NO. 94818-6

THE SUPREME COURT OF

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

AMANDA TORRES,
Appellant/Petitioner.

ANSWER TO PETITION FOR REVIEW BY YAKIMA COUNTY

David B. Trefry
WSBA #16050
Senior Deputy Prosecuting Attorney
P.O. Box 4846
Spokane, WA 99220

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2nd St. Rm. 329
Yakima, WA 98901-2621

TABLE OF CONTENTS PAGE

TABLE OF AUTHORITIES PAGE

State Cases

Federal Cases.

Rules

A. INTRODUCTION.

This matter was tried to a jury, the defendant was found guilty of all three counts: sabotaging rolling stock, second degree malicious mischief, and second degree burglary.

The Court of Appeals overturned Torres' conviction on count one, sabotaging rolling stock, but upheld the actions of the trial court and jury and affirmed the convictions. Torres then filed a Motion for Reconsideration which was denied by the Court of Appeals Division III on June 27, 2017.

ISSUES PRESENTED BY PETITION

1. Whether the police officer's warrantless entry into the home and seizure of Torres violated the Fourth Amendment and article I, section 7 because no exception to the warrant requirement justified those actions, requiring suppression of the confession and reversal?
2. Whether defense counsel was ineffective in failing to move to suppress the confession based on the officer's warrantless entry and seizure because there is a reasonable probability that motion would have been granted?
3. If the record is insufficient, whether the case should be remanded to the trial court for an evidentiary hearing to enable an appellate court to reach the merits of these issues?

ANSWER TO ISSUES PRESENTED BY PETITION

1. The Court of Appeals opinion does not conflict with any prior cases from this or any other court.
2. The Court of Appeals ruling that Torres did not raise this issue in the trial court and therefore it was not reviewable on appeal was and is correct.
3. The actions of Torres' trial counsel were not ineffective. The

Court of Appeals correctly determined that it need not address this issue. There was no record to support this claim.

4. The Court of Appeals correctly stated that it did not have the ability to remand this case to the trial court for a hearing to attempt make the record that Torres failed to make before, during or after her trial. The Court of Appeals opinion does not conflict with any prior cases from this or any other court.

B. STATEMENT OF THE CASE

The facts have been set out by all of the parties on numerous occasions. The Court of Appeals issued its opinion on May 9, 2017. The court reversed and remanded one count – sabotaging rolling stock, but affirmed the trial court's conviction of Torres in one count of malicious mischief and one count of burglar, and passed judgment on a sentencing issue. Torres moved the court for reconsideration of its opinion, that was denied on June 27, 2017.

While reviewing the record in this case, during the process of producing an answer to Torres's petition for review, the State found in the trial court record the Omnibus Order signed by the State, trial counsel for Torres, Torres herself and a Superior Court Judge.

That order, attached as Appendix A, sets forth that the actions of trial counsel were not some oversite but were in fact a strategic act. This document was not designated by Torres in the original appeal.

RAP RULE 9.6 DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) Generally. The party seeking review should, within 30 days after the notice of appeal is filed or discretionary review is granted, serve on all other parties and file with the trial court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court.

(1) The clerk's papers shall include, at a minimum:
….
(C) any written order or ruling not attached to the notice of appeal, of which a party seeks review;
(D) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;

In the Omnibus order Torres and the State delineate what matters have been addressed and what issue have not been addressed as well as specifically setting forth those additional actions that will be forthcoming from both parties. In this omnibus order, under section 5, the parties filled in that there needs to be "[a] 3.5 conference is required." This is not a untouched form but has handwritten information included. Two sections below, in section 7 the parties have placed an "X" in the box that states "Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that: [X] No motion to suppress physical evidence or identification will be filed. In section 8 "Regarding OTHER PRE-TRIAL MOTIONS:" hand written in is "Corpus Delecti (sic).

This is a four-page form which is used by the parties and the court to legally inform the parties and the court what has been done, what is

expected to be done and what still needs to be addressed. This is a road map and clearly was signed by Mr. Dold and Torres who had obviously considered this case and had address those issue which they believed were strategic to Torres's case.

