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SUPREME COURT NO. 72205-1

RECEIVED BY E-MAIL  
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

v.

KEVIN DAVID DILTZ

Petitioner

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DEC 01 2015  
Nielsen, Broman & Koch, P.L.L.C.

(On Appeal from the Superior Court of the State of Washington for  
Snohomish County

The Honorable Linda Krese, Judge

PETITION FOR REVIEW

RECEIVED

NOV 30 2015

PROSECUTING ATTORNEY  
FOR SNOHOMISH COUNTY

BY \_\_\_\_\_

NOV 30 2015

PROSECUTING ATTORNEY  
FOR SNOHOMISH COUNTY

BY \_\_\_\_\_

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**A. IDENTIFY OF PETITIONER/DECISION BELOW:**

Kevin Diltz requests this court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State Vs. Diltz, No. 72205-I-1, filed July 27, 2015. Filed July 27 2015. A copy of the opinion is attached as Appendix A.

**B. ISSUES PRESENTED FOR REVIEW:**

1. In rebuttal argument, the Prosecutor, argued to the jury
2. that Mr. Diltz wanted to kill as many cops, specifically Officer Norris, on that day as he could. That's what he wanted. "7RP 50. Right after this, the Prosecutor argued to the jury that they only need to determine Mr. Diltz intent, not what was his motivation behind it, was he trying to flee, was he trying to Become a notorious cop killer. 7RP50. Did the prosecutor commit misconduct requiring reversal, by using inflammatory arguments during rebuttal?
3. During rebuttal argument, the Prosecutor argued that Mr. Diltz was guilty of taking a motor vehicle that belonged to Ravn Behr. Mr. Diltz was not charged with this crime. Mr. Diltz was charged with Assault in the First Degree, Possession of a stolen vehicle (belonging to Curtis Hovauder), Unlawful Possession of a firearm in the Second Degree,

Attempting to Elude and Possession of a stolen firearm. Did the court err in not granting a mistrial due to the Prosecutor's argument of an uncharged crime?

3. Also in rebuttal argument, the Prosecutor argued that in order to have more ammunition, Diltz chose to take the 15-round magazine instead of the 10-round magazine when he grabbed the gun and jumped out of the moving truck. No 10-round magazines were admitted into evidence. Should Diltz's conviction for First-degree assault be reversal, do to improper argument based on evidence outside the record?

**C. STATEMENT OF THE CASE:**

**1. PROCEDURAL FACTS:**

The Snohomish County Prosecutor charged appellant Kevin Diltz with First-degree assault. Second-degree unlawful possession of a firearm, attempting to elude a pursuing police officer, possession of stolen vehicle, and possession of a stolen firearm CP348-49. Amended information also alleged the aggravating factors that the assault was committed while armed with a firearm and against a law enforcement officer in the performance of his duties and the attempt to elude endangered other persons than the officer and the driver. CP348-49.

The jury acquitted Diltz of possession of a stolen firearm, but found him guilty on the remaining charges and answered "yes" to the special verdicts on the aggravating factors. CP178-86. The court found substantial and compelling reasons justified imposition of an exceptional sentence above the standard range, including that the multiple offense policy and Diltz high Offender score

resulted in some offenses unpunished. CP 31-32. The court imposed an exceptional sentence of 414 months (including the 60 month firearm sentencing enhancement) for first degree assault to run consecutive to an enhanced 41 months and one day for attempting to elude for a total of 455 months and one day. CP 22-23. The court also imposed concurrent standard range sentences on remaining offenses, 36 months of community custody, and mandatory legal financial obligations. CP 22-25. Notice of appeal was timely filed. CP 8.

## 2. SUBSTANTIVE FACTS:

At around 11:30am on April 29, 2013 Marysville Police Department Officer Jeffrey Norris pulled over a black pickup truck on the on ramp Southbound Interstate 5 (I-5). As Officer Norris approached the truck, the driver, later identified as Kevin David Diltz, and fled reaching speeds of 95mph as he drove Southbound on State Route 529, passing a number of cars on the right hand shoulder. When Diltz reached Everett he slowed down, but drove through one red light and a few stop signs. When the driveline fell out, Diltz jumped from the truck and fled on foot. 4RP32-33. As Norris chased Diltz on foot, he noticed Diltz looked behind him and heard several gunshots 4RP32-33. During trial, Diltz Defense argued he was guilty only of Second-degree assault, rather than First Degree, on account his gun was aimed at the ground, not at officer Norris, and he did not intend to cause great bodily harm. 7RP34-36. An eyewitness to the shooting testified she saw the shooter with his gun aimed at the ground. 5RP125. However, when she called 911, she told the dispatcher she could not see a gun as she watched Diltz hide behind a fence. Ex 253-5RP 132. A defense expert also testified, that based on the bullet strike marks in the

sidewalk, that the firearm was pointed generally downwards towards the sidewalk. 6RP89. Assuming 90 degrees to be straight down and 0 degrees to be horizontal, the defense expert testified one shot was between 60 degrees and 40 degrees, one was between 20 degrees and 40 degrees, and a third was between 10 degrees and 30 degrees. 6RP 97-99.

Norris, on the other hand, testified Diltz's hand was approximately 75-90 degrees. Where 90 degrees represented parallel to the ground aimed directly at Norris. 4RP48. In prior interviews, Norris had said he did not recall the angle of Diltz arm and demonstrated the arm being at 90 degrees. 4RP 50-51.

After a chase through the neighborhood involving several officers, Officer Nelson, who had responded to assist, saw Diltz walk out from between two houses, pointed his rifle at him, and ordered him to get on the ground. 4RP 86. Diltz continued to walk towards Nelson until Nelson threatened to shoot him, at which point Diltz complied with the order to lie down on the ground. 4RP 88.

After his arrest, police found a brown jacket containing a cell phone in the alley and a pair of gloves in one of the backyards but did not find a firearm. Officers also identified three 9mm hollow point shell casings. 4RP 187. 199-205, 208-209. The closest strike mark to Norris was approximately 19 feet from where he estimated he was when he heard the gunshots. 5RP 148.

Detective Steve Brenneman obtained a warrant to search the black pickup truck. Inside he found an empty gun case, a small canvas bag containing a pipe, a pair of vice grips, and a screwdriver. Washington State Patrol Crime Laboratory (WSPCL) forensic scientists extracted Deoxyribonucleic acid (DNA) from the pipe found in the truck and the pair of gloves. The DNA from the pipe and the gloves



matched the DNA from Diltz with a “1 in 3.4 quintillion” probability of a random match.

Approximately a month later, police listened to Diltz’s phone calls from the jail. The court admitted a call in which Diltz is heard to say, “I should have went out fucking blasting at ‘em like I wanted to... then I wouldn’t be here” Supp.CP (sub 1070 filed July 7, 2014); Ex. 254. In another call, Diltz mentioned someone not digging quickly enough 5RP 149; Ex. 254.

The next day using a metal detector, police found a gun buried in about three inches of mulch in one of the backyards Diltz had entered during the chase. 5RP 68-71, 151-55. Glasses and gloves had already been found nearby. 4RP 172; 5RP 86, 140-41; 6RP 53-56. The gun was a Ruger model P89 9mm semiautomatic. The hammer was cocked back, but the gun was “out of battery” (jammed) and unable to fire. 5RP 155-57. A WSPCL forensic scientist testified that all four of the 9mm hollow point bullet shell casings had been fired from the Ruger P89 pistol. GRP 125-27, 129-30.

A number of witnesses testified during the four day trial, including the owner of the stolen Ruger P89 pistol, Everett Police Department Detective Joseph Klingman, Detective Brememan, Officer Norris, and WSPCL forensic scientist.

The court admitted into evidence over 200 exhibits, including the gun, the four shell casings, one 15-round magazine, 10-9mm hollow tip bullets, the gloves found in the backyard, and a number of maps and photographs. Without objection, the court admitted into evidence experts of the recorded jail tape conversations.

In closing argument, defense counsel conceded the State had met its burden of proving possession of a firearm, possession of a stolen vehicle, and attempting to elude a pursuing police officer 7RP 24-26. With regards to the first degree assault charge, defense argued that Diltz was guilty only of second degree assault, on account his gun was aimed at the ground and he did not intend to hit Norris or cause him harm. 7RP 21;34-36.

In rebuttal, the State argued the evidence showed Diltz acted with intent to cause Officer Norris great bodily injury. First, the prosecutor pointed to the evidence that Diltz grabbed the gun and a 15-round magazine before jumping out of the moving pickup truck. The State argued, in pertinent part: "When (Diltz) bail out of the car, what does he have? A gun. He arms himself. He is getting ready. There's a gun case that he left in the car. He didn't leave the gun in the gun case... He didn't grab the 10-round clip. He grabbed the 15-round clip, more ammo, more hollow-point bullets. Shows you what he was intending to do. 7RP-46. The Prosecutor further argued that even if Diltz's only motive was not to be caught, his intent was still to cause great bodily harm to Norris. 7RP.44-46. Several times Prosecution argued that Diltz would rather escape arrest then let Norris go home to breathe and see his children. 7RP5, 19, 21, 48. "He argued Diltz's conduct should he wanted to kill as many cops, specifically Officer Norris, on that day as he could". 7RP50. He further argued it did not matter what Diltz's motivation was, such as "was he was trying to become a notorious cop killer". 7RP50.

