

No. 89749-2

COA No. 68661-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

PARAMJIT SINGH BASRA,

Petitioner,

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

The Honorable Brian D. Gain

PETITION FOR REVIEW
(Combined)

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A. IDENTITY OF PETITIONER

Paramjit Basra, Petitioner, Pro Se, asks this Court to accept a review of the Court of Appeals decision terminating review designated in Part-B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), Petitioner seeks review of the Court of Appeals Unpublished decision in State v. Paramjit Basra, No. 68661-5-I (November 25, 2013). A copy of the decision is in appendix at pages A-1 to A-10 for review.

C. ISSUES PRESENTED FOR REVIEW

1. Due Process requires the State prove every element of the offense beyond a reasonable doubt. Premeditation is an essential element of the charged offense of first degree murder. The trial evidence established Mr. Basra killed his wife in an impulsive and/or spontaneous single act of strangulation lasting 30-60 seconds, an which the Supreme Court has held is insufficient to prove premeditation. Is a significant question of law under United States and the Washington Constitutions presented where the trial court erred in entering a conviction for first degree murder for which there was not sufficient evidence and proof?

2. Whether evidence was sufficient to prove premeditation?

3. Were prosecutors closing remarks prejudicial and improper?

4. Was defense counsel ineffective in investigation of evidence?

5. Does the cumulative error doctrine apply, where there are several errors raised in the Statement of Additional Grounds?

D. STATEMENT OF THE CASE FACTS

Paramjit Basra and Harjinder Basra were married in their native India and moved to the United States with their son and youngest daughter in 2006. RP 332. The family settled in Auburn. Paramjit ran a transportation business in India and became a truck driver when he moved to the United States. RP 334, 460, 481.

In 2009, Paramjit, Harjinder, and their two children returned to India for five months to attend the wedding of their oldest daughter who did not immigrate to the United States. RP 170, 332, 464-66. Mr. Basra spent a substantial sum of money in celebrating his daughter's marriage, and on return to the United States, money woes arose. RP 482 542. Jobs were scarce and Mr. Basra's poor english skills did further limit his job opportunities. RP 470-71, 481-82. This began to cause Mr. Basra to suffer from insomnia. RP 543.

On July 27, 2009, Mr. Basra was to begin a new job. On his way to work, he realized he had left his wallet and cord for his GPS at home. RP 549, 731-32. Mr. Basra went home and began searching the master bedroom for his wallet and GPS cord. RP 176, 342. Basra's youngest daughter, Amandeep Basra, was in the bedroom finishing her homework assignment on the computer. RP 178. Mr Basra and Harjinder began to quarrel about the wallet. RP 305. Mr. Basra instructed his daughter Amandeep to leave the room, and then slapped her across the face when she refused. RP 176. Harjinder stepped into stop Mr. Basra grabbed Harjinder around her throat with his hand. RP 179, 311. Then Amandeep told her father to stop, but he continued. RP 318.

1. For ease of citation Harjinder and Amandeep Basra shall be referenced by their first names. No disrespect is intended.

called 9-1-1, and then moved into the bathroom. RP 319-20.

Auburn police officers responding to Amandeep's 9-1-1 call detained Mr. Basra. RP 66-67. Mr. Basra told the officers he had killed his wife and that she could be found in the master bedroom. RP 69. The officers entered the house and located Harjinder on the floor of the master bedroom unconscious and not breathing. RP 76-77. They immediately began cardio-pulmonary resuscitation until firefighters arrived. RP 77, 107. The officers noted bruising under Harjinder's neck. RP 132.

Harjinder was taken to Harborview Hospital in Seattle where she died on July 30, 2009. RP 366, 378. A subsequent autopsy revealed Harjinder died of asphyxia due to ligature strangulation. RP 384. The Medical Examiner opined that the strangulation took approximately 30 to 60 seconds before there was irreversible brain damage leading to death. RP 399. A GPS cord found in Mr. Basra's master bedroom was consistent with the ligature impressions on Harjinder's neck. RP 390. The medical examiner did not find any evidence of manual strangulation RP 392.

Mr. Basra was subsequently charged with first degree murder and second degree felony murder. CP 8-9. Prior to trial, Mr. Basra moved pursuant to State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48(1986) to dismiss the first degree murder count in the information on the basis that the facts as stated by the prosecutor failed to establish element of premeditation. CP 10-16; 1/27/2012RP 16-26. The court denied the motion. 1/27/2012RP 37.