FACTS

The State in this Answer shall merely set forth the relevant portions of the facts as set forth by the Court of Appeals its opinion;

With Deputy Reyna present, Shreves retrieved from the ground an identification card belonging to appellant Amanda Torres. Shreves handed the card to Deputy Reyna, who drove to the address listed on the card.

An important question on appeal is whether a confession purportedly spoken by Amanda Torres to Sheriff Deputy Sergio Reyna should be suppressed. The remainder of the statement of facts comes from a confession suppression hearing.

At 8:30 a.m., on July 7, Sheriff Deputy Sergio Reyna arrived at the Wapato address on Amanda Torres' identification card. Torres' aunt owned the house. Deputy Reyna knocked on the residence front door, a young female answered the knock, Reyna asked the young lady if he could speak to Amanda Torres, and the young female escorted Reyna to a downstairs bedroom. The identity of the young female and her relationship

to the house looms important in resolving the legality of Deputy Reyna's entry inside the residence and seizure of Amanda Torres. During the suppression hearing, Torres identified the female as Isabel Batista, Torres' aunt's daughter-in-law. Torres averred that Batista was age 13 or 14 on July 7, 2014.

The State presented no testimony to identify the young female who allowed Sheriff Deputy Sergio Reyna entrance to the Wapato home. Sergio Reyna did not know the age of the woman, although he recognized her as being "younger." Report of Proceedings (RP) at 17. Reyna described the youngish woman as being 5'3" or 5'4" in height.

A curtain, rather than a door, separated the downstairs bedroom from the remainder of the basement, so Deputy Sergio Reyna knocked on a wooden stud and asked to speak to Amanda Torres. A male and female lay on a bed. Torres identified herself and rose from the bed. Amanda Torres and Sergio Reyna's testimony differs as to events thereafter.

According to Amanda Torres, she awoke to Deputy Reyna's knocking and his telling her that he was a sheriff and was looking for Amanda Torres. Torres stumbled out of bed without shoes. She wore basketball shorts and a tank top, an outfit in which she slept.

According to Amanda Torres, Deputy Sergio Reyna took her arm and told her to follow him. Reyna did not allow Torres to completely

dress. Torres immediately deemed herself under arrest since Reyna gave her no choice but to obey him. Reyna neither told Torres that she was under arrest or not under arrest. Reyna concedes he possibly grabbed Torres' elbow and escorted her upstairs.

According to Amanda Torres, when the two reached upstairs, Deputy Sergio Reyna asked Torres if the identification card in his possession was Torres' card. Torres responded in the affirmative. Reyna next asked where Torres lost the card. Torres did not respond because of the distraction of Torres' aunt returning home. The aunt asked the reason for Deputy Reyna being inside the home, inquired about who permitted Reyna's entrance, and questioned whether the deputy held a warrant. In response, Reyna escorted an unshod Torres outside.

According to Sheriff Deputy Sergio Reyna, he sat Amanda Torres in the back of his patrol car. He then delivered Miranda warnings to Torres and questioned her about damage to the locomotive. Reyna remained outside the car and spoke to Torres with the car door open.

According to Sergio Reyna, after he read the Miranda warnings, Amanda Torres admitted to being present at the railroad yard with friends and conceded that she and her friends had imbibed strong drink. Torres refused to be a snitch on her friends. Torres did not expressly admit to damaging the locomotive, but volunteered to take responsibility for the

damage. Torres never cried and never asked for assistance of a lawyer. Reyna's patrol car contained a voice recorder, but Reyna chose not to record the conversation. During the conversation, Amanda Torres' boyfriend walked toward the car with Torres' shoes in hand. Reyna closed the car door to prevent the boyfriend access to Torres.

According to Amanda Torres, Deputy Sergio Reyna questioned her for ten minutes as she sat in the patrol car. Reyna stood outside the car, and the two spoke with the door closed and locked, but the window halfway down. Reyna never read Torres the Miranda warnings. The deputy spoke to her as if she was guilty.

ARGUMENT

Petitions for review are governed by RAP 13.4(b), which sets forth the standard an appellant must meet before their case will be accepted by this court for review. Torres claims the Court of Appeals opinion merits review under sections (b) (1), (2) and (3). The court of appeals opinion does not meet any of the criterion set forth in RAP 13.4(b) The Court of Appeals opinion does not **1**) Conflict with any decision by this court; **2**) The opinion does not conflict with any opinion of the other two divisions of the Court of Appeals **(3)** the opinion does not address issues that are significant question of law under the Constitution of the State of Washington or of the Constitution of United States and **4**) The issues

raised in this petition for review do not involve any issues of substantial public interest that this court should address.

