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Court of Appeals
Division I
State of Washington

Supreme Court No.: 90597-5
Court of Appeals No.: 69507-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KEVIN MORAN,

Petitioner.

PETITION FOR REVIEW

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A. INTRODUCTION

The residential burglary statute, recognizing the sanctity of the home, makes the unlawful entry into a dwelling a more serious crime than entry into a building. A jury convicted Mr. Moran of residential burglary after the State alleged he crawled under his ex-wife's home and tampered with a sewer pipe. The Court of Appeals affirmed Mr. Moran's conviction in a published decision, finding that despite the fact the space was not connected to the home by an interior staircase, nor functionally connected through its use, the crawl space was part of the dwelling.

The Court of Appeals recognized this case presented an issue of first impression regarding the statutory construction of the residential burglary statute. It raises an issue of substantial public interest and the Court should accept review.

B. IDENTITY OF PETITIONER AND THE DECISION BELOW

Mr. Moran requests this Court grant review pursuant to RAP 13.4(b) of the published decision of the Court of Appeals, Division One, in State v. Kevin Moran, No. 69507-0-I, filed May 19, 2014. A copy of the opinion is attached as Appendix A. Mr. Moran's motion for reconsideration was denied June 16, 2014. A copy of this order is attached as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals affirmed Mr. Moran's conviction for residential burglary, finding that entering a crawl space under a house was sufficient to find that he entered a "dwelling." Issues of first impression regarding statutory construction are matters of substantial public interest that should be reviewed by this Court. See e.g. State v. Moeurn, 170 Wn.2d 169, 240 P.2d 1158 (2010); State v. Engel, 166 Wn.2d 572, 210 P.3d 1007 (2009). Should this Court grant review to decide whether entering a crawl space under a house constitutes residential burglary? RAP 13.4(b)(4).

2. Despite finding that the trial court mischaracterized newly discovered evidence as impeachment evidence, the Court of Appeals determined that the trial court did not abuse its discretion when it denied Mr. Moran's motion for a new trial. Should review be granted in the substantial public interest where the trial court's failure to understand the nature of the evidence hindered its ability to properly assess whether the evidence would probably change the result at a new trial? RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

The Morans were married for 23 years and divorced in 2007. 7/23/12 RP 22.[1] In the divorce proceedings Ms. Moran was awarded sole possession of their home, which Mr. Moran had built, but Mr. Moran maintained half ownership of the house and both parties agreed the plan was to eventually sell it, allowing the couple to split the proceeds. 7/23/12 RP 23; 7/24/12 RP 100.

At Kevin Moran's criminal trial, his ex-wife, Karen Moran, alleged that she came home one afternoon to find "thou shall not covet" spray painted on her garage door. 7/23/12 RP 25. Later that evening, her toilet began backing up. 7/23/12 RP 26. When the clog got worse, she called a plumber, who discovered that someone had tampered with the sewer line. 7/23/12 RP 26-27.

Ms. Moran testified that after the incident, her son called Mr. Moran and spoke to him about what happened. 7/23/12 RP 28. Mr. Moran allegedly told the son to "let them clean up their own shit," referring to Ms. Moran and her boyfriend, who was visiting at the time. Id. The son accused Mr. Moran of tampering with the sewer line, and Mr.

[1] The verbatim reports of proceedings are not numbered by volume. They are referred to herein by date and then page number.

Moran responded that they could not prove he had done anything, and that Ms. Moran and her boyfriend were "getting everything they deserve." Id.

At trial, Mr. Moran's ex-girlfriend, Lynda Kozak, testified that Mr. Moran admitted to her that he had clogged Ms. Moran's sewer line. 7/23/12 RP 38. At the same time he made this admission, in December 2010, she found a receipt from Home Depot listing several purchases, including foam filler and spray paint. 7/23/12 RP 37-38. Ms. Kozak testified that she hid the receipt in the back of her cell phone, but did not speak with the sheriff's department until five months later, in May 2011. 7/23/12 RP 38, 40. She admitted that she contacted the authorities out of retaliation after Mr. Moran had moved out and she believed that he had taken some of her personal belongings. 7/23/12 RP 41.

After Ms. Kozak spoke with the sheriff's department, they retrieved a video from Home Depot that showed Mr. Moran purchasing the items on the day in question. 7/24/12 RP 87. The video showed Mr. Moran checking his list carefully, and Mr. Moran testified this was because the list had been given to him by Ms. Kozak, and that he was buying the items for her. 7/24/12 RP 103.