After the jury began deliberating, Defense Counsel moved for a mistrial based on the Prosecutor's improper arguments that Diltz wanted to "kill as many cops

as possible and wanted to become a notorious cop killer. Also, because the Prosecutor argued Diltz was guilty of an uncharged crime.

7RP 42; 55-56; CP 159-63. The court denied the motion, finding the “cop killer” statement was not improper because the prosecutor was merely illustrating a potential motivation that the State did not have to prove and the “kill as many cops as possible argument” was not improper because it was a reasonable inference from Diltz phone call. 8RP 12-13; CP 1-4. The court also found the argument of the uncharged crime, was not improper because the jury acquitted him of the charge that was related to the referral of the charge that was rebuttal to the referral crime. RP8 10-11.

**REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT:**

1. **The prosecutor’s inflammatory argument violated Diltz rights of a fair trial.**

A Prosecutor is a quasi-Judicial officer whose zealous advocacy must be tempered by the responsibility to ensure that every accused person receives a fair trial. State Vs. Fisher, 165 Wn.2d 727, 746, 202 P.3d 927 (2009); State Vs. Hudson, 73 Wn.2d 660, 663, 440 P.2d (1968), Closing arguments must, therefore, be based on reasonable inferences from the evidence, not inflammatory attempts to arouse juror’s emotions against the defendant. In re Pers. Restraint of Glassman, 175 Wn.2d 696, 704, 286 P.3d 673 (2012); Hudson, 73 Wn.2d at 663. Prosecutorial misconduct requires reversal of the conviction

**Foot note:** A supplemental designation of clerk’s papers and exhibits was filed January 13, 20

when the Prosecutor's argument was improper and there is a substantial likelihood the misconduct affected the verdict. Glassman, 175 Wn.2d at 703-04. The trial court's ruling on a mistrial motion is reviewed for abuse of discretion. State Vs Henderson, 100 Wn. App 794, 799, 998 P.2d 907 (2000).

Here, the Prosecutor committed misconduct in arguing Diltz's intent was to .“kill as many cops specifically Officer Norris, on that day as he could, and speculating his motive must have been to become a notorious cop killer.” 7RP50. These arguments are inherently inflammatory and were designed to provoke a verdict based not on reason, but on the jury's fear and predictable emotional reaction to a “cop killer” This was misconduct that requires reversal of Diltz's conviction.

**The Prosecutor's Inflammatory Comments About Killing Police were Improper Emotional Appeals.**

“The State commits misconduct by asking the jury to convict based on their emotions, rather than the evidence”. State Vs. Fuller 169 Wn.2d 2006 (2013) Cating State Vs Bautista-Caldera, 56.Wn App. 186, 194-95, 783 P.2d 116 (1989). The Prosecutor has raised the specter of police officers murdered in the line of duty, in a case in which no police officer was even injured. These comments were an improper emotional appeal in the form of inflammatory speculation about what might have happened but did not.

His misconduct for the state to play on the jury's fear based on hypothetical scenarios. State Vs. Russell, 125 Wn.2d 24, 89, 882 P.2d 747 (1994). In Russell, the Prosecutor argued the defendant would go to California, would find more

“naïve, trusting, foolish young people,” and would kill them. Id. The court described the Prosecutor’s remarks as “egregious 3.” The Russell court declined to reverse because the comment was not likely to inspire revulsion under circumstances, and defense counsel utilized.

Three (3) other jurisdictions have also concluded that appeals to a jury’s fear of “what would have happened” are improper. See United States Vs. Nobar, 574 F.3d 1065, 1077 (9<sup>th</sup> Cir. 2009) (court erred in not instructing jury to disregard prosecutor’s reference to what would have happened if little boy had come out of McDonald’s as defendants were being arrested); State Vs. Storey, 901 S.W.2d 886, 901-02 (Mo (1995) (improper to refer to what defendant might have done to victims child if child had caused a scene.) The comment in his own closing argument, thereby weakening the contention that it denied him a fair trial. 125 Wn.2d at 89.

In State Vs. Martines, an unreported case, the prosecutor called the defendant’s “cowards”, “back shooting cowards,” and outlaws. 13927-1- III, 1996 Vol 368238 (Wash Ct. App-July 2, 1996. The court found that the prosecutor’s comments were an inflammatory and deliberate appeal to the jury’s passion and prejudice. Whether a victim was shot in the back, had no bearing on the factual questions presented to the jury. ID. The comments were nothing more than encouragement to jurors to decide the case on the basis of their own passions, rather than on the evidence presented. ID. The comments were improper and flagrant. ID.

Similarly, in State Vs Pierce, the court held an inflammatory appeal to the jury’s emotions could not be overcome by instruction. 169 Wn. App. at 555-56. In

Pierce, the Prosecutor's argument speculated about what the defendant and the victims had been thinking before and during the murders. ID at 553. A third improper argument about whether the victims would have ever expected the murders was not objected; never in their wildest dreams... or in their wildest nightmare would the Yarrs have expected to be murdered. ID at 555. Despite the lack of objection, they found this last argument improper and incurable by instruction in light of the other highly inflammatory arguments. ID at 555-56. The court concluded the argument was not relevant to guilt and invited the jury to place themselves in the victim's shoes, which increased the prejudice. ID at 555.

In this case the prosecutor similarly appealed to the jury's fear of a hypothetical scenario in which officers were killed. Florida has also held it is improper to "raise the specter of cop killers where none was actually present" Campbell Vs. State, 679 SO.2d 720, 784 (Fla. 1996). To do so unfairly exploits juror's natural sense of sympathy and a trace for the fallen officers and fear for their own safety. " ID.

The Georgia Court of Appeals came to the same conclusion under facts remarkably similar to this case. William Vs. State, 172 GA. App. 682, 324 S.E. 2d 544-45 (1984). Williams escaped after firing two shots at the police officer who had pulled him over for a traffic violation. ID. During closing argument, the Prosecutor mentioned instances where police had been killed and told the jury "but for the grace of God, the defendant would have been on trial for just such an offense." ID. The court concluded the statements went outside the evidence, were not relevant, and constitutional improper closing argument." ID.

The trial court here deemed the comments unobjectionable because of Diltz's phone call indicating he "should have gone out blasting at 'em like I wanted to." CP 2-4; Ex. 254. This reasoning should be rejected because the prosecutor did not limit his comments to reasonable inferences from the evidence pertaining to the elements of the charge. He did not argue merely that the phone call showed intent to inflict great bodily harm on Norris. He argued it meant Diltz "intended to kill as many cops, specifically Officer Norris, as possible." 7RP 50. He followed that up with an even more inflammatory and irrelevant comment suggesting Diltz's motive may have been to "become a notorious cop killer." 7RP 50. These statements were not made to encourage the jury to draw reasonable inferences about Diltz's state of mind on the date of the incident. They were made to arouse the juror's fear of and anger at notorious cop killers!

In addition to the comments included in the mistrial motion, the prosecutor made similar emotional appeals based on the risk to Norris's life throughout closing argument and rebuttal. The prosecutor argued Diltz "decided that it was more important that he get away than that Officer Norris lived..it was more important he get away with committing crimes than that officer Norris live another day." 7RP 5. Later, the prosecutor argued, "and when Officer Norris didn't stop following him, he decided that the best way to get away is to get rid of Officer Norris, and "the worst decision he made was that Jeff Norris life was not as important as him getting away with committing other crimes"., 7RP 19, 21. In rebuttal, the prosecutor argued, "in fact, he would rather not be arrested than let Officer Norris go home to breathe, see his kids." 7RP48.

The pervasive theme of the prosecutor's argument was that Norris could have died and Diltz wanted to kill him, and other officers as well. As in Campbell, the prosecutor "raise(d) the specter of "cop killers" where none actually existed." 679 So.2d at 724. Given that no harm actually occurred and the only disputed issue was Diltz's intent, this focus on the potential for murder was an improper emotional appeal.

**The prosecutor's inflammatory statements about killing officers cause prejudice that required a mistrial.**

The court erred in denying Diltz's motion for a mistrial due to prosecutorial misconduct. The prosecutor's inflammatory "cop killer" comments caused a prejudicial emotional reaction in the jury that could not be cured by an instruction.