Torres reiterates her Court of Appeals argument in her petition, this repetition does not move this issue past simple fact, as stated by the court of appeals, that this issue was not raised in the trial court and the issues do not fall within the parameters of RAP 2.5. Trial counsel for Torres was Mr. Chad Dold, Mr. Dold is an extremely experienced trial attorney. These two allegation are based on pure speculation. The allegation that there was an unlawful entry into the home were Torres was sleeping was not raised in the trial court. The claim that Mr. Dold's alleged failure to raise this issue is therefore ineffectiveness is grounded on air.

The court of appeals correctly stated this matter was not raised in the trial court, there is therefore no record and as such there was no basis for that court to remand for some sort of hearing. There was a hearing conducted at the time the Omnibus order was entered and an order to confirm Torres's position regarding the alleged illegal search, by not raising it in the trial court case law strongly supports the actions of the trial attorney at the same time clearly stating that the actions of the court of review is not to re-litigate the case but to review was actions occurred in trial. Strickland v. Washington, 466 U.S. 668, 689-90, 104 S. Ct. 2052, 80

L. Ed. 2d 674 (1984)

Torres claims in subsection (b) of her petition that Mr. Dold was ineffective because "the per se illegality of the officer's actions in securing (Torres's) statements." But Torres once again cannot get past the record, the facts and the procedure that took place in the trial court. Facts Torres chose to place in the trial court record, or not, do not support this allegation. There is absolutely nothing in the trial court record that would demonstrate a "per se illegality" for anything that this officer did. The deputy prosecutor, the trial court judge and trial counsel all swore an oath to uphold the laws and constitution of this state. They did not collude to trample on the right of Torres.

This court of appeals based its ruling on well-founded law which is not in conflict with any case from this court or other courts of appeal in this state. The hindsight claim that trial counsel was ineffective because he did not raise this issue is not supported by the facts of the case and certainly not supported by the efforts displayed by trial counsel for Torres.

While the opinion of the Court of Appeals is of significant interest to Ms. Torres it does not met the criterion that the issues addressed in the opinion are significant questions of law under either constitution listed in RAP 13.4.

The Court of Appeals opinion is premised on State v. McFarland,

127 Wn.2d 322, 333-34, 899 P.2d 1251 (1995) and is merely a recitation of the long standing standard set out in that case, if there is no record to support the claim then no actual prejudice is shown and the error is not manifest:

> As an exception to the general rule, therefore, RAP 2.5(a)(3) is not intended to afford criminal defendants a means for obtaining new trials whenever they can identify some constitutional issue not raised before the trial court. Rather, the asserted error must be "manifest" - i.e., it must be "truly of constitutional magnitude". Scott, 110 Wn.2d at 688. The defendant must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant's rights; it is this showing of actual prejudice that makes the error "manifest", allowing appellate review. Scott, 110 Wn.2d at 688; Lynn, 67 Wn. App. at 346. *If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest*. State v. Riley, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993). (Emphasis added.)

Torres continues to state that the person who opened the door of this residence was a "girl" clearly attempting to imply that she was too young to be able to grant entry. Testimony from Torres herself refutes this. That testimony was that this "girl" was the ***daughter-in-law*** of the home owner, the defendant narrowed this to the "girl" was under 18, then again that she was maybe 13 or 14. As the State pointed out in its opening brief "It is very noteworthy that the defendant describes this "[m]aybe 13, 14" year old as the "daughter-in-law" of her aunt, a term that literally means "the wife of one's son" and it is doubtful to say the least

that this married person who answered the door is "[m]aybe 13,14." RP 29-30. There was never any dispute that this young woman was a "daughter-in-law."

It is just as reasonable to believe that this "suppression issue" was not raised in the trial court because trial counsel knew that the relationship of the young woman who opened the door was such that there was in fact no issue which could have been legitimately raised and therefore there was no issue to raise.