The sewer pipe at issue was located under the Morans' house, in what Ms. Moran described as a "crawl space." 7/23/12 RP 32. Once under the house, it was possible to stand in some areas, but it was

necessary to physically crawl under the house in order to access the space. 7/23/12 RP 32-33. Nothing was stored in the area and the ground was covered only with plastic. 7/23/12 RP 33. In order for Mr. Moran to have tampered with the sewer pipe, he would have had to crawl underneath the home, but not enter the home itself. It was not possible to enter the home by way of the crawl space. 7/24/12 RP 105.

After the State rested, Mr. Moran argued that there was insufficient evidence for the jury to find he entered or remained unlawfully in a "dwelling," as required for a conviction of residential burglary. 7/24/12 RP 94; RCW 9A.52.025. Mr. Moran argued the State should only be permitted to proceed with a charge of burglary in the second degree. 7/24/12 RP 95. The trial court found this to be "an interesting argument" but denied Mr. Moran's motion because it was reluctant to take the issue out of the hands of the jury absent case law deciding this particular question. 7/24/12 RP 97.

After the trial, Mr. Moran's son provided a statement indicating that Mr. Moran's ex-girlfriend, a key witness for the State, had offered to pay him to tamper with the sewer pipes. CP 38. Mr. Moran moved for a new trial based on this newly discovered evidence. CP 32; 10/15/12 RP 2. However, despite the fact that this evidence raised the question of an additional suspect, the trial court denied Mr. Moran's motion after finding

that it was merely impeachment evidence that would not change the results at trial. 10/15/12 RP 4.

The Court of Appeals affirmed Mr. Moran's conviction in a published opinion. Slip Op. at 10.

E. ARGUMENT IN FAVOR OF GRANTING REVIEW

1. **This case raises an important issue of first impression and should be granted review in the substantial public interest because crawling under a house does not pose the same danger to the possible occupants as entering a home.**

This Court has long recognized the inviolability of the home. State v. White, 129 Wn.2d 105, 109, 915 P.2d 1099 (1996) ("overriding respect for the sanctity of the home... has been embedded in our traditions since the origins of the Republic"). Presumably cognizant of the special status afforded to the home, the legislature directed that residential burglary should be considered a more serious offense than second degree burglary, and that a defendant be sentenced accordingly. RCW 9A.52.025(2). Pursuant to the statute, an individual commits second degree burglary when he enters or remains unlawfully in a building. RCW 9A.52.030. He commits residential burglary when he enters a building or structure that is also a dwelling, meaning it is "used or ordinarily used by a person for lodging." RCW 9A.04.110.

The trial court and the Court of Appeals recognized that the facts of Mr. Moran's case raise a novel issue regarding what constitutes unlawful entry into a "dwelling." 7/24/12 RP 97; Slip Op. at 7. The State alleged Mr. Moran entered a space underneath the house that his ex-wife described as a "crawl space." 7/23/12 RP 32. In order the access the crawl space, Mr. Moran was required to crawl underneath the back deck of the home, remove an access panel in the foundation, and climb through the opening in the foundation under the house. 7/23/12 RP 32; Ex. 8. Once under the home, it was possible to stand in some areas but not others. 7/23/12 RP 33. The space was lighted but the "floor" was bare ground covered with plastic. Id.

The Court of Appeals found that "[c]learly, this enclosed area beneath the living space, regardless of what moniker is assigned to it, was a portion of the house." Slip Op. at 6. This was clear to the Court of Appeals because "[t]he access door was set in the house's foundation, the house's utilities were accessible from the area, and access could be gained by crawling underneath the deck of the house." Slip Op. at 6. However, simply because it was necessary to climb through a panel in the foundation of the home to enter the space and once there, it was possible to access the home's plumbing, is not sufficient to find Mr. Moran's alleged actions met the elements of residential burglary. This conclusory analysis fails to

account for the legislature's undeniable intent to more severely punish those offenders who invaded the sanctity of a home and risked coming in contact with victims at their most vulnerable.

Other jurisdictions, when examining whether basements are part of a dwelling, have recognized the importance of accounting for these concerns and have considered other factors in the analysis, such as whether the space provides direct access to the rest of the house or is "functionally interconnected" with the rest of the house. In cases where the basement was accessible only through an exterior access point, and not connected to the house, courts have found the basement was part of the dwelling by determining its function was connected to the home. See Commonwealth v. Rivera, 983 A.2d 767, 771 (Pa. 2009) ("the basement contains a bed, television, portable radio and washing machine. The basement is habitable."); Stewart v. Commonwealth, 793 S.W.2d. 859, 860 (Ky. 1990) (despite having only an exterior entrance there was a "laundry room, a refrigerator, and a workshop in the basement"); Burgett v. State, 161 Ind.App. 157, 161, 314 N.E. 799 (1974) (basements are "used for a variety of purposes connected with family living, such as storage of various household items, location of hearing and mechanical equipment, and laundering of clothing").

In denying Mr. Moran's appeal, the Court of Appeals quoted the language from Burgett:

> Being under the same roof, functionally interconnected with and immediately contiguous to other portions of the house, it requires considerable agility to leap over this fulsome interrelationship to a conclusion that a basement is not part of a dwelling house because no inside entrance connects the two.

161 Ind. App. at 157 (emphasis added); Slip Op. at 7. Because the basement in Burgett was not connected to the rest of the home through an interior staircase, the court relied on the fact that the victim used the basement for storage of personal household items. 161 Ind. App. at 163. This basement was functionally connected with the rest of the home through its use as a storage space, despite the fact there was no access from the basement to the living space above.

In contrast, it was undisputed in this case that there was both no way to access the home from the crawl space and that the crawl space was not functionally connected to the home. 7/23/12 RP 33; 7/24/12 RP 105. The crawl space was not used for storage, laundry, or otherwise connected with activities of daily living. Thus, of the factors typically relied on to determine whether a space is part of the dwelling, none are present here.

These factors, and in this case the absence thereof, should be determinative. Residential burglary is a more serious crime because the

offender has invaded the sanctity of the home. When the offender has only invaded the area around, or under, the home, he is guilty of second degree burglary. Statutory interpretation is an issue of substantial public importance and this Court should grant review. RAP 13.4(b)(4); see e.g. Moeurn, 170 Wn.2d 169; Engel, 166 Wn.2d 572.

2. The Court should grant review in the substantial public interest because when a trial court fails to accurately identify the nature of newly discovered evidence, its judgment as to whether the evidence warrants a new trial is not entitled to deference.

After Mr. Moran's trial, his son provided a written statement which revealed Mr. Moran's ex-girlfriend had offered to pay him to tamper with the sewer pipe before the crime was committed. CP 38. The trial court denied Mr. Moran's motion for a new trial after holding the new evidence would be admissible only for impeachment purposes and therefore would not have changed the results at trial. 10/15/12 RP 4.

The Court of Appeals acknowledged that the trial court's assessment of the evidence was incorrect and that in fact the son's statement provided "an additional theory that could have been argued at trial"; namely, that the ex-girlfriend committed, or conspired with Ms. Moran to commit, the crime alleged. Slip Op. at 9. However, despite recognizing the trial court's error, the Court of Appeals declined to find the trial court abused its discretion because it found Mr. Moran

inadequately explained how this evidence would change the result at trial. Slip Op. at 9.

A trial court abuses its discretion when its decision is based on untenable grounds or for untenable reasons. State v. Burke, 163 Wn.2d 204, 210, 181 P.2d 1 (2008). The trial court's decision to deny Mr. Moran a new trial was based on its incorrect determination that the new information would be admissible only as impeachment evidence. 10/15/12 RP 4. While the trial court concluded it would not have changed the result at trial, it did so based on an inaccurate understanding of the evidence at issue. 10/15/12 RP 4.

The Court of Appeals found that "the trial judge who has seen and heard the witnesses is in a better position to evaluate and adjudge than we can from a cold, printed record." Slip Op. at 10 (quoting State v. Wilson, 71 Wn.2d 895, 899, 431 P.2d 221 (1967)). It was therefore not inclined to reevaluate the effect the newly discovered evidence might have had at a new trial. However, reversal is required precisely because the trial judge is in the best position to make this type of judgment. Here, the trial court was unable to properly evaluate whether the evidence would change the result at trial because it did not understand that the son's statement provided substantive evidence of an additional suspect, rather than simply impeachment evidence. Because the trial court failed to properly identify

the value of the newly discovered evidence, its judgment regarding whether the evidence would probably change the result at trial is not entitled to deference.

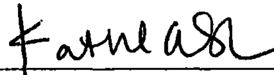
To find both that the trial court failed to appreciate the nature of the newly discovered evidence but properly determined its effect at a new trial defies logic. Had the trial court understood the nature of the new evidence, and based on its experience of having seen and heard the witnesses, it may have reached an entirely different conclusion. This Court should accept review.

F. CONCLUSION

On each of these bases, the Court should grant review of the Court of Appeals opinion affirming Mr. Moran's residential burglary conviction.

DATED this 16th day of July, 2014.

Respectfully submitted,



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APPENDIX A

COURT OF APPEALS, DIVISION I PUBLISHED OPINION

May 19, 2014

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,	DIVISION ONE
v.	No. 69507-0-I
KEVIN JOHN MORAN, Appellant.	PUBLISHED OPINION
	FILED: May 19, 2014

DWYER, J. — Kevin Moran was charged with and convicted of residential burglary after tampering with a sewage pipe at the house of his ex-wife, Karen Moran. Kevin[1] cut open the sewage pipe and filled it with foam that hardens and expands once it contacts air, which caused the toilet and the bathtub to back up. To carry out his act of sabotage, Kevin crawled underneath the deck, through an access door set in the house's foundation, and into a lighted area beneath the house with access to the pipe. On appeal, he contends that the State failed to present sufficient evidence that he entered a "dwelling," as required by the residential burglary statute. He also contends that the trial court erred in denying his motion for a new trial based on newly discovered evidence. We hold that sufficient evidence was presented at trial to support Kevin's conviction of

[1] As this case involves three individuals who share the last name "Moran," our opinion will refer to each by his or her first name. No disrespect is intended.

residential burglary, and that the trial court did not abuse its discretion in denying his motion for a new trial. Accordingly, we affirm.

I

Kevin and Karen were married for 23 years, during which time they built a house together. Kevin was the general contractor and did a fair amount of labor on the house. The couple divorced in 2007. In the divorce decree, Karen was awarded sole possession of the house, but Kevin retained half ownership and both parties agreed that they would eventually sell the house and split the sale proceeds. Still, Kevin was required to obtain Karen's permission in order for him to enter the premises. Although their divorce had begun amicably, their relationship deteriorated over time. Kevin exhibited "tremendous animosity" toward Karen, based, in part, on the fact that she maintained possession of the home.

On December 23, 2010, Karen left the house to pick up her boyfriend who had come in from out of town to visit. Kevin had not asked for Karen's permission to come to the house on that day. When Karen returned with her boyfriend to the house, she found a message spray-painted in red on the garage door: "Thou shalt not covet." Later that evening, a toilet on the main floor began to back up, and the following day the bathtub also began to back up. Karen called a plumber, who went underneath the house and discovered that a sewer pipe had recently been patched using plumber's cement. The plumber concluded that the sewer pipe underneath the house had been cut and filled with foam that hardens and expands once it contacts air. This caused the toilet and

the bathtub to back up.

In order to reach the only access door to the area in which the sewer pipe was located, it is necessary to first remove the lattice that hangs down from the deck to the ground and then crawl under the deck a short distance. The access door is set in the foundation of the house. Once through the access door, the area is lighted and there is enough space to stand. The floor is covered with plastic, nothing is stored there, and the space cannot be accessed from inside the house.

Kevin, who was living with his girl friend, Lynda Kozak, at the time, told Kozak that he had cut a pipe underneath the house and filled it with "some kind of a solution" so that the toilet and shower would back up with sewage. He bragged that he had "F'ed up their Christmas," presumably referring to Karen and her boyfriend. Kozak also found a receipt from Home Depot listing several purchases, including foam filler and spray paint.

Shawn Moran, Kevin's and Karen's son, called Kevin to confront him about tampering with the sewer pipe. Karen listened to their conversation on Shawn's speakerphone, and heard Kevin tell Shawn to "let them clean up their own shit," that they could not prove that he had done anything, and that Shawn should not get involved.

In May 2011, Kozak contacted the Snohomish County Sherriff's Office and turned over to them the Home Depot receipt. She admitted that she contacted the authorities out of anger after Kevin moved out, taking with him, she believed, some of her personal belongings. After Kozak contacted the authorities, they

obtained a video from Home Depot showing Kevin purchasing the items on the day in question.

The State charged Kevin by information with committing the crime of residential burglary. The case was tried to a jury. After the State rested, Kevin argued that the State had presented insufficient evidence for the jury to find that he had entered or remained unlawfully in a "dwelling"—a necessary element to support a conviction of residential burglary. He argued that the State should only be permitted to proceed with a charge of burglary in the second degree. The trial court denied the defense request. The jury was instructed on residential burglary and on the lesser-included offense of second degree burglary of a "building." The jury convicted Kevin of residential burglary and he was sentenced within the standard range.

After the trial, Kevin's son provided a statement to the Snohomish County Sherriff's Office, wherein he indicated that Kozak had offered to pay him to tamper with the sewer pipe. Kevin moved for a new trial based on this statement. The trial court denied the motion, concluding that the statement was merely impeachment evidence and that it would not have changed the result of the trial.

II

Kevin contends that insufficient evidence was presented at trial to support his conviction of residential burglary. This is so, he asserts, because the State failed to establish that he entered or remained unlawfully in a "dwelling." We disagree.

"When reviewing a challenge to the sufficiency of the evidence, we must determine '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.'" State v. Phuong, 174 Wn. App. 494, 501-02, 299 P.3d 37 (2013) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). We employ this standard of review "to ensure that the trial court fact finder 'rationally appl[ied]' the constitutional standard required by the due process clause of the Fourteenth Amendment, which allows for conviction of a criminal offense only upon proof beyond a reasonable doubt." Phuong, 174 Wn. App. at 502 (alteration in original) (quoting Jackson, 443 U.S. at 317-18). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Kevin asserts that the State proffered insufficient evidence to support his conviction of residential burglary. As enacted by our state legislature, the crime of residential burglary is as follows:

> (1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person *enters* or remains unlawfully *in a dwelling* other than a vehicle.
>
> (2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, residential burglary is to be considered a more serious offense than second degree burglary.

RCW 9A.52.025 (emphasis added). "Dwelling" is defined as "*any building* or structure, though movable or temporary, *or a portion thereof*, which is *used* or *ordinarily used by a person for lodging.* RCW 9A.04.110(7) (emphasis added).

We first inquire which building or structure is at issue here. The record, as well as the parties' briefing, reveals that the only building or structure at issue is the house.

We next inquire as to the use of the house. The record establishes that the house was being used for lodging. Kevin does not contest this.

We finally inquire whether Kevin entered a portion of the house and, if he did, whether his entry was unlawful. The record establishes that Kevin did, in fact, enter a portion of the house. In order to access the area at issue, Kevin would have had to first remove the lattice that hung down from the deck to the ground and then crawl under the deck to reach the access door, which was set in the foundation of the building. Once through the access door, Kevin would have entered a lighted area with plastic covering the floor, which was large enough for him to stand up in. Clearly, this enclosed area beneath the living space, regardless of what moniker is assigned to it, was a portion of the house. The access door was set in the house's foundation, the house's utilities were accessible from the area, and access could only be gained by crawling underneath the deck of the house. Therefore, when Kevin entered the area, he entered a portion of the house.

Furthermore, the record establishes that Kevin's entry was unlawful. Although Kevin had ownership rights in the house, Karen was awarded sole possession of the house in the divorce decree. Kevin could only enter the premises after obtaining Karen's permission. On the day in question, the record shows that he did not obtain her permission. Accordingly, his entry was

unauthorized and, hence, unlawful.

Nevertheless, in support of his contention that the area at issue did not constitute a dwelling, Kevin argues that (1) no one was living in the area at issue, and (2) it was inaccessible from inside the residence. We have already considered and rejected Kevin's first argument. State v. Neal, 161 Wn. App. 111, 114-15, 249 P.3d 211 (2011) (although no one was living in a tool room contained within an apartment building, the tool room constituted a "portion" of a building that was used for lodging). With respect to Kevin's second argument, the plain language of the statute does not require an area such as this to be accessible from inside the living space of a residence in order to be a "portion" of the "dwelling." Moreover, although no court in Washington has considered Kevin's second argument, courts in other jurisdictions have considered similar arguments and rejected them. See, e.g., Burgett v. State, 161 Ind. App. 157, 314 N.E. 2d 799, 803 (1974) ("Being under the same roof, functionally interconnected with and immediately contiguous to other portions of the house, it requires considerable agility to leap over this fulsome interrelationship to a conclusion that a basement is not part of a dwelling house because no inside entrance connects the two.").

A plain reading of the statute leads to the conclusion that sufficient evidence was presented at trial to support Kevin's conviction of residential burglary.

III

Kevin also contends that the trial court abused its discretion by denying his motion for a new trial based on newly discovered evidence. This is so, he avers, because the trial court misconstrued the nature of the new evidence, thereby erroneously concluding that it was merely impeachment evidence that would not have changed the result of the trial. We disagree.

A denial of a motion for a new trial is reviewed for abuse of discretion. State v. Burke, 163 Wn.2d 204, 210, 181 P.3d 1 (2008). "[D]iscretion is abused if it is exercised on untenable grounds or for untenable reasons, such as a misunderstanding of the underlying law that causes nonharmless error in the trial." Burke, 163 Wn.2d at 210. This discretion does not allow the trial court to "weigh the evidence and substitute its judgment for that of the jury, simply because it may disagree with the verdict." State v. Williams, 96 Wn.2d 215, 221, 634 P.2d 868 (1981). "In this state a trial judge is not deemed a 'thirteenth juror.'" Williams, 96 Wn.2d at 221-22.

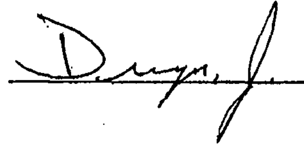
A new trial should be granted on the basis of newly discovered evidence when the defendant has demonstrated that the evidence: "(1) will probably change the result of the trial; (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; *and* (5) is not merely cumulative or impeaching." Williams, 96 Wn.2d at 222-23. "The absence of any one of these five factors is grounds for the denial of a new trial." Williams, 96 Wn.2d at 223.

The basis for Kevin's motion for a new trial was a statement given by Shawn, his son, to the Snohomish County Sherriff's Office, wherein Shawn stated, among other things, that Kozak, Kevin's ex-girlfriend, had offered to pay Shawn $300 to compromise the sewer pipe at his mother's house and that he had overheard conversations between his mother and Kozak discussing how they could get back at Kevin. The trial court denied Kevin's motion, concluding that the newly discovered evidence would not probably change the result of the trial and that the evidence was merely impeachment evidence.

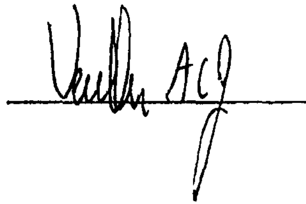
On appeal, Kevin contends that the trial court misapprehended the nature of the new evidence, which led to its conclusion that it would not probably change the result of the trial. Specifically, he contends that Shawn's statement—considered with Kozak's admission that she only notified the authorities out of desire for retaliation, and Kevin's testimony that he bought the items from Home Depot at Kozak's direction—would likely change the result of the trial. Although Shawn's statement does provide an additional theory that could have been argued at trial, Kevin does not explain why this new theory would probably change the result of the trial. Rather than explain why the jury would reject the State's theory and accept the new theory based on Shawn's statement, Kevin's briefing simply asserts that the result of the trial likely would change. This does not provide a tenable basis for us to conclude that the trial court abused its discretion in denying Kevin a new trial. See State v. Wilson, 71 Wn.2d 895, 899, 431 P.2d 221 (1967) (noting the "oft repeated observation that the trial judge who has seen and heard the witnesses is in a better position to evaluate and adjudge

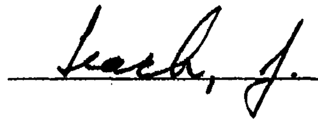
than can we from a cold, printed record").

Affirmed.



We concur:





APPENDIX B

ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION

June 16, 2014

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

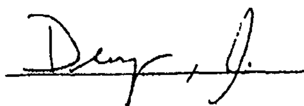
STATE OF WASHINGTON,	)	
	)	DIVISION ONE
Respondent,	)	
	)	No. 69507-0-I
v.	)	
	)	ORDER DENYING
KEVIN JOHN MORAN,	)	APPELLANT'S MOTION
	)	FOR RECONSIDERATION
Appellant.	)	
	)	

The appellant having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 16th day of June, 2014.

FOR THE COURT:



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STATE OF WASHINGTON
2014 JUN 16 PM 2:23

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 69507-0-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Seth Fine, DPA
[sfine@snoco.org]
Snohomish County Prosecutor's Office

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: July 16, 2014