The proper remedy for inflammatory evidence or argued that prevents the jury from rendering an unbiased decision is a mistrial. See, eg., State Vs Miles, 73 Wn.2d 67, 70-71, 436 P.2d 198 (1968) (remanding for a new trial where trial court erred in denying mistrial motion based on inflammatory evidence suggesting defendants planned another robbery), In deterring whether a mistrial is warranted, courts consider three factors: 1) the seriousness of the irregularity, 2) whether the evidence was cumulative of other evidence properly admitted, and 3) whether the effectively on the jury could have been cured by an instruction. ID. A mistrial should be granted when a trial irregularity is so serious that is effectively deprives the defendant of a fair trial. State Vs. Babcock, 145 Wn. App. 157, 163, 185 P.3d 1213 (2008).



Prosecutorial misconduct is a serious irregularity because it may violate the defendant's constitutional right to a fair trial. State Vs. Davenport, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984). Even when there was no objection at trial, reversal is required when the misconduct was so flagrant and ill-intentioned as to be incurable by instruction. ID.

The arguments about killing as many cops as possible or becoming a notorious cop-killer were particularly calculated to inflame the jury's emotions.

Emotionally inflammatory comments cannot generally be cured by instruction. Emery. 169 Wn. App. at 552.

In the context of this case, the comments were particularly likely to affect the jury, regardless of any instruction, because the prosecutors other pervasive comments also focused the jury's attention on the fear that Norris might have been killed. 7RP 5, 19, 21, 48. Finally, because the most inflammatory comments were made by defense counsel to counter the inflammatory image of what might have happened.

The prosecutor inflamed the jury's emotions by framing this case as a "cop killer" case even though no officer was even injured. The pervasive and improper comments were a serious irregularity that could not be cured by instruction and required reversal of Diltz's First-degree assault conviction.

Prosecutor's Argument of an unchanged crime violated Diltz right to a Fair Trial.

If an error is constitutional in magnitude, the error must be harmless beyond a reasonable doubt. State Vs. Janes, 101 Wn.2d 113, 125, 677 P.2d 131 (1984).

Furthermore, in State Vs. Stovall,, 192, 115 Wn. App 650, 63 P3d. (2003), the  
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court concluded that, if evidence of an uncharged crime is before the jury, and the state argues that defendant's participation in such a crime triggered liability for the specific crime charges, reversal is required.

In, State Vs. Lewis, 19 Wn. App35 (1978), the prosecutor questioned a witness about uncharged crimes which involved a similar pattern to the prosecutor in this case did not just question the witness about other uncharged crimes, the State argued to the jury that Mr. Diltz was guilty of an uncharged crime. "The evidence would actually tend to show that Mr. Diltz stole Mr. Behr's car. But we have not charged him with that. 7RP 20-22. Furthermore, in motions in limine the defense moved and the court granted to exclude evidence of prior crimes and bad acts. The similar nature of Mr. Behr's truck (Mr. Behr's truck contained the firearm used in this case). And the truck Mr. Diltz was charged and convicted of illegally possessing, enhances the prejudicial nature of this statement. The use of this uncharged crime conveys to the jury that Mr. Diltz is a criminal, who had committed more crimes than he had been charged with and should be found guilty because he is a criminal, not based on the facts of the case.

**The prosecutor arguing facts not supported by evidence violated Diltz's right to a fair trial.**

"Substantial rights are prejudicially affected by prosecutors' statements, as would warrant a mistrial, when there is a reasonable probability that, but for the remarks, the outcome of the trial would have been different. (Quoting Fed. Digest 110K2077) in United States Vs. Eckhart, 466 F.3d (11<sup>th</sup> Cir. 2006) the court held that a "prosecutor may not exceed the evidence presented at trial during her closing argument, she may state conclusions drawn from the

evidence presented at trial.” Similarly, in State Vs. Walker 182 Wn.2d 463, 478, 341 P.3d 976 (Wash 2015) the court held, closing argument provides an opportunity to draw the jury’s attention to the evidence presented, but it does not give a prosecutor the right to present altered versions of admitted evidence to support the state’s theory of the case, to present derogatory depictions of the defendant, or guilt.” ID at 478.

In this case the prosecutor argued that in order to have more ammunition, Diltz choose to take the 15-round magazine instead of the 10-round magazine when he grabbed the gun and jumped out of the moving truck. The state argued, in pertinent part: Just what Mr. Diltz grabbed and did at that time goes to his mindset. He didn’t have the full metal jacket. And as you heard from the officer the defense witness that those full metal jackets will kill, but those hollow points when they impact a body spread causing significantly more damage. He didn’t grab the 10-round clip. He grabbed the 15-round clip more ammo, hollow-point bullets. Shows you what he was intending to do.” 7RP 45-46

During the course of the trial 278 exhibits were admitted into evidence and submitted to records. None of these exhibits are 10-round magazines or full metal jacket bullets (non-hollow tip). The prosecution’s argument, based on evidence outside the record is especially damaging in this case where intent is the central argument. By arguing that Mr. Diltz had a choice between two different types of clips and ammunition, and deliberately chose the more deadly, was likely to give the jury the false impression that he intended to cause as much danger as possible. However, the admission of evidence does not

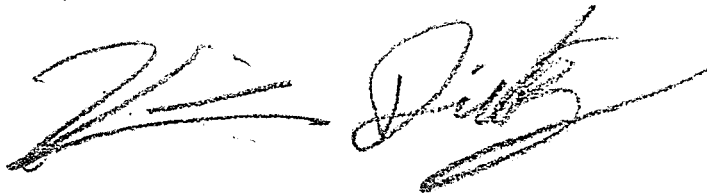
support this argument. Lastly, this argument was made during rebuttal, giving defense no opportunity to counter the altered version of what happened.

A. CONCLUSION:

Based on the foregoing facts and arguments, this court should accept and review.

Kevin Diltz

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Kevin Diltz  


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

STATE OF WASHINGTON,	)	No. 72205-1-I
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
KEVIN DAVID DILTZ,	)	
	)	
Appellant.	)	FILED: July 27, 2015

SCHINDLER, J. — Kevin David Diltz seeks reversal of the jury conviction for assault in the first degree of a law enforcement officer while armed with a firearm. Diltz contends the court erred in denying his motion for a mistrial based on two prejudicial statements during rebuttal argument. Because the statements were based on reasonable inferences from the evidence and were related to the State’s burden to prove intent, we affirm the decision to deny the motion for a mistrial.

FACTS

At around 11:30 a.m. on April 29, 2013, Marysville Police Department Officer Jeffrey Norris pulled over a black pickup truck on the onramp to southbound Interstate 5 (I-5). As Officer Norris approached the truck, the driver, later identified as Kevin David Diltz, drove southbound on I-5. Officer Norris ran back to his patrol car and followed the

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truck. As Diltz drove southbound on State Route 529, he passed a number of cars on the right-hand shoulder, often reaching speeds of 95 m.p.h.

Diltz slowed down when he reached Everett but drove through a number of red traffic lights and stop signs. After the truck's driveline fell off, Diltz jumped out of the truck. The truck crashed into a parked vehicle, and Diltz started running through a residential neighborhood. Officer Norris got out of his patrol car and yelled, "Stop. Police," but Diltz kept running. Officer Norris ran after him.

While Diltz was running downhill along a sidewalk, he turned to look back at Officer Norris and fired at least four shots. Diltz then ran behind a house and jumped over a fence into a neighboring backyard. Officer Norris called dispatch to report shots had been fired and request backup.

Marysville Police Department Officer Daniel Vinson stationed himself at a nearby intersection while other officers set up a perimeter. Officer Vinson saw Diltz running down an alley and pointed a rifle at him. Diltz raised his hands but then turned and ran. Everett Police Department Officer Alex Soderstrom saw Diltz run out of the alley and across a street. Officer Soderstrom pointed a rifle at Diltz and told him to stop but Diltz kept running.

Everett Police Department Officer Shane Nelson spotted Diltz running between two houses. Officer Nelson pointed his rifle at Diltz and threatened to shoot him if he did not get on the ground. Diltz walked directly toward Officer Nelson with his fists balled. Diltz had a large knife on his hip but did not appear to have a gun. The police arrested Diltz.

After his arrest, the police found a brown jacket containing a cell phone in the alley and a pair of gloves in one of the backyards but did not find the firearm Diltz used to

shoot at Officer Norris. A police officer identified three bullet strikes on the concrete sidewalk where Diltz fired at Officer Norris. The officer also found three 9 mm hollow-point bullet shell casings. A few days later, a homeowner found a fourth 9 mm shell casing in a nearby front yard.

Detective Steve Brenneman obtained a warrant to search the black pickup truck. Inside, he found an empty gun case, a small canvas bag containing a pipe, and a pair of vice grips and a screwdriver. A Washington State Patrol Crime Laboratory (WSPCL) forensic scientist extracted DNA<sup>1</sup> from the pipe found in the truck and the pair of gloves. The DNA from the pipe and the gloves matched the DNA from Diltz with a "1 in 3.4 quintillion" probability of a random match.

Detective Brenneman also obtained a warrant to search the cell phone found in the jacket. The search history showed two searches on the evening of April 28 for a Ruger P89 handgun.

On May 17, the State charged Diltz with assault in the first degree and the aggravating factor of committing the assault against a law enforcement officer while armed with a firearm. The State also charged Diltz with attempting to elude a pursuing police vehicle and the aggravating factor of threatening persons other than the defendant or the pursuing officer with physical injury or harm.

On May 28, Detective Brenneman listened to recorded phone calls Diltz made from jail. During a conversation on May 15, Diltz told a friend, "I just want somebody to go get that fuckin' thing so I don't have to worry about it." On May 22, Diltz told his friend, "[A]t least you tried right?" The friend answered, "I did I even went back and tried again." In response, Diltz said, "I mean it's over with . . . I should have just went out fuckin'

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<sup>1</sup> Deoxyribonucleic acid.

blasting at 'em like I wanted to . . . then I wouldn't be here."<sup>2</sup> Later in the conversation, Diltz said, "I'm pretty pissed off, but then again I only got me to be mad at, maybe I shoulda hid it better."

The next day, Detective Brenneman went back to the Everett neighborhood with a metal detector and "almost immediately" found the gun in the backyard where the pair of gloves with Diltz's DNA had been found. The Ruger model P89 9 mm semiautomatic pistol was buried under several inches of mulch. The hammer of the gun was cocked back with one live round in the chamber, but the gun was jammed. A WSPCL forensic scientist determined that all four of the 9 mm hollow-point bullet shell casings had been fired from the Ruger P89 pistol.

On July 26, the State charged Diltz by amended information with additional counts of possession of a stolen firearm, possession of a stolen vehicle, and unlawful possession of a firearm in the second degree.

A number of witnesses testified during the four day trial, including the owner of the stolen black pickup truck, the owner of the stolen Ruger P89 pistol, Everett Police Department Detective Joseph Klingman, Detective Brenneman, Officer Norris, and WSPCL forensic scientists. The court admitted into evidence over 200 exhibits, including the gun, the four shell casings, the gloves found in the backyard, and a number of maps and photographs. Without objection, the court admitted into evidence excerpts of the recorded jail phone conversations.

Detective Brenneman testified he and Officer Norris returned about a week later to determine the location of Officer Norris and Diltz when Diltz fired the gun. Detective Klingman testified that the location of the four 9 mm shell casings was consistent with

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<sup>2</sup> Some alterations in original.



where Officer Norris said Diltz was standing when Diltz pulled the trigger. Detective Brenneman and Detective Klingman used digital crime scene reconstruction software to determine how close the bullets were to Officer Norris when they struck the sidewalk. The Detectives testified that one of the bullets struck the concrete sidewalk approximately 19 feet from Officer Norris. The other two bullet strikes were approximately 72 and 73 feet from Officer Norris.

Detective Klingman testified that Officer Norris was uphill from Diltz at the time of the shooting and the difference in elevation between Diltz and Officer Norris was approximately three feet. Detective Brenneman testified that because Diltz was three feet lower than Officer Norris when he pulled the trigger, "the height difference would account for why those rounds may not have hit Officer Norris."

Forensic consultant Matthew Noedel testified on behalf of the defense. Noedel testified that in his opinion, Diltz must have fired the gun toward the ground rather than straight at Officer Norris. Noedel said that where 90 degrees represents pointing straight down and 0 degrees represents pointing directly horizontal, he believed that Diltz held the gun between 10 and 60 degrees while shooting. However, on cross-examination, Noedel admitted he did not take into account the slope of the sidewalk or the difference in elevation in reaching his conclusion. Noedel also admitted a 9 mm hollow-point bullet could kill a person and if a 9 mm hollow-point bullet hit "a vital area" of a person's body, "I would expect it to be fatal or cause great harm."

The court instructed the jury on assault in the first degree and, at the request of defense, the lesser-included crime of assault in the second degree.

In closing argument, the defense attorney conceded the State met its burden of

proving possession of a stolen vehicle, attempting to elude, and unlawful possession of a firearm. However, the defense argued the State did not prove Diltz knew the gun was stolen.

In addressing the charge of assault in the first degree, the defense attorney admitted Diltz shot the gun but argued he fired only "toward the ground" and not directly at Officer Norris. The attorney argued Diltz was just trying to escape and "did not try or intend to hit Officer Norris with a bullet." The defense attorney argued that because the State did not prove Diltz intended to inflict great bodily injury, the jury should convict him of the lesser-included crime of assault in the second degree.

In rebuttal, the State argued the evidence showed Diltz acted with intent to cause Officer Norris great bodily injury. First, the prosecutor pointed to the evidence that Diltz grabbed the gun and a 15-round magazine before jumping out the moving pickup truck. The State argued, in pertinent part:

When [Diltz] bails out of the car, what does he have? A gun. He arms himself. He is getting ready. There's a gun case that he left in the car. He didn't leave the gun in the gun case. . . .

. . . .  
He didn't grab the 10-round clip. He grabbed the 15-round clip. More ammo, more hollow-point bullets. Shows you what he was intending to do.

Second, the State argued that the recorded phone calls from jail demonstrated Diltz's intent. The State argued, in pertinent part:

I think the most critical piece of information comes from the defendant himself. You heard those recorded phone calls. You heard him say, and I quote, "I should have just went out fucking blasting at them like I wanted to."

. . . .  
That shows you his intent, what he wanted to do. He wanted to kill as many cops, specifically Officer Norris, on that day as he could. That's what he wanted.

The State also argued the evidence did not support the defense theory that Diltz fired only "warning shots." The State asserted that if Diltz "wanted to just send a warning," he "could have shot in the air" or "into the grass to the side of him." The State argued, in pertinent part:

You don't fire warning shots. You don't. You shoot to kill. Do you fire warning shots into the air? Into the ground? You don't fire them at all. But if you do, that's what you do. And you fire one. You don't fire at least four. There is no reasonable explanation why you would fire multiple shots at or [in] the direction of an officer unless you intended to hit them.

The State pointed out that the central issue for the jury to decide was Diltz's intent when he pulled the trigger, not his motivation.

That's the one issue you have to decide in this case. The time [Diltz] took that gun, the time he fired it at Officer Norris, and what was his intent. Not what was his motivation behind it, was he trying to flee, was he trying to become a notorious cop killer. What was his intent when he shot at Officer Norris?

The defense did not object to the prosecutor's rebuttal argument.

The jury found Diltz not guilty of possessing a stolen firearm. The jury found Diltz guilty of assault in the first degree, attempting to elude a pursuing police vehicle, possession of a stolen vehicle, and unlawful possession of a firearm in the second degree. The jury returned special verdicts finding Diltz committed the crime of assault in the first degree against a law enforcement officer while armed with a firearm, and individuals other than Diltz and Officer Norris were threatened with physical injury or harm by Diltz's actions in attempting to elude.

The defense filed a motion for a mistrial, arguing the prosecutor's statements that Diltz intended "to kill as many cops . . . as he could" and that his motive was "to become a notorious cop killer" were improper and prejudicial.

The court denied the motion. The court ruled the prosecutor's statements were

based on reasonable inferences from the evidence. The court found the statement that Diltz intended to kill as many cops as he could was “a reasonable inference from the evidence presented at trial and was directly relevant to the defendant’s intent when firing the gun in [O]fficer Norris’ direction.” The court also found the argument that the jury must decide intent and “the [S]tate did NOT have to prove the defendant’s motivation” was to become a notorious cop killer was “also relevant to the State’s burden to prove intent and the difference between intent and the motive behind the intent.”

Based on an offender score of 13 and the aggravating factors, the court imposed an exceptional sentence for the conviction of assault in the first degree and a high-end standard-range sentence for attempting to elude to run consecutively.

#### ANALYSIS

Diltz contends the court erred in denying his motion for a mistrial based on the two prejudicial statements the prosecutor made during rebuttal argument. Diltz asserts the statements that Diltz wanted to kill as many police officers as he could and that the State did not have to prove his motive were an improper appeal to the passion and prejudice of the jurors that require reversal of his conviction for assault in the first degree.

Where, as in this case, alleged prosecutorial misconduct has been the subject of a mistrial motion, we review the trial court’s decision to deny the motion for abuse of discretion. State v. Lindsay, 180 Wn.2d 423, 430, 326 P.3d 125 (2014); State v. Rodriguez, 146 Wn.2d 260, 269, 45 P.3d 541 (2002). The court abuses its discretion only “ ‘when no reasonable judge would have reached the same conclusion.’ ” State v. Emery, 174 Wn.2d 741, 765, 278 P.3d 653 (2012) (quoting State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989)). We give deference to the trial court’s ruling because it is in the best position to evaluate whether the prosecutor’s comments prejudiced the

defendant. State v. Gregory, 158 Wn.2d 759, 841, 147 P.3d 1201 (2006). “The trial court should grant a mistrial only when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant will be fairly tried.” Emery, 174 Wn.2d at 765.

