Southward's injuries were inconsistent with "ground level falls," the State made it appear that Selley's defense was that Southward had experienced a ground level fall. Because the State properly asked witnesses to

[3] Br. of Appellant at 24.

compare Southward's injuries with the account they had received from Selley, we find no misconduct.

Selley argues that by "purposefully mischaracterizing the types of activities that Southward had engaged in when she sustained her injuries" the State "denied Selley his constitutional right to due process, a fair trial, and to present a defense."[4] "The tactic of misrepresenting defense counsel's argument . . . does not comport with the prosecutor's duty to 'seek convictions based only on probative evidence and sound reason.'" State v. Thierry, 190 Wn. App. 680, 694, 360 P.3d 940 (2015), review denied, 185 Wn.2d 1015, 368 P.3d 171 (2016) (quoting State v. Casteneda–Perez, 61 Wn. App. 354, 363, 810 P.2d 74 (1991)).

In Thierry, the State repeatedly told the jury that the defendant's theory of the case was that children could not be believed. 190 Wn. App. at 694. That was not the defendant's theory of the case. Thierry, 190 Wn. App. at 694. Rather, the defendant pointed to specific inconsistencies in the child's testimony to show that the child's testimony was not credible. Thierry, 190 Wn. App. at 694. The court ruled that the prosecutor's argument was improper because it unfairly undermined the defense's theory. Thierry, 190 Wn. App. at 695.

But here, the State's arguments and questions matched Selley's theory of the case. As defined by one of Southward's doctors at the hospital, a "ground level fall" is a fall from standing, meaning the degree of the fall could not be any higher than the height of the person who fell.[5] One emergency medical technician even noted that injuries from striking pieces of furniture are "pretty common" with ground

---

[4] Br. of Appellant at 26.
[5] 15 RP (Nov.18, 2014) at 2297.

level falls.[6]

Selley testified that Southward fell when she was standing by the car, she fell when he tried to pick her up from the ground, she fell from a half-way standing position, and she fell backwards from standing. For some of those falls, Selley testified that Southward fell onto objects or struck objects on her way down, including falling onto garbage cans and recycling bins and striking the back of her head on the television stand. These are all ground level falls. Accordingly, Selley's theory of the case included that ground level falls caused some of Southward's injuries.

Moreover, the State did not imply that Selley's account of the events was that Southward had suffered only ground level falls. Selley testified that Southward had told him she had fallen down a flight of stairs. The State asked Dr. Clark if Southward's injuries were consistent with a fall down stairs because that was part of the medical history he had received. And, during closings, the State argued that a fall down stairs could not explain Southward's injuries.

Based on Selley's testimony, it was not improper for the State to ask if Southward's injuries were consistent with ground level falls. The State did not intentionally twist or undermine Selley's defense and did not violate its duty to provide Selley with a fair trial.

State's Objection

Selley argues that the State impermissibly commented on Selley's truthfulness when it objected to a question that called for speculation. We

[6] 5 RP (Oct. 29, 2014) at 734.

conclude that the State's objection did not suggest that the State doubted Selley's truthfulness.

In a criminal prosecution, the prosecutor may not offer his or her opinion on the credibility of any witness, including the defendant. State v. Lindsay, 180 Wn.2d 423, 437, 326 P.3d 125 (2014). But the prosecutor's statements cannot be considered out of context. State v. Jefferson, 11 Wn. App. 566, 569, 524 P.2d 248 (1974). The trial court is the best situated to determine whether an attorney's comments were improper, and the court's opinion will not be disturbed on appeal absent a manifest abuse of discretion. Jefferson, 11 Wn. App. at 569-70.

Here, Selley asked Detective Ryan Salmon several questions about his failure to obtain security footage from the bar where Selley and Southward had been drinking on the night at issue. Selley then asked the following question:

> [SELLEY]: And had you asked and known from Mr. Selley what bar they had been at on the 27th, then on that day, or the 28th you could have gone to Johnny's Bar –
>
> [STATE]: Objection, Your Honor; calls for speculation that he would have received the correct answer, and truthful answer about what bar it was and where to go.
>
> THE COURT: Sustained.[7]

The next day, Selley moved for a mistrial, arguing that the State had implied that it doubted Selley's truthfulness. The trial court held that the State's phrasing was "unfortunate" and "troubling" but that it did not rise to the level of a comment on Selley's credibility.[8]

Selley argues that the State called Selley a liar. We disagree. While the

---

[7] 4 RP (Oct. 28, 2014) at 587.
[8] 5 RP (Oct. 29, 2014) at 607-08.