Torres clearly had access to this witness and if she and her attorney believed that there was a chance for this search to be defeat by merely putting her on the stand and demonstrating that she was not of the age to grant consent to enter they would have done so. Torres move to suppress the statements due to an illegal entry. She did not call this witness for tactical reasons, by doing so Torres could allege to the trial court that this person was too young to grant consent without the State having occasion to cross-examine her about her age and status within this home. One can easily infer that a "daughter-in-law" living in a home had co-equal or even superior rights over a cousin living in an area of the basement that does not even have a door. Even in this day in age it is hard to imagine a "daughter-in-law" who is only 13.

Mr. Dold raised the issue regarding the officers questioning Torres

at or in the officer's patrol vehicle. Dold raised the issue regarding Torres rights in that location, an interview that was literally the end result of the officer moving Torres from the basement of this home to the officer's patrol car. Therefore, Dold clearly knew of the possibility that the officer's actions could be challenged and yet he exercised his professional judgment and did not move to suppress.

Mr. Dold was not ineffective, he raised those issues that he as the trial attorney working directly with Ms. Torres and having personally interviewed the witness, knew and/or believed were valid issues that had a real chance of being granted by the trial court.

Once again McFarland, which has been cited in nearly two thousand cases in Washington addresses an alleged failure to bring a motion to suppress, opining that it is not per se deficient performance;

> We will not presume a CrR 3.6 hearing is required in every case in which there is a question as to the validity of a search and seizure, so that failure to move for a suppression hearing in such cases is per se deficient representation. Because the presumption runs in favor of effective representation, the defendant must show in the record the absence of legitimate strategic or tactical reasons supporting the challenged conduct by counsel. There may be legitimate strategic or tactical reasons why a suppression hearing is not sought at trial. The presumption of effective representation can be overcome only by a showing of deficient representation based on the record established in the proceedings below. McFarland, 127 Wn.2d at 336. (Citations omitted.)

See also, State v. Nichols, 161 Wn.2d 1, 14-15, 162 P.3d 1122 (2007);

> Not every possible motion to suppress has to be made. In *McFarland,* we rejected the premise that failing to move to suppress any time there is a question as to the validity of a search or seizure is per se deficient performance. McFarland, 127 Wash.2d at 336-37, 899 P.2d 1251. Such a rule turns the presumption of effectiveness "on its head," and instead "the burden is on the defendant to show from the record a sufficient basis to rebut the 'strong presumption' counsel's representation was effective." Id. at 337, 899 P.2d 1251. Counsel may legitimately decline to move for suppression on a particular ground if the motion is unfounded. Thus, although the presumption of effectiveness can fail if there is no legitimate tactical explanation for counsel's actions, State v. Aho, 137 Wash.2d 736, 745-46, 975 P.2d 512 (1999), there is no ineffectiveness if a challenge to admissibility of evidence would have failed, State v. G.M.V., 135 Wn.App. 366, 372, 144 P.3d 358 (2006).

Mr. Dold must have believed there was no viable ground to move for suppression. This was a consensual entry were one co-tenant physically led the officer to the "room" were Torres was sleeping.

The court of appeals cited a considerable number of cases from this court and all three divisions of the court of appeals. All of these cases are still "good law." The use of these tried and true cases resulted in an opinion which does not conflict with any other opinion of this court or any other court of review in this state. Cases such as:

> A party may not generally raise a new argument on appeal that the party did not present to the trial court. RAP

2.5; In re Det. of Ambers, 160 Wn.2d 543, 557 n.6, 158 P.3d 1144 (2007).

A party must inform the court of the rules of law it wishes the court to apply and afford the trial court an opportunity to correct any error. Smith v. Shannon, 100 Wn.2d 26, 3 7, 666 P .2d 3 51 (1983).

We may decline to consider an issue inadequately argued below. International Association of Fire Fighters, Local 46 v. City of Everett, 146 Wn.2d 29, 36-37, 42 P.3d 1265 (2002).

No procedural principle is more familiar than that a constitutional right, or a right of any other sort, may be forfeited in criminal cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it. United States v. Olano, 507 U.S. 725,731,113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993); Yakus v. United States, 321 U.S. 414,444, 64 S. Ct. 660, 88 L. Ed. 834 (1944).

Sound reasoning lies behind the requirement that arguments be first asserted at trial. The prerequisite affords the trial court an opportunity to rule correctly on a matter before it can be presented on appeal. State v. Strine, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013).

There is great potential for abuse when a party does not raise an issue below because a party so situated could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal. State v. Weber, 159 Wn.2d 252, 271-72, 149 P.3d 646 (2006); State v. Emery, 174 Wn.2d 741, 762,278 P.3d 653 (2012).

The theory of preservation by timely objection also addresses several other concerns. The rule serves the goal of judicial economy by enabling trial courts to correct mistakes and thereby obviate the needless expense of appellate review and further trials, facilitates appellate review by ensuring that a complete record of the issues will be available, and prevents adversarial unfairness by ensuring that the prevailing party is not deprived of victory by claimed errors that he had no opportunity to address. State v. Strine, 176 Wn.2d at 749-50 (2013); see State v. Scott, 110 Wn.2d 682, 688, 757 P.2d 492 (1988). (Slip opinion.)

Regarding the Court of Appeals alleged belief that they could not remand for a hearing, the Court of Appeals made a circular argument which is somewhat confusing but in the end comes to the correct conclusion. The court cites to the rule that allows remand, it cites to cases were remand occurred and then it states that those cases can be distinguished from this case and reiterates the tried and true rule that if you fail to raise it you wave it. The court stated;

> Nevertheless, the State in *Brown* or *Mitchell* did not question the presence of manifest constitutional error because of a failure to assert a contention before the respective trial courts. We do not consider ourselves free to remand for an additional hearing on an issue not argued below when the defendant fails to show manifest constitutional error because of an insufficient record. Amanda Torres' filing of a personal restraint petition would better serve adjudication of her Fourth Amendment rights.

Certainly the court of appeals is not stating that any appellant who claims that the record is not complete or that the actions of their attorney were such that information that they wished to be on the record was not placed on the record should get a remand hearing. It is also clear from this portion of the opinion that the court is not stating it would or will grant Torres some right to a remand hearing regarding the record if and when she was to file a personal restraint petition.

What the court is stating is that there is an avenue for this type of

unsupported allegation to be raised and that is NOT on direct appeal. Direct appeal has to comport with certain rules.

Torres's claim that the court of appeals was "complaining" that it could not remand completely misreads that single paragraph of this twenty-six-page opinion. The court is just simply restating that if a defendant does not raise an issue in her trial the court of review does not have the ability give them a "do-over." The court wrote:

> We note that the broad authority granted under RAP 12.2 and case law allows this court to remand to the trial court for an evidentiary hearing and factual findings if necessary to resolve an issue on appeal. Nevertheless, the State in *Brown* or *Mitchell* did not question the presence of manifest constitutional error because of a failure to assert a contention before the respective trial courts. We do not consider ourselves free to remand for an additional hearing on an issue not argued below when the defendant fails to show manifest constitutional error because of an insufficient record. Amanda Torres' filing of a personal restraint petition would better serve adjudication of her Fourth amendment rights. (Citations omitted)

Torres urges this court to ignore the rules of appellate procedure and paint this case with an enormously broad brush under RAP 12.2. She urges this court to take "certain realities" into account and impose this extreme approach because she would be bound by the rules that all other litigants are bound by.

Personal Restraint Petitions have a different standard, purposefully. The rules are put into place for this very type of claim.

That after conviction and with an apparent new clarity Torres now realizes that she should have placed more information into the record. That she was wronged by her counsel who according to the Court of Appeals was in this instance correct when he argued that the first count of the information was not proven. She argues that she should be allowed to have her trial conducted in the manner it was BUT now that the outcome does not suit her she should get to go back to trial and make a new "better" record that may win the day.

In re Personal Restraint of Brockie, 178 Wn.2d 532, 309 P.3d 498, 503 (2013)

> On collateral review the burden shifts. If a constitutional error is subject to harmless error analysis on direct appeal, that same error alleged in a PRP must be shown to have caused actual and substantial prejudice in order for the petitioner to obtain relief. This rule is based on the fundamental principle that " [a] personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal." Collateral relief is limited because it " undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders."
>
> [I]n order to prevail in a collateral attack, a petitioner must show that more likely than not he was prejudiced by the error." The court determines actual prejudice " in light of the totality of circumstances." (Citations omitted.)

If this court were to accept Torres argument regarding remand for a hearing the jury process would in effect be nullified. There literally would be no finality to any case. A defendant would merely need to agree

with the process enacted by his trial counsel, here Torres signed the Omnibus order agreeing there were no suppression issues, and then at the time of her appeal she could say my lawyer was ineffective and I need this court to allow more hearings in the trial court to prove this.

This claim is exactly why the law has the rules it does for a direct appeal and why the standard of review for ineffective assistance of counsel claims is what it is. The State must believe that most, if not all, defendants who are convicted do not believe that their trial counsel was effective. After all they were convicted so that attorney could not have done a good enough job.

What this court has stated regarding collateral relief is applicable to Torres's request to have a second round in the trial court, "'"[C]ollateral relief ' "undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." ' " In re Coats, 173 Wn.2d 123, 150, 267 P.3d 324 (2011)

Torres cites to State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999), Ford, which has been superseded, is distinguishable. Ford was a sentencing case where the defendant was incorrectly sentenced and challenged that for the first time on appeal. And while Ford does indicate that there is not a complete bar to remand, the first sentence of the analysis

section reconfirms that the general rule is a party may not raise an issue for the first time on appeal. Id at 477. The Ford court then sets forth questions which would trigger the courts ability to remand "Thus, the rule never operates as an absolute bar to review. Furthermore, challenges such as lack of jurisdiction, failure to establish facts upon which relief may be granted, and manifest error affecting a constitutional right may be raised for the first time on appeal as a matter of right. RAP 2.5(a)." Id at 477. The court in McFarland purposefully does not include a strategic decision to not raise an issue in trial, to do so would allow nearly all cases to be remanded if and when the defendant determines after they are convicted that the actions of their trial court attorney were not satisfactory. Even as is the case here where Torres actually signed the omnibus order which specifically acknowledged that she was not raising any suppression issues.

D. CONCLUSION

The Court of Appeals opinion does not merit review by this court.

Respectfully submitted this 1st day of September 2017,

s/David B. Trefry
David B. Trefry WSBA #16050
Senior Deputy Prosecuting Attorney
P.O. Box 4846, Spokane, WA 99220
Telephone: (509) 534-3505
David.Trefry@co.yakima.wa.us

APPENDIX A

CA 4

FILED
COUNTY CLERK

'15 SEP -2 P1 :22

SUPERIOR COURT
YAKIMA CO. WA

IN THE SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Amanda Torres,

DOB:

Defendant.

NO. 14-1-00990-4

ORDER ON OMNIBUS HEARING **(OOR)**

CHARGE: Damaging Rolling Stock
Malicious Mischief 2°, Burglary 2°

TRIAL DATE: ~~9-28-15~~ 9-28-15

TRIAGE DATE: ~~9-25-15~~ 9-25-15

THIS MATTER having come before the court for an Omnibus Hearing, with the State being represented by Sam Chen, and the defendant being present and represented by Chad Dill.

1. Regarding PROSECUTOR'S OBLIGATIONS, THE DEPUTY PROSECUTING ATTORNEY STATES that at least seven days prior to this order:

[X] The Prosecutor provided to defendant a complete list of the defendant's criminal convictions.

[X] The Prosecutor has provided to defense all discovery in their possession or control, pursuant to CR 4.7(a);

[X] The Prosecutor has contacted law enforcement agencies to request and/or obtain any additional supplemental police reports, forensic tests, and evidence and has made them available to defendant or defense counsel. The State is aware of the following reports, tests or evidence which has not been made available to the defendant: _____

_____

_____.

CAUSE NO. 14-1-00990-4

[X] Prosecutor has reviewed the discovery and criminal history and made an offer to the defense.

If prosecutor has not checked every box in this section, the court makes the following order:

2. Regarding DEFENSE ATTORNEY'S OBLIGATIONS, DEFENSE COUNSEL STATES that prior to this order:

[X] Defense attorney has met with the defendant about this case and fully discussed it.

[X] Defense attorney has received a plea offer from the State.

[X] Defense attorney has conveyed State's offer to the defendant.

[ ] Defense attorney has given discovery to prosecutor.

If defense attorney has not checked every box in this section, the court makes the following order:

Witness statements from Tina Torres + Isabel Torres and Tania Ray / Yallup → Δ witness

3. Regarding DISCOVERY: The parties agree that Discovery is COMPLETE / NOT COMPLETE IN THE FOLLOWING RESPECTS: ~~[illegible]~~ Defense has to give info re: witness interview of their alibi witness pursuant to 9/2

[X] Interviews of following witnesses: ~~[illegible]~~

[ ] DISCOVERY must be completed by: _____ has not been done so interview was not done

4. Regarding GENERAL NATURE OF DEFENSE: The Defense states that the general nature of the defense is:

[X] General Denial	[ ] Consent
[ ] Alibi	[ ] Diminished Capacity
[ ] Insanity	[ ] Self-defense

[ ] Other (specify): _____

5. Regarding CUSTODIAL STATEMENTS by defendant, the parties agree that:

[ ] No custodial statements will be offered in the State's case in chief, or in rebuttal.

[ ] The statements of defendant will be offered in the State's case in rebuttal only.

CAUSE NO. 14-1-00990-4

[X] The statements referred to in the State's discovery will be offered and:

[ ] May be admitted into evidence without a pre-trial hearing, by stipulation of the parties.

[X] A 3.5 conference is required and is estimated to require 2 (min/hr) and is set for first day of trial.

6. Regarding PRIOR CRIMINAL CONVICTIONS OF THE DEFENDANT, the parties agree that if defendant testifies at trial:

[X] If the defendant testifies at trial, the prior record of convictions contained in the State's discovery [ ] will [X] will not be stipulated to by the defendant with the following exceptions:

_____

[X] There are no prior known convictions at this time. State will advise defendant promptly if it learns of prior convictions.

7. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that:

[X] No motion to suppress physical evidence or identification will be filed.

Or, THE COURT ORDERS THAT:

[ ] Defendant's written motion to suppress shall be filed by _____. The State's Response shall be filed by _____. Testimony will / will not be required.

8. Regarding OTHER PRE-TRIAL MOTIONS: No additional motions are anticipated, except: Corpus Delecti. Briefing schedule: Affidavits and briefs of the moving party must be served and filed by: _____. Responsive Brief must be served and filed by: _____. The hearing will last about _____min/hr.

9. Regarding TRIAL:

a. The trial will be [X] jury [ ] non-jury, and will last about 3 days.

b. Is an interpreter needed: [X] No [ ] Yes. Language: _____. If an interpreter is needed, Counsel needing the interpreter services will complete the Interpreter Request form as approved by the Court Interpreter Program and submit the information to the Court at least 7 days prior to the trial date.

10. Regarding WITNESSES:

There will be out-of-state witnesses: [ ] Yes [X] No.

A child competency or child hearsay hearing is needed: [ ] Yes [X] No.

CAUSE NO. 14-1-00990-4

State:

[X] All witnesses have been disclosed.

[ ] A witness list has been filed.

[X] A witness list must be filed by: Triage.

Defense:

[X] All witnesses have been disclosed.

[ ] A witness list has been filed.

[X] A witness list must be filed by: Triage.

11. Other:

[ ] Defendant needs a competency examination.

[ ] Defendant is applying for drug court.

[ ] Defendant is seeking an evaluation which may necessitate a continuance.

12. The Court sets a Status Conference for _____ date) for the purpose of:

_____

_____

_____

13. Other orders: _____

_____

_____

14. The Court sets a Triage date for 9-25-15.

Dated this 2 day of Sept 20 15.

Defendant

Judge

Attorney for Defendant, WSBA# 8668

Prosecuting Attorney, WSBA# 26[illegible]

DECLARATION OF SERVICE

I, David B. Trefry, state that on September 1, 2017, I emailed a copy of the State's Answer to: Mr. Casey Grannis at SloaneJ@nwattorney.net,

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of September at Spokane, Washington.

s/ David B. Trefry

DAVID B. TREFRY, WSBA #16050
Senior Deputy Prosecuting Attorney
Yakima County, Washington
P.O. Box 4846, Spokane WA 99220
Telephone: (509) 534-3505
David.Trefry@co.yakima.wa.us

YAKIMA COUNTY PROSECUTORS OFFICE

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