To establish prosecutorial misconduct, Diltz must show the statements made by the prosecutor during rebuttal were both improper and prejudicial. Lindsay, 180 Wn.2d at 440. We consider an allegedly improper statement in the context of the argument as a whole, the issues in the case, the evidence, and the jury instructions. State v. Russell, 125 Wn.2d 24, 85-86, 882 P.2d 747 (1994).

The State has wide latitude to make arguments based on reasonable inferences from the evidence. State v. Thorgerson, 172 Wn.2d 438, 448, 258 P.3d 43 (2011). But a prosecutor commits misconduct by asking the jury to convict based on their emotions rather than the evidence. In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 704, 286 P.3d 673 (2012) (citing AM. BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE std. 3-5.8(c) (2d ed. 1980)); State v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009) (“References to evidence outside of the record and bald appeals to passion and prejudice constitute misconduct.”). During rebuttal, a prosecutor “is entitled to make a fair response to the arguments of defense counsel.” State v. Brown, 132 Wn.2d 529, 566, 940 P.2d 546 (1997).

Here, the defense conceded Diltz fired the gun. The parties disputed his intent when he fired at least four shots from a semiautomatic weapon. The State argued he was guilty of assault in the first degree. The defense argued Diltz was guilty of the lesser-included crime of assault in the second degree.

During closing argument, the defense argued the State did not prove Diltz

intended to inflict great bodily harm. The defense claimed that because Diltz's motive was to flee, he only intended to fire warning shots.

Diltz contends the prosecutor committed reversible misconduct by arguing that Diltz intended "to kill as many cops . . . as he could" and that the State did not have to prove his motive was "to become a notorious cop killer."

The court denied the motion for a mistrial, finding the statements were based on reasonable inferences from the evidence, relevant to the State's burden to prove intent, and not flagrant or ill intentioned. The court's findings state, in pertinent part:

1. As part of the First Degree Assault charge in this case, the State was required to prove that the defendant intended to cause Officer Norris great bodily harm, a term that includes bodily injury that creates a probability of death.
2. Evidence and arguments derived from that evidence, related to what the defendant was thinking at the time he fired a gun at Officer Norris were relevant and admissible to prove the defendant's intent.
3. During trial, the jury heard a recorded phone call made by the defendant in which he said, "I should have just went out fucking blasting at 'em like I wanted to" when discussing the incident involving Officer Norris.
4. There was also evidence presented at trial that the defendant fired in the direction of Officer Norris at least 3-4 times and, when told he needed to stop or would be shot, the defendant laid down on the ground.
5. The State's argument that the defendant "wanted to kill as many cops, specifically Officer Norris, on that day as he could" was a reasonable inference from the evidence presented at trial and was directly relevant to the defendant's intent when firing the gun in [O]fficer Norris' direction.
6. The State's argument that the [S]tate did NOT have to prove the defendant's motivation behind his intent "Not what was his motivation behind it, was he trying to flee, was he trying to become a notorious cop killer? What was his intent when he shot at Officer Norris" was also relevant to the State's burden to prove intent and the difference between intent and the motive behind the intent.
7. Neither of the above statements were any more inflammatory than the evidence that was presented at trial and neither were flagrant or ill intentioned.

The record supports the court's finding that the prosecutor's argument that Diltz

"wanted to kill as many cops, specifically Officer Norris, on that day as he could" was based on reasonable inferences from the evidence at trial. The evidence showed that in order to have more ammunition, Diltz chose to take the 15-round magazine instead of the 10-round magazine when he grabbed the gun and jumped out of the moving truck. The testimony and forensic evidence showed Diltz fired the gun at least four times in the direction of Officer Norris. And, without objection, the State presented the recording of the phone call from jail where Diltz said he wanted to "just [go] out fuckin' blasting at 'em."

The record supports the court's finding that the prosecutor's argument that the State "did NOT have to prove" Diltz's motive, including whether he was "trying to flee" or "trying to become a notorious cop killer," was not improper or inflammatory. The distinction between intent and motive was particularly important because the defense argued the State did not prove Diltz intended to inflict great bodily harm because his motive was simply to get away.<sup>3</sup> And as the court points out, the statement was "relevant to the State's burden to prove intent and the difference between intent and the motive behind the intent." See State v. Boot, 89 Wn. App. 780, 789, 950 P.2d 964 (1998) (the State is not required to prove motive as an essential element of the crime).

The cases Diltz relies on are inapposite. See Russell, 125 Wn.2d at 87-89 (prosecutor's argument that the defendant would go to another state and kill again if acquitted was speculative and not based on the evidence); State v. Pierce, 169 Wn. App. 533, 537, 280 P.3d 1158 (2012) (prosecutor committed reversible misconduct by "fabricating an emotionally charged story of how the victims might have struggled" and speculating on the defendant's "thought

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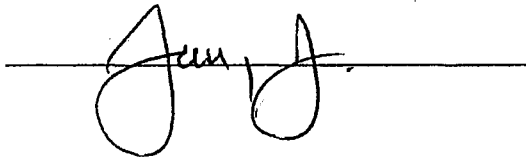
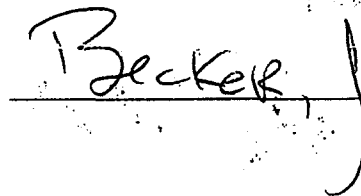
<sup>3</sup> In addition, the jury instructions specifically state that the jury is to "act impartially," to "not let your emotions overcome your rational thought process," and to "disregard any remark, statement, or argument that is not supported by the evidence or the law in [the court's] instructions."

process leading up to the crime” because the statements were based on evidence outside of the record); Campbell v. State, 679 So.2d 720, 724, 21 Fla. L. Weekly S287 (1996) (prosecutor’s reference to “cop-killers” was improper where neither victim was a police officer and no officers were present at the time of the charged crimes); Williams v. State, 324 S.E.2d 544, 544, 172 Ga. App. 682 (1984) (prosecutor’s reference to “two specific instances” of police officers being killed was improper because it was unrelated to the defendant and based on evidence outside the record); People v. Brooks, 573 N.E.2d 1306, 1313-14, 214 Ill.App.3d 531 (1991) (prosecutor’s statement that “an officer was just killed two weeks ago” was “clearly improper” because it was unrelated to the defendant and based on evidence outside of the record).

We affirm denial of the motion for a mistrial.

Handwritten signature of Scheinelle, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Jan, J. in cursive script, written over a horizontal line.Handwritten signature of Becker, J. in cursive script, written over a horizontal line.



FILED IN OPEN COURT  
June 27, 20 14



SUPERIOR COURT OF  
WASHINGTON  
FOR SNOHOMISH COUNTY

SONYA KRASKI  
COUNTY CLERK  
BY: *J. Krist Martin*  
DEPUTY CLERK

LIST OF EXHIBITS FILED

PAGE 1 OF 32

CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

Cynthia Larsen

Tiffany Mecca

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
1	White evidence box containing P89 9mm Ruger	X									
2	Large brown paper bag (#8) containing: black sweatshirt, t-shirt and black gloves	X									
3	Large brown paper bag (#9) containing brown jacket	X									
4	One 9" x 15" evidence envelope (#30) containing 2 pair of vice grips and screwdriver	X									
5	One 6" x 9" evidence envelope (#36) containing bullet fragments	X									
6	One 6" x 9" evidence envelope (#11) containing cell phone and 3 page Inventory and Return of Search Warrant stapled to envelope	X									
7	One 8 1/2" x 12" evidence envelope (#27) containing tan and brown zipper case	X									
8	One 9" x 12 1/2" evidence envelope (#23) containing license plate	X									
9	One 9" x 12 1/2" evidence envelope (#22) containing Kirkland Eastside dealer license and frame	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

CODES: A = Admitted; R = Rejected; N = Not Offered; W = Withdrawn

ORIGINAL

CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS					DFDT/RESP'S EXHIBITS						
No.	Description	A	R	N	W	No.	Description	A	R	N	W
10	One 9" x 12" evidence envelope (#21) containing vehicle registration	X									
11	One 9" x 6" evidence envelope (#5) containing 9mm shell casing	X									
12	One 9" x 6" evidence envelope (#46) containing magazine from firearm	X									
13	One 9" x 6" evidence envelope (#15) containing a shell casing	X									
14	One 9" x 6" evidence envelope (#1) containing a knife	X									
15	One 9" x 6" evidence envelope (#38) containing DNA swabs	X									
16	One 9" x 6" evidence envelope (#6) containing shell casing	X									
17	One 9" x 6" evidence envelope (#7) containing: 9mm shell casing	X									
18	One 9" x 12 1/2" evidence (#26) envelope containing pipe			X							
Column Totals		8	0	1	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
19	One 9" x 12" evidence envelope (#18) containing Ducks Unlimited baseball cap	X									
20	One 9" x 12" evidence envelope (#13) containing center punch, lighter, glasses, flashlight, cigarettes	X									
21	Posterboard sheet illustrating larger view of scene showing bullet strikes and bullet casing locations	X									
22	Posterboard sheet illustrating scene showing bullet strike and bullet casing locations	X									
23	Posterboard sheet of aerial map of Hoyt in Everett	X									
24	Posterboard sheet of Marysville and Everett Map	X									
25	1 page copy; Everett Police illustration of scene	X									
26	1 page color copy of aerial Google map of Hoyt and 14 <sup>th</sup> Street	X									
27	1 page color copy of aerial view showing location "A"	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
28	1 page color copy photograph: Police Officer J. Norris	X									
29	1 page color copy photograph: Close-up of Marysville Police Officer patch on front of shirt	X									
30	1 page color copy photograph: Close-up of Marysville Police patch on sleeve and "Police J. Norris" on front of shirt	X									
31	1 page color copy photograph: Rearview of officer in uniform with "Police" on back of shirt	X									
32	1 page color copy photograph: Side view of officer with Marysville Police patch on sleeve	X									
33	1 page color copy photograph: Front view of patrol vehicle	X									
34	1 page color copy photograph: partial front and side view of Marysville police vehicle	X									
35	1 page color copy photograph: driver's side view of Marysville police vehicle	X									
36	1 page color copy photograph: side and rear view of Marysville police vehicle	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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vs. Kevin D. Diltz

