COURT OF APPEALS No. 328660-III

93707-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington, Respondent

v.

DANIEL BLIZZARD, Defendant/Petitioner

MOTION FOR DISCRETIONARY REVIEW

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A. Identity of the Petitioner

The Petitioner is Daniel Blizzard.

B. Decision Below

On September 1, 2016, the Court of Appeals, Division Three affirmed Mr. Blizzard's criminal conviction in a published opinion, No. 32866-0-III (herein after referred to as "the opinion below"). The opinion is included in Appendix 1. No motion for reconsideration was filed.

Appellant submits this timely motion for discretionary review to the honorable Supreme Court of the State of Washington.

C. Issues Presented for Review

1. As a matter of first impression, does the prosecutor's attempt to remove an elected trial judge from a pending case on the eve of important legal rulings violate the separation of powers?

2. As a matter of first impression, can a prosecutor's unethical "political" and "professional" attacks on a trial judge's integrity damage the structural fairness of a criminal trial?

3. As a matter of first impression, should evidence obtained by executing an illegal warrant, but not formally recorded in a warrant return, be suppressed?

4. Is it time to reconsider the permissive "ministerial" approach to warrant illegalities?

5. Does the same harmless "beyond a reasonable doubt" standard that applies to attorney-client communications seized post-trial also apply to those seized pre-trial?

6. If a writing itself is inadmissible for lack of foundation, is testimony about the content of the writing also inadmissible?

D. Statement of the Case

A series of errors denied Daniel Blizzard the right to a fair trial. The

problems began early, with a series of illegal warrants resulting in the seizure of circumstantial evidence. 4/28/14 VRP 312-320.[1] The warrants were originally issued by a District Court to out-of-state recipients, and thus without jurisdiction. CP 3278, Conclusion of Law (CL) 4; Appendix 2, Appendix 3. When that error was discovered, the warrants were re-issued by a Superior Court, but this time without the notice provisions required by RCW 10.96.020. CP 3277, Finding of Fact (FF) 23; Appendix 4.[2]

During the nine months between seizure of evidence under the illegal District Court warrants and finalization of the Superior Court warrants, CP 3277, FF 25, law enforcement supplemented the supporting affidavits of probable cause repeatedly, including information obtained by the illegal District Court warrants.[3] For example, the affidavit supporting the Superior Court warrants assert that Mr. Blizzard's phone records were held by the "GOGII" telecommunications corporation. CP 751, Appendix 4. However, GOGII's involvement in the case was entirely unknown to law enforcement until after the State served the illegal District Court warrants on "Level 3," the telecommunications corporation originally thought to hold Mr. Blizzard's records. See CP 647, Appendix 2. When law enforcement called Level 3 to execute the warrant, officers inquired why it

[1] Cites to the record, with respect to the Verbatim Report of Proceedings (VRP), are included throughout this briefing with the date (e.g. 4/28/14) followed by the specific VRP page number (e.g. 312-320).

[2] The unlawful District Court warrants, including the affidavits, to Level III communications and GOGII are included in Appendix 2 (CP 642-650) and 3 (CP 672-680) respectively. The warrant and affidavit to the Superior Court is included in Appendix 4 (CP 744-753). Whenever cited in the brief, the warrants are denoted by their original CP page numbers along with their corresponding Appendix. For example, CP 647, Appendix 2 denotes the 6th page of the Level III communications warrant included in Appendix 2, etc.

[3] Compare, for example, Appendix 2, Appendix 3 and Appendix 4.

had not complied with the illegal District Court warrant. In replying, Level 3 disclosed that Mr. Blizzard's phone line had been sold to GOGII. CP 3276. Law enforcement never submitted a subsequent Superior Court warrant to Level 3 to cure the taint on the disclosure of GOGII's role; the corrected warrant was instead sent directly to GOGII. Appendix 4.

Before trial began, the State also seized Mr. Blizzard's attorney-client communications, including confidential defense investigative memos and Mr. Blizzard's personal copy of discovery containing handwritten notes about witnesses and ideas for his attorney. CP 3282-85. The State kept some of these protected materials for months on top of an unsecured desk, a location where "officers, or anyone else who was at the desk, could potentially have access to the documents and read them," CP 3285-3288. The prosecuting attorney knew about this seizure, directed that the materials not be returned to Mr. Blizzard, and never disclosed the incident to Mr. Blizzard's attorney, CP 3284-3286.

Mr. Blizzard filed several pre-trial motions seeking relief for the aforementioned issues, as well as for discovery violations regarding the State's failure to comply with the trial court's order to narrow 30,000 pages of text messages seized under the illegal warrants. CP 197-205; 922-934; 968-981; 1134-1135. Unfortunately, three court days before the trial judge was scheduled to rule on those motions, the elected Yakima County Prosecuting Attorney delivered a letter (Appendix 5) to the presiding judge of the Superior Court containing sweeping, untrue, and dismaying allegations against the trial judge. The letter contained complaints specific

to Mr. Blizzard's case, his counsel, unrelated cases involving his counsel, and a long series of assertions about the trial judge's alleged incompetence and misconduct over a period of years, including that the trial judge:

- made "untrue allegations" about the State, CP 835; Appendix 5.[4]
- "bent over backwards" to help the defense, CP 834; Appendix 5.
- "exceeded the bounds of appropriate judicial conduct," CP 835; Appendix 5; and
- "overstep[ped] her authority," CP 835; Appendix 5.

The letter asked the criminal presiding judge to "remove [the trial judge] from these [serious homicide] cases in the interest of fairness and justice," CP 836; Appendix 5 at 4.

The trial judge herself described the letter as "outrageous," 6/9/13 VRP 569, "***filled with potential intimidation on this bench***," 5/28/16 VRP 463 (emphasis added),[5] and obvious "prosecutorial misconduct," 6/9/14 VRP 556[6]. Ultimately, she expressly concluded that the letter was an attempt to corrupt the integrity of the trial. 6/9/14 VRP 569. The trial court treated the letter as a motion for recusal, which was later abandoned by the State and never endorsed by Mr. Blizzard. 6/9/14 VRP 558-561; 569. After

[4] The prosecutor's letter to the criminal presiding judge consisted of 4 pages (CP 833-CP 836). Individual pages of the letter are cited with their original CP page numbers throughout this briefing. Hence CP 835, App. 5, denotes the third page of the letter as presented in Appendix 5.

[5] The suspicious timing of the letter, delivered just three court days before the trial court was scheduled to rule on the defense motion to suppress the text messages because of the warrant irregularities, was not lost on the trial court. 5/28/14, VRP 460; 6/9/14 VRP 574.

[6] "I want to make this record absolutely clear that [the elected prosecutor's] letter constitutes prosecutorial misconduct. There is absolutely no doubt that this was ex-parte communication with the trial judge in a pending matter that is prohibited by Rule of Professional Conduct, 3.5. For the State to suggest otherwise is, worst case scenario, disingenuous or, best case, naïve." 6/9/14 VRP 566.

extensive briefing and argument about the legal implications of the prosecutor's letter by all parties, the trial judge elected to not recuse herself. Part of her reasoning was that recusal would require further violation of the right to timely trial. 6/9/14 VRP 569.

Interestingly, before receiving the letter, the trial judge expressed a substantial degree of skepticism toward the State's arguments,[7] particularly regarding warrant suppression. 4/28/14 VRP 412. After receiving the letter, this skepticism evaporated,[8] Mr. Blizzard's motions were denied, and the text messages were held admissible. 6/9/16 VRP 643.

At trial, the text messages, already subject to the GOGII-warrant taint and discovery objections, were conditionally admitted through testimony on the State's promise to lay adequate foundation for their admission. 9/4/14 VRP 1906-1907; 1913; 1919-1921; 1925-1942; 1970-1986; 9/8/2014 VRP 2338-2350; 9/9/14 VRP 2618-2622; 9/92014 VRP 2616-2622. The State failed to do so, and the text messages were not admitted. However, the jury was not admonished to disregard the related testimony. 9/11/2014 VRP 2998-3003.

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[7] Originally, the trial court was adamant that specific information about "GOGII" was obtained as a result of the issuance of the illegal District Court warrants: "I guess, I just don't know how [the State] get[s] around GOGII. I'm going to be blunt. I keep going in a circular way in my head as to how [the State] get[s] GOGII in the mix because that information came from the district court warrants that were not properly issued. That information would not have been known if it hadn't been received from those [illegal] warrants . . . [The Level 3 phone call occurred because Level 3 was] not complying with the warrant request. . . . Do you see what I'm saying?" 4/28/14 VRP 412-13. Also: 4/28/14 VRP 357, 360-65, 379, 406-08.

[8] The trial court reversed itself, finding that the "GOGII" information ***resulted not from the illegal warrant***, but rather ***from a phone call about the illegal warrant***: "Following that information he had received directly – this is where it gets dicey – not pursuant to actual information obtained from the warrant itself. I appreciate there is a connection there." 6/9/16 VRP 643.

E. ARGUMENT

Review Should be Granted

This case cries out for review. The opinion below is irreconcilable with several decisions of this Court and of the Court of Appeals, RAP 13.4(b)(1)-(2), and ***raises significant new questions about the separation of powers, prosecutorial misconduct in the form of an attempt to remove an elected judge from a pending case and influence its outcome, and the judicial branch's capacity to guarantee a fair trial in the face of heavy-handed pressure from the executive branch***, RAP 13.4(3)-(4). The errors in the opinion below are numerous, significant, and impact core constitutional principles, including the warrant requirement and the right to counsel.

1. **The opinion below should be reversed because it allows prosecutors to attack judges in hopes of influencing the outcome of a case, substantially undermining the separation of powers doctrine, and narrows the holding of Zylstra v. Piva, 85 Wn.2d 743, 539 P.2d 823 (1975).**

The Washington Constitution vests the judicial power in an independent branch of government. Article IV, Section 1; Washington State Bar Ass'n v. State, 125 Wn.2d 901, 906, 890 P.2d 1047 (1995). This arrangement "preserves the constitutional division between the three branches of government" so that the activities of one branch do not "threaten or invade the prerogatives of another." Hale v. In re Estate of Hambleton, 181 Wn.2d 802, 817, 335 P.3d 398 (2014).[9]

[9] Also see Wellpinit School Dist. No. 49, 165 Wn.2d 494, 198 P.3d 1021 (2009); Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173 (1994); State v. Elmore, 154 Wn.App. 885, 905, 228 P.3d 760 (2010).

In breezing past the separation of powers violation implicated by the prosecutor's letter, the opinion below summarily holds that the letter could:

> "only implicate separation of powers if it was so powerful and divisive that it had the capacity to threaten the judge's independence."

App. 1 at 5.[10] The only authority offered in support of this holding was Zylstra v. Piva, 85 Wn.2d 743, 539 P.2d 823 (1975), a case that cannot be reconciled with the opinion below in letter or spirit.

In Zylstra, this Court addressed the question of whether juvenile court staff, who are hired and fired by juvenile court judges but compensated by the county, are executive branch employees for purposes of collective bargaining. Id. Holding that the employees have a "dual status" that does not violate the separation of powers, the Court explained:

> Harmonious cooperation among the three branches is fundamental to our system of government. Only if this cooperation breaks down is it necessary for the judiciary to exercise inherent power to sustain its separate integrity. . . . The question to be asked is . . . whether the activity of one branch ***threatens the independence or integrity or invades the prerogatives*** of another. We can find no such encroachment, actual or threatened, in permitting these employees to bargain on the question of wages.

Id. at 750. Thus, when cooperation between the branches occasionally fails, each branch is entitled to three degrees of separation: independence, integrity, and sovereign prerogatives. Id.