State could have phrased its objection in a less "troubling" way, its phrasing was acceptable given the context. The State did no more than what Selley himself had just done. A few minutes before the State's objection, Selley introduced the idea that Detective Salmon might have received untruthful answers from the witnesses he interviewed, including Selley. Selley asked Detective Salmon, "[Y]ou had no idea whether Mr. Selley was giving you a bill of goods, or telling you something that was true?" and "[y]ou have no idea whether or not [Southward's mother] was giving you partial truths?"[9]

Moreover, the State's objection did not assume that Selley had given Detective Salmon false information. Like Selley's question, it pointed out that Detective Salmon could not be sure that he would receive truthful answers during his interviews. Because the State did not say that Selley would have been untruthful and Selley made similar comments in front of the jury, we conclude the State's objection was not improper.

Closing Argument

Selley argues that the State committed misconduct in several ways during its rebuttal closing argument, including denigrating defense counsel, mischaracterizing the evidence, vouching for the credibility of witnesses, and appealing to the jury's emotions. The State responds that its rebuttal was proper in all respects.

The prosecutor has "'wide latitude in making arguments to the jury and prosecutors are allowed to draw reasonable inferences from the evidence.'" State

[9] 4 RP (Oct. 28, 2014) at 575. The court sustained an objection to the question about the mother's credibility.

v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009) (quoting State v. Gregory, 158 Wn.2d 759, 860, 147 P.3d 1201 (2006), overruled by State v. W.R., 181 Wn.2d 757, 336 P.3d 1134 (2014)). But a "prosecutor must not impugn the role or integrity of defense counsel." Lindsay, 180 Wn.2d at 431-32. Similarly, [r]eferences to evidence outside of the record and bald appeals to passion and prejudice constitute misconduct. Fisher, 165 Wn.2d at 747.

This court reviews allegedly improper comments in the context of the entire argument. Fisher, 165 Wn.2d at 747. When the defendant objects at trial, he must show on appeal that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. State v. Allen, 182 Wn.2d 364, 375, 341 P.3d 268 (2015). But, if the defendant fails to object to the misconduct at trial, he must show that "'the prosecutor's misconduct was so flagrant and ill intentioned that an instruction could not have cured the resulting prejudice.'" Allen, 182 Wn.2d at 375 (quoting State v. Emery, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012)).

Here, the State said at the beginning of its rebuttal that it "must have sat through a completely different trial than defense."[10] The State immediately followed that comment with a reminder to the jury that the jurors were "the sole takers of what the facts are, and what [they] heard. What [counsel] argues is just [their] comments" and is not evidence.[11]

The State also stated that it had "heard the evidence far differently than the

[10] 22 RP (Dec. 9, 2014) at 3250.
[11] 22 RP (Dec. 9, 2014) at 3250.

defense did."[12] The State followed that comment by explaining the different ways of interpreting of a witness's testimony. In context with its cautions to the jury, neither of the State's comments indicating that it and the defense counsel viewed the evidence differently rose to the level of impugning defense counsel's integrity.

Moreover, Selley did not object to either of these statements, despite objecting repeatedly throughout the rebuttal. Thus, if we were to find that the statements rose to the level of misconduct, Selley would have to show that they were flagrant or ill-intentioned. He cannot meet that burden.

Selley argues next that the State misstated Dr. Clark's testimony. Selley objects to "[t]he prosecutor's failure to accurately and thoroughly summarize Dr. Clark's testimony."[13] The State's argument, that Southward's injuries were not consistent with a fall down the stairs, was faithful to Dr. Clark's testimony. When asked, "Why is a fall down the stairs not consistent for the cause of death in this case?," Dr. Clark responded by describing the type of injuries he would typically expect from a fall down the stairs, including that the "injuries are more likely to be more widely distributed during a fall down the stairs."[14] He contrasted those with Southward's injuries:

> These rib fractures were all in the same area. The liver lacerations were all in that same area. The bowel perforation was in that same area, and partly for that reason I think it's unlikely that a fall down the stairs caused any of this.
>
> I can't exclude the possibility that a fall down the stairs may have caused rib fractures, conceivably could have caused a liver laceration. I think it's very unlikely it caused a bowel perforation.[15]

---

[12] 22 RP (Dec. 9, 2014) at 3250.
[13] Br. of Appellant at 29-30.
[14] 16 RP (Nov. 19, 2014) at 2432.
[15] 16 RP (Nov. 19, 2014) at 2432-33.

Therefore, we conclude that the State's characterization of Dr. Clark's testimony during rebuttal was not improper.

Selley argues that the State improperly vouched for Dr. Clark's testimony. We disagree. The State listed Dr. Clark's credentials and told the jury it should not disregard his opinion, but had to decide whether Dr. Clark's opinion that Southward's death was from an assault, not a fall down the stairs, was credible. The State did not vouch for Dr. Clark's credibility by calling the jury's attention to his credentials. The argument was not improper.

Selley argues that the State misused Dr. Clark's determination of the cause of death. The State argued that Dr. Clark ruled that Southward's death was a homicide and that the cause was being beaten to death. This was the cause of death that Dr. Clark provided for Southward's death certificate. The State described Dr. Clark as "an interface between the legal community and the medical community."[16] It was not improper for the State to rely on Dr. Clark's expert medical opinion, so long as Dr. Clark did not provide any opinion on the legal weight of his determination. See, e.g., State v. Jones, 59 Wn. App. 744, 751, 801 P.2d 263 (1990).

Selley maintains that the State misrepresented the evidence by stating that Selley's testimony was the only evidence that Southward had fallen down the stairs. The State referred to Selley's account of Southward's fall down the stairs, specifically that he found Southward sitting at the base of the stairs, to show that there was no evidence of a "significant fall" down the stairs.[17] The prosecutor said,

---

[16] 22 RP (Dec. 9, 2014) at 3253.
[17] 22 RP (Dec. 9, 2014) at 3252.

"We have evidence, provided only by the Defendant, that she fell, was sitting at the base of the stairs."[18] Selley was the only one who said that Southward "was down by the landing," which was at the bottom of the stairs, and that Southward was "sitting on the step."[19]

Selley says this was a misstatement because one of the doctors remembered hearing that a fall down the stairs was part of Southward's medical history. But that doctor's testimony did not include that Southward was sitting at the bottom of the steps following the fall. Therefore, it was not inaccurate to say that Selley provided the only evidence of how Southward was acting after her fall.

Finally, Selley argues that the State improperly attempted to inflame the prejudice of the jury by showing them pictures of Southward's injuries and saying "that's what getting the shit beat out of you looks like, and the Defendant is the one that did that to Kate."[20] Selley immediately objected, and the trial court told the State to "[d]ial it back just a little bit."[21]

The most provocative language from the State's comment came from a quote from Selley himself. Selley told one of the paramedics who responded to his 911 call, "It looks like I beat the shit out of her."[22] Although somewhat inflammatory, this quote served to remind the jury that even Selley admitted that it looked like Southward was the victim of an assault. Combined with the trial court's admonition that the State should "[d]ial it back," this statement was not improper.[23]

---

[18] 22 RP (Dec. 9, 2014) at 3252.
[19] 20 RP (Dec. 4, 2014) at 2931, 2933.
[20] 22 RP (Dec. 9, 2014) at 3256.
[21] 22 RP (Dec. 9, 2014) at 3256.
[22] 2 RP (Oct. 23, 2014) at 200.
[23] 22 RP (Dec. 9, 2014) at 3256.

We conclude that the State did not commit prosecutorial misconduct throughout the trial, including during its rebuttal argument.

Right to Present a Defense

Selley contends the trial court denied him his right to present a defense when it excluded evidence that Southward was an alcoholic. Specifically, Selley argues that excluding this evidence denied him his right to impeach Southward's hearsay statements about times when Selley had assaulted her.[24] The trial court allowed Selley to impeach Southward's statements with evidence that she was intoxicated at the specific times she made those statements, but properly excluded testimony about Southward's history of alcoholism because it was prejudicial and irrelevant.

The Sixth Amendment provides criminal defendants with the right to present a defense, which includes the right to cross-examine adverse witnesses. State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). Courts use a "three-prong approach" for determining whether they must admit a criminal defendant's offered evidence. Darden, 145 Wn.2d at 622.

> First, the evidence must be of at least minimal relevance. Second, if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial. Finally, the State's interest to exclude prejudicial evidence must be balanced against the defendant's need for the information sought, and only if the State's interest outweighs the defendant's need can otherwise relevant information be withheld.

---

[24] In his reply brief, Selley argues that evidence of Southward's alcoholism was relevant because medical evidence showed that it impacted her injuries. Selley made this point in his assignments of error in his opening brief, but failed to support that assignment of error with argument. We decline to consider the argument. It was unsupported in the opening brief and untimely in the reply brief. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Darden, 145 Wn.2d at 622. No State interest is compelling enough to warrant excluding evidence with "high probative value." State v. Jones, 168 Wn.2d 713, 721, 230 P.3d 576 (2010).

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Evidence of intoxication is admissible "to impeach the credibility of a witness if there is a showing that the witness was using or was influenced by the drugs at the time of the occurrence which is the subject of the testimony." State v. Russell, 125 Wn.2d 24, 83, 882 P.2d 747 (1994). But, because of society's prejudice against addicts, evidence that a witness is an addict is inadmissible without proof that the addiction would make the witness less credible. State v. Renneberg, 83 Wn.2d 735, 737, 522 P.2d 835 (1974). The court in Renneberg did not explicitly mention alcoholism as a type of drug addiction, but secondary sources interpret Rennenberg to apply to alcohol addiction. See 5A KARL B. TEGLAND, WASHINGTON PRACTICE: EVIDENCE LAW AND PRACTICE § 607.12, at 409 (6th ed. 2016).

This court reviews claimed violations of the Sixth Amendment right to present a defense de novo. Jones, 168 Wn.2d at 719.

The trial court allowed Selley to present evidence that Southward was intoxicated on the specific occasions that she told people Selley had abused her. But the court would not allow Selley to introduce evidence that Southward was an alcoholic. Selley argues that Southward's alcoholism was relevant to "explain Southward's inconsistent statements by showing that her memory likely was

clouded by her alcoholism."[25] Selley does not cite any evidence that Southward's alcoholism had an impact on her general credibility. Without that evidence, Southward's alcoholism was not relevant. We conclude that the trial court properly excluded this evidence and that the exclusion did not deny Selley a right to present a defense.

Jury Instruction

Selley argues that the trial court erred by rejecting his proposed jury instruction on the lack of duty to seek medical care. Because Selley's proposed instruction was misleading and did not apply to the crime charged, we disagree.

Jury instructions are sufficient if they allow a party to argue its theory of the case, properly inform the jury of the applicable law, and are supported by substantial evidence. State v. Hathaway, 161 Wn. App. 634, 647, 251 P.3d 253, (2011). The trial court may refuse to give a party's proposed specific instruction if a general instruction "adequately explains the law" and allows that party to argue its theory of the case. Hathaway, 161 Wn. App. at 647.

This court reviews a trial court's choice of jury instructions for an abuse of discretion. Hathaway, 161 Wn. App at 647.

Here, the State charged Selley with felony murder based on assault, which is a method of murder in the second degree. The court accurately instructed the jury on the elements of assault, including that the defendant had to intentionally touch or strike the victim in a manner that is harmful or offensive.

A defendant is guilty of criminal mistreatment if he assumes the

[25] Br. of Appellant at 37.

responsibility to provide a person with the basic necessities of life and causes great bodily harm to that person by recklessly withholding those necessities. RCW 9A.42.020. But the defendant is not guilty of criminal mistreatment if he fails to provide basic necessities to a person who has refused them. See State v. Koch, 157 Wn. App. 20, 36-37, 237 P.3d 287 (2010).

Selley proposed an instruction combining the definition of intent with an assault defense for criminal mistreatment charges:

> A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. However, a person has a right to privacy and to be free from bodily invasion and a defendant is not obligated to disregard another adult's wishes by forcing on him/her unwanted medical care.[26]

This instruction could have confused jurors about the basis of Selley's liability. The assault charges are based on Selley's affirmative conduct, not Selley's failure to act, which could be the basis for a criminal mistreatment charge.

Moreover, Selley does not identify what theory he was unable to argue because the trial court rejected his instruction. Selley presented evidence, primarily his own testimony, that Southward chose not to receive medical care. He argued in his closing that Southward's injuries were caused by accidental falls made worse by her decision not to seek treatment.

Selley argues the instruction was necessary to rebut the State's argument "that Selley had the duty to seek medical care for Southward and that his failure to do so caused her death."[27] The State did not make that argument. It argued that the gravity of Southward's injuries was obvious and that Selley did not call 911

---

[26] Clerk's Papers at 183.
[27] Br. of Appellant at 54.

because he was hoping Southward would get better, not because Southward told him she was fine. Selley has not shown that he needed the rejected instruction in order to argue his theory of the case.

The trial court did not err by declining to give a potentially misleading instruction that Selley did not need.

Sufficiency

Selley challenges the sufficiency of the evidence supporting his conviction and the aggravating factor on which the court imposed an exceptional sentence. Sufficient evidence supports both the aggravating factor and the underlying conviction.

The State must prove all elements of a charged crime beyond a reasonable doubt. State v. Larson, 184 Wn.2d 843, 854, 365 P.3d 740 (2015). When a criminal defendant challenges the sufficiency of the evidence underlying his conviction, this court determines whether, viewing the evidence in the light most favorable to the State, "any rational trier of fact could have found guilt beyond a reasonable doubt." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The reviewing court accepts as true all the State's evidence and any inferences that a jury could reasonably have drawn from it. Salinas, 119 Wn.2d at 201.

The trier of fact makes credibility decisions. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The appellate court cannot review those decisions. Camarillo, 115 Wn.2d at 71.

This standard applies to Selley's challenges to the underlying conviction and to the aggravating factor.

Felony Murder in the Second Degree

Selley argues that the State did not meet its burden of proving that Southward's injuries resulted from an assault by Selley rather than a series of accidents. Specifically, he argues that the State's medical experts could not testify to a degree of reasonable medical certainty that a series of falls could not have caused Southward's injuries and, therefore, there was insufficient proof that Selley had assaulted Southward. The State argues that Selley distorts the medical testimony and that there was sufficient proof that Southward's injuries were not caused by the accidents Selley described. We agree with the State.

To prove second degree felony murder based on an assault, the State had to show that Selley committed an assault and, in the course of and in furtherance of such crime or in immediate flight therefrom, he caused the death of Southward, who was not a participant. RCW 9A.32.050(1)(b).

Selley does not suggest that there is any doubt that Southward died as a result of the injuries she sustained between September 23, and September 27, 2012.[28] But he argues that there is insufficient evidence that the injuries were the product of an assault rather than an accident. Selley essentially argues that the State's evidence on the mechanism of injury must rise to the level of a reasonable medical certainty.

[28] Below, Selley argued that, even if the jury found that he had assaulted Southward, the assault did not proximately cause Southward's death because her choice not to seek medical attention was an intervening cause. He does not repeat that argument on appeal.

None of the authority Selley relies on supports his position. He cites two cases that address the admissibility of medical testimony, not whether medical testimony was sufficient to support a conviction. State v. Martin, 14 Wn. App. 74, 76-77, 538 P.2d 873 (1975) (the specific requirements for admitting evidence of a diminished capacity defense); State v. Terry, 10 Wn. App. 874, 884, 520 P.2d 1397 (1974) (admissibility of medical expert testimony on cause of death). A third case relied on by Selley examined whether there was evidence that the injuries a decedent sustained, in an accident caused by the defendant, proximately caused a decedent's mental illness. Orcutt v. Spokane County, 58 Wn.2d 846, 853, 364 P.2d 1102 (1961). The court held that

> in actions in which recovery is sought for physical conditions allegedly resulting from injuries inflicted by the wrongful act of the defendant, the plaintiff must produce evidence to establish, with reasonable certainty, a causal relationship between the injury and the subsequent condition, so that the jury will not be indulging in speculation and conjecture in passing upon this issue.

Orcutt, 58 Wn.2d at 853.

The present case is distinguishable because there was no question whether Southward's injuries caused her death. The question was what caused her injuries, and Selley does not cite any authority for his proposition that the answer to that question must be supported by testimony rising to the level of reasonable medical certainty. The lack of that medical evidence was the only ground on which Selley challenged the sufficiency of the State's proof. Because that evidence was not required, his challenge fails.

Domestic Violence Aggravating Factor

Selley argues that there is insufficient evidence to support the jury's findings on the domestic violence aggravating factor because the State did not establish an "ongoing pattern" of abuse. The State responds that Selley is using the wrong definition of "pattern," and that it provided sufficient evidence of acts of domestic violence to support the jury's findings under the correct definition. We agree with the State.

"The purpose of statutory interpretation is to determine and carry out the intent of the legislature." State v. Sweat, 180 Wn.2d 156, 159, 322 P.3d 1213 (2014). If the words of a statute are clear, the inquiry ends. Sweat, 180 Wn.2d at 159. The court will not interpret a statute in a way that renders some of the statute superfluous. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

This court reviews questions of statutory interpretation de novo. Sweat, 180 Wn.2d at 159.

The State alleged that Selley's assault on Southward was a crime of domestic violence and was part of "an ongoing pattern" of physical abuse of a victim "manifested by multiple incidents over a prolonged period of time." RCW 9.94A.535(3)(h)(i). Selley urges this court to adopt the definition of "pattern" used in State v. Russell, 69 Wn. App. 237, 247, 848 P.2d 743 (1993). In that homicide by abuse case, the court cited a dictionary definition of "pattern" as "'a regular, mainly unvarying way of acting or doing.'" Russell, 69 Wn. App. at 247 (quoting WEBSTER'S NEW WORLD DICTIONARY 1042, 1117 (1976)).

But here, the statute unambiguously states that "multiple incidents over a prolonged period of time" are the appropriate form of proof of an ongoing pattern of abuse. RCW 9.94A.535(3)(h)(i). Requiring the State to prove the pattern in a different way would render this language superfluous. Selley's interpretation of the statute, as requiring something more than multiple acts of domestic violence, is unpersuasive.

Selley also challenges the sufficiency of the evidence to support each of the alleged acts of domestic violence. There is sufficient evidence from which a jury could believe each of these acts occurred.

Kristin Howard, a nurse practioner, testified that Southward had come to her for treatment in December 2010. She stated that Southward told her that "she was repeatedly kicked and/or punched in the chest by her significant other."[29]

Cheryl Larriva, Selley's neighbor, testified that Southward had come to her door a little after midnight during the summer of 2011. Southward had a bloody nose. Southward told Cheryl that her boyfriend had hit her.

Gary Robinson, Selley's former coworker, testified that Selley told him that he had beaten up Southward in October 2011.[30] Selley had left Southward at home on his couch to recover.

Selley points out inconsistencies in various witnesses' testimony about these incidents, arguing that "it is impossible to know which of these wildly

---

[29] 11 RP (Nov. 10, 2014) at 1651.

[30] Selley argues that, because the only evidence of this act is his own testimony, it does not satisfy the corpus delecti rule. That rule does not apply to aggravating factors. State v. Finch, 137 Wn.2d 792, 838-39, 975 P.2d 967 (1999).

inconsistent versions the jury found to have occurred."[31] This court does not have to determine exactly what the jury believed. It is enough that a jury could reasonably believe that the assault that led to Southward's death was part of an ongoing pattern of physical abuse. The State offered evidence of three incidents of abuse taking place over a two-year span before Southward's death. The State met its burden to show an ongoing pattern of domestic violence by providing evidence of multiple incidents of domestic violence occurring over a prolonged period of time.

Statement of Additional Grounds for Review

Selley raises four arguments in his statement of additional grounds. None merit reversal. First, he argues that the trial court erred by excluding evidence of Southward's alcoholism. Selley argues that Southward's alcoholism was relevant because she had severely injured herself while intoxicated in the past. The evidence of these earlier injuries, allegedly contained in medical records in the possession of the State, does not appear to be in the record on appeal. We cannot review this alleged error. RAP 10.10(c).

Second, Selley argues that the trial court relied on letters from Southward's family at sentencing. This is not improper. RCW 9.94A.500(1); CrR 7.1(d).

Third, Selley argues that he was denied his right to present witnesses, but does not mention which witnesses he might have been prevented from having testify. This is not sufficient to inform the court of the nature of the alleged error. RAP 10.10(c).

---

[31] Br. of Appellant at 49.

Finally, Selley argues that the State committed misconduct when the prosecutor indicated which way she wanted witnesses to respond to questions by shaking or nodding her head. This was raised a few times during trial and the record does not support the assertion that the prosecutor made any inappropriate signals to witnesses.[32]

Affirmed.

Trickey, ACJ

WE CONCUR:

Schindler, J.

Cox, J.

[32] Selley claims this was brought to the attention of the trial court at least three times, but a cursory examination of the record reveals only two. Both times the court asked numerous people present in the courtroom if they had observed the prosecutor shaking her head or nodding her head. No one had.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, June 07, 2017 4:02 PM
To: 'William Dummitt'
Subject: RE: RE WILLIAM BARRY SELLEY COA#75631-1-I

Received 6/7/17.

Supreme Court Clerk's Office

ATTENTION COURT FILERS: The Supreme Court and the Court of Appeals now have a web portal to use for filing documents. As a result, the Supreme Court will discontinue accepting filings by e-mail effective June 30, 2017. We encourage you to register for and begin using the appellate courts web portal for all your filings as soon as possible.
Here is a link to the website where you can register to use the web portal: https://ac.courts.wa.gov/
A help page for the site is at: https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=portalHelp
Registration FAQs: https://ac.courts.wa.gov/content/help/registrationFAQs.pdf
Registration for and use of the web portal is free and allows you to file in any of the divisions of the Court of Appeals as well as the Supreme Court. The portal will automatically serve other parties who have an e-mail address listed for the case. In addition, you will receive an automated message confirming that your filing was received.

From: William Dummitt [mailto:william@bcoreylaw.com]
Sent: Wednesday, June 07, 2017 4:00 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE WILLIAM BARRY SELLEY COA#75631-1-I

Attached please find a scan of the Petition for Discretionary Review From the Court of Appeals, part 1 of 2.
Thank you,

William Dummitt
Legal Assistant

william@bcoreylaw.com
www.bcoreylaw.com

Law Offices of Barbara Corey
Attorney at Law
902 South 10th Street
Tacoma, WA 98405
phone: 253-779-0844 fax: 253-272-6439

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 08, 2017 8:33 AM
To: 'William Dummitt'
Subject: RE: RE WILLIAM BARRY SELLEY COA#75631-1 I

Thank you for trying. We will accept your filing as it was originally sent-Part 1 and Part 2.

Supreme Court Clerk's Office

From: William Dummitt [mailto:william@bcoreylaw.com]
Sent: Thursday, June 08, 2017 8:28 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: RE WILLIAM BARRY SELLEY COA#75631-1 I

The full document size exceeds our limit to send (I just attempted with no success). We had this issue with a previous filing that resulted in being told by your office to send in *multiple emails* after I attempted to send in one email through our gmail account. Please advise.

William Dummitt
Legal Assistant

william@bcoreylaw.com
www.bcoreylaw.com

Law Offices of Barbara Corey
Attorney at Law
902 South 10th Street
Tacoma, WA 98405
phone: 253-779-0844 fax: 253-272-6439

From: OFFICE RECEPTIONIST, CLERK [mailto:SUPREME@COURTS.WA.GOV]
Sent: Wednesday, June 07, 2017 4:08 PM
To: 'William Dummitt'
Subject: RE: RE WILLIAM BARRY SELLEY COA#75631-1 I

Mr. Dummitt:

Please combine the two documents into one and resend.

Thank you,

Supreme Court Clerk's Office

From: William Dummitt [mailto:william@bcoreylaw.com]
Sent: Wednesday, June 07, 2017 4:01 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE WILLIAM BARRY SELLEY COA#75631-1 I

PETITION FOR DISCRETIONARY REVIEW PT. 2
Thank you,

William Dummitt
Legal Assistant

william@bcoreylaw.com
www.bcoreylaw.com

Law Offices of Barbara Corey
Attorney at Law
902 South 10th Street
Tacoma, WA 98405
phone: 253-779-0844 fax: 253-272-6439