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DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
37	1 page color copy photograph: passenger side and rear view of Marysville police vehicle	X									
38	1 page color copy photograph: passenger side view of Marysville police vehicle	X									
39	1 page color copy photograph: driver's side mirror on vehicle	X									
40	1 page color copy photograph: driver's side mirror on vehicle showing fenced area in mirror	X									
41	1 page color copy photograph: view of roadway with dark SUV parked on right side of roadway	X									
42	1 page color copy photograph: 2 story residence on corner	X									
43	1 page color copy photograph: Ford pickup truck slightly off road and impacted with another vehicle	X									
44	1 page color copy photograph: Rear view of Ford truck with "ZAG" plate	X									
45	1 page color copy photograph: close-up of door handle on vehicle	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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vs. Kevin D. Diltz

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No.	Description	A	R	N	W	No.	Description	A	R	N	W
46	1 page color copy photograph: Interior of vehicle with Husky bag on floor	X									
47	1 page color copy photograph: close-up of interior of vehicle with Husky bag on floor	X									
48	1 page color copy photograph: side view of Ford truck impacted head-on with other vehicle	X									
49	1 page color copy photograph: Front view of Ford truck off roadway with driver's door open	X									
50	1 page color copy photograph: close-up of impacted area between truck and car	X									
51	1 page color copy photograph: Driver's side of vehicle that was impacted by Ford truck	X									
52	1 page color copy photograph: close-up of blue vehicle and red vehicle impact	X									
53	1 page color copy photograph: passenger's side view of red vehicle with hood slightly raised	X									
54	1 page color copy photograph: several people standing behind yellow caution tape in distance	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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State of Washington

vs. Kevin D. Diltz

PLTF/PTRN'S EXHIBITS					DFDT/RESP'S EXHIBITS						
No.	Description	A	R	N	W	No.	Description	A	R	N	W
55	1 page color copy photograph: a few people standing behind yellow caution tape in distance	X									
56	1 page color copy photograph: a few people standing behind yellow caution tape and one person on lawn to the left	X									
57	1 page color copy photograph: fenced area with arbor in front of residence	X									
58	1 page color copy photograph: Orange cone on sidewalk in front of bushes	X									
59	1 page color copy photograph: Steps leading to residence with bushes on both sides of walkway	X									
60	1 page color copy photograph: several people standing beyond caution tape area and orange cone in foreground	X									
61	1 page color copy photograph: close-up of top view of orange cone on pavement	X									
62	1 page color copy photograph: 2 orange cones on sidewalk and boat on trailer with caution tape	X									
63	1 page color copy photograph: boat on trailer with caution tape leading from boat to residence	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-~~1~~

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
64	1 page color copy photograph: residence with yellow caution tape across front of house	X									
65	1 page color copy photograph: close-up of orange cone, top view,	X									
66	1 page color copy photograph: orange cone in center of walkway and caution tape attached to boat trailer and across sidewalk	X									
67	1 page color copy photograph: caution tape attached to boat and across residence and orange cone in foreground	X									
68	1 page color copy photograph: caution tape attached to boat and across front of 2 story residence	X									
69	1 page color copy photograph: close-up of two story residence with yellow caution tape across front of property	X									
70	1 page color copy photograph: 4 people with yellow caution tape behind them and 3 orange cones on sidewalk	X									
71	1 page color copy photograph: 3 people in front of yellow caution tape and 2 orange cones on sidewalk	X									
72	1 page color copy photograph: two story residence with lattice along bottom of house	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

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No.	Description	A	R	N	W	No.	Description	A	R	N	W
73	1 page color copy photograph: Blue house with red door	X									
74	1 page color copy photograph: 2 story green home with American Flag on left side	X									
75	1 page color copy photograph: corner residence with caution tape across lawn and 6 orange cones	X									
76	1 page color copy photograph: residential street with two vehicles parked along roadway	X									
77	1 page color copy photograph: Alleyway with "Road Closed" barrier and yellow caution tape	X									
78	1 page color copy photograph: Alleyway with man standing in distance	X									
79	1 page color copy photograph: Wooden fence and bushes along alley	X									
80	1 page color copy photograph: two adult males in backyard of residence	X									
81	1 page color copy photograph: Rearview of residence with two open doors	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed <b>THIS</b> Page		9				Total No. Dfdt/Resp's Exhibits Filed <b>THIS</b> Page		0			

CODES: A = Admitted; R = Rejected; N = Not Offered; W = Withdrawn

CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
82	1 page color copy photograph: backyard deck with chimney	X									
83	1 page color copy photograph: wooden fence attached to blue house with a few boards from fence on ground	X									
84	1 page color copy photograph: close-up of fence with missing boards	X									
85	1 page color copy photograph: close-up of opening in fence	X									
86	1 page color copy photograph: dark object on ground in bush, view 1	X									
87	1 page color copy photograph: dark object on ground in bush, view 2	X									
88	1 page color copy photograph: dark object on ground in bush, view 3	X									
89	1 page color copy photograph: close-up of dark object and red striped item on left on ground	X									
90	1 page color copy photograph: distant view of dark object in bushes outside of doorway	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
91	1 page color copy photograph: dark object on ground along area with missing fence boards	X									
92	1 page color copy photograph: dark object on ground with red and black items to the right and left	X									
93	1 page color copy photograph: Blue and white garage with open green bucket in front	X									
94	1 page color copy photograph: wooden area between two structures with some boards missing	X									
95	1 page color copy photograph: close-up of wooden area between two structures with boards missing	X									
96	1 page color copy photograph: jacket and glasses lying on ground among plywood	X									
97	1 page color copy photograph: close-up of glasses	X									
98	1 page color copy photograph: assorted plywood stacked against structure	X									
99	1 page color copy photograph: gloved hand holding set of 2 keys on key chain and jacket	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltff/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
100	1 page color copy photograph: front view of police officer standing in front of police vehicle	X									
101	1 page color copy photograph: gloved hands holding Samsung cell phone and zippered jacket	X									
102	1 page color copy photograph: close-up view gloved hands holding Samsung cell phone and jacket	X									
103	1 page color copy photograph: alleyway with 3 car garage on left	X									
104	1 page color copy photograph: fence leading to two-tone blue house	X									
105	1 page color copy photograph: close-up of two-tone blue house with stick pile outside	X									
106	1 page color copy photograph: blue structure with dog house on right and stick pile	X									
107	1 page color copy photograph: Blue house with rear door open	X									
108	1 page color copy photograph: alleyway with caution tape in distance and green bucket on left tipped over	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
109	1 page color copy photograph: Alleyway with caution tape and garage door on left partially open	X									
110	1 page color copy photograph: Blue residence with wooden fence	X									
111	1 page color copy photograph: Blue residence and garage with two vehicles parked outside	X									
112	1 page color copy photograph: Sign "Date/Time 05/29/13 1105..."	X									
113	1 page color copy photograph: two story home with American flag	X									
114	1 page color copy photograph: 2 homes with fence connecting them	X									
115	1 page color copy photograph: stone walkway along residence	X									
116	1 page color copy photograph: backyard with pots on right	X									
117	1 page color copy photograph: backyard with patio table and red umbrella	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTRN'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
118	1 page color copy photograph: close-up view of patio table and red umbrella	X									
119	1 page color copy photograph: close-up view of outdoor chairs and two-tone green door	X									
120	1 page color copy photograph: outdoor area with shovel handle sticking out of ground, view 1	X									
121	1 page color copy photograph: outdoor area with shovel sticking out of ground, view 2	X									
122	1 page color copy photograph: close-up of shovel handle sticking out of ground, view 3	X									
123	1 page color copy photograph: close-up of shovel sticking out of ground and wind chime	X									
124	1 page color copy photograph: dark item sticking out of ground, view 1	X									
125	1 page color copy photograph: dark item sticking out of ground, view 2	X									
126	1 page color copy photograph: dark item sticking out of ground with "1" metric placard	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
127	1 page color copy photograph: purple gloved hand pulling item out of ground	X									
128	1 page color copy photograph: purple gloved hand holding gun with dirt and debris on it	X									
129	1 page color copy photograph: Close-up of gun with dirt and debris on it	X									
130	1 page color copy photograph: purple gloved hand pointing to area on gun.	X									
131	1 page color copy photograph: close-up view of purple gloved hand holding gun	X									
132	1 page color copy photograph: close-up of gun showing serial number	X									
133	1 page color copy photograph: purple gloved hands holding gun and ammunition clip	X									
134	1 page color copy photograph: Purple gloved hand holding ammunition clip	X									
135	1 page color copy photograph: Purple gloved hands holding gun and ammunition clip on cardboard	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page.		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page.		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
136	1 page color copy photograph: purple gloved hand holding bullet	X									
137	1 page color copy photograph: Gun laying on cardboard labeled "DD13-8298"	X									
138	1 page color copy photograph: Blue gloved hand holding 9 bullets	X									
139	1 page color copy photograph: close-up view of the heads of 8 bullets	X									
140	1 page color copy photograph: Gun, ammunition clip and 10 bullets	X									
141	1 page color copy photograph: Adult male holding line and measuring from yellow marked location on sidewalk	X									
142	1 page color copy photograph: close-up of hand hold measuring tape up to yellow level line	X									
143	1 page color copy photograph: close-up of measuring tape along yellow level line	X									
144	1 page color copy photograph: close-up of adult male hold two yellow lines from locations on sidewalk	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTR'S EXHIBITS