The case now before the Court illustrates the distinct characteristics

[10] The opinion below seemed entirely satisfied that the trial judge "volunteered" that she could be impartial despite the prosecutor's letter. App.1 at 8, fn. 6. However, vindication of the separation of powers cannot wait until the moment a judge admits that she does not feel free to act independently; that moment is far too late to preserve a free government.

and utility of each degree. First, "independence" should be understood to mean the freedom of the branch to operate beyond the influence of the others. Here, for example, the prosecutor violated the trial judge's "independence" by asking that she be removed from this and other criminal cases. Thus, the prosecutor threatened the trial judge's institutional "independence."

Second, "integrity" should be understood to mean the customary decorum and professionalism due to the branch, an especially essential element in the adversarial conditions over which the judiciary presides. Here, the prosecutor attacked the trial judge's personal integrity, professional integrity, her judgment, and her legal intelligence. CP 834-835, Appendix. 5. The prosecutor not only threatened, but outright assaulted, the trial judge's institutional "integrity." (App. 5).

Third, sovereign "prerogatives" should be understood to mean the powers which the Constitution vests in the institution. Making decisions in a legal case is trial judge's constitutional prerogative. Wa. Const. Art. IV, Sec. 1, 6, and 20. Here, the prosecutor's timing and message were not the only evidence of his intent to influence the trial judge's decision-making: the letter was not addressed privately to the judge. Rather, it was sent under official letterhead to the criminal presiding judge, CP 833, Appendix 5; a decision certain to result in broadest notoriety within the local legal community. Thus, the prosecutor attempted to either influence or punish the trial judge's institutional "prerogative."

2. The Court should reverse the opinion below because it denies

the obvious: unethical "political" and "professional" attacks on a judge's integrity can undermine the fairness of a trial.

The opinion below categorically denies the possibility that "political" or "professional" attacks on a judge's integrity can cause "structural error" to the fairness of a trial because: 1) "Professional criticisms, ***no matter how inaccurate or improper***, do not meet [the] standard [for creating impermissible judicial bias]," App. 1 at 10; and 2) "The judiciary ***is not vulnerable*** to manipulation by politically charged criticism," App.1 at 1. The opinion below does not offer an explanation for why these statements might be true in practice, or answer any of the obvious questions they raise,[11] and instead cite a general rule prohibiting judges from being "swayed by public clamor, or fear of criticism." App. 1 at 10.

The opinion below relied on Ungar v. Sarafite, 376 U.S. 575; 11 L.Ed. 2d 921; 84 S.Ct. 841 (1964) an analogous case in which the potential bias was caused by a party's misconduct. However, Ungar is in direct conflict with the opinion below. Ungar holds that a party's recalcitrance or disobedience would not automatically implicate judicial bias, but a party's "insulting attack" upon a judge's "integrity" could. Unger, 376 U.S. at 584. Most importantly, Unger does not rest on a distinction between "personal" and "professional/political" criticisms. Id. at 584.[12] Rather, it credits the

[11] Is an attack "professional" in nature merely because it superficially addresses a person's job performance? Is an attack "political" in nature merely because it is hurled by an elected official? Are "professional/political" attacks mutually exclusive of "personal" ones? Do the facts (the severity, scope, timing, and source of the attack) matter? For example, are "professional" criticisms, especially for life-long professionals (such as judges), potentially more predictive of bias than criticisms about "personal" characteristics (about which a judge may have no concern)? Are attacks on a person's "professional" reputation, and thereby indirectly on the person's livelihood, more predictive of structural error?

[12] Mr. Ungar, a resistant lawyer-witness, claimed his constitutional rights to a fair hearing

threat that an "insulting attack" on a judge's "professional" qualifications pose on the right to a fair trial.

The "personal" v. "professional/political" paradigm outlined in the opinion below sets a terrible precedent for several reasons. First, it limits a judge's ability to respond: if a judge is "invulnerable" to such slander, then such slander is not cause to take remedial action. Second, it is an idealistic expression which certainly describes our best judges, but does nothing to functionally protect the right to a fair trial under less-than-ideal circumstances. "Structural error" analysis must be more than inspirational.

Structural errors defy harmless error review because they are "defects in constitution of the trial mechanism." Arizona v. Fulminante, 499 U.S. 279, 309-310, 11 S.Ct. 1246, 113 L.Ed.2d 302 (1991).[13] This Court recently explained that the common denominator of all structural errors is that they infect myriad aspects of trial, making it nearly impossible to assess how and whether the errors affected the outcome of the case. State v. Frawley, 181 Wn.2d 452, 480, 334 P.3d 1022 (2014). Significantly, the trial court in the instant case recognized the structural nature of the dilemma it faced:

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were violated because his contemptuous remarks were a personal attack on the judge which necessarily, and without more, biased and disqualified the judge from presiding over the subsequent contempt proceedings.

[13] These errors taint the entire proceeding but their specific prejudicial consequences are "necessarily unquantifiable and indeterminate." Sullivan v. Louisiana, 508 U.S. 275, 282, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993). The cases in which the Supreme Court has deemed errors structural include a biased trial judge. Tumey v. Ohio, 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749 (1927); See also Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (citing Tumey, 273 U.S. 510, "biased trial judge" as example of structural error regarding "automatic reversal"); Johnson v. United States, 520 U.S. 461, 468, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997)(lack of an impartial judge).

> The other unfortunate reality today, [is] . . . that regardless of what my ruling is in this case, it has been set up to fail. Because if I, applying the law to the facts and in that way decide the suppression motions and rule in favor of the defendants in this matter, then the state can simply say, see; we told you so. She's obviously prejudiced and biased against us and has proven it once again. . . . It leaves the question mark in the defendants' minds, if I rule against them today, as to whether I am giving into the perceived pressure . . . . So truly, the minute the letter was delivered on Friday, this particular scenario has been created . . .

5/28/14 VRP 462-63. As Mr. Blizzard's attorney succinctly described the trial judge's options, "you're damned if you do and dammed if you don't," 5/28/14 VRP 489, an apt definition of structural error. If a prosecutor's misconduct puts a judge in this position, whether by "professional" insults or "personal" ones, then the proceeding is structurally damaged.

a. The opinion below should be reversed because it fails to remedy a prosecutor's intentional violation of the separation of powers; a "head-in-the-sand" response invites future attacks on the judiciary and the right to a fair trial.

The opinion below expresses the view that providing a remedy to the prosecutor's letter is a cure worse than the disease:

> A rule requiring recusal in cases such as Mr. Blizzard's would enable the executive to manipulate the judiciary and force future recusals at virtually any juncture by simply hurling politically charged attacks.

App. 1 at 10-11. In other words, the judiciary does more to protect itself from executive overreach by ignoring such unmistakable violations.

However, the dichotomy presented by the Court of Appeals is illusory: providing a consequence for this most egregious misconduct does

not empower the executive; only the failure to do so would. And while bar discipline might[14] punish after the fact, it does nothing to remove the taint from Mr. Blizzard's trial. Thus, a remedy is necessary and would enjoy well-established analogs.[15] And, while a dismissal might be extreme, a new trial is not.

b. The opinion below should be reversed because it applies the "waiver" rule in a manner that rewards intentional prosecutorial misconduct; the prosecutor's letter should be subject to the "appearance of fairness" doctrine because it forced Mr. Blizzard to choose either a fair judge, or a timely trial.

The opinion below concluded that the "appearance of fairness" doctrine was unavailable to Mr. Blizzard on appeal because he "waived" the issue by failing to move for recusal of the wounded trial judge. App. 1 at 8. In doing so, the opinion below ignores: 1) that Mr. Blizzard's case is distinguishable from a true "waiver" case; 2) that waivers require a "knowing, ***voluntary***, and intelligent" decision, 128 Wn.2d 553, 558, 910 P.2d 475 (1996);[16] and 3) that "waiver" does not apply when governmental misconduct "compel[s] the defendant to choose between two distinct rights." See State v. Woods, 143 Wn.2d 561, 582-83, 23 P.3d 1046

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[14] Will the bar enforce if the bench will not?

[15] State v. Wittenbarger, 124 Wn.2d 467, 880 P.2d 517 (1994) (remedy for State's failure to preserve and disclose exculpating evidence); State v. Boehning, 127 Wn.App. 511, 11P.3d 899 (2005) (remedy for State inflaming the passions of the jury); Blackledge v. Perry, 111 P.3d 899, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed. 2d 628 (remedy for State's vindictive prosecution).

[16] A "waiver" is an intentional relinquishment or abandonment of a known right or privilege, Johnonson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Courts "indulge every reasonable presumption against waivers of fundamental rights." City of Bellevue v. Acrey, 103 Wn.2d 203, 207 691 P.2d 957 (1984). Also see City of Seattle v. Williams, 101 Wn.2d 445, 452, 680 P.2d 1051 (1984); State v. Frawley, 181 Wn.2d 452, 461, 334 P.3d 1022 (2014).

(2001).[17]

Mr. Blizzard's case is not a true "waiver" case.[18] In the true waiver cases cited by the opinion below, 1) the complained of dilemma arises by naturally occurring coincidence, not intentional misconduct; and 2) the "waiver" operates to deprive the trial judge of an opportunity to consider the dilemma. Here, the dilemma did not occur by coincidence: it arose because of intentional prosecutorial misconduct. And Mr. Blizzard's "waiver" did not deprive the trial court of the opportunity to consider the dilemma: the issue was extensively briefed and argued at multiple hearings and expressly articulated by the judge herself. CP 922-934; 6/9/14 VRP 540-542; 5/28/14 VRP 462-63[19].

Mr. Blizzard's "waiver" was not voluntary. When the letter was delivered, trial was scheduled for June 2, 2014, 5/28/14 VRP 508-509 (***not*** "August, 2014", contra, App. 1 at 7). The trial judge herself immediately recognized the "Hobson's choice" caused by the letter, 5/28/14 VRP 464, and made a record that her recusal would cause a time for trial violation:

"By remaining on the case, I am preserving, in fact, the

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[17] See also State v. Price, 94 Wn.2d 810, 814, 620 P.2d 994 (1980); State v. Berry, 184 Wn.App. 790, 796-97, 339 P.3d 200 (2014); State v. Michielli, 132 Wn.2d 229, 239, 937 P.2d 587; and CrR 8.3(b) (remedy triggered by prejudice to the right to a timely trial).

[18] See In re Swenson, 158 Wn.App. 812, 244 P.3d 959 (2010); State v. Bolton, 23 Wn.App. 708, 598 P.2d 734 (1979). In Swenson, the coincidental dilemma was that the sentencing judge had prosecuted the same defendant on a similar charge 20 years earlier. 158 Wn.App. at 820. The trial judge did not have an opportunity to consider the problem because she apparently did not even realize the coincidence. Id. In Bolton, the coincidental dilemma was that the sentencing judge had suffered a personal tragedy similar to the crime. The defendant remained entirely silent on the issue. 23 Wn.App. at 714.

[19] "The other unfortunate reality today, [is] . . . that regardless of what my ruling is in this case, if has been set up to fail. . . . . It leaves the question mark in the defendants' minds, if I rule against them today, as to whether I am giving into the perceived pressure . . . "

> defendants' speedy trial rights and can keep the cases moving forward without the need for another judge to become involved."

6/9/14 VRP 569. Likewise, Mr. Blizzard made his concerns about a timely trial utterly clear. 5/28/14 VRP 488; 6/10/14 VRP 788.

Because the dilemma was caused by prosecutorial misconduct and because it forced him to waive his rights, the "waiver" rule should not apply to this issue. To hold otherwise is to reward an elected prosecutor's misconduct at the cost of citizen rights.