Following the State's case-in-chief Mr. Basra again moved to dismiss the first degree murder count, submitting that the State's

evidence failed to prove the element of premeditation, only spontaneous anger and loss of control. RP 442-45. The trial court denied the motion. RP 453-55.

Following the jury trial, Mr. Basra was convicted as charged. CP102-03. At sentencing, the trial court found the second degree felony murder conviction merged with the first degree murder conviction and vacated the lesser degree conviction. CP 110; 4/20/2012 RP 10.

On appeal, Mr. Basra submitted his conviction supported only a conviction for second degree murder because the State failed to prove premeditation for first degree murder. The Court of Appeals affirmed the conviction, finding the State had established the element of premeditation. Decision at 5-6.

E. ARGUMENTS ON WHY REVIEW SHOULD BE ACCEPTED

1. THE STATE FAILED TO PROVE MR. BASRA WAS GUILTY OF PREMEDITATION. (Appellant Attorney Mr. Kummerow)

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435(2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is "[w]hether, after analyzing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all reasonable

inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

First degree murder requires the defendant act "with premeditated intent to cause the death of another person;..." RCW 9A.32.030(1)(a). Premeditation distinguishes first degree murder from second degree murder. *State v. Brooks*, 97 Wn.2d 873, 876, 651 P.2d 217(1982). Premeditation is not shown merely because the act takes an appreciable amount of time because to do so would obliterate the distinction between first and second degree murder. *State v. Bingham*, 105 Wn.2d 820, 826, 719 P.2d 109(1986).

Murders resulting from an impulsive or spontaneous act are not premeditated. *State v. Luoma*, 88 Wn.2d 28, 34, 558 P.2d 756(1977). Where there is evidence that a killing occurred in the heat of passion, it is possible to find the absence of premeditation but the presence of intent. *State v. Bolen*, 142 Wn.2d 653, 666, 254 P.2d 445 (1927).

The Court of Appeals here ruled that Mr. Basra initially struck his wife, then strangled her, establishing the element of premeditation. Decision at 5. But these facts established nothing more than sustained violence, which has been held to be insufficient to prove premeditation. see *Austin v. United States*, 382 F.2d 129, 139 (D.C. Cir. 1967) overruled on other grounds by *United States v. Foster*, 783 F.2d 1082, 1085 (D.C. Cir. 1986)(where, standing alone, multiple stab wounds and sustained violence do not support an inference of premeditation).

The Court's additional conclusion that Mr. Basra moved from one method of strangulation to another thereby establishing premeditation

is also insufficient. Decision at 5. Changing methods of strangulation may establish intent to kill but does not establish premeditation. Here, there is nothing more presented than a sustained strangulation, which failed to establish Mr. Basra in fact deliberated, thus failing to prove premeditation. see Bingham, 105 Wn.2d at 826 (the mere passage of time for killing to occur, in that case the approximately 3 to 5 minutes it took for killing by manual strangulation, shows only opportunity to deliberate and by itself is insufficient to sustain the premeditation element absent evidence that the defendant did in fact deliberate).

But more importantly, in this case the evidence established the act of strangulation only took 30-60 seconds. RP 399. Again, this established Mr. Basra arguably intended to kill his wife but does nothing to establish he either planned her death or deliberated prior to or during the act of strangling her.

The Court of Appeals' conclusion conflated intent and premeditation. The evidence the Court of Appeals pointed to only reinforced this argument. The State failed to prove premeditation.

This Court should grant review to clearly delineate between evidence establishing only an intent to kill and evidence establishing premeditation. As a result this Court should reverse Mr. Basra's conviction.

2. WHETHER EVIDENCE WAS SUFFICIENT TO PROVE EVIDENCE OF PREMEDITATED FIRST DEGREE MURDER. (Petitioner Basra)

The Court of Appeals decision appears to conflict with prior decisions of this Court and impugns on the Petitioner's rights under the VI and XIV Amendments to the United States Constitution and to

Article 1, Sections 3 and 25 of the Washington State Constitution to have each and every element of the crime charged and proven beyond a reasonable doubt. Citing RAP 13.4(b)(1) and (3). see *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368(1970).

In the instant case, it was the State's theory that the accused caused the death of Harjinder (wife of Petitioner) by strangulation. Moreover, it is the trial courts finding that the Petitioner's acts were not only intentional, but premeditated.

Several cases provide an accurate analysis on this issue. The standards of reviewing a claim of this nature involves whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560(1979). In *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1086(1992), the court opined that a challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom.

The Petitioner bases his major constitutional claim of defense from premeditation based upon *State v. Bingham*, 105 Wn.2d 280, 719 P.2d 109(1986), relying largely upon the fact the single act of stangulation "in the heat of the moment", is not sufficient on its own to establish premeditation.

In the Petitioner's endeavor not to simply reargue the case, he simply points this Court to the several cases weighing in on this issue

2. Paramajit Basra was initially charged and convicted of both first degree and second degree murder, however the second degree felony murder conviction was later in fact vacated by the trial court. see COA Opinion.

and although the State points to the standard that the reviewin court views evidence in the "light most favorable to the State," they reason that the facts and inferences here support the jury's findings that Basra's murder conviction was premeditated. see Opinion at 3. They support this with State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011); see also State v. Ollens, 107 Wn.2d 848, 850, 733 P.2d 984 (1987). These are just two of several cases the State uses to try to establish premeditation.

The issue here is one of complexity. Mr. Basra admittedly had an extreme act of domestic violence, whereby he struck his wife and then strangled her. As set forth in Austin v. United States, 382 F.2d 129, 139 (D.C. Cir. 1967), sustained violence standing alone, does not support an inference of premeditation.

Based upon the foregoing, this Court should grant review on the issue cited to and discussed above by Petitioner.

3. WERE THE PROSECUTOR'S REMARKS PREJUDICIAL AND IMPROPER IN CLOSING ARGUMENTS? (Petitioner Basra)

In the case at bar, the Petitioner submitted briefing via, SAG (Statement of Additional Grounds), that his right to due process was violated when improperly commented on evidence during closing arguements was allowed. Citing State v. Padilla, 69 Wa. App. 295, 846 P.2d 564 (1993). Any time a prosecutor appeals to the passions or prejudice of the jury during closing arguements, there is error of which reversal should be made, where every verdict must be free of improper comments upon evidence, where the comments show they are deliberately based upon a plea to passion or prejudice, and there is sufficient evidence in the records showing such conduct here.

The Petitioner cited to the specific instances, and admits a proper objection should have been made by trial counsel, whereby the Court of Appeals opinion supports that an objection should of been made during trial, then that COA Opinion support ineffective assistance of that trial counsel, which was raised by Mr. Basra in his SAG Briefing.

"Although failure to object is usually a tactically sound decision, we can only conclude that counsel's failure to object to the examples of clearly prejudicial, improper, and inadmissible highly prejudicial statements by a witness does demonstrate gross incompetence. We conclude defense counsel failed in these instances to exercise the customary skills and diligence that a reasonable, and competent attorney would exercise under similar circumstances" see State v. Visitac, 55 Wa. App. 166, 776 P.2d 986(1989).

Based upon the foregoing the Court should grant review of the issue as discussed above.

4. WAS DEFENSE COUNSEL INEFFECTIVE FOR FAILING TO INVESTIGATE EVIDENCE? (Petitioner Basra)

In the instant case, and submitted to the Court of Appeals was an issue brought via, SAG Brief. The seminal case governing that ineffective assistance of counsel claim is set forth in Strickland v. Washington, 466 U.S. 668 (1984). The two prong analysis required to prevail on such a claim is as follows: "But for the counsel's deficient performance, the outcome of the trial could have been different!" Here it was the defendants endeavor to have his mental health issues investigated for the purpose of establishing "intent!"

Here defense counsel chose to travel down the path of presenting a mental health defense in order to undermine the State's theory. The central question was whether the Petitioner was in fact, able to form the required element of intent under Premeditation to support his conviction for Murder in the First Degree.

Several aspects necessary to support this tactical defense went unexplored. For example no "blood reports" were presented, although available. This could have explained the chemical imbalance and its effects on the human brain at the time of the alleged crime, and all medical records were obtainable to defense counsel.

Moreover, trial counsel stopped testimony of a State's witness, whom was asked to speak to effects of "Homeopathic Medicine" utilized by the defendant at the time of the alleged crime. Courts have long held that failure to investigate and present evidence that is critical to the client's defense renders the lawyer ineffective. *State v. Boyd*, 160 Wn.2d 424, 153 P.3d 54(2007). The Courts findings that these are claims based on matters outside the records is improper, where acts of counsel stopping the testimony is a part of the records, and Court of Appeals Opinion suffices to show the need to have this information as apart of the record, proving actual prejudice of trial counsel's very conduct in this case. see Unpublished Opinion at 9.

Failure of the defense to preserve this issue properly, and a failure to present evidence critical to the mental state on mind of the defendant at the time of the alleged crime is per se ineffective assistance of trial counsel. Citing *Strickland v. Washington*, *Supra*. Based upon the foregoing this Court should grant review of this issue and provide relief from counsel's errors during trial.

5. DOES THE CUMULATIVE ERROR DOCTRINE EXIST?
(Petitioner Basra)

In this case at bar, several issues have been presented to now establish individually the numerous due process violations that exist in the records. In the Court of Appeals Unpublished Opinion, many of the issues complained of stem from the Petitioner's Statement of additional grounds Brief(SAG), and were deemed meritless. As a result of the extensive number of issue presentend, one must ask can there be harm on a cumulative level.

It has long been settled that accumulative error requires court action where each error standing alone would be considered harmless. State v. Grieff, 141 Wn.2d 910, 10 P.3d 290(2000); also State v. Hodges, 118 Wa. App. 668, 77 P.3d 375(2003).

The Courts assertion that the Petitioner has not identified any trial error is a question that requires a second look from the court and review should be granted in order to make that determination.


Petitioner presents that issues in this matter meet the considerations listed in RAP 13.4(b). The Court should review the decision of the Court of Appeals as to the issues asserted herein.

F. CONCLUSION

For the reasons stated, Mr. Basra requests this Court grant his petition and reverse his conviction for first degree murder.

DATED This 19th day of January, 2014.

Respectfully Submitted,


Paramjit Basra, Petitioner

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON)	
)	No. 68661-5-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
PARAMJIT SINGH BASRA,)	
)	
Appellant.)	FILED: November 25, 2013

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GROSSE, J. — Paramjit Basra appeals his first degree murder conviction, contending the State failed to produce sufficient evidence of premeditation. We disagree and affirm the conviction. We also reject the issues Basra raises in his statement of additional grounds as meritless, except as to the community custody term. We accept the State’s concession and remand for the trial court to correct the period of community custody.

FACTS

On July 27, 2009, Amandeep Basra called 911 screaming, “[M]y father’s killing my mom.” When police arrived at the house, Paramjit Basra (hereinafter Basra) opened the door. An officer immediately put Basra in handcuffs. Basra said, “Ah, ah, the problem is I killed my wife. She’s in the room to the right.” As another officer walked Basra to a patrol car, Basra said, “I have family problems.” Basra also said, “She has problems with men, so I killed her.” The police found Basra’s wife, Harjinder, lying unconscious on the bedroom floor, not breathing. Aid personnel transported Harjinder to the hospital, where she died three days later.

The State charged Basra with first degree murder and second degree felony murder. At trial in February 2012, 24-year-old Amandeep testified that on the morning of July 27, 2009, she was working on her homework on the computer in her parents' bedroom while her mother was lying awake on the bed. Then Basra returned to the house and came into the bedroom looking for his wallet. Basra and Harjinder began quarreling. Basra told Amandeep to leave the room. When Amandeep refused, Basra slapped her face. When Harjinder told Basra to stop, Basra grabbed Harjinder by the neck or shoulders and pushed her against the wall. As Basra held and pushed on Harjinder's neck, Amandeep called 911, screaming that Basra was killing her mother, but the call was disconnected. Amandeep then called her brother on the phone. Amandeep testified that she then saw Basra with his hands on Harjinder's neck while Harjinder was lying on the floor near the bedroom door. At some point during the altercation, Amandeep slapped Basra, knocking off his turban, in an attempt to make him stop attacking Harjinder. Amandeep then locked herself in the bathroom to speak to the 911 operator, who had called back. The State also played a recording of Amandeep's 911 calls, in which she said Basra was "beating" Harjinder, he tried to kill Harjinder by "pushing her neck," and "he grabbed a rope and just put it on my mom's neck."

Detective Anna Weller of the Auburn Police Department testified that she interviewed Amandeep in October 2009. Amandeep told her that Basra's attack of Harjinder began when "he got mad and started beating her" by "[s]lapping and pushing" her.

Dr. Micheline Lubin, of the King County Medical Examiner's Office, testified that she found two parallel lines across Harjinder's neck, consistent with ligature strangulation, which she identified as the cause of death. Dr. Lubin testified that strangulation by ligature takes 10 to 20 seconds to produce unconsciousness and 30 to 60 seconds to produce irreversible brain damage. Dr. Lubin also testified that a Global Positioning System (GPS) cord found at the scene by police was consistent with the ligature impression on Harjinder's neck.

The jury found Basra guilty as charged. The trial court imposed a standard range sentence on the first degree murder conviction and vacated the felony murder charge.

Basra appeals.

ANALYSIS

Premeditation

Basra contends the State failed to produce sufficient evidence to determine that he acted with premeditated intent to kill Harjinder. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.¹ "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."² We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.³

¹ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

² Salinas, 119 Wn.2d at 201.

³ State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

A person is guilty of first degree murder when “[w]ith a premeditated intent to cause the death of another person, he or she causes the death of such person.”⁴ Premeditation involves “more than a moment in point of time.”⁵ Premeditation is the deliberate formation of and reflection upon the intent to take a life. It involves the mental process of thinking beforehand, deliberation, reflection, and weighing or reasoning for a period of time, however short.⁶ Premeditation may be proven by circumstantial evidence where the inferences drawn by the jury are reasonable and the evidence supporting the jury’s finding is substantial.⁷ A wide range of proven facts will support an inference of premeditation.⁸ Factors relevant, but not necessary, to establish premeditation include motive, procurement of a weapon, stealth, and method of killing.⁹

⁴ RCW 9A.32.030(1)(a).

⁵ RCW 9A.32.020(1).

⁶ State v. Gentry, 125 Wn.2d 570, 597-98, 888 P.2d 1105 (1985); State v. Hoffman, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991).

⁷ State v. Pirtle, 127 Wn.2d 628, 643, 904 P.2d 245 (1995); Hoffman, 116 Wn.2d at 83.

⁸ Gentry, 125 Wn.2d at 598-99; State v. Finch, 137 Wn.2d 792, 831, 975 P.2d 967 (1999); see, e.g., State v. Ollens, 107 Wn.2d 848, 850-53, 733 P.2d 984 (1987) (sufficient evidence of premeditation where defendant stabbed victim multiple times and then slashed the victim’s throat, defendant procured a knife, struck victim from behind, and had motive to kill); State v. Gibson, 47 Wn. App. 309, 312, 734 P.2d 32 (1987) (where victim suffered three blunt force injuries to the head before ligature strangulation by long, thin rope or cord-like object, brief lapse of time was sufficient for jury to find premeditation beyond reasonable doubt).

⁹ Pirtle, 127 Wn.2d at 644; see also State v. Ortiz, 119 Wn.2d 294, 297, 312-13, 831 P.2d 1060 (1992) (sufficient evidence of premeditation without discussion of motive or stealth); see also State v. Sherrill, 145 Wn. App. 473, 485, 186 P.3d 1157 (2008) (sufficient evidence of premeditation despite lack of evidence of motive, procurement of a weapon, or stealth).

Relying on State v. Bingham,¹⁰ Basra argues that evidence of ligature strangulation, alone, does not support an inference of premeditation. Basra first claims that the State failed to produce evidence of manual strangulation because Dr. Lubin testified that she did not find physical evidence of manual strangulation. Basra also claims that the State proved nothing beyond a “quick act of strangulation,” whether manual or ligature, resulting in Harjinder’s death, thereby demonstrating intent, but not premeditation.

But Bingham, in which the State presented nothing more than physical evidence suggesting that a manual strangulation took 3 to 5 minutes to prove premeditation, is easily distinguished from the facts here, which include testimony and statements of an eyewitness to the murder, Amandeep, as well as physical evidence and the opinion of the medical examiner. Viewed in the light most favorable to the State, the evidence showed different methods of attack. Basra began by slapping and pushing Harjinder, then grabbed her neck and held her against the wall, where he continued to manually strangle her. Then Harjinder somehow moved from standing against the wall to lying on the floor near the bedroom door. Finally, while Amandeep was screaming at him and slapping him, and calling 911 and repeatedly screaming at the operator that he was killing her mother, Basra changed his hold on Harjinder’s neck, obtained the GPS cord, and then wrapped it around her neck where he held it tightly for at least 30 to 60 seconds. Shortly after the killing, Basra volunteered to police that he had killed his wife because she had problems with men.

¹⁰ 105 Wn.2d 820, 719 P.2d 109 (1986).

Thus, in addition to his admitted motive, Basra had several opportunities to deliberate and reflect before he continued with the killing, given Amandeep's attempts to stop him and screams for help, the change in Harjinder's position, and his decision to release her neck and then wrap the cord around it. A rational trier of fact could find beyond a reasonable doubt that Basra acted with premeditation.

Statement of Additional Grounds

In his statement of additional grounds, Basra contends that his conviction of both first degree murder and second degree felony murder violate his right against double jeopardy, that the trial court should have instructed the jury on "separate acts" to support the two charges, and that charging the two crimes violated legislative intent and the applicable "unit of prosecution." But the State may properly file and prosecute multiple counts where the evidence supports the charges, as long as convictions are not entered in violation of double jeopardy protections.¹¹ Because the trial court properly vacated the second degree felony murder conviction, Basra fails to identify any error.¹²

Basra next argues that the trial court erroneously admitted his statements to the officers as evidence in violation of his constitutional rights. In particular, he claims that he could not have voluntarily and knowingly waived his rights, because he was "completely unable to understand the arresting/detaining officers['] statements." But the trial court held a CrR 3.5 hearing and found that

¹¹ State v. Calle, 125 Wn.2d 769, 777 n.3, 888 P.2d 155 (1995).

¹² See, e.g., State v. Womac, 160 Wn.2d 643, 660, 160 P.3d 40 (2007) (multiple convictions entered in violation of double jeopardy principles must be vacated).

Basra's statements, which Basra made in English and which the officers clearly understood, were spontaneous and not in response to police interrogation. Under these circumstances, the trial court properly admitted the statements as voluntary and Basra fails to establish grounds for relief.¹³

Basra also claims that the arresting officer violated his right to an attorney by failing to put him in contact with an attorney immediately upon his request. But nothing in the record supports his claim.

Basra also contends that the prosecutor improperly "coached" State witnesses in violation of ER 612.¹⁴ A prosecutor may not "urge a witness to create testimony . . . under the guise of refreshing the witness's recollection under ER 612."¹⁵ Prosecutorial misconduct is grounds for reversal if the prosecutor's conduct was both improper and prejudicial.¹⁶ Without a timely objection, reversal is required only if the prosecutor's conduct is so flagrant and

¹³ See, e.g., State v. Ortiz, 104 Wn.2d 479, 484, 706 P.2d 1069 (1985) (spontaneous statement is voluntary and therefore admissible if not solicited and not the product of custodial interrogation).

¹⁴ ER 612, "WRITING USED TO REFRESH MEMORY," provides in pertinent part:

If a witness uses a writing to refresh memory for the purpose of testifying, either: while testifying, or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

¹⁵ State v. McCreven, 170 Wn. App. 444, 475, 284 P.3d 793 (2012), review denied, 176 Wn.2d 1015 (2013).

¹⁶ State v. Monday, 171 Wn.2d 667, 675, 257 P.3d 551 (2011) (internal quotation marks omitted and citations omitted).

ill-intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by a curative jury instruction.¹⁷

Although his citations to the record are incomplete and/or inaccurate and he does not indicate that he objected to any particular incident on these grounds at trial, Basra contends that the prosecutor attempted to improperly supplement the testimony of several witnesses rather than merely refresh recollections. He claims that there is “no question of the prejudicial effects” and that “prejudice is clearly now established” when officers were invited to review their reports and Amandeep was directed to review an interview transcript in the jury’s presence. But Basra fails to actually articulate an enduring prejudice resulting from any such incident that could not have been neutralized by a curative jury instruction.

Basra also contends that the prosecutor’s closing argument was improper because he urged the jury to find him guilty of two counts of murder for one death. He also claims the prosecutor misstated the facts and improperly appealed to the passions and prejudices of the jury. But Basra’s descriptions of the prosecutor’s arguments are not supported by the record and his claims of error are meritless.

Basra claims that the prosecutor added the first degree murder charge to punish him for exercising his right to a jury trial. He claims that the fact that the prosecutor considered lesser charges during plea negotiations and added the more serious charge without the benefit of any new evidence after he rejected

¹⁷ State v. Warren, 165 Wn.2d 17, 43, 195 P.3d 940 (2008).

the plea offers demonstrates vindictiveness. But his bare assertion is insufficient to support a claim of vindictiveness.¹⁸

Basra argues he was denied a fair trial when the trial court failed to ensure that he had no conflicts with his trial attorney. Although Basra's attorney indicated on the record during pretrial hearings that counsel and Basra had disagreements over strategy, Basra did not make a motion to discharge his attorney and defense counsel did not move to withdraw. Because Basra did not request new counsel and the record shows nothing more than a disagreement over strategy, Basra fails to demonstrate error.¹⁹

Basra next claims that his attorney provided ineffective assistance by failing to investigate evidence regarding his mental health. On the contrary, the record reveals that trial counsel presented the testimony of a forensic psychologist and argued to the jury that Basra's mental health issues prevented him from forming the intent to kill his wife. Basra's reliance on matters outside the record, including blood tests and homeopathic medicines, is misplaced in this direct appeal.²⁰ Likewise, Basra claims the trial court and his attorney interfered with his right to testify by limiting the scope of his direct examination and providing an interpreter to translate his testimony from his native language. But Basra testified at trial, and again, we cannot consider matters outside the record in a direct appeal.

¹⁸ State v. Terrovonia, 64 Wn. App. 417, 422-23, 824 P.2d 537 (1992).

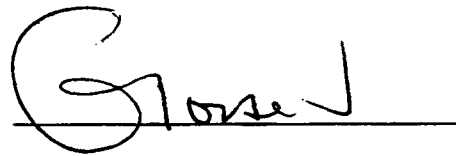
¹⁹ See State v. Stenson, 132 Wn.2d 668, 734, 940 P.2d 1239 (1997) (defendant dissatisfied with appointed counsel must show good cause to warrant substitution of counsel; general loss of confidence or trust alone is not sufficient).

²⁰ State v. McFarland, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995).

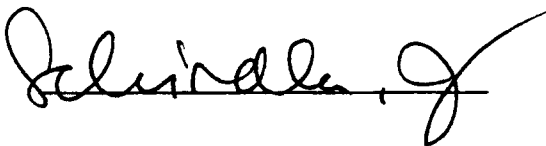
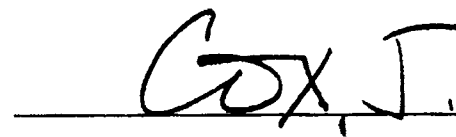
Also, because Basra fails to identify any trial error, he is not entitled to relief under the doctrine of cumulative error.

Finally, Basra contends, and the State concedes, that the sentencing court improperly imposed 36 months of community custody for a "sex offense," instead of a "serious violent offense." Although the trial court later entered an order to correct the scrivener's error with regard to the type of offense, the term of community custody must also be corrected to reflect a range of 24 to 36 months. We therefore remand for correction of the term of community custody.

Affirmed and remanded.

A handwritten signature in cursive script, appearing to read "G. Stone", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "J. J. ...", written over a horizontal line.A handwritten signature in cursive script, appearing to read "COX, J.", written over a horizontal line.

DECLARATION OF SERVICE BY MAIL
CR 3.1(e)

I, Paramjit Basra, declare that, on
this 19th day of January, 2014 I deposited the forgoing documents:

Combined Brief For Review

Declaration of Service

Motion For Extension of Time to Combine -

or a copy thereof, in the internal legal mail system of C.B.C.C

And made arrangements for postage, addressed to: (name & address of court or other party.)

Supreme Court

Temple of Justice

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I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

Dated at Challam Bay, Wash. on 1/19/14
(City & State.) (Date)

Paramjit Basra
Signature

Paramjit BASRA
Type / Print Name