DEFT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
145	1 page color copy photograph: adult male hold two yellow lines from locations on sidewalk	X									
146	1 page color copy photograph: two lines attached to locations on sidewalk	X									
147	1 page color copy photograph: two lines showing locations on sidewalk; view 1	X									
148	1 page color copy photograph: two lines showing locations on sidewalk; view 2	X									
149	1 page color copy photograph: hand to right of photo holding two lines attached to locations on sidewalk	X									
150	1 page color copy photograph: side view of adult male holding two lines attached to location in sidewalk	X									
151	1 page color copy photograph: Rearview of female and man in distance holding yellow line	X									
152	1 page color copy photograph: Adult male holding 3 lines attached to locations on sidewalk	X									
153	1 page color copy photograph: adult male holding 3 lines attached to discs on sidewalk; view 1	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
154	1 page color copy photograph: Adult male holding 3 lines attached to discs on sidewalk, view 2	X									
155	1 page color copy photograph: Rearview of female and man in distance holding 3 lines attached to discs on sidewalk, view 3	X									
156	1 page color copy photograph: Adult male holding 3 lines attached to discs on sidewalk, view 4	X									
157	1 page color copy photograph: Street sign showing Hoyt Ave and 14 <sup>th</sup> St	X									
158	1 page color copy photograph: "DD13-8298..." sign			X							
159	1 page color copy photograph: bullet casing with 2 placard	X									
160	1 page color copy photograph: gloved person picking up shell casing by 2 placard and manila envelope	X									
161	1 page color copy photograph: close-up of 9mm Luger bullet head	X									
162	1 page color copy photograph: shell casing with placard 3	X									
Column Totals		8	0	1	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS					DFDT/RESP'S EXHIBITS						
No.	Description	A	R	N	W	No.	Description	A	R	N	W
163	1 page color copy photograph: gloved person holding shell casing with placard 3 and evidence envelope	X									
164	1 page color copy photograph: close-up of black item on ground with placard 4	X									
165	1 page color copy photograph: black item on ground with placard 4	X									
166	1 page color copy photograph: shell casing and placard 5	X									
167	1 page color copy photograph: close-up view of blue gloved hand holding shell casing with placard 5	X									
168	1 page color copy photograph: close-up view of blue gloved hand holding 9mm Luger shell casing	X									
169	1 page color copy photograph: gloved hand holding shell casing and evidence envelope next to placard 5	X									
170	1 page color copy photograph: two people holding brown jacket and placing in paper bag	X									
171	1 page color copy photograph: close-up view of jacket on ground with placard 6	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

## PLTE/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
172	1 page color copy photograph: gloved person picking up jacket and holding brown evidence bag next to placard 6	X									
173	1 page color copy photograph: Rearview of dark pickup truck	X									
174	1 page color copy photograph: Rear passenger side view of dark pickup truck	X									
175	1 page color copy photograph: Front view of Ford pickup truck	X									
176	1 page color copy photograph: Driver's side view of dark pickup truck	X									
177	1 page color copy photograph: interior view of front seat of vehicle	X									
178	1 page color copy photograph: interior view of rear seat of vehicle	X									
179	1 page color copy photograph: interior view of rear passenger side of vehicle	X									
180	1 page color copy photograph: interior view of front passenger seat of vehicle with license plate on floor	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS					DFDT/RESP'S EXHIBITS						
No.	Description	A	R	N	W	No.	Description	A	R	N	W
181	1 page color copy photograph: bed of truck with open tool box	X									
182	1 page color copy photograph: close-up of license plate, hat, vice grips and screwdriver on floor of vehicle	X									
183	1 page color copy photograph: close-up of hat, vice grips and screwdriver	X									
184	1 page color copy photograph: close-up of screw driver and vice grips	X									
185	1 page color copy photograph: gloved hand holding vehicle registration certificate	X									
186	1 page color copy photograph: Interior console of vehicle	X									
187	1 page color copy photograph: Blue and red zippered Husky bag	X									
188	1 page color copy photograph: blue and red bag on floor of vehicle	X									
189	1 page color copy photograph: various tools, headphones, lighter	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
190	1 page color copy photograph: purple gloved hand holding silver punch tool	X									
191	1 page color copy photograph: Tan and black canvas bag laying on pavement	X									
192	1 page color copy photograph: gloved hand holding open tan and black zippered bag	X									
193	1 page color copy photograph: Close-up of tan and black "Winchester" bag	X									
194	1 page color copy photograph: Kirkland Eastside Subaru license plate and cover	X									
195	1 page color copy photograph: close-up of Kirkland Eastside Subaru license plate and cover	X									
196	1 page color copy photograph: close-up of vehicle VIN #	X									
197	1 page color copy photograph: Interior door of vehicle	X									
198	1 page color copy photograph: close-up of vehicle info on door	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
199	1 page color copy photograph: "Date/Time 5-1-13 1407...Photographed by Uhden #1320"	X									
200	1 page color copy photograph: residence with orange cone on front sidewalk	X									
201	1 page color copy photograph: sidewalk leading to cement stairway	X									
202	1 page color copy photograph: cracked sidewalk	X									
203	1 page color copy photograph: shell casing with 1A placard	X									
204	1 page color copy photograph: close-up of shell casing and 1A placard	X									
205	1 page color copy photograph: close-up of gloved hand picking up shell casing next to 1A placard	X									
206	1 page color copy photograph: Sign "Date/Time 5-9-13 1400 hrs ...Photographed by 1154"	X									
207	1 page color copy photograph: metric measure with silver and copper bullet strike on pavement	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
208	1 page color copy photograph: Sign "Date/Time 5-9-13 1400 hrs ...Photographed by 1154" and metric measure	X									
209	1 page color copy photograph: metric measure showing silver bullet strike on pavement	X									
210	1 page color copy photograph: Sign "Date/Time 5-9-13 1400 hrs ...Photographed by 1154" and metric measure showing bullet strike on pavement	X									
211	1 page color copy photograph: Marker, metric measure and sign "Date/Time 5-9-13 1400 hrs"	X									
212	1 page color copy photograph: Close-up of marker tip and metric measure, view 1	X									
213	1 page color copy photograph: Close-up of marker tip and metric measure, view 2	X									
214	1 page color copy photograph: close-up of blue marker tip and blue spot	X									
215	1 page color copy photograph: blue spot on manila envelope "DD13-8298" with yellow note paper folded on top	X									
216	1 page color copy photograph: pair of red and black gloves	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
217	1 page color copy photograph: palm side up of red and black gloves	X									
218	1 page color copy photograph: dark North Face zippered jacket	X									
219	1 page color copy photograph: tag on North Face jacket	X									
220	1 page color copy photograph: glasses and zipper jacket	X									
221	1 page color copy photograph: close-up of Outback Work Wear label on jacket	X									
222	1 page color copy photograph: Outback tag on inside of jacket	X									
223	1 page color copy photograph: glasses, keys, cell phone, flashlight, cigarettes and jacket	X									
224	1 page color copy photograph: two keys on key ring with "Duplicate 41" tag	X									
225	1 page color copy photograph: view of street with patrol car and yellow caution tape	X									
Column Totals:		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page:		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page:		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

PLTF/PTRN'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
226	1 page color copy photograph: intersection with patrol car and yellow caution tape	X									
227	1 page color copy photograph: pole lying on grass	X									
228	1 page color copy photograph: close-up of pole on grass	X									
229	1 page color copy photograph: bullet strike on pavement, DSC0001.jpg	X									
230	1 page color copy photograph: bullet strike on pavement, DSC0006.jpg	X									
231	1 page color copy photograph: bullet strike on pavement with metric ruler, DSC0009.jpg	X									
232	1 page color copy photograph: bullet strike on pavement and metric ruler, DSC0012.jpg	X									
233	1 page color copy photograph: sidewalk with orange cone and yellow caution tape in distance	X									
234	1 page color copy photograph: close-up of orange cone on and yellow caution tape across sidewalk	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
235	1 page color copy photograph: close-up of top view of orange cone, DSC0123.jpg	X									
236	1 page color copy photograph: bullet strike in concrete, view 1	X									
237	1 page color copy photograph: bullet strike in concrete, view 2	X									
238	1 page color copy photograph: bullet strike on pavement with metric ruler, view 3	X									
239	1 page color copy photograph: bullet strike in concrete with ruler, view 4	X									
240	1 page color copy photograph: bullet strike in concrete, view 5	X									
241	1 page color copy photograph: bullet strike in concrete, view 6	X									
242	1 page color copy photograph: bullet strike in concrete with metric ruler, view 7	X									
243	1 page color copy photograph: bullet strike in concrete and metric ruler, view 8	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

PLTF/PTRN'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
244	1 page color copy photograph: bullet strike in concrete, view 9	X									
245	1 page color copy photograph: bullet strike in concrete, view 10	X									
246	1 page color copy photograph: bullet strike in concrete with metric ruler, view 11	X									
247	1 page color copy photograph: bullet strike in concrete, with metric ruler, view 12	X									
248	1 page copy: Everett Police Department Original Narrative of R. McDonell, 4/29/13			X							
249	4 page copy: Snohomish County Sheriff's Office Follow-Up report of Detective Haldeman, 5/9/2013			X							
250	5 page copy: Snohomish County Sheriff's Office Additional Narrative of Detective Fagan, 5/13/2013			X							
251	1 page copy: "311 Ruger p89 - Google Search..."	X									
252	1 page color copy photograph: P89 firearm	X									
Column Totals		6	0	3	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
253	1 CD-R disc "911 Track 3, Eve 13-8298"	X									
254	1 Sony CD-R of excerpts of telephone conversations	X									
255	1 page copy: Everett Police Department Statement Form of Paula Guerrero, 4/29/13			X							
256	5 page copy: Everett Police Department Follow-Up Report of Officer Anders, 4/29/13			X							
257	Large laminated map by Det. J. Klingman illustrating bullet strikes from suspect elevation, Date Drawn 6/25/2014	X									
258	Large laminated map by Det. J. Klingman illustrating bullet strikes from officer elevation, Date Drawn 6/25/2014	X									
259	Large laminated map by Det. J. Klingman illustrating bullet casings from suspect elevation, Date Drawn 6/25/2014	X									
						260	1 page copy: Illustration of "Distance between people..."	X			
						261	CD-R of Defense Interview w/Officer Norris	X			
Column Totals		5	0	2	0	Column Totals		2	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		7				Total No. Dfdt/Resp's Exhibits Filed THIS Page		2			

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CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

## PLTF/PTNR'S EXHIBITS

## DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
262	1 page color copy photograph consisting of 6 smaller photos--3 of guns	X									
263	1 page color copy photograph consisting of 9 smaller photos--6 of bullet cartridges	X									
264	1 page color copy photograph consisting of 12 smaller photos--8 of bullet cartridges	X									
265	1 page color copy photograph consisting of 5 smaller photos--one bullet cartridge labeled "Item 7"	X									
266	1 page color copy photograph: close-up of bullet test fire comparison, view 1	X									
267	1 page color copy photograph: close-up of bullet test fire comparison, view 2	X									
268	1 page color copy photograph: close-up of bullet test fire comparison, view 3	X									
269	1 page color copy photograph: close-up of bullet test fire comparison, view 4	X									
270	1 page color copy photograph: close-up of bullet test fire comparison, view 5	X									
Column Totals		9	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		9				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

CODES: A = Admitted; R = Rejected; N = Not Offered; W = Withdrawn

CASE NO.: 13-1-01079-2

State of Washington

vs. Kevin D. Diltz

PLTF/PTNR'S EXHIBITS

DFDT/RESP'S EXHIBITS

No.	Description	A	R	N	W	No.	Description	A	R	N	W
271	1 page color copy photograph: close up of bullet test fire comparison, view 6	X									
272	1 page color copy photograph consisting of 6 smaller photos--one of gun and one of bullet shell casings and fragments	X									
273	1 page color copy photograph consisting of 3 smaller photos--one of bullet casing labeled "Item 15"	X									
274	1 page color copy photograph: close-up of test fire comparison, view 7	X									
275	1 page color copy photograph: close-up of test fire comparison, view 8	X									
276	1 page color copy photograph: shell casings and bullet fragments	X									
277	Posterboard sheet: hand drawing of angles (orange marker)	X									
278	CD-R "Norris Interview" *video stamp 5:08:47 - 5:09:21 / counter 6:15-6:54)	X					*-- only portion of tape admitted --				
Column Totals		8	0	0	0	Column Totals		0	0	0	0
Total No. Pltf/Ptnr's Exhibits Filed THIS Page		8				Total No. Dfdt/Resp's Exhibits Filed THIS Page		0			

CODES: A = Admitted; R = Rejected; N = Not Offered; W = Withdrawn

## LIST OF EXHIBITS FILED

PAGE 32 OF 32

CASE NO.: 13-1-01079-1

State of Washington

vs. Kevin D. Diltz

TOTAL NUMBER PLAINTIFF/PETITIONER'S EXHIBITS:	276		
TOTAL NUMBER DEFENDANT/RESPONDENT'S EXHIBITS:	2		
TOTAL NUMBER OF EXHIBITS SUBMITTED TO RECORDS:	278		
TYPE OF HEARING:	CRIMINAL JURY TRIAL		
JUDGE/COMMISSIONER:	LINDA C. KRESE	AGENCY:	



**NIELSEN, BROMAN & KOCH, PLLC**

**December 01, 2015 - 2:23 PM**

**Transmittal Letter**

Document Uploaded: 722051-Petition for Review.pdf

Case Name: Kevin Diltz

Court of Appeals Case Number: 72205-1

Party Respresented:

**Is this a Personal Restraint Petition?**  Yes  No

Trial Court County: \_\_\_\_ - Superior Court # \_\_\_\_

**The document being Filed is:**

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_
- Answer/Reply to Motion: \_\_\_\_
- Brief: \_\_\_\_
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

**Comments:**

Pro Se Petition

Sender Name: Patrick P Mayavsky - Email: [mavovskyp@nwattorney.net](mailto:mavovskyp@nwattorney.net)

A copy of this document has been emailed to the following addresses:

Diane.Kremenich@co.snohomish.wa.us

## OFFICE RECEPTIONIST, CLERK

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**From:** Faulk, Camilla  
**Sent:** Wednesday, December 02, 2015 9:32 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** FW: Electronic Filing - Document Upload  
**Attachments:** 722051-20151201-022342.pdf; 722051-Petition for Review.pdf

**Importance:** High

No need to acknowledge, but could you open and put our file stamp on this. Thanks.

*Camilla* 😊

**From:** Sanders, Laurie  
**Sent:** Wednesday, December 02, 2015 9:29 AM  
**To:** Faulk, Camilla <Camilla.Faulk@courts.wa.gov>; Hutnik, Bev <Bev.Hutnik@courts.wa.gov>  
**Cc:** Carlson, Susan <Susan.Carlson@courts.wa.gov>  
**Subject:** FW: Electronic Filing - Document Upload  
**Importance:** High

Ladies:

The attached Petition for Review came in through our filing portal yesterday. The files are already with you folks. Did you want me to mail you a hard copy or is this sufficient?

Laurie Sanders  
Court of Appeals, Division I  
600 University Street  
Seattle, WA 98101  
Direct Dial: 206-464-6013

**From:** [mayovskyp@nwattorney.net](mailto:mayovskyp@nwattorney.net) [mailto:[mayovskyp@nwattorney.net](mailto:mayovskyp@nwattorney.net)]  
**Sent:** Tuesday, December 01, 2015 2:24 PM  
**To:** Sanders, Laurie; Dahlem, Susan  
**Subject:** Electronic Filing - Document Upload

This is to inform you that Patrick P Mayavsky from Nielsen, Broman & Koch, PLLC has uploaded a document named "722051-Petition for Review.pdf." Please see the attached Transmittal Letter and document.

This document and transmittal letter were also sent to:  
[Diane.Kremenich@co.snohomish.wa.us](mailto:Diane.Kremenich@co.snohomish.wa.us)