3. The opinion below should be reversed because it allows the use of illegal warrants, perversely encourages deceptive warrant practices, and creates irreconcilable conflict with federal 4th Amendment jurisprudence.

As noted above, "GOGII's" involvement was discovered during execution of an illegal District Court warrant. Despite this, the opinion below approves use of the GOGII information to support the ultimately perfected Superior Court warrants under the "independent source," doctrine, with all focus on an ultra-finely-split hair: "[the GOGII] information was not obtained by reviewing ***search warrant returns***."[20] App. 1 at 12 (emphasis added). While technically accurate, this statement ignores the fact that GOGII's involvement was discovered as ***a consequence of*** the illegal District Court warrants.

[20] The opinion below relies heavily on a misleading fact: GOGII's possession of Mr. Blizzard's records was confirmed during a phone call to Level III Communications which was placed "prior to any application for a [District Court] warrant to search ***GOGII's*** records." Appendix 1 at 12, fn. 7 (emphasis added). Had law enforcement developed the GOGII lead based on solid detective work, a hunch, or even plain old good luck, then it would make sense to call it the result of "independent source." However, Level III told law enforcement that GOGII had the records when police sought a response to the unlawful warrant. CP 3276. Because the illegal District Court warrant preceded the call to Level III, and Level III led to GOGII, the independent source doctrine is inapplicable.

The opinion below implicates a new world of warrant exploitation: only information learned directly from "reviewing warrant returns" is subject to suppression; everything else learned executing the illegal warrant, but not recorded within the four corners of its return, is now the result of "independent investigation." Perversely, this rule de-incentivizes reporting evidence in warrant returns. The opinion below threatens to turn the warrant from the citizen's shield into law enforcement's cloak.

The lower court opinion runs afoul of Utah v. Strieff, 579 U.S. __, 136 S.Ct. 2056 (2016), a recent United States Supreme Court opinion steeped in the "attenuation doctrine." Strieff holds that the exclusionary rule applies not only to evidence obtained as a ***direct result*** of an illegal search, but also evidence found to be ***derivative of*** an illegality. Strieff, 136 S. Ct. at 2062 citing Segura v. U.S., 468 U.S. 796, 104 S.CT. 3380, 82 L.Ed. 2d 599 (1984). Because the follow-up phone call was part and parcel of executing of the illegal District Court warrant, it is derivative of the illegality.

4. The opinion below should be reversed because it expands the "ministerial" approach to illegal warrants, further undermining the important procedural protections offered by the warrant requirement.

The opinion below minimized the omission from the warrants of the mandatory advisements required by RCW 10.96.020, characterizing them as "ministerial" elements.[21] App. 1 at 13.

[21] This heap includes such "requirements" as: 1) that the subject of the warrant is entitled to receive a signed copy of the warrant (State v. Parker, 28 Wn.App. 425, 426-27, 626 P.2d 508 (1981)), 2) that there must be at least two witnesses to the execution of the warrant (State v. Wraspir, 20 Wn.App. 626, 629 581 P.2d 182 (1978)), 3) that the warrant must disclose the identity of the court where the return will be filed (State v. Smith, 15 Wn.App. 716, 719, 522 P.2d 1059 (1976)), 4) that the warrant must be served by a law enforcement

The language of RCW 10.96.020 should not be dispensed with as "ministerial." Here, the omitted language would have advised the foreign warrant recipients of the issuing statutory authority, which in turn would have suggested the possibility of quashing the warrant, when to do so, and where. RCW 10.96.020 (2). This information is material to the integrity of the warrant process, and no substitute exists elsewhere in the warrant. (See, e.g. Appendix 4).

Generally, Washington's "ministerial" approach will only vindicate a warrant "requirement" if the defendant can show that compliance with the rule would have prevented the search. State v. Kern, 81 Wn.App. 308, 318 P.2d 114 (1996). In other words, the "ministerial" approach prioritizes substance (the search) over procedure (the warrant). In addition to causing real due process problems in a case such as this the "ministerial" approach fundamentally conflicts with the warrant concept itself, wherein procedure ***is*** substance. Article I, Sect. 7 specifically names the "process" as the constitutional guarantee; it is anything but "ministerial."

5. The opinion below should be reversed because it erodes the right to counsel by substantially diluting the "harmless beyond a reasonable doubt" test for intrusions into attorney-client communications.

The opinion below sidestepped meaningful analysis of the State's pre-trial seizure and retention of attorney-client communications based on the conclusion that Mr. Blizzard "assign[ed] no error to the trial court's factual findings," and that those "findings are sufficient to justify denial of

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officer (State v. Kern, 81 Wn. App 308, 311, 914 P.2d 114 (1996)) and 5) that police cannot file the return before they actually know what it is they have seized (id.).

the motion to dismiss." App. 1 at 16. This holding should be reviewed for two reasons.

First, it is not supported by the record: Mr. Blizzard absolutely did not acquiesce at any stage of the proceedings to the adequacy or accuracy of the trial courts' finding of no prejudice beyond a reasonable doubt. E.g. 7/30/14 VRP 1137. Nor did Mr. Blizzard raise strictly legal issues on appeal: error was specifically assigned to the trial court's ruling on this exact issue.[22]

Second, even if Mr. Blizzard's objections are ignored, the trial court's findings are woefully insufficient to support the conclusion that there was no possibility "that seizure of Mr. Blizzard's documents benefited the State or prejudiced the defense." App. 1 at 17. The trial court's findings show that the seized attorney client communications were left out on top of a desk for months for any passerby to read:

- In the long-term, the materials were "left in a cubby on the front desk . . . [that] is not locked up." CP 3284.
- The front desk is a location where "perhaps officers, or anyone else who was at the desk, could potentially have access to the documents and read them." CP 3283.

While the record adequately supports the trial court's conclusion that at least four jail staff members did not pass the privileged communications to the prosecution team, CP 3281-86, the record is silent about all of the other law enforcement "officers, or anyone else who was at the desk" during the several months between seizure of the communications and the court's

[22] Appellant's "Assignments of Error and Issues Related to Errors" at sub-section (C)(c), specifically citing Conclusion of Law "VII" at CP 3287.

ruling. How can it possibly be settled "beyond a reasonable doubt" that this uncounted number of other persons, known to have lengthy and unfettered access to Mr. Blizzard's privileged materials, did not read or distribute protected information?

Given that factual record, the opinion below either renders meaningless this Court's strong definition of "beyond a reasonable doubt" as it applies to post-trial seizures of attorney-client communications, or takes a novel position that pre-trial seizure of attorney-client communications enjoy lesser protection. See State v. Fuentes, 179 Wn.2d 808, 318 P.3d 257 (2014). If anything, pre-trial communications should be afforded greater protections.[23]

6. The opinion below should be reversed because it directly conflicts with ER 1002, asserts a new formulation of ERs 104 and 901, and introduces a new, permissive foundational requirement for improperly admitted evidence.

The opinion below adopts an unheard of evidentiary principle: the contents of a writing may be admitted through testimony with less foundation than would be required to admit the writing itself. See App. 1 at 19-20. Approval of this tactic violates well-known evidentiary principles, including: 1) ER 1002, prohibiting the introduction of the contents of a writing by means other than the writing itself; 2) ER 901, requiring a minimal foundation, which the trial judge herself concluded had not been

[23] See, e.g. Bishop v. Rose, 701 F.2d 1150, (6th Cir. 1983); State v. Granacki, 90 Wn.App. 598, 959 P.2d 667 (1998); State v. Garza, 99 Wn.App. 291, 994 P.2d 868 (2000); State v. Perrow, 156 Wn.App. 322, 231 P.3d 853 (2010).

satisfied; and 3) ER 104(b), under which admissibility is expressly "subject to" the fulfillment of fact, in this case, the foundation to admit the writing.[24]

The writing in question, supposedly in coded text messages, were offered by the State to show Mr. Blizzard's connection to the murderers. Over clear and contemporaneous objections warning that the State would be unable to ultimately establish foundation, the trial judge allowed testimony by fact witnesses about the content of the text messages, pursuant to ER 104(b), upon the State's promise to eventually lay foundation under ER 901.[25] 9/4/14 VRP 1925-34; 1971-1982. Sure enough, the State failed to keep its promise[26] and the trial court found the writings to be inadmissible

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[24] Strikingly, the opinion below not only approved of this novelty but also crafted a relaxed foundational standard just for the occasion: "given the [testimonial] nature of the evidence shared with the jury, the State established a sufficient foundation." App. 1 at 19. Logically speaking, the foundational standard should be stricter when its contents of a writing are admitted by testimony, unmoored from their actual terms. See ER 1002.

[25] Significantly, this led to unsolicited, highly prejudicial testimony about several abortions of the State's key witness, Jill Taylor. According to Ms. Taylor, Mr. Blizzard impregnated her several times and failed to pay for her several abortions. The testimony was blurted out by Ms. Taylor in a non-responsive/ narrative answer to defense counsel's question about the order in which text messages were sent during cross examination. Defense counsel, satisfied to let sleeping dogs lie, moved on. However, when the State sought to re-visit the issue expressly and in detail during re-direct, defense counsel promptly objected specifically on relevance grounds. 9/9/14 RP 2546. The lower court's claim that Mr. Blizzard "did not object on the basis of either improper character evidence" is deeply misleading: Mr. Blizzard immediately objected based on relevance (ER 402), the general rule upon which the "improper character evidence" rules (ER 404 and 405) are based. The lower court's opinion also points to Mr. Blizzard's failure to request a curative instruction, which would have been an odd request following an overruled objection. Finally, the opinion below asserts that Mr. Blizzard's counsel asked more questions about the issue and "mentioned the abortions in closing argument." There is absolutely no support in the record for these statements.

[26] The opinion below chafed at Mr. Blizzard's framing of this issue as prosecutorial misconduct rather than evidentiary error. Whether it was the trial court's error to admit the testimony over defense objection in reliance on the prosecutor's representations, or the prosecutor's misconduct to not prove up the foundation, or both, is ultimately academic.

for lack of foundation. 9/11/14 VRP 2998-3003. And, whereas the court below did not furnish transcripts of the texts to the jury for deliberation, it also failed to instruct the jury to disregard the testimonial evidence of their contents.

The lower court relied on State v. Young, 192 Wn.App. 850, 369 P.3d 205 (2016), in reaching its conclusion on this issue. Unlike the present case, in Young foundation ***had*** been laid and the trial court had admitted the writings into evidence—the defendant simply challenged the factual support for foundation. The issue on appeal in the instant case is entirely different: when a writing is inadmissible for lack of foundation, are its contents admissible through testimony? The answer is no.

F. CONCLUSION

For all of the foregoing reasons, the Court should accept review.

Respectfully submitted this 30th day of September, 2016.

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APPENDIX 1

September 1, 2016 Slip Opinion
from the Court of Appeals Div. III –
COA#328660

Renee S. Townsley
Clerk/Administrator

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September 1, 2016

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CASE # 328660
State of Washington v. Daniel Blizzard
YAKIMA COUNTY SUPERIOR COURT No. 131013296

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion (unless filed electronically). If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:btb
Attachment
c: **E-mail** Honorable Ruth E. Reukauf
c: Daniel Blizzard (#376371)
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FILED
SEPTEMBER 1, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	No. 32866-0-III
	)	
Respondent,	)	
	)	
v.	)	PUBLISHED OPINION
	)	
DANIEL BLIZZARD,	)	
	)	
Appellant.	)	

PENNELL, J. — Due process requires a fair trial in a fair tribunal. Daniel Blizzard argues he was denied this basic protection after his trial judge received a letter from the county prosecutor containing inflammatory accusations of judicial bias. According to Mr. Blizzard, the letter's contents were so explosive they rendered the trial judge incapable of fairly presiding over the proceedings.

We are unpersuaded. The judiciary is not vulnerable to manipulation by politically charged criticism. In extreme cases, hurtful, personal attacks against a judge may make

recusal unavoidable. This is not such a case. We reject Mr. Blizzard's broad attack against his conviction, along with his other claims of more discrete error. The judgment and sentence is affirmed.

BACKGROUND

On May 25, 2013, real estate broker Vern Holbrook was found lying in a pool of blood in a vacant house he reportedly showed to a couple earlier that day. He had been severely beaten and his throat was cut. Mr. Holbrook later died as a result of the injuries sustained in the attack.

An investigation of Mr. Holbrook's cell phone records and witness interviews led law enforcement to Mr. Blizzard. The State's theory was essentially a murder for hire scheme. Mr. Holbrook and Mr. Blizzard were former business partners. Although there had been a falling out between the two men, Mr. Blizzard was the beneficiary of Mr. Holbrook's life insurance policy. Prior to the May 2013 attack, Mr. Blizzard tried recruiting various people to kill Mr. Holbrook. As part of this effort, he enlisted the help of his sometimes-girlfriend, Jill Taylor. Ms. Taylor also happened to be Mr. Holbrook's former daughter-in-law. Eventually, Mr. Blizzard recruited Ms. Taylor's roommate, Adriana Mendez, and Ms. Mendez's boyfriend, Luis Gomez-Monges, to pose as prospective homebuyers and attack Mr. Holbrook during a home tour.

Mr. Blizzard, Ms. Mendez, Mr. Gomez-Monges, and Ms. Taylor were charged in connection with Mr. Holbrook's murder. During the pretrial phase of the case, Mr. Blizzard moved to suppress records related to his cell phone. He argued the warrants authorizing seizure of his cell phone records were invalid due to procedural and substantive flaws.

Just prior to a hearing scheduled to address the cell phone warrants, the trial judge received a letter authored by the county's elected prosecutor.[1] In the letter, the prosecutor alleged the trial judge had "a bias and prejudice against the Yakima County Prosecuting Attorney's Office." Clerk's Papers (CP) at 835. He criticized the trial judge's handling of Mr. Blizzard's case as well as others. The prosecutor claimed the trial judge personally disliked several prosecutors and "bent over backwards" to favor the defense. CP at 834. He alleged the trial judge's bias made it "impossible for the State to get a fair trial." CP at 835. Ultimately, the prosecutor requested the trial judge recuse herself or be removed by the presiding judge.

The trial judge brought the letter to the parties' attention. The judge noted she had consulted with the state's judicial ethics advisory committee. She expressed concern that the letter was improper ex parte contact and constituted an attempt to intimidate the court.

[1] The elected prosecutor at issue no longer holds office.

The trial judge provided the State with a deadline for filing a formal recusal motion and set a briefing schedule.

The State never filed a formal motion for recusal. Instead, the State's lead deputy prosecutor assigned to this case filed a notice of abandonment, disavowing the recusal request. Mr. Blizzard, in turn, filed a motion to dismiss under CrR 8.3(b) for prosecutorial misconduct based on the letter. The trial court denied Mr. Blizzard's motion and continued to hear the case.

Shortly after ruling on Mr. Blizzard's motion to dismiss, the trial court denied his motion to suppress the cell phone records. The court ultimately ruled on numerous additional motions, including a second motion to dismiss based on an allegation the State had intercepted attorney-client communications. While the judge denied this second motion to dismiss, not all the court's rulings favored the State. Significantly, the trial judge granted a defense motion to prohibit the State from filing enhanced charges, which could have resulted in a mandatory life sentence.

At trial, codefendants Adriana Mendez and Jill Taylor turned state's evidence and testified against Mr. Blizzard. Codefendant Luis Gomez-Monges was tried separately. A jury found Mr. Blizzard guilty of first degree murder. By special verdict, it also found

(1) Mr. Blizzard was armed with a deadly weapon,[2] and (2) Mr. Holbrook was particularly vulnerable or incapable of resistance. Mr. Blizzard appeals.

ANALYSIS

The County Prosecutor's Letter

Mr. Blizzard focuses his appeal on various legal harms purportedly caused by the county prosecutor's letter. According to Mr. Blizzard, the letter violated separation of powers, constituted prosecutorial misconduct, and deprived him of a fair trial. We need not address these concerns serially in a complicated, multi-faceted manner. The county prosecutor's letter could only implicate separation of powers if it was so powerful and divisive that it had the capacity to threaten the judge's independence. *See Zylstra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1975). Similarly, any misconduct by the prosecutor in issuing the letter would only warrant reversal if it fundamentally undermined the fairness of the proceedings. *State v. Davenport*, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984). In sum, regardless of whether the prosecutor was attempting to engage in misconduct or invade the independence of the judiciary, the issue to be decided is whether the letter

[2] Prior to commencing deliberations, the court instructed the jurors, in part: "If one participant in a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved." CP at 2691.

deprived Mr. Blizzard of his right to a fair trial before a fair tribunal.

Fair trial claims fall into two categories: due process and claims under the "appearance of fairness doctrine." Due process is a constitutional requirement. It establishes the minimal requirements for a fair hearing. The appearance of fairness doctrine provides greater protection. It permits litigants to make fair trial claims based on violations of the Code of Judicial Conduct (Code), regardless of whether those claims implicate due process. *Tatham v. Rogers*, 170 Wn. App. 76, 91-93, 283 P.3d 583 (2012).

Because a complaint under the appearance of fairness doctrine is not constitutional, it generally cannot be raised for the first time on appeal. Once a basis for recusal is discovered, prompt action is required. *In re Pers. Restraint of Swenson*, 158 Wn. App. 812, 818, 244 P.3d 959 (2010). Delaying a request for recusal until after the judge has issued an adverse ruling is considered tactical and constitutes waiver. *Id.*; *State v. Bolton*, 23 Wn. App. 708, 714, 598 P.2d 734 (1979).[3]

Mr. Blizzard never asked the trial judge to recuse herself. He claims doing so would have impaired his speedy trial rights. But this concern is always present in criminal cases. Mr. Blizzard fails to explain how his case is different or what type of

[3] The appearance of fairness doctrine involves an objective inquiry into the impact of prejudice on a judge. *Swenson*, 158 Wn. App. at 818. As a result, there is no need to wait and see whether an improper influence will impact a judge's rulings.

delay would have occurred had his case been assigned to a different judge. Less than a year passed between Mr. Blizzard's arraignment and the start of trial. From a constitutional perspective, this was prompt. *Doggett v. United States*, 505 U.S. 647, 651-52, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). We fail to detect any obvious reason why Mr. Blizzard could not have sought recusal in a timely manner. We therefore decline to craft a generalized speedy trial exception that would swallow the well established rule requiring a prompt motion.

Relief from waiver would be especially inappropriate here as the record indicates Mr. Blizzard's decision not to seek recusal was tactical. The county prosecutor's letter was disclosed on May 28, 2014. Trial did not begin until late August 2014. During the period between these two dates, Mr. Blizzard appeared before the trial judge numerous times and filed significant pleadings.[4] Yet he made no request for recusal. Mr. Blizzard's actions demonstrated a willingness to "take his chances" with the trial judge. *Bolton*, 23 Wn. App. at 714-15. This strategy proved fruitful. The trial judge saved Mr. Blizzard from facing a mandatory life sentence by granting the defense motion to prohibit the State from filing enhanced charges; the judge excluded a State witness from testifying on grounds of hearsay; and the judge ultimately imposed a much lower sentence than what

[4] *See, e.g.*, CP at 985, 1033 and 1062.

was requested by the prosecution.[5] Mr. Blizzard cannot now go back on his choice to remain with the trial judge simply because he has been convicted. Appellate review under the appearance of fairness doctrine has been waived. *Id.*

Our due process analysis requires a different approach. Denial of the constitutional right to a fair tribunal is a structural error that requires reversal regardless of prejudice. *Williams v. Pennsylvania*, __ U.S. __, 136 S. Ct. 1899, 1909-10, 195 L. Ed. 2d 1208 (2016). The rules of appellate procedure permit review of Mr. Blizzard's constitutional claim even though it was not previously raised in the trial court. RAP 2.5(a)(3).

Due process generally involves an objective analysis.[6] We ask "not whether a judge harbors an actual, subjective bias, but instead whether as an objective matter, the average judge in his position is likely to be neutral or whether there is an unconstitutional

---

[5] The prosecution requested a total sentence of 600 months, or 50 years. The judge imposed 416 months, or 34 years. Mr. Blizzard was not yet 30 at the time of sentencing. The trial court's discretionary rulings saved Mr. Blizzard from potentially spending the rest of his life in prison.

[6] A due process claim can stand in the rare case where a judge admits to actual bias but fails to recuse. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009). Although never formally asked to recuse herself, the trial court volunteered that she had "absolutely no question" in her mind she could be fair and impartial in Mr. Blizzard's case. Verbatim Report of Proceedings (May 28, 2014) at 496.

potential for bias." *Williams*, 136 S. Ct. at 1905 (internal quotation marks omitted) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

Through our country's significant history of litigation, only three circumstances have been found to create unconstitutional judicial bias: (1) when a judge has a financial interest in the outcome of a case, (2) when a judge previously participated in a case in an investigative or prosecutorial capacity, and (3) when an individual with a stake in a case had a significant and disproportionate role in placing a judge on the case through the campaign process. *Caperton*, 556 U.S. at 877-884. In addition, the Supreme Court has suggested, though not held, there may be an impermissible risk of bias when a judge is the recipient of personal criticisms that are highly offensive. *Ungar v. Sarafite*, 376 U.S. 575, 583, 84 S. Ct. 841, 11 L. Ed. 2d 921 (1964).

The circumstances presented by Mr. Blizzard do not fall into any of the three established categories of bias. He instead draws on the analysis suggested by *Ungar* that the county prosecutor's letter to the judge was "so personal and so probably productive of bias" the trial judge was constitutionally required to recuse herself. *Id.* The argument is the county prosecutor's letter was so incendiary that a reasonable person could not help but conclude the judge would feel intimidated and therefore pressured to issue future

rulings in favor of the State.

Even if we were to accept that *Ungar* recognized a fourth category of impermissible bias, it does not apply in Mr. Blizzard's case. The criticisms lodged against the judge in this case were professional, not personal. They do not fall within the scope of potential prejudice contemplated by *Ungar*. Judges are required by the Code to disregard criticisms such as those lodged in this case. CJC Rule 2.4(A) ("judge shall not be swayed by public clamor, or fear of criticism"). As recognized in *Ungar*, "[w]e cannot assume that judges are so irascible and sensitive that they cannot fairly and impartially deal with resistance to their authority or with highly charged arguments about the soundness of their decisions." *Ungar*, 376 U.S. at 584. Professional criticisms, no matter how inaccurate or improper, do not meet this standard. A judge's duty to decide all cases presented to the court remains paramount.

Before considering Mr. Blizzard's remaining arguments, we briefly return to the concept of separation of powers. Mr. Blizzard argues the county prosecutor's letter threatened to undermine the balance of powers between the judicial and executive branches of government. We agree this is a basis for concern. But it is a concern that would only become manifest were we to grant relief. There must be consequences to prosecutorial misconduct. However, dismissal is not always the appropriate response.

Dismissal in this case would not punish the prosecutor. With dismissal, the executive branch might lose an individual case, but it would gain daunting power. A rule requiring recusal in cases such as Mr. Blizzard's would enable the executive to manipulate the judiciary and force future recusals at virtually any juncture of the proceedings simply by hurling politically charged attacks. Dismissal would not punish the executive. It would punish the judiciary. It would also punish Mr. Holbrook's family. The very need to preserve separation of powers requires that Mr. Blizzard's challenge be denied.

Validity of the Search Warrants

Mr. Blizzard contends the trial court erred in admitting contents of his cell phone records because they were not obtained pursuant to valid search warrants. His challenges are both procedural and substantive. Our review is de novo. *State v. Miles*, 159 Wn. App. 282, 291, 244 P.3d 1030 (2011); *State v. Dunn*, 186 Wn. App. 889, 896, 348 P.3d 791 (2015).

Procedural challenges

The warrants under review were issued by the Yakima County Superior Court after similar warrants had been issued by the district court. The reason for reissuance was that the State became concerned the district court lacked jurisdiction to issue warrants for out-

of-state corporations. Because the State does not attempt to defend the district court warrants, we operate under the assumption they were invalid.

Mr. Blizzard challenges the superior court warrants on the basis that they were obtained in reliance on information learned from the invalid district court warrants. Were this argument factually accurate, there would be a strong argument for suppression. Illegally obtained information cannot be used to support probable cause for a warrant. *State v. Ridgway*, 57 Wn. App. 915, 919, 790 P.2d 1263 (1990). But the facts are not as suggested by Mr. Blizzard. The new information referenced by Mr. Blizzard pertains to a change in the company that owned Mr. Blizzard's cell phone lines. According to the record, the State learned Mr. Blizzard's cell phone lines had been sold to a new company through a series of law enforcement phone calls to cell phone company representatives. This new information was not obtained by reviewing search warrant returns. Nor was it obtained by exploiting the existence of the invalidly issued warrants.[7] Because the State independently discovered the change in phone companies, this information was properly

[7] One of the phone calls was to GOGII, Inc., the purchaser of Mr. Blizzard's phone lines. A representative from GOGII confirmed the company had purchased Mr. Blizzard's phone lines. This confirmation was received prior to any application for a warrant to search GOGII's records. Thus, there can be no claim the State exploited an improperly issued warrant to obtain this information. *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

included in the superior court warrant application and does not provide a basis for suppression. *State v. Gaines*, 154 Wn.2d 711, 718, 116 P.3d 993 (2005).

Mr. Blizzard next argues the superior court warrant was invalid because it lacked the following statutorily mandated language: "This warrant is issued pursuant to RCW 10.96.020. A response is due within twenty business days of receipt, unless a shorter time is stated herein, or the applicant consents to a recipient's request for additional time to comply." RCW 10.96.020(2).

Unless constitutional considerations are in play, the rules for the execution and return of a search warrant are basically ministerial in nature. *State v. Kern*, 81 Wn. App. 308, 311, 914 P.2d 114 (1996). Generally, unless a defendant can show prejudice, procedural noncompliance with these rules does not invalidate a warrant or otherwise require suppression of evidence. *Id.*; *see also State v. Parker*, 28 Wn. App. 425, 426-27, 626 P.2d 508 (1981) (officer served unsigned copy of warrant); *State v. Smith*, 15 Wn. App. 716, 719, 552 P.2d 1059 (1976) (warrant failed to designate a magistrate for return); *State v. Bowman*, 8 Wn. App. 148, 150, 504 P.2d 1148 (1972) (officer failed to properly serve defendant with warrant); *State v. Wraspir*, 20 Wn. App. 626, 629, 581 P.2d 182 (1978) (officer failed to take inventory in presence of other person). Mr. Blizzard has not shown or argued the warrants' failure to specify the time of its execution and return

prejudiced him in any way. The object of the search was not transitory or changeable or stale. The dangers inherent in delay in execution were not implicated. The search warrant was valid, despite the absence of the required language.

Substantive challenge

Substantively, Mr. Blizzard claims the search warrants were not supported by probable cause. Probable cause to support a search warrant requires sufficient facts and circumstances establishing a reasonable inference that the defendant participated in criminal activity and that evidence of the crime will be found in the area to be searched. *State v. Dunn*, 186 Wn. App. 889, 895-96, 348 P.3d 791 (2015).

The superior court warrant set forth numerous facts linking Mr. Blizzard's cell phone lines with the Holbrook investigation. The affidavit disclosed that Mr. Blizzard's company held a $1.58 million life insurance policy on Mr. Holbrook. The affidavit also recited Ms. Mendez's confession that she and Mr. Gomez-Monges had posed as fake homebuyers and that Mr. Gomez-Monges had attacked Mr. Holbrook while viewing a prospective property. Although at the time Ms. Mendez denied the existence of a conspiracy, she admitted to knowing Mr. Blizzard. In addition, Ms. Mendez's phone records showed text messages between herself and Mr. Blizzard on the day of the attack. The manager at Ms. Mendez's hotel identified Mr. Blizzard as the individual who had

been paying Ms. Mendez's rent. The manager recalled Mr. Blizzard stating he was suing Mr. Holbrook's real estate company and was expecting to come in to a large sum of money. This comment tended to corroborate the statements from Mr. Holbrook's family members, alleging bad blood between Mr. Blizzard and Mr. Holbrook.

While the information set forth in the affidavit may not have been enough to secure a conviction, it was sufficient to establish probable cause. The affidavit established motive and an apparent conspiracy between Mr. Blizzard and Mr. Holbrook's attackers. Because Mr. Blizzard and Ms. Mendez were contacting each other via text message on the day of the attack, it was reasonable to infer that evidence about the attack would be found on Mr. Blizzard's cell phone.

Attorney-Client Communications

While Mr. Blizzard was in pretrial custody, staff from the Yakima County jail confiscated paperwork from his cell during a routine security sweep. The paperwork turned out to be trial preparation materials, including discovery documents, defense investigative memos, and handwritten notes. Based on this intrusion into his private paperwork, Mr. Blizzard filed a motion to dismiss for governmental misconduct under CrR 8.3(b).

Dismissal under CrR 8.3(b) is an "extraordinary remedy." *State v. Puapuaga*, 164 Wn.2d 515, 526, 192 P.3d 360 (2008). Even in the context of an improper intrusion into confidential attorney-client communications, dismissal is unwarranted if there is "no possibility of prejudice to the defendant." *State v. Peña Fuentes*, 179 Wn.2d 808, 819, 318 P.3d 257 (2014). The State bears the heavy burden of proving lack of prejudice beyond a reasonable doubt. *Id* at 819-20.

The trial judge considered Mr. Blizzard's CrR 8.3(b) motion after conducting a lengthy evidentiary hearing. At the close of the hearing, the judge found the contents of the confiscated materials had never been shared with anyone involved in the prosecution team, including law enforcement officers. The lead case agent did not even know Mr. Blizzard's documents had been confiscated until the defense filed a motion to dismiss. The trial judge found that while some jail staff saw Mr. Blizzard's documents, no one looked at the materials in detail. In addition, no one with access to Mr. Blizzard's documents discussed the contents with anyone else.

Mr. Blizzard assigns no error to the trial court's factual findings; as such, they are verities on appeal. *State v. Perrow*, 156 Wn. App. 322, 325, 231 P.3d 853 (2010). The trial judge's findings are sufficient to justify denial of the motion to dismiss. What little information was obtained by jail staff was never shared with the prosecution or law

enforcement investigators. Because there was no possibility that seizure of Mr. Blizzard's documents benefited the State or prejudiced the defense, dismissal was unwarranted. *Peña Fuentes*, 179 Wn.2d at 821-22.

Additional Prosecutorial Misconduct

Mr. Blizzard argues additional misconduct by the State exacerbated the structural error caused by the county prosecutor's letter. Our ruling regarding the county prosecutor's letter undercuts his claim. In any event, none of the alleged remaining errors warrant reversal.

Standard of review

To succeed on a prosecutorial misconduct claim, a defendant must show not just improper conduct, but also prejudice. *In re Pers. Restraint of Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). Usually misconduct claims can be efficiently remedied at the trial court stage of the proceedings. A defendant who waits until appeal to raise misconduct arguments bears a heavy burden. We will only reverse if prosecutorial misconduct is "so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

Alleged discovery violation

Mr. Blizzard argues the State committed misconduct when it failed to identify the text messages it intended to use at trial, in violation of a court order. The record shows otherwise. During a pretrial proceeding, the State represented it intended to introduce 150 pages of text messages at trial. This was pared down from 30,000 pages originally contained in the discovery. The trial judge accepted the State's representation as satisfying the court's order. Defense counsel responded, "[t]hat's fine." Verbatim Report of Proceedings (July 30, 2014) at 1222. No discovery violation occurred.

Abortion testimony

Mr. Blizzard asserts the State introduced prejudicial character evidence by eliciting testimony from Jill Taylor that Mr. Blizzard impregnated her on three occasions and terminated each pregnancy through abortion. At the time of Ms. Taylor's testimony, the defense did not object on the basis of either improper character evidence or prosecutorial misconduct. Had character been a concern, Mr. Blizzard could have sought a curative instruction. But he did not. Instead, defense counsel asked Ms. Taylor further questions about the abortions and mentioned the abortions in closing argument. Mr. Blizzard's request for relief based on the abortion testimony is denied as waived.

Foundation for text messages

Mr. Blizzard contends the State did not establish a foundation for admission of the text messages taken from his phone. This is a claim of evidentiary error. It cannot even loosely be classified as prosecutorial misconduct. Reviewing the trial judge's evidentiary rulings for abuse of discretion, *State v. Bradford*, 175 Wn. App. 912, 927, 308 P.3d 736 (2013), we find no error.

The text messages were never fully admitted to the jury. Although various witnesses testified about some of the messages, copies of the actual text records were never published to the jury or sent back to the jury room. When the jury submitted a question during deliberations, asking if the text messages had been admitted, they were told they had received all admitted evidence. Given the jury never received copies of the text message exhibits, the scope of Mr. Blizzard's evidentiary challenge is quite limited.

Particularly given the nature of the evidence shared with the jury, the State established a sufficient foundation. The text messages in question were either between Mr. Blizzard and Ms. Mendez or Mr. Blizzard and Ms. Taylor. Both Ms. Mendez and Ms. Taylor testified at trial and identified the text messages as ones between themselves and Mr. Blizzard. Although Ms. Mendez could not recall Mr. Blizzard's cell phone number, she recognized the content of the text messages, and Ms. Taylor confirmed Mr.

Blizzard's number. Mr. Blizzard's cell number was also confirmed by testimony regarding the search of the cell phone that had been seized from Mr. Blizzard at the time of his arrest. Because competent, first-hand evidence tied Mr. Blizzard's cell phone to the text messages, the State presented sufficient evidence of authenticity to allow presentation of its evidence. *State v. Young*, 192 Wn. App. 850, 369 P.3d 205 (2016).

Cell phone record testimony

Finally, Mr. Blizzard claims the State introduced testimony regarding cell phone records and cell phone location without proper foundation. Again, this error is at most evidentiary, not misconduct. Nevertheless, as is true in the misconduct context, we will not reverse for evidentiary error absent prejudice to the defense. *State v. Jackson*, 102 Wn.2d 689, 695, 689 P.2d 76 (1984).

The cell phone evidence at issue in this portion of Mr. Blizzard's argument did not pertain to Mr. Blizzard. The phone records pertained to Mr. Holbrook and the cell phone location evidence pertained to Ms. Mendez. The State introduced this evidence to corroborate Ms. Mendez's testimony that she had been in contact with Mr. Holbrook prior to the assault and that she was near him at the time of the assault. Neither of these facts was contested by the defense. The defense theory was that Ms. Taylor had been responsible for recruiting Ms. Mendez and Mr. Gomez-Monges to kill Mr. Holbrook.

This theory was not undermined by the introduction of Ms. Mendez's and Mr. Holbrook's cell phone evidence. Any evidentiary error was harmless.

CONCLUSION

Mr. Blizzard received a fair trial, administered by an impartial judge. He suffered no meritorious claims of error. The judgment and sentence is affirmed.

Pennell, J.

WE CONCUR:

Fearing, C.J.

Lawrence-Berrey, J.

APPENDIX 2

May 31, 2013 - Search Warrant and
Affidavit of Search Warrant to
Level 3 Communications
(Yakima County District Court)

2013 MAY 31 PM 1:25

FILED
YAKIMA COUNTY
DISTRICT COURT

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY. **130243**

STATE OF WASHINGTON)
) ss. **SEARCH WARRANT**
County of Yakima)

In the name of the State of Washington, to the Sheriff of Yakima County, State of Washington, his deputies or to any peace officer of the State of Washington duly authorized to enforce or assist in enforcing any law thereof, GREETINGS: whereas, complaint has been made to and signed before the undersigned District Court Judge by Detective Sam Perrault, of the Yakima County Sheriff's Office, stating under oath, that he has probable cause and does believe that corroborating evidence of the crime of Attempted First Degree Murder is located at Level 3 Communications, Attn: Subpoena Compliance, 1025 El Dorado BLVD, Broomfield, CO 80021; Fax: (720) 888-5631.

To wit: All call and text detail information for Level 3 Communications telephone number (509) 774-6199 from May 23, 2013 to 30 days from the date of this warrant. Text information is to include the content of the text messages when it's available. Also include all applicable cell tower data, including their locations from May 23, 2013 to 30 days from the date of this warrant. If this account has GPS enabled include the exact locations of the phone from May 23, 2013 to 30 days from the date of this warrant. If available, include Per Call Measurement Data (PCMD) from May 23, 2013 to 30 days from the date of this warrant. This warrant shall include billing information for this phone number to include the name, address and personal information of this subscriber.

Your affiant has probable cause to believe that the above crime has been committed and the items being sought are in the location described hereafter: In the telephone records for (509) 774-6199 at Level 3 Communications, Attn: Subpoena Compliance, 1025 El Dorado BLVD, Broomfield, CO 80021; Fax: (720) 888-5631.

NOW, THEREFORE, you are hereby commanded in the name of the State of Washington within ten (10) days of this date, to use such force as may be necessary to search the above-described business and to seize the above described evidence, and to safely keep the same as provided by law and to make a return of this warrant within three (3) days of the date thereof, showing all acts and things done hereunder, with a particular statement of all articles seized and names of all persons in

32866 0-000000642

whose possession the same were found, if any, and if no person be found in possession of said articles, then your return shall so state.

You are further commanded to serve a copy of this warrant upon the person or persons found in the above-described location and if no person or persons be found in possession thereof, you shall leave a copy of this warrant inside the building. Service of this warrant by fax or mail is authorized.

HEREIN FAIL NOT.

WITNESS my hand and seal this 31 day of MAY, 20 17

JUDGE

32866 0-000000643

2013 MAY 31 PM 1:25

YAKIMA COUNTY

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

STATE OF WASHINGTON)
) SS.
County of Yakima)

AFFIDAVIT FOR SEARCH WARRANT

130243

I Detective Sam Parrault, being first duly sworn upon oath, before the undersigned Judge of The Yakima County District Court, hereby deposes and says: That your affiant is a duly commissioned law enforcement officer with the Yakima County Sheriff's Office, and that he has probable cause to believe and does believe that evidence of the crime of Attempted First Degree Murder is located at Level 3 Communications, Attn: Subpoena Compliance, 1025 El Dorado BLVD, Broomfield, CO 80021; Fax: (720) 888-5631.

To wit: All call and text detail information for Level 3 Communications telephone number (509) 774-6199 from May 23, 2013 to 30 days from the date of this warrant. Text information is to include the content of the text messages when it's available. Also include all applicable cell tower data, including their locations from May 23, 2013 to 30 days from the date of this warrant. If this account has GPS enabled include the exact locations of the phone from May 23, 2013 to 30 days from the date of this warrant. If available, include Per Call Measurement Data (PCMD) from May 23, 2013 to 30 days from the date of this warrant. This warrant shall include billing information for this phone number to include the name, address and personal information of this subscriber.

This search warrant shall authorize the search of the telephone records for (509) 774-6199 at Level 3 Communications, Attn: Subpoena Compliance, 1025 El Dorado BLVD, Broomfield, CO 80021; Fax: (720) 888-5631.

Your affiant's probable cause is based on the following facts:

The following incident happened in the County of Yakima and State of Washington. On 05-25-13 Vernon "Vern" Holbrook, who is a 78 year old realtor in Yakima County went to show houses in the Cowiche/ Tieton Area. Vern arranged to show a home locat 32866 0-000000644

The home was listed by Ricardo Villasenor. Vern arranged to meet Ricardo at the house at about 1100 hrs.

Vern & Ricardo communicated via telephone that morning. Vern mentioned to Ricardo that his clients were from out of town, and that he did not have a telephone number to reach them. He said that they were staying at the Oxford Suites in Terrace Heights. During one of the calls Ricardo told Vern that he was on his way to the house, and only five minutes away. Vern told Ricardo not to rush because he was going to show the clients another home on Franklin RD in Tieton before the Summitview RD home. Vern said that his clients were running late, but that they had called him to tell him that they would be there. Vern asked Ricardo to unlock the Summitview RD home, and leave it unlocked for him.

Vern's daughter- in- law, Terra Rockenfield, texted Vern Saturday morning, and arranged to meet him to borrow his pick-up. At 1116 hrs Vern texted Terra, and said, "I am delayed on my showing. Client got lost. Just arriving. See you soon."

Vern had plans to go fishing with his wife on Saturday afternoon, but never returned home. She called the office to see if anyone knew where Vern had gone. [Vern's wife later said that Vern had scheduled a showing of the same house the previous night, but the clients had called to cancel due to an ill child. She had gone with Vern to that showing. They had noted that a car drove by slowly, like it was going to stop at the house, but appeared to continue on when they saw that Vern was not alone.]

Saturday evening a co-worker, Javier Cardenas, went to Vern's last known location, 17481 Summitview RD. Upon arrival Javier noted that Vern's pick-up was parked in the driveway. Javier did not have a key to the residence, and feared that Vern had suffered a heart attack inside the residence. He called 911 at 1939 hrs. A neighbor with a key to the house entered the residence with Javier. As they were checking the residence they found Vern lying in a pool of blood in a bedroom in the northwest corner of the residence. Vern had been severely beaten and his throat had been cut.

Vern was transported to Yakima Memorial Hospital, and later transferred to Harborview Hospital in Seattle. He suffered multiple skull fractures, an orbital fracture, and multiple lacerations. The only reason that he was not dead when paramedics arrived was because when the suspects cut his throat they missed his artery. He is still alive, but in critical condition.

[Soon after Vern was located and family and friends were notified of what had happened, people started to call the Yakima County Sheriff's Office (YCSO). They were concerned that Daniel Blizzard had been involved in the attack on Vern. Daniel was said to have been a former business associate of Vern's, and their business dealings had gone badly. He was known to carry a million dollar life insurance policy on Vern. Other family members called to report that Jill Taylor was dating Daniel, and had recently made indirect threats towards Vern saying things similar to "Vern needs to be careful who he makes an enemy."]

Vern was known to have his iPhone with him when he went to the house, but it was missing from the scene. On 05-25-13 I did an exigent circumstances request with Vern's cell phone carrier, AT&T Wireless. Vern's phone was no longer active, and could not be located. AT&T faxed me a copy of Vern's call detail records for the day. The records confirmed the times of the calls between Vern and Ricardo. There were also two incoming calls from (509) 910-6581 at 1044 hrs and 1115 hrs. The call at 1044 hrs was flanked by the calls between Vern & Ricardo, and was likely the call that Vern received right before he told Ricardo that his clients were on their way. The call at 1115 hrs was the last call that connected, and it was right before Vern's text to Terra. Fonefinder.net and the Number Portability Administration Center (NPAC) listed that number as belonging to Sprint Wireless. I called the number, but the call went straight to voice mail. I asked for a return call.

On 05-26-13 I obtained a telephonic search warrant for the number (509) 910-6581 through Sprint Wireless. I also filed an exigent circumstances request with Sprint. A short time later they e-mailed me the phone records. The call detail records included "Per Call Measurement Data", which estimated the position of the phone when each call was made. The position was given with a longitude and latitude. When I mapped the calls I noted that most of the calls were in the Northeast Yakima area, but the caller was in the Cowiche area when the call was made to Vern at 1115 hrs. The subscriber for the phone was listed as Adriana Mendez.

On the evening of 05-26-13 Adriana called YCSO dispatch and said that she had gotten my message. It was arranged for her to come to YCSO on 05-27-13 at 1300 hrs. Adriana did not make it to the meeting. She was later located at the Sunshine Motel in Yakima. She agreed to come to YCSO to speak to detectives. At the beginning of the statement she was read her Miranda Warnings. She agreed to waive her rights and provide a taped statement.

Adriana admitted that the phone number in question belonged to her. She said that she had used *67 to conceal her phone number from Vern when she called him. Initially, Adriana lied about why she had called Vern, and said that she had not been to Tieton for a few years. Eventually, she provided the following version of events. Adriana was a good friend of Jill Taylor. Adriana lived with Jill for 2-3 months at the beginning of 2013. Adriana met Daniel Blizzard through Jill, and also became good friends with him. Adriana had dated Luis Gomez-Monges off and on for approximately four years. They had a child in common. She introduced Luis to Jill and Daniel.

The week of 05-20-13 Luis told Adriana to call Aspen Real Estate, and set-up a viewing of homes in the country. Adriana said that she called Aspen Real Estate, and specifically requested to speak to Vern. Adriana said that she knew Vern's name because of her friendship with Jill and Daniel. Adriana said that she provided Vern with a false name, and a back story that she and her husband were in town from Texas. They were staying at the Oxford Suites, and looking to purchase a home in the country. The initial appointment was set-up for 05-24-13 at 1900 hrs. However, Adriana said that she called to cancel. She gave Vern the excuse that she had to take her child to the doctor.

On 05-25-13 Adriana and Luis met Vern at a house in Tieton. At the time they had her three small children with them. The kids stayed in the car while they viewed the first house. Vern had told Adriana and Luis that the homeowner was around, and they saw a car in the driveway.

Next Vern lead Luis and Adriana to 17481 Summitview RD. They went inside the house, and left the kids in the car. They went through the house, and wound up in the northwest bedroom. Adriana was standing beside Vern, and he was looking out a window. Luis was standing behind Vern, and off to his right. Adriana said that she saw Luis take a bladed stance like he was getting ready to hit Vern. She turned to walk out of the room, and said that she was going to check the kids. She saw Luis hit Vern in the back right side of his head. She saw Vern's Knees buckle, and turned to leave the room. She heard a loud thump that sounded like a body hitting the floor. Adriana said that Vern had been very respectful to both her and Luis prior to Luis assaulting him. She said that no angry words had been spoken, and there did not appear to be any provocation.

Adriana went to the car, and sat with the kids. Within a few minutes Luis came to the car. He was excited, and seemed to be in a hurry. He was taking deep breaths, and sped all the way back to Yakima. He turned the radio up loud. During the drive back to Yakima Luis opened his door, and "may have" tossed something out. Luis took Adriana back to her residence, and left. She denied that there was a conspiracy with her, Luis, Daniel Blizzard, and Jill Taylor to kill Vern. She also denied that she knew Luis was going to attack Vern.

Adriana said that Luis picked her up in an older dark gray small four door car that had faded paint. She did not know the make or model. She said that they drove the car to and from the crime scene.

Adriana's call detail records show that there were several text messages between her phone and a number that she identified as belonging to Daniel Blizzard on the day of the attack. The number was (509) 774-6192. Fonfinder.net and the NPAC listed that number as belonging to Level 3 Communications. She also said that Daniel came to her hotel room on Saturday afternoon, and drove her around to run errands. At the conclusion of her statement Adriana was taken into custody, and booked at the Yakima County Jail.

On 05-27-13 Luis Gomez-Monges was located and detained by members of the Violent Crimes Task Force at Yakama Nations Legends Casino. He was transported to YCSO, and placed in interview room #2. A Spanish speaking interpreter was used to communicate with Luis. He was read his Miranda Warnings. He agreed to waive his rights and provide a taped statement. He admitted that he was with Adriana on Saturday, and provided the same story that Adriana had initially. It was obvious that they had synchronized their stories. He claimed that they had called the realtor to sell his mother's mobile home. He denied that they had gone to look at any houses, and that he had assaulted anyone.

Luis said that Saturday afternoon Adriana's friend, who he knew as Daniel or "Papoy", came over to the motel room, and hung out with them. Luis said that on the day that Vern was attacked he borrowed his mother's gray Hyundai Elantra to drive Adriana around. He said that they ran errands, and went job hunting at orchards in the Cowiche area. W

dropped Adriana and her kids off at the Sunshine Motel. He then returned the car to his mother's house.

When Luis was detained he was carrying a new cellular telephone. He said that he had just purchased the phone at Boost Mobile. He said that he had traded in an old iPhone that his mother had given him. Inside of Luis' pocket he had a receipt from "Phone Lot", and a business card from the salesman who had helped him. The paperwork listed Luis' phone number as (509) 759-1326. Fonefinder.net and the NPAC list that number as belonging to Sprint Wireless. At the conclusion of his statement Luis was taken into custody, and booked at the Yakima County Jail.

On 05-28-13 detectives contacted Luis' mother, Daria Martinez, at her residence; 812 S. 6th AVE, Yakima, WA. Her gray 2003 Hyundai Elantra (WA License 021ZNB) was parked in front of the house. Daria confirmed that Luis had borrowed the car on Saturday 05-25-13. He picked the car up at approximately 1100 hrs, and brought it back approximately one hour later. She did not look at the clock when he returned, and she did not know the exact times. Daria denied that she had given Luis an iPhone, and said that she did not own an iPhone. The Hyundai was impounded as evidence, and hauled back to YCSO, where it was placed in the secure evidence bay.

On 05-28-13 I met with Vern's personal assistant, Delfina Valle. She said that Vern had started getting calls from a private number on Thursday 05-23-13. The calls were supposedly from a married couple who were in town from Texas, and were in a hurry to buy a house. It was the same couple who had set-up the showing on Friday evening. The couple called Vern's cell phone directly, and claimed to be a referral from someone that Vern knew. Delfina overheard the conversation. Vern told the person that he was busy on Thursday, but could send an agent out to show them the Cowiche house that day. The client declined, and said that they would wait for Vern to show the house on Friday.

Vern had told Delfina, approximately one month before the attack, that he had a heated meeting with Jill Taylor. Up until that time, Vern had been paying Jill's rent and car payment; because she was the mother of his grandchildren. When Vern met with Jill she asked him for money. He informed her that he was going to put a stop to the payments, and she became very angry.

Vern's son, Terry Holbrook was present when I spoke to Delfina. Terry said that approximately three years ago Daniel Blizzard and his brothers made a deal to buy Aspen Real Estate from Vern. As a part of the deal the Blizzards formed a new company called Aspen Blizzard, and hired Vern to manage the day to day operations of the business. Aspen Blizzard took out a $1 million life insurance policy on Vern through New York Life Insurance. The deal went forward, and operated for approximately one year. Aspen Blizzard paid the life insurance premium, but failed to make the payments to Vern for the purchase of the company. Therefore, Vern took the business back from them. Reportedly, there were hard feelings over the deal, threats were made against Vern, and the Blizzards filed a civil law suit. Since then they have continued to pay the premium on the life insurance policy.

On 05-29-13 Det. Mallonee, who has been trained in child forensic interviews, interviewed Adriana's children. Adriana's eight year old son said that on Saturday he, his two sisters, his mother, and his dad, Luis, drove to the country in a small gray car to look for a house to live in. He said that they went to a big house first where his mom and dad went inside to look at the house with an old man. The boy said that he and his sisters waited in the car while his parents looked at the house. Next, they went to a smaller house with the same old man. The boy's mom and dad went inside the house with the old man. A short time later his mom and dad came out of the house, but the old man stayed there.

Adriana's five year old daughter acknowledged that she and her family had gone shopping on Saturday, but was not able to convey the details. She did recall that her mom's friend, Daniel, had come to the motel Saturday afternoon. The girl knew Daniel as "Papoy". The girl said that she had played games on Daniel's iPhone. Adriana's three year old daughter was too young to interview affectively.

On 05-29-13 I went to the "Phone Lot" at 1731 S. 1st ST in Yakima. They provided me with the iPhone that Luis had traded in for his new phone. They informed me that Luis had been a repeat customer. I was able to confirm that the iPhone did not belong to Vern. However, it is suspicious that Luis would have an iPhone when he was reported to have trouble paying his rent. One of his friends described having to lend Luis money to buy groceries to feed the kids.

On 05-30-13 I served a search warrant at the Sunshine Motel, where Luis and Adriana had been staying. Inside of a garbage bag I found a piece of paper with phone numbers written on it. The numbers included two numbers for YCSO and the phone number for Det. Engquist, who Adriana had spoken to about setting up the 1:00 meeting. There was also a number listed for "Papoy" (Daniel's nickname). The number was listed as (509) 774-6199. Fonefinder.net and NPAC list that number as belonging to Level 3 Communications.

The manager of the Sunshine Motel told me that Adriana had a rich white friend named Daniel, who would often come to visit her. Daniel told the manger that he was a former employee of Aspen Real Estate, and was in the process of suing them. He said that he was about to come into a large sum of money, and was going to take Adriana, Luis, and their kids on a cruise to the Bahamas. The manager showed me a video of Daniel Blizzard walking into the office with Adriana, and paying her rent.

THEREFORE, your affiant prays that a Search Warrant be issued directly to the Sheriff of Yakima County, Washington, or to any peace officer in the county duly authorized to enforce or assist in enforcing any law herein, commanding him to search the above-described business, and to seize any and all of the above described evidence if found and safely keep same and make return of said warrant within three (3) days, showing all articles seized and the name of any person or persons in whose possession the same are found, if any, and if no person be found in the possession of said articles, that the return shall so state.

AFFIANT

SUBSCRIBED AND SWORN to before me this 31 day of MAY, 2017

JUDGE

32866 0-000000650

APPENDIX 3

June 21, 2013 - Search Warrant and
Affidavit of Search Warrant to
GOGII, Inc.
(Yakima County District Court)

2013 JUN 21 AM 8:41

FILED
YAKIMA COUNTY
DISTRICT COURT

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

STATE OF WASHINGTON)
) ss.
County of Yakima)

130391

SEARCH WARRANT

In the name of the State of Washington, to the Sheriff of Yakima County, State of Washington, his deputies or to any peace officer of the State of Washington duly authorized to enforce or assist in enforcing any law thereof, GREETINGS: whereas, complaint has been made to and signed before the undersigned District Court Judge by Detective Sam Perrault, of the Yakima County Sheriff's Office, stating under oath, that he has probable cause and does believe that corroborating evidence of the crime of Attempted First Degree Murder is located at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

To wit: All call and text logs for telephone number (509) 774-6199 from May 23, 2013 to 30 days from the date of this warrant. Text information is to include the content of the text messages when it's available. Also include all applicable IP addresses, and wireless Internet connection data and locations from May 23, 2013 to 30 days from the date of this warrant. Include any known information regarding the device(s) associated with this account including but not limted to types, model numbers, serial numbers, etc. This warrant shall include all known information for the subscriber, including but not limited to name, address and personal information.

Your affiant has probable cause to believe that the above crime has been committed and the items being sought are in the location described hereafter: In the telephone records for (509) 774-6199 at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

NOW, THEREFORE, you are hereby commanded in the name of the State of Washington within ten (10) days of this date, to use such force as may be necessary to search the above-described business and to seize the above described evidence, and to safely keep the same as provided by law and to make a return of this warrant within three (3) days of the date thereof, showing all acts and things done hereunder, with a particular statement of all articles seized and names of all persons in

32866 0-000000672

whose possession the same were found, if any, and if no person be found in possession of said articles, then your return shall so state.

You are further commanded to serve a copy of this warrant upon the person or persons found in the above-described location and if no person or persons be found in possession thereof, you shall leave a copy of this warrant inside the building. Service of this warrant by fax or mail is authorized.

HEREIN FAIL NOT.

WITNESS my hand and seal this 21 day of June, 2013.

JUDGE

32866 0-000000673

2013 JUN 21 AM 8:41

YAKIMA COUNTY
DISTRICT COURT

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

130391

STATE OF WASHINGTON)
) SS. **AFFIDAVIT FOR SEARCH WARRANT**
County of Yakima)

I Detective Sam Perrault, being first duly sworn upon oath, before the undersigned Judge of The Yakima County District Court, hereby deposes and says: That your affiant is a duly commissioned law enforcement officer with the Yakima County Sheriff's Office, and that he has probable cause to believe and does believe that evidence of the crime of Attempted First Degree Murder is located at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com

To wit: All call and text logs for telephone number (509) 774-6199 from May 23, 2013 to 30 days from the date of this warrant. Text information is to include the content of the text messages when it's available. Also include all applicable IP addresses, and wireless Internet connection data and locations from May 23, 2013 to 30 days from the date of this warrant. Include any known information regarding the device(s) associated with this account including but not limted to types, model numbers, serial numbers, etc. This warrant shall include all known information for the subscriber, including but not limited to name, address and personal information.

This search warrant shall authorize the search of the telephone records for (509) 774-6199 at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

Your affiant's probable cause is based on the following facts:

The following incident happened in the County of Yakima and State of Washington. On 05-25-13 Vernon "Vern" Holbrook, who is a 78 year old realtor in Yakima County went to show houses in the Cowiche/ Tieton Area. Vern arranged to show a home located at 17481 Summitview RD.

The home was listed by Ricardo Villasenor. Vern arranged to meet Ricardo at the house at about 1100 hrs.

Vern & Ricardo communicated via telephone that morning. Vern mentioned to Ricardo that his clients were from out of town, and that he did not have a telephone number to reach them. He said that they were staying at the Oxford Suites in Terrace Heights. During one of the calls Ricardo told Vern that he was on his way to the house, and only five minutes away. Vern told Ricardo not to rush because he was going to show the clients another home on Franklin RD in Tieton before the Summitview RD home. Vern said that his clients were running late, but that they had called him to tell him that they would be there. Vern asked Ricardo to unlock the Summitview RD home, and leave it unlocked for him.

NOT IN TELEPHONIC S.W.

Vern's daughter- in- law, Terra Rockenfield, texted Vern Saturday morning, and arranged to meet him to borrow his pick-up. At 1116 hrs Vern texted Terra, and said, "I am delayed on my showing. Client got lost. Just arriving. See you soon."

Vern had plans to go fishing with his wife on Saturday afternoon, but never returned home. She called the office to see if anyone knew where Vern had gone. Vern's wife later said that Vern had scheduled a showing of the same house the previous night, but the clients had called to cancel due to an ill child. She had gone with Vern to that showing. They had noted that a car drove by slowly, like it was going to stop at the house, but appeared to continue on when they saw that Vern was not alone.

NOT IN TELEPHONIC. S.W. BUT GOT FAM. INTRVW. W/ V's WIFE.

Saturday evening a co-worker, Javier Cardenas, went to Vern's last known location, 17481 Summitview RD. Upon arrival Javier noted that Vern's pick-up was parked in the driveway. Javier did not have a key to the residence, and feared that Vern had suffered a heart attack inside the residence. He called 911 at 1939 hrs. A neighbor with a key to the house entered the residence with Javier. As they were checking the residence they found Vern lying in a pool of blood in a bedroom in the northwest corner of the residence. Vern had been severely beaten and his throat had been cut.

Vern was transported to Yakima Memorial Hospital, and later transferred to Harborview Hospital in Seattle. He suffered multiple skull fractures, an orbital fracture, and multiple lacerations. The only reason that he was not dead when paramedics arrived was because when the suspects cut his throat they missed his artery. He is still alive, but in critical condition.

Soon after Vern was located and family and friends were notified of what had happened, people started to call the Yakima County Sheriff's Office (YCSO). They were concerned that Daniel Blizzard had been involved in the attack on Vern. Daniel was said to have been a former business associate of Vern's, and their business dealings had gone badly. He was known to carry a million dollar life insurance policy on Vern. Other family members called to report that Jill Taylor was dating Daniel, and had recently made indirect threats towards Vern saying things similar to "Vern needs to be careful who he makes an enemy."

NOT IN TELEPHONIC S.W.

Vern was known to have his iPhone with him when he went to the house, but it was missing from the scene. On 05-25-13 I did an exigent circumstances request with Vern's cell phone carrier, AT&T Wireless. Vern's phone was no longer active, and could not be located. AT&T faxed me a copy of Vern's call detail records for the day. The records confirmed the times of the calls between Vern and Ricardo. There were also two incoming calls from (509) 910-6581 at 1044 hrs and 1115 hrs. The call at 1044 hrs was flanked by the calls between Vern & Ricardo, and was likely the call that Vern received right before he told Ricardo that his clients were on their way. The call at 1115 hrs was the last call that connected, and it was right before Vern's text to Terra. Fonefinder.net and the Number Portability Administration Center (NPAC) listed that number as belonging to Sprint Wireless. I called the number, but the call went straight to voice mail. I asked for a return call.

NOT IN TLAHC. S.W.

On 05-26-13 I obtained a telephonic search warrant for the number (509) 910-6581 through Sprint Wireless. I also filed an exigent circumstances request with Sprint. A short time later they e-mailed me the phone records. The call detail records included "Per Call Measurement Data", which estimated the position of the phone when each call was made. The position was given with a longitude and latitude. When I mapped the calls I noted that most of the calls were in the Northeast Yakima area, but the caller was in the Cowiche area when the call was made to Vern at 1115 hrs. The subscriber for the phone was listed as Adriana Mendez.

NOT IN TLAHC. S.W.

On the evening of 05-26-13 Adriana called YCSO dispatch and said that she had gotten my message. It was arranged for her to come to YCSO on 05-27-13 at 1300 hrs. Adriana did not make it to the meeting. She was later located at the Sunshine Motel in Yakima. She agreed to come to YCSO to speak to detectives. At the beginning of the statement she was read her Miranda Warnings. She agreed to waive her rights and provide a taped statement.

Adriana admitted that the phone number in question belonged to her. She said that she had used *67 to conceal her phone number from Vern when she called him. Initially, Adriana lied about why she had called Vern, and said that she had not been to Tieton for a few years. Eventually, she provided the following version of events. Adriana was a good friend of Jill Taylor. Adriana lived with Jill for 2-3 months at the beginning of 2013. Adriana met Daniel Blizzard through Jill, and also became good friends with him. Adriana had dated Luis Gomez-Monges off and on for approximately four years. They had a child in common. She introduced Luis to Jill and Daniel.

The week of 05-20-13 Luis told Adriana to call Aspen Real Estate, and set-up a viewing of homes in the country. Adriana said that she called Aspen Real Estate, and specifically requested to speak to Vern. Adriana said that she knew Vern's name because of her friendship with Jill and Daniel. Adriana said that she provided Vern with a false name, and a back story that she and her husband were in town from Texas. They were staying at the Oxford Suites, and looking to purchase a home in the country. The initial appointment was set-up for 05-24-13 at 1900 hrs. However, Adriana said that she called to cancel. She gave Vern the excuse that she had to take her child to the doctor.

On 05-25-13 Adriana and Luis met Vern at a house in Tieton. At the time they had her three small children with them. The kids stayed in the car while they viewed the first house. Vern had told Adriana and Luis that the homeowner was around, and they saw a car in the driveway.

Next Vern lead Luis and Adriana to 17481 Summitview RD. They went inside the house, and left the kids in the car. They went through the house, and wound up in the northwest bedroom. Adriana was standing beside Vern, and he was looking out a window. Luis was standing behind Vern, and off to his right. Adriana said that she saw Luis take a bladed stance like he was getting ready to hit Vern. She turned to walk out of the room, and said that she was going to check the kids. She saw Luis hit Vern in the back right side of his head. She saw Vern's Knees buckle, and turned to leave the room. She heard a loud thump that sounded like a body hitting the floor. Adriana said that Vern had been very respectful to both her and Luis prior to Luis assaulting him. She said that no angry words had been spoken, and there did not appear to be any provocation.

NOT IN TIMING S.W.

Adriana went to the car, and sat with the kids. Within a few minutes Luis came to the car. He was excited, and seemed to be in a hurry. He was taking deep breaths, and sped all the way back to Yakima. He turned the radio up loud. During the drive back to Yakima Luis opened his door, and "may have" tossed something out. Luis took Adriana back to her residence, and left. She denied that there was a conspiracy with her, Luis, Daniel Blizzard, and Jill Taylor to kill Vern. She also denied that she knew Luis was going to attack Vern.

Adriana said that Luis picked her up in an older dark gray small four door car that had faded paint. She did not know the make or model. She said that they drove the car to and from the crime scene.

Adriana's call detail records show that there were several text messages between her phone and a number that she identified as belonging to Daniel Blizzard on the day of the attack. The number was (509) 774-6192. Fonfinder.net and the NPAC listed that number as belonging to Level 3 Communications. She also said that Daniel came to her hotel room on Saturday afternoon, and drove her around to run errands. At the conclusion of her statement Adriana was taken into custody, and booked at the Yakima County Jail.

On 05-27-13 Luis Gomez-Monges was located and detained by members of the Violent Crimes Task Force at Yakama Nations Legends Casino. He was transported to YCSO, and placed in interview room #2. A Spanish speaking interpreter was used to communicate with Luis. He was read his Miranda Warnings. He agreed to waive his rights and provide a taped statement. He admitted that he was with Adriana on Saturday, and provided the same story that Adriana had initially. It was obvious that they had synchronized their stories. He claimed that they had called the realtor to sell his mother's mobile home. He denied that they had gone to look at any houses, and that he had assaulted anyone.

Luis said that Saturday afternoon Adriana's friend, who he knew as Daniel or "Papoy", came over to the motel room, and hung out with them. Luis said that on the day that Vern was attacked he borrowed his mother's gray Hyundai Elantra to drive Adriana around. He said that they ran errands, and went job hunting at orchards in the Cowiche area. When they were finished he

dropped Adriana and her kids off at the Sunshine Motel. He then returned the car to his mother's house.

When Luis was detained he was carrying a new cellular telephone. He said that he had just purchased the phone at Boost Mobile. He said that he had traded in an old iPhone that his mother had given him. Inside of Luis' pocket he had a receipt from "Phone Lot", and a business card from the salesman who had helped him. The paperwork listed Luis' phone number as (509) 759-1326. Fonefinder.net and the NPAC list that number as belonging to Sprint Wireless. At the conclusion of his statement Luis was taken into custody, and booked at the Yakima County Jail.

On 05-28-13 detectives contacted Luis' mother, Daria Martinez, at her residence; 812 S. 6th AVE, Yakima, WA. Her gray 2003 Hyundai Elantra (WA License 021ZNB) was parked in front of the house. Daria confirmed that Luis had borrowed the car on Saturday 05-25-13. He picked the car up at approximately 1100 hrs, and brought it back approximately one hour later. She did not look at the clock when he returned, and she did not know the exact times. Daria denied that she had given Luis an iPhone, and said that she did not own an iPhone. The Hyundai was impounded as evidence, and hauled back to YCSO, where it was placed in the secure evidence bay.

On 05-28-13 I met with Vern's personal assistant, Delfina Valle. She said that Vern had started getting calls from a private number on Thursday 05-23-13. The calls were supposedly from a married couple who were in town from Texas, and were in a hurry to buy a house. It was the same couple who had set-up the showing on Friday evening. The couple called Vern's cell phone directly, and claimed to be a referral from someone that Vern knew. Delfina overheard the conversation. Vern told the person that he was busy on Thursday, but could send an agent out to show them the Cowiche house that day. The client declined, and said that they would wait for Vern to show the house on Friday.

Vern had told Delfina, approximately one month before the attack, that he had a heated meeting with Jill Taylor. Up until that time, Vern had been paying Jill's rent and car payment; because she was the mother of his grandchildren. When Vern met with Jill she asked him for money. He informed her that he was going to put a stop to the payments, and she became very angry.

Vern's son, Terry Holbrook was present when I spoke to Delfina. Terry said that approximately three years ago Daniel Blizzard and his brothers made a deal to buy Aspen Real Estate from Vern. As a part of the deal the Blizzards formed a new company called Aspen Blizzard, and hired Vern to manage the day to day operations of the business. Aspen Blizzard took out a $1 million life insurance policy on Vern through New York Life Insurance. The deal went forward, and operated for approximately one year. Aspen Blizzard paid the life insurance premium, but failed to make the payments to Vern for the purchase of the company. Therefore, Vern took the business back from them. Reportedly, there were hard feelings over the deal, threats were made against Vern, and the Blizzards filed a civil law suit. Since then they have continued to pay the premium on the life insurance policy.

On 05-29-13 Det. Mallonee, who has been trained in child forensic interviews, interviewed Adriana's children. Adriana's eight year old son said that on Saturday he, his two sisters, his mother, and his dad, Luis, drove to the country in a small gray car to look for a house to live in. He said that they went to a big house first where his mom and dad went inside to look at the house with an old man. The boy said that he and his sisters waited in the car while his parents looked at the house. Next, they went to a smaller house with the same old man. The boy's mom and dad went inside the house with the old man. A short time later his mom and dad came out of the house, but the old man stayed there.

Adriana's five year old daughter acknowledged that she and her family had gone shopping on Saturday, but was not able to convey the details. She did recall that her mom's friend, Daniel, had come to the motel Saturday afternoon. The girl knew Daniel as "Papoy". The girl said that she had played games on Daniel's iPhone. Adriana's three year old daughter was too young to interview affectively.

NOT IN YAKIMA S.W.

On 05-29-13 I went to the "Phone Lot" at 1731 S. 1st ST in Yakima. They provided me with the iPhone that Luis had traded in for his new phone. They informed me that Luis had been a repeat customer. I was able to confirm that the iPhone did not belