SUPREME COURT NO. 89180-0

NO. 30219-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER FOLEY,

Petitioner.

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

The Honorable Scott R. Sparks, Judge

AMENDED PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Christopher Foley asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the court of appeals decision in State v. Foley, COA No. 30219-9-III, filed July 16, 2013, attached as an appendix to this petition.

C. ISSUES PRESENTED FOR REVIEW

1. Whether, in the state's prosecution against petitioner for allegedly bludgeoning his brother-in-law with a 2 x 10 piece of wood, the court erred in admitting evidence of a past incident in which petitioner allegedly hit his brother-in-law with a 4 x 4 piece of wood, where the state failed to prove the prior incident occurred by a preponderance of the evidence, and where the potential for prejudice far outweighed any probative value of the evidence?

2. Whether the court erred in instructing the jury on first and second degree manslaughter as lesser included offenses of second degree murder, where there was no evidence supporting an inference that only a reckless or negligent killing occurred?

3. Whether the court's instruction defining recklessness in regard to first degree manslaughter eased the state's burden of proof and

deprived petitioner of his due process right to have the state prove all elements of the offense?[1]

4. Whether prosecutorial misconduct deprived petitioner of his right to a fair trial, where the state played a portion of petitioner's interview with police – during which the lead detective asserted petitioner's family members believed he was guilty?

5. Whether petitioner received ineffective assistance of counsel, where the court indicated it would give a limiting instruction regarding inadmissible evidence that was proffered by the state through the recorded interview, but defense counsel failed to take the court up on its offer?

D. STATEMENT OF THE CASE[2]

1. Propensity Evidence

Christopher Foley was convicted of first degree manslaughter for the death of his brother-in-law, Russel Ray, whom the state theorized was bludgeoned with a 2 x 10 piece of wood on or about June 21 or June 22,

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[1] This issue was not raised in the court of appeals. However, this Court may accept review of, and decide, issues raised for the first time in a petition for review. State v. McCullum, 98 Wn.2d 484, 487, 656 P.2d 1064 (1983) (reversing conviction based on instructional error raised for the first time in the petition for review).

[2] A more detailed statement of the case with citation to the record can be found in the opening brief of appellant at pages 5-35.

2010. ARP 27-28; RP 1244.[3] No one had seen or heard from Ray since that date, but his body was found the following March, in a ditch off Vantage Highway. RP 862, 1414, 1518.

There were no eyewitnesses to Ray's death and police uncovered no physical evidence tying Foley to Ray's disappearance or death. BRP 60, 62, 79.

Rather, the state's case against Foley was entirely circumstantial. BRP 60, 62, 69; RP 316. Mainly, it was based on evidence of Foley and Ray's deteriorating relationship and dispute about tools, after their construction business dissolved. BRP 63. Over Foley's objection, the state was allowed to present evidence that approximately one month before Ray's disappearance, Foley caught Ray snooping around in his shop and hit him with a 4 x 4 piece of wood. CP 279-81; RP 166-67. Significantly, Foley disputed the existence and state's proof of this altercation. CP 75-79; RP 146, 164, 274. Moreover, Foley argued its potential for prejudice far outweighed any probative value of the evidence. CP 78-79.

Division Three of the Court of Appeals rejected Foley's challenge, disagreeing the state failed to sufficiently prove the incident. Appendix at

[3] As the opening and reply briefs of appellant, this petition refers to the verbatim report of proceedings as follows: "RP" – pretrial hearings in June 2011, jury trial in August 2011, and sentencing in September 2011; and "BRP" – 8/19/11 (last day of trial).

12-13. Regarding the probative value versus prejudicial effect of the evidence, the court concluded: "While the State presented other evidence that supports motive, the May 2010 incident involving a 4" x 4" board shows the depth of the disagreement between the men." Appendix at 13.

2. First and Second Degree Manslaughter Instructions

Over Foley's objection, the court instructed the jury on first and second degree manslaughter as lesser included offenses of the charged second degree murder. CP 192-194, 203; RP 1691; BRP 35-37. While Foley maintained his innocence (RP 1690-91), he argued that regardless, the evidence did not support an inference that a reckless or negligent killing was committed to the exclusion of an intentional one. BOA at 41-43; State v. Perez-Cervantes, 141 Wn.2d 468, 6 P.3d 1160 (2000).

Division Three disagreed, based on previous altercations between the men and the nature of the weapon involved:

> The state's motive for the crime is the dispute over the division of tools. Evidence of the prior altercations established that the men were very angry over the tools, and both attempted to reclaim the tools from the other. The killing of Mr. Ray could have resulted from another physical altercation that escalated to the point of a reckless killing. Additionally, the piece of wood used in Mr. Ray's murder is not the type that is brought to intentionally kill someone. Instead, the piece of wood suggests that it was grabbed in the heat of an argument. In sum, the circumstantial evidence suggests that Mr. Foley and Mr. Ray were involved in a spontaneous altercation after Mr. Foley entered Mr. Ray's property looking for tools. The

> altercation became physical, Mr. Foley hit Mr. Ray with a piece of wood lying in the barn, and Mr. Ray was recklessly killed as a result.

Appendix at 16.

3. Definition of Recklessness

As indicated, the defense objected to instructions on manslaughter. Accordingly, the court instructed the jury on recklessness, using the state's proposed instruction:

> A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a reasonable person would exercise in the same situation.

CP 194, 307; WPIC 10.03.

4. Opinion Evidence on Guilt

After significant debate and the court's warning the state was proceeding at its own risk, the prosecutor opted to play in its entirety the video recording of Foley's interview with detectives, following Ray's disappearance. BOA at 11-18; RB at 1-5; RP 179-181, 497-98, 1138-39, 1141, 1393, 1396, 1398-1400, 1635-38, 1644-45, 1647-68; BRP 42. During the video, detective Darren Higashiyama informed Foley the bulk of his family believed he was guilty of killing Ray.[4] BRP 42. The state

[4] The interview transcript provides:

> Higashiyama: So you know the family's going to be very upset over this, right? Because some family members, not all of 'em are pointing

did not dispute that portions of the video were played in which Detective Higashiyama indicated Foley's family did not believe him and thought he was guilty. Brief of Respondent (BOR) at 15-16. On appeal, Foley argued this constituted improper opinion evidence, and the prosecutor committed misconduct by offering it to the jury. BOA at 43-46; RB at 14-18.

The appellate court agreed the video contained improper opinions on guilt. Appendix at 18-19. Nonetheless, the court did not agree the prosecutor's conduct in offering the opinion testimony was flagrant and

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> a finger but they're pointing at, at you, but just because of the relationship.
>
> Foley: Yeah.
>
> Higashiyama: Kay, we're not pointing the finger at anybody cause we don't know.
>
> Foley: Yeah. No, that's fine.
>
> Higashiyama: So you're okay with the family and holding that shadow over your head?
>
> Foley: Yeah I'm fine with it.
>
> Higashiyama: Okay.
>
> Foley: I mean they still talk to you anyways.
>
> Higashiyama: Mmhm (yes).
>
> Foley: But yeah, I, I can live with it.

CP 419-420.

ill-intentioned,[5] reasoning he was not *purposely* trying to get in evidence that would otherwise be inadmissible. Appendix at 19. Moreover, the court declined to find prejudice, reasoning: "The opinion testimony was buried in the lengthy interview." Appendix at 19. Finally, the court found any prejudice could have been obviated by a curative instruction. Appendix at 20.

5. No Curative Instruction

Before the jury was instructed, defense counsel was offered the opportunity to craft a limiting instruction to jurors to disregard certain portions of the video. BRP 42. Although defense counsel was aware that the recording played to the jury contained statements attributed to family members opining on Foley's guilt, defense counsel declined to offer an instruction, reasoning it would be difficult to parse out which parts of the video should be disregarded. BRP 42.

On appeal, Foley argued that, to the extent defense counsel could have alleviated the prejudice of the opinion evidence by proposing a limiting instruction, Foley received ineffective assistance of counsel. BOA at 46-47; RB at 18-20.

[5] Foley argued the error was preserved in that he successfully moved pretrial to exclude improper opinions on guilt. CP 82 (MIL 6), 207; RP 184 (MIL 6 granted). Moreover, the defense noted the video contained objectionable material that should be redacted by the state, before it was played. See e.g. RP 1639.

Division Three concluded defense counsel's choice could have been tactical, however, and therefore did not constitute ineffective assistance of counsel. Appendix at 21.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

1. DIVISION THREE'S DECISION AFFIRMING THE ADMISSION OF A PRIOR INCIDENT ALMOST IDENTICAL IN NATURE TO THE CRIME CHARGED CONFLICTS WITH DIVISION ONE'S DECISION IN STATE V. ESCALONA.

Considering the lack of any direct evidence tying Foley to Ray's death, the jury was likely influenced to convict based on the unfairly prejudicial evidence Foley previously hit Ray with a 4 x 4. Under Division One's decision in State v. Escalona, this evidence should have been excluded, in light of its similarity to the current charge. State v. Escalona, 49 Wn. App. 251, 742 P.2d 190 (1987) (grounds for mistrial in state's case against Escalona for assault with a knife where state's witness testified Escalona stabbed someone before). This Court should accept review to resolve this conflict between the divisions. RAP 13.4(b)(2).

Before a trial court may admit evidence of other crimes or misconduct under ER 404(b), it must identify on the record the purpose for which such evidence is admitted. Even when a valid purpose can be identified, evidence of prior misconduct still must be relevant to a material

issue, and its probative value must outweigh its prejudicial effect. The trial court must also find by a preponderance of the evidence that the claimed misconduct occurred. State v. Brown, 132 Wn.2d 529, 571, 940 P.2d 546 (1997), cert. denied, 118 S. Ct. 1192 (1998). Regardless of relevance or probative value, however, evidence that relies on the propensity of a person to commit a crime cannot be admitted to show a person acted in conformity with his or her propensity to commit a crime. Saltarelli, 98 Wn.2d 358, 362, 655 P.2d 697 (1982).

As argued below, the court erred in admitting evidence of the 4 x 4 incident, because the state failed to prove its existence by a preponderance of the evidence, and because its prejudicial effect far outweighed its probative value. BOA at 35-39.

The appellate court's decision to the contrary reflects an erroneous balancing of competing interests. As indicated, the state had ample evidence establishing the tool-centered feud between Ray and Foley and at least two prior altercations – the job site assault and the gas station verbal exchange. Moreover, the "depth" of the deteriorated relationship was described by numerous family members. RP 581, 584, 588, 1278, 1310-1311, 1324. Accordingly, the 4 x 4 incident – contrary to the court of appeals decision – added little to the state's case.

And more significantly, considering the similarity between the 4 x 4 incident and the state's theory of how Ray was killed, the potential for prejudice was extremely high. As Division One recognized in Escalona, admission of evidence the defendant committed a nearly identical act in the past is highly prejudicial and grounds for a mistrial. Because Division Three's decision conflicts with these principles and Division One's decision in Escalona, this Court should accept review. RAP 13.4(b)(2).

2. DIVISION THREE'S DECISION AFFIRMING THE COURT'S LESSER INCLUDED OFFENSE INSTRUCTIONS CONFLICTS WITH THIS COURT'S DECISION IN STATE V. PEREZ-CERVANTES.

The evidence showed Ray suffered at least three blunt force injuries to the left side of his skull and that the injuries would have required significant force to cause. The circumstances are analogous to those in Perez-Cervantes, where the defendant stabbed the victim in the stomach twice, and this Court found no evidence of anything but an intentional act. Because Division Three's decision conflicts with Perez-Cervantes, this Court should accept review. RAP 13.4(b)(1).

An instruction on a lesser included offense is warranted when two conditions are met: First, each of the elements of the lesser offense must be a necessary element of the offense charged and second, the evidence in the case must support an inference that the lesser crime was committed.

State v. Perez-Cervantes, 141 Wn.2d 468, 6 P.3d 1160 (2000); State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978).

The crimes of first and second degree manslaughter constitute legal lessers of the crime of second degree murder. See e.g. State v. Gamble, 154 Wn.2d 457, 469, 114 P.3d 646 (2005). As argued below, the court nonetheless erred in instructing the jury on these crimes, as there was no evidence on which a jury could rationally find the defendant guilty of the lesser and acquit him of the greater.

This Court's opinion in Perez-Cervantes is directly on point. Perez-Cervantes was found guilty of the second degree murder for twice stabbing Samuel Thomas with a pocketknife. Perez-Cervantes, 154 Wn.2d at 471. The stabbing punctured an artery between Thomas' ribs, which caused blood to rush to the left side of his chest cavity. Id.

Two days following his apparent recovery and release from the hospital, Thomas stopped breathing and died. The autopsy revealed Thomas had five liters of fresh blood in his chest cavity. The medical examiner found the stab wound to have caused Thomas' internal bleeding and death. Id.

On review, this Court affirmed the lower court's decision not to instruct on first and second degree manslaughter:

> Perez-Cervantes contends that the jury could have inferred that manslaughter was committed because "a small knife, causing a small wound, which was successfully treated initially does not prove intent to kill," and that Perez-Cervantes "meant to assault Mr. Thomas, not kill." Br. of Appellant at 8-9. Perez-Cervantes cannot, however, overcome the presumption that an actor intends the natural and foreseeable consequences of his conduct. The State's evidence showed that Perez-Cervantes twice attacked Thomas with a knife, after Thomas had been kicked and beaten into submission. "A jury may infer criminal intent from a defendant's conduct where it is plainly indicated as a matter of logical probability." State v. Myers, 133 Wash.2d 26, 38, 941 P.2d 1102 (1997). In short, there was no evidence that affirmatively established that Perez-Cervantes acted recklessly or with criminal negligence in plunging the blade of his knife into Thomas. Whatever Perez-Cervantes' subjective intent, his objective intent to kill was manifested by the evidence admitted at trial.

Perez-Cervantes, 141 Wn.2d at 481-82.

Contrary to Division Three's decision here, there was no evidence Foley (assuming he was the culprit) acted recklessly or negligently by repeatedly bludgeoning Ray in the head with a 2 x 10. As in Perez-Cervantes, whatever the culprit's subjective intent, his objected intent to kill was manifested by the evidence admitted at trial.

The crime scene was grisly. See e.g. RP 1154-1155. Forensic anthropologist Katherine Taylor examined Ray's bones and testified his skull suffered trauma to its left side of the head, in the form of blunt force trauma, with *a minimum of three impact sites.*[6] RP 1582. She also

[6] Blood spatter on the board likewise suggested multiple impacts. RP 1160.

testified a significant amount of force was necessary to cause this kind of damage. RP 1583.

The forensic pathologist concurred Ray suffered separate blunt force impacts to the left side of his skull. RP 1588. These injuries "undoubtedly caused brain injury which caused death at some point later in the candescence of these injuries." RP 1589. In other words, Ray died of blunt force injury to the head, enforced injury." RP 1589 (emphasis added).

Contrary to the Court of Appeals decision, the relationship of past acts between Ray and Foley does not support a finding of recklessness. It doesn't shed any light onto what actually happened that night. Moreover, although Ray's killer may have picked up the 2 x 10 as a weapon of convenience, whomever hit Ray with it did so not once, not twice, but three times. As this Court held in Perez-Cervantes, a person intends the natural and foreseeable consequences of his actions. The natural and foreseeable consequences of such acts is death. Because Division Three's decision conflicts with this Court's decision in Perez-Cervantes, this Court should accept review. RAP 13.4(b)(1).

3. THE COURT'S ERROR IN INSTRUCTING THE JURY ON RECKLESSNESS INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS.

Assuming arguendo the court did not err in instructing the jury on manslaughter, the court's instruction on recklessness eased the state's burden of proof and violated Foley's right to have the state prove all the elements of the offense. Although this issue was not raised below, this Court should accept review of this significant question of law under the state and federal constitutions. RAP 13.4(b)(3); State v. McCullum, 98 Wn.2d 484, 487, 656 P.2d 1064 (1983) (reversing conviction based on issue raised for first time in the petition for review).

Under the due process clause of the state and federal constitutions, the state bears the burden to prove all elements of a charged offense beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Failure to instruct the jury on every element of the crime charged is an error of constitutional magnitude that may be raised for the first time on appeal. State v. Mills, 154 Wn.2d 1, 6, 109 P.3d 415 (2005) (citing RAP 2.5(a)(3)); State v. Peters, 163 Wn. App. 836, 847, 262 P.3d 199 (2011).

Under RCW 9A.32.060(1)(a), a person is guilty of manslaughter in the first degree if "[h]e recklessly causes the death of another person." RCW 9A.08.010(1)(c) defines recklessness:

> A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

In State v. Gamble, this Court addressed the recklessness element of manslaughter in the context of whether first degree manslaughter is a lesser included offense of second degree felony murder based on assault. State v. Gamble, 154 Wn.2d 457, 462, 114 P.3d 646 (2005). This Court held it was not, because first degree manslaughter requires the state to prove the defendant knew of, and disregarded, a substantial risk that a *homicide* may occur; whereas, felony murder based on assault requires the state to prove only that the defendant acted intentionally and disregarded a substantial risk that *substantial bodily harm* may occur. In short, this Court held the risk contemplated by the assault statute is of "substantial bodily harm," not *a homicide* as required by the manslaughter statute. Accordingly, this Court concluded first degree manslaughter requires proof of an element that does not exist in the second degree felony murder charge. Gamble, 154 Wn.2d at 467-68.

Based on Gamble, Division One of the Court of Appeals held it was reversible error for the court – in a manslaughter case – to define recklessness to mean the defendant knew of, and disregarded "a substantial risk that a wrongful act may occur." Peters, 163 Wn. App. at 849-50. The court held the instruction impermissibly relieved the state of its burden to prove beyond a reasonable doubt that Peters knew of and disregarded a substantial risk that death may occur. Peters, 163 Wn.2d at 850.

The state was relieved of that same burden here, as recklessness was defined to mean Foley knew of, and disregarded "a substantial risk that a reasonable person would exercise in the same situation." CP 194. This instruction relieved the state of its burden to prove Foley knew of and disregarded a substantial risk that death may occur.

The instructional error prejudiced Foley. As the appellate court held in its decision, the jury could have found that Ray's death resulted from a "spontaneous altercation," after Foley entered Ray's property looking for tools. Appendix at 16. In which case, the jury could have believed Foley disregarded a substantial risk that bodily harm may occur, as opposed to death. See Peters, 163 Wn. App. at 850-851. This Court should accept review of this significant question of law under the state and federal constitutions. RAP 13.4(b)(3).

4. THE PROSECUTOR'S MISCONDUCT INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS.

The prosecutor committed misconduct and deprived Foley of a fair trial by offering as evidence the unredacted video of Foley's interview with police detectives, in which Higashiyama indicated Foley's family did not believe him and thought he was guilty. Although the defense successfully moved to exclude opinions on guilt at a pretrial hearing, and although the prosecutor knew the video contained objectionable material, he played it anyway – despite the court's warnings he could thereby create grounds for a mistrial or grant of a new trial on appeal. Because this issue involves a significant question of law under the state and federal constitutions, this Court should accept review. RAP 13.4(b)(3).

A prosecutor is a quasi-judicial officer who has a duty to ensure a defendant in a criminal prosecution is given a fair trial. State v. Boehning, 127 Wn. App. 511, 518, 111 P.3d 899 (2005). Where a prosecutor commits misconduct, the defense may be deprived of a fair and impartial trial. Boehning, at 518; U.S. Const. amend. 14; Wash. Const. art. 1, § 3.

A defendant claiming prosecutorial misconduct who has preserved the issue by objection bears the burden of establishing the impropriety of the prosecuting attorney's actions and their prejudicial effect. State v. McKenzie, 157 Wash.2d 44, 52, 134 P.3d 221 (2006). A defendant

establishes prejudice if there is a substantial likelihood the misconduct affected the jury's verdict. State v. Dhaliwal, 150 Wash.2d 559, 578, 79 P.3d 432 (2003).

Even with no objection, however, reversal is still required when the misconduct is so flagrant and ill-intentioned it causes enduring prejudice that could not have been cured by instruction. Boehning, 127 Wn. App. at 518. It is reversible misconduct for a prosecutor to violate a court order regarding the admissibility of evidence. State v. Escalona, 49 Wn. App. 251, 255-56, 742 P.2d 190 (1987) (witness testimony in violation of court's pretrial orders constituted serious trial irregularity necessitating retrial despite court's instruction to disregard the improper statement).

As the appellate court properly recognized, the evidence introduced through detective Higashiyama clearly revealed Foley's family members' opinions as to his guilt. Such evidence was clearly improper. Contrary to the appellate court's decision, however, the prosecutor's actions in playing that portion of the DVD constituted misconduct – in light of the motion in limine excluding improper opinions on guilt. And contrary to the court of appeals reasoning, it is not defense counsel's job to micromanage the state's presentation of evidence once the defense has obtained a favorable ruling excluding evidence.

And although the improper opinions were contained within a lengthy interview, jurors would naturally be influenced by the fact that Foley's own family members – the people who knew him the best – would think he was guilty. This Court should therefore take review of this important constitutional question. RAP 13.4(b)(3).

5. COUNSEL'S INEFFECTIVENESS IN FAILING TO CRAFT A CURATIVE INSTRUCTION INVOVLES A SIGNFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS.

The federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. To prevail on an ineffective assistance claim, trial counsel's conduct must have been deficient in some respect, and that deficiency must have prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687–88, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Defense counsel knew of the admission of the improper opinion testimony in advance of instructing the jury, yet failed to craft a limiting instruction directing jurors to disregard it – despite the court's invitation. This constituted ineffective assistance of counsel. Contrary to the Court of Appeals decision, the record indicates counsel's choice was not the result of tactics, but frustration. BRP 42. This Court should accept review of this significant constitutional question. RAP 13.4(b)(3).

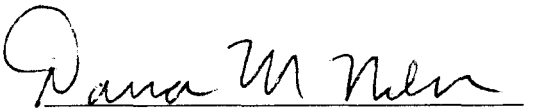
F. CONCLUSION

For the reasons set forth above, this Court should accept review. RAP 13.4(b)(1), (2) and (3).

Dated this 21st day of October, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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

STATE OF WASHINGTON,	)	No. 30219-9-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
CHRISTOPHER M. FOLEY,	)	
	)	
Appellant.	)	

KULIK, J. — Christopher Foley was charged with second degree murder of Russell Ray. Based on the State's theory of the crime, Mr. Foley killed Mr. Ray by hitting him with a 2" x 10" board during a dispute over ownership of tools. A jury found Mr. Foley guilty of the lesser included offense of first degree manslaughter. Mr. Foley appeals. He asserts that the trial court made evidentiary errors, prosecutorial misconduct occurred, and assigns error to the court's decision to instruct the jury on the lesser included offense. He also assigns numerous errors in his statement of additional grounds for review. We conclude that the trial court did not err. We affirm the conviction.

FACTS

Christopher Foley and Russell Ray were brothers-in-law. Mr. Foley's wife, Karen Foley, and Mr. Ray's wife, Christine Ray, are sisters. The couples lived next to each other as well as Ms. Foley's and Ms. Ray's parents, Bob and Connie Collignon, in Ellensburg, Washington. The brothers-in-law were business partners in a construction company until the company stopped being profitable and dissolved. Mr. Foley's and Mr. Ray's relationship deteriorated after the dissolution. The men disagreed over the division of the tools that belonged to the company. Mr. Ray reportedly felt he had been cheated.

Mr. Ray disappeared on June 21, 2010, when most of his family was attending a wedding in California. However, Mr. Foley had returned home on the day of the disappearance. Neighbors and police searched for Mr. Ray or clues to his disappearance, but found nothing significant.

On June 27, a day after Ms. Ray returned, she discovered blood on the fence in her backyard. Ms. Ray called police who discovered blood in several locations outside of the home. With the help of search and rescue volunteers, the police found a 2" x 10" board in the barn covered in blood.

Over the next two days, the Washington State Patrol and the Kittitas County Sherriff's Office collected evidence from the scene. Forensic scientist Brianna Peterson

described the scene as a "blood letting." Report of Proceedings (RP) at 1167. On the north side of the property, there was red-brown staining across the length of the property line to the residence and on the residence. There was also blood and hair on tree branches in this area. A significant amount of blood was also located in the immediate backyard by the trampoline. "Saturation" stains and hair were visible on the nearby railroad ties. RP at 1108. Spatters of blood were observed in the grass to the west of the railroad ties.

Ms. Peterson also examined the bloody board found in the barn. Ms. Peterson testified that the four sides of the board had blood transfer marks and blood spatter patterns.

The following March, Mr. Ray's body was found in a ravine off the Vantage Highway. The Kittitas County prosecutor charged Mr. Foley with the second degree murder of Mr. Ray. The amended information alleged that the crime occurred between June 21 and June 22. The State relied on Mr. Foley's and Mr. Ray's long-standing feud over the tools and the failure of the business as motive for the crime.

PROCEDURAL HISTORY

Evidence of Past Acts. The State relied on circumstantial evidence in its case against Mr. Foley. To help show motive for the crime, the State introduced three prior altercations between Mr. Ray and Mr. Foley that occurred over the tools.

The first instance involved a physical altercation between Mr. Foley and Mr. Ray at a job site in May 2009. Mr. Foley allegedly punched Mr. Ray after the two argued about the tools. Mr. Collignon and Brink Evans witnessed the altercation. In addition, Ms. Ray and Ms. Collignon were told about the incident by Mr. Ray. Ms. Ray photographed the injury.

The second instance involved a verbal exchange in May 2009. The tools were again the subject of the altercation. Mr. Foley described this incident to detectives during his first interview following Mr. Ray's disappearance. Ms. Collignon was told of the incident by Mr. Ray. Mr. Ray perceived this incident as an ambush because Mr. Foley had delayed leaving for work in order to confront Mr. Ray about the tools.

The last instance involved a physical altercation in May 2010. Mr. Foley caught Mr. Ray looking for tools. Mr. Foley allegedly hit Mr. Ray with a 4" x 4" piece of wood. No witnesses were present, but Mr. Ray told details of the incident to his brother, Mark Ray, and to a co-worker, Mark Emmert. Ms. Ray, Ms. Collignon, and Jory Ray observed an injury to Mr. Ray that was consistent with the described incident. Additionally, a photograph taken shortly after the incident by the Department of Licensing demonstrates an injury consistent with the described incident. Mr. Foley denied he participated in this incident.

Mr. Foley argued that the three incidents were not admissible under ER 404(b) because they were propensity evidence. Mr. Foley also contended that the State could not meet its burden to prove that the incident regarding the 4" x 4" board occurred.

The trial court found the incidents were sufficiently proved and admissible under ER 404(b) as evidence of motive, opportunity, and lack of mistake or accident. The court also found the evidence to be relevant and not unfairly prejudicial.

Recorded Interview. The State sought to present a video recording of a police interview of Mr. Foley. Mr. Foley was concerned that the State anticipated fast forwarding or muting the sound through portions of the video that were excluded or irrelevant. Mr. Foley requested that if the State were to present the video, it needed to redact those portions. In response, the State said that the system supporting the video evidence did not allow for editing, but the State would work on a solution. In the alternative, the State said it would submit a transcript to the jury, excluding the redacted material. The court agreed. The video was discussed again and the State proposed to play the interview in its entirety for the sake of completeness. No decision was made during this discussion.

During the trial, when the State questioned Detective Greg Bannister about the recorded interview, Mr. Foley objected, claiming that the State's presentation of the

interview evidence was awkward and confusing. In response, the State detailed the problems with presenting the evidence of the interview. The State explained that playing portions of the recorded interview was not a viable option because the video could not be physically altered and portions were inaudible. Also, relying solely on the transcripts of the video created problems because portions of the interview were transcribed as inaudible and the jury was entitled to hear that inaudible evidence. However, asking the detective about the interview would result in leading questions and hearsay objections. The State said it would be best to admit the transcript and let Detective Bannister answer the State's questions.

The trial court decided that the transcript could not be introduced into evidence in the manner the State suggested. The State requested that the court allow the video to be played in its entirety, skipping over the portions that were impermissible, such as the reference to the polygraph, and stopping when Mr. Foley objected. The State suggested that if any inadmissible evidence came in by error, it be cured by a jury instruction. Mr. Foley complained that he would suffer incredible prejudice from the inadmissible evidence. Mr. Foley recognized the State's technical issues, but acknowledged that it was the State's burden to present evidence so it was error free, and such a presentation was possible.

The court allowed the State to play the entire video and skip over the impermissible portions. The court warned the State that a mistrial would occur if inadmissible evidence was presented. The court determined that the video would not go back to the jury, but would be treated more like a witness statement.

As the State set up the video, Mr. Foley informed the trial court that he was concerned that the State was failing to skip the inadmissible part of the interview where Mr. Foley was advised of his rights. The court reminded the State that it had required the State to come up with an easy and workable way to present the video interview. The State agreed to make a written record of the presentation to document what portions of the video interview were played to the jury and to exclude the portions of the video that were prejudicial or not relevant.

The court expressed that most of the video contained irrelevant material and that playing the video would confuse the jury. However, the court reluctantly allowed the State to play the video for the purpose of impeachment of Mr. Foley. After the court played the video, the court criticized the State for wasting everyone's time with the lengthy video.

In the video, Deputy Darren Higashiyama asked Mr. Foley where Ms. Foley thought Mr. Ray might have gone. Mr. Foley replied that Ms. Foley thought Mr. Ray was

dead. Later in the interview, Detective Higashiyama suggested that some members of Mr. Foley's family were accusing Mr. Foley because of their relationship. However, Detective Higashiyama assured Mr. Foley that Detective Higashiyama was not blaming anyone because he did not know the offender.

This portion of the video was not skipped even though the trial court previously granted Mr. Foley's motion in limine to exclude any evidence pertaining to an opinion of Mr. Foley's guilt.

The video was brought up once more before the jury was instructed. Mr. Foley sought to have the court instruct the jury to disregard the entire video. However, the trial court indicated that it would instruct the jury to disregard portions of the video, if requested. Mr. Foley responded that there were many statements from other people that should not have been allowed, including the statement from the detective that a witness formed an opinion of guilt. The State argued that all statements provided context for the evidence. The State also claimed that it did not remember the language of the statement to know if it was an opinion of guilt.

Lesser Offense. During the instructions conference, Mr. Foley requested that the court not give instructions for first degree or second degree manslaughter, which are lesser included offenses of second degree murder. The State requested the instructions,

arguing that the instructions were supported by the evidence. The trial court agreed with the State to include the instructions for the lesser included offenses.

A jury found Mr. Foley guilty of first degree manslaughter. Following the verdict, Mr. Foley filed a motion for a new trial on the grounds of prosecutorial misconduct. Mr. Foley argued that the prosecutor committed misconduct by failing to redact the portion of the video interview where detectives asserted that Ms. Ray and Ms. Foley did not believe Mr. Foley's written version of events. The trial court determined that there was no basis for a new trial.

ANALYSIS

Evidence of a Prior Altercation. We review a trial court's ruling on ER 404(b) evidence for an abuse of discretion. *State v. Foxhoven*, 161 Wn.2d 168, 174, 163 P.3d 786 (2007). An abuse of discretion occurs if the court's decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *State v. Dixon*, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

ER 404(b) forbids admitting evidence of a person's other crimes, wrongs, or acts to prove a person's character in order to show that the person acted in conformity with the prior bad acts. A defendant must be tried on evidence relevant to the crime charged, and

not convicted because the jury believes he is a bad person who has done wrong in the past. *Foxhoven*, 161 Wn.2d at 175.

However, ER 404(b) allows evidence of such acts if admitted for other purposes, such as to establish motive, opportunity, intent, identity, and the absence of mistake or accident.

"Before admitting ER 404(b) evidence, a trial court 'must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudical effect.'" *Foxhoven*, 161 Wn.2d at 175 (quoting *State v. Vy Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002)). The trial court must conduct this analysis on the record. *Id.*

Courts presume that evidence of a defendant's past acts is inadmissible; any doubts regarding admittance are resolved in favor of the defendant. *State v. Fuller*, 169 Wn. App. 797, 829, 282 P.3d 126 (2012), *review denied*, 176 Wn.2d 1006 (2013).

Evidence of previous quarrels and assaults against the same victim is admissible when motive is relevant to the current offense. *State v. Powell*, 126 Wn.2d 244, 260, 893 P.2d 615 (1995).

We decide whether the evidence of other bad acts is more probative than prejudicial by considering the record as a whole and determining whether the trial court articulated the balancing of these two aspects. *Id.* at 264-65. A trial court has broad discretion in balancing the probative value against the prejudicial effect. *State v. Stenson*, 132 Wn.2d 668, 702, 940 P.2d 1239 (1997).

Mr. Foley challenges the trial court's decision to allow the prior altercation where Mr. Foley allegedly hit Mr. Ray with a 4" x 4" piece of wood. Mr. Foley contends that this evidence was not supported by a preponderance of evidence because the State relied on uncorroborated hearsay testimony from Mark Ray as proof of the prior act. Mr. Foley also contends that the evidence's potential for prejudice outweighs its probative value because the incident was too similar to the State's theory of how Mr. Foley was killed, and the State had other evidence to establish Mr. Foley's and Mr. Ray's disagreement over tools.

At trial, Mark Ray testified that he spoke with his brother about the 4" x 4" incident. Mr. Ray told his brother that he was in Mr. Foley's shop to take tools when Mr. Foley hit Mr. Ray with a 4" x 4" board. Mr. Emmert also testified that Mr. Foley told him about the incident. According to Mr. Emmert, Mr. Foley went home to get his boots when he heard someone in his shop. He picked up a 4" x 4" board and hit the

person, who turned out to be Mr. Ray. The court allowed this hearsay testimony as statements against interest.

The trial court did not abuse its discretion by allowing the hearsay testimony of Mark Ray to prove the 4" x 4" incident. The statements by Mr. Ray were allowed under the ER 804(b)(3) statement against interest exception to the hearsay rule. Inculpatory hearsay statements against a penal interest are admissible under ER 804(b)(3) if the declarant is unavailable, the statement subjects the declarant to criminal liability to the extent that a reasonable person in the same position as the declarant would not have made the statement unless he believed it was true, and corroborating circumstances clearly indicate the trustworthiness of the statement. *State v. Valladares*, 99 Wn.2d 663, 668, 664 P.2d 508 (1983).

First, no question is raised in regard to Mr. Ray's unavailability to testify. Also, Mr. Ray's statements subjected him to criminal liability for burglarizing Mr. Foley's property. Finally, Mark Ray's statement about the incident was corroborated by Mr. Emmert, who also testified that the incident occurred. Additional support came from other witnesses who testified to seeing an injury on Mr. Ray that was consistent with the incident. Mr. Ray's Department of Licensing photograph taken a few days after the incident also shows the injury. While Mr. Foley denied making the statement to Mr.

Emmert, there is no reason to believe the statements from the other witnesses are not credible. Both Mark Ray and Mr. Emmert gave similar testimony, and there is no evidence that the men knew each other.

We conclude that the trial court did not abuse its discretion by admitting the prior bad act. The State proved by a preponderance of the evidence that the incident occurred. Also, the trial court considered the incident involving Mr. Foley and Mr. Ray relevant to establish motive. The State's motive was based on Mr. Foley's and Mr. Ray's longstanding argument over the tools, and this incident provided evidence of that motive.

Furthermore, the court weighed the effects of the evidence and determined that the probative value was significant as this evidence strongly supports the State's motive that Mr. Foley killed Mr. Ray over the conflict surrounding the dissolution of the business and the disposition of the tools. The event happened in Mr. Foley's shop while Mr. Ray was looking for the tools. Mr. Foley was upset and argued with Mr. Ray over the tools. While the State presented other evidence that supports motive, the May 2010 incident involving a 4" x 4" board shows the depth of the disagreement between the men. The record shows that the trial court carefully balanced the probative value of the prior acts against the danger of unfair prejudice. The court did not abuse its discretion by admitting evidence of a prior altercation between Mr. Foley and Mr. Ray.

Jury Instructions. Alleged errors of law in a trial court's instructions are legal questions that we review de novo. *State v. Porter*, 150 Wn.2d 732, 735, 82 P.3d 234 (2004). When determining whether sufficient evidence supported a jury instruction on a lesser included offense, the court reviews the supporting evidence in the light most favorable to the party requesting the instruction. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000).

An instruction on a lesser included offense is warranted when "'[f]irst, each of the elements of the lesser offense must be a necessary element of the offense charged[, and,] [s]econd, the evidence in the case must support an inference that the lesser crime was committed.'" *Id.* at 454 (alterations in original) (quoting *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978)).

The second prong of the lesser included offense test requires a factual showing supporting the lesser crime that must be "more particularized than that required for other jury instructions." *Fernandez-Medina*, 141 Wn.2d at 455. "[T]he evidence must raise an inference that *only* the lesser included/inferior degree offense was committed to the exclusion of the charged offense." *Id.* "If the evidence would permit a jury to rationally find a defendant guilty of the lesser offense and acquit him of the greater, a lesser

included offense instruction should be given." *State v. Warden*, 133 Wn.2d 559, 563, 947 P.2d 708 (1997).

First and second degree manslaughter are lesser included offenses of intentional murder, and such instruction should be given to the jury when supported by the facts. *State v. Berlin*, 133 Wn.2d 541, 543, 947 P.2d 700 (1997).

First degree manslaughter is committed when a person recklessly causes the death of another person. RCW 9A.32.060(1)(a). Second degree manslaughter is committed when a person, with criminal negligence, causes the death of another person. RCW 9A.32.070(1).

The factual prong is in dispute here. We conclude that the trial court did not err in giving the lesser included instructions of first and second degree manslaughter. The State's motive for the crime is the dispute over the division of tools. Evidence of the prior altercations established that the men were very angry over the tools, and both attempted to reclaim the tools from the other. The killing of Mr. Ray could have resulted from another physical altercation that escalated to the point of a reckless killing. Additionally, the piece of wood used in Mr. Ray's murder is not the type that is brought to intentionally kill someone. Instead, the piece of wood suggests that it was grabbed in the heat of an argument. In sum, the circumstantial evidence suggests that Mr. Foley and Mr.

Ray were involved in a spontaneous altercation after Mr. Foley entered Mr. Ray's property looking for tools. The altercation became physical, Mr. Foley hit Mr. Ray with a piece of wood lying in the barn, and Mr. Ray was recklessly killed as a result.

Instructing the jury on the lesser included offenses of first and second degree manslaughter was not error.

Prosecutorial Misconduct. "The granting or denial of a new trial is a matter primarily within the discretion of the trial court and we will not disturb its ruling unless there is a clear abuse of discretion." *State v. Wilson*, 71 Wn.2d 895, 899, 431 P.2d 221 (1967). A trial court's decision regarding improper prosecutorial argument is reviewed for an abuse of discretion. *State v. Cheatam*, 150 Wn.2d 626, 652, 81 P.3d 830 (2003).

A prosecutor is a quasi-judicial officer who has a duty to ensure a defendant in a criminal prosecution is given a fair trial. *State v. Boehning*, 127 Wn. App. 511, 518, 111 P.3d 899 (2005).

A defendant claiming prosecutorial misconduct who has preserved the issues by objection bears the burden of establishing the impropriety of the prosecuting attorney's actions and their prejudicial effect. *State v. McKenzie*, 157 Wn.2d 44, 52, 134 P.3d 221 (2006) (quoting *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997)). A defendant establishes prejudice if there is a substantial likelihood that the misconduct affected the

jury's verdict. *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003) (quoting *State v. Pirtle*, 127 Wn.2d 628, 672, 904 P.2d 245 (1995)).

Even with no objection, reversal is still required when the misconduct is so flagrant and ill-intentioned it causes enduring prejudice that could not have been cured by instruction. *Boehning*, 127 Wn. App. at 518. It is misconduct for a prosecutor to flagrantly violate a court order regarding the admissibility of evidence. *State v. Smith*, 189 Wash. 422, 428-29, 65 P.2d 1075 (1937).

Expressions of personal belief as to the guilt of the defendant are clearly inappropriate for opinion testimony in criminal trials. *State v. Montgomery*, 163 Wn.2d 577, 591, 183 P.3d 267 (2008). Both direct and implied opinions of guilt are improper. *Id.* at 594.

Mr. Foley contends that the prosecutor committed misconduct and deprived Mr. Foley of a fair trial by offering as evidence the unredacted video interview that included witness opinion on Mr. Foley's guilt. Mr. Foley contends that the prosecutor knew the video contained objectionable material, but chose to play it anyway. While Mr. Foley objected to the playing of the video in its entirety, he did not object to the opinion statements when they were introduced. In contrast, the

State contends that the statements made by detectives are not impermissible opinion testimony.

Two portions of the police video interview of Mr. Foley by Detective Higashiyama are challenged as opinion evidence. The first portion contained the following dialogue:

> HIGASHIYAMA: Have you talked to your wife . . .
> FOLEY: . . . California.
> HIGASHIYAMA: . . . about where Russel [sic] might've gone?
> FOLEY: She thinks he's dead.

Clerk's Papers (CP) at 397. The second portion is as follows:

> HIGASHIYAMA: So you know that the family's going to be very upset over this, right? Because some family members, not all of 'em are pointing a finger but they're pointing at, at you, but just because of the relationship.
> FOLEY: Yeah.
> HIGASHIYAMA: Kay, we're not pointing the finger at anybody cause we don't know.
> FOLEY: Yeah. No that's fine.
> HIGASHIYAMA: So you're okay with the family and holding that shadow over your head?
> FOLEY: Yeah I'm fine with it.

CP at 419.

We conclude that the second portion of the video interview contains an opinion regarding Mr. Foley's guilt. Detective Higashiyama's testimony that some of the family members were pointing a finger at Mr. Foley because of the relationship implies that the family members thought Mr. Foley was guilty of killing Mr. Ray over the business and

the tools. While this opinion was given in a video format and not direct testimony of a witness, the trial court treated the interview as a witness statement because of the difficulty in questioning Detective Higashiyama. As such, we treat this interview as a witness statement and conclude that the opinion testimony was improperly introduced by the prosecution.

However, the prosecutor's introduction of this evidence did not constitute misconduct because the prosecutor's actions were not flagrant and ill-intentioned. The evidence does not lead to a conclusion that the prosecutor sought to play the video in order to get in evidence that otherwise would have been recognized as inadmissible. The prosecutor attempted to introduce the evidence of the interview without playing the video, but it was found to be too confusing. The prosecutor also was able to skip over other portions of inadmissible material, which infers that the prosecutor was attempting to omit the material.

Also, the introduction of the material did not cause enduring prejudice that could not have been cured by instruction. The detective's statement regarding the family's opinion of guilt was not highlighted evidence in the trial. The opinion testimony was buried in the lengthy interview. The court recognized that most of the video interview was irrelevant and a waste of time. Detective Higashiyama lessened the prejudicial

impact of the statement when he immediately responded to Mr. Foley that he did not support the opinion of the family. This statement stifled any enduring prejudice that may have arisen from the testimony. Any prejudice could have been cured by a limiting instruction. The court offered to give an instruction, but Mr. Foley declined.

Prosecutorial misconduct did not deprive Mr. Foley of his right to a fair trial.

Ineffective Assistance of Counsel. We review claims of ineffective assistance of counsel de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

The federal and state constitutions guarantee the right to effective representation. U.S. CONST. amend. VI; CONST. art. I, § 22. To prevail on an ineffective assistance of counsel claim, trial counsel's conduct must have been deficient in some respect, and that deficiency must have prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Performance is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Prejudice results if the outcome of the trial would have been different had defense counsel not rendered deficient performance. *Id.* at 337.

Where a defendant claims that his or her counsel was ineffective for failing to make a particular motion, "[a]bsent an affirmative showing that the motion probably

would have been granted, there is no showing of actual prejudice." *Id.* at 337 n.4.

Courts engage in a strong presumption that counsel's representation was effective. *Id.* at 335.

We conclude that Mr. Foley's counsel's failure to request a limiting instruction could have been tactical. Counsel recognized that a comment on guilt was included in the video interview and could have chosen to avoid additional attention to the statement by refusing a limiting instruction.

And, we cannot conclude that the failure to request a limiting instruction prejudiced Mr. Foley. As previously discussed, the evidentiary value of the opinion evidence was not highlighted or heavily weighted. The opinion evidence was buried in an extensive, lengthy video interview and immediately discredited by Detective Higashiyama. As a result, we conclude that Mr. Foley's right to effective assistance of counsel was not violated.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

RAP 10.10(c) states that reference to the record and citation to authorities are not required in statements of additional grounds for review (SAG). However, the rule also states that the appellate court will not consider the SAG for review if the SAG does not inform the court of the nature and occurrence of the alleged errors. Generally, the

appellate court is not obligated to search the record in support of claims made in a defendant/appellant's SAG. RAP 10.10(c).

In his SAG, Mr. Foley generally informs this court of the nature and occurrence of the alleged errors, but fails to direct us to the portion of the extensive record where the facts supporting the alleged errors can be found. Our review of Mr. Foley's claims are based on our knowledge of the record, in accordance with RAP 10.10(c). We conclude that his SAG contentions are without merit.

We affirm the conviction for the crime of first degree manslaughter.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Brown, J.

Korsmo, C.J.

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State v. Christopher Foley

No. 89180-0

Certificate of Service

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 21st day of October, 2013, I caused a true and correct copy of the **Amended Petition for Review** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Gregory Zempel
Kittitas County Prosecuting Attorney
prosecutor@co.Kittitas.wa.us

Christopher Foley
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Signed in Seattle, Washington this 21st day of October, 2013.

x Patrick Mayovsky

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, October 21, 2013 2:29 PM
To: 'Patrick Mayovsky'; prosecutor@co.Kittitas.wa.us
Subject: RE: State v. Christopher Foley, No. 89180-0

Received 10/21/13

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From: Patrick Mayovsky [mailto:MayovskyP@nwattorney.net]
Sent: Monday, October 21, 2013 2:25 PM
To: OFFICE RECEPTIONIST, CLERK; prosecutor@co.Kittitas.wa.us
Subject: State v. Christopher Foley, No. 89180-0

Attached for filing today is an amended petition for review and a motion for leave to file an amended petition for review.

State v. Christopher Foley

No. 89180-0

- Motion for Leave to File an Amended Petition for Review
- Petition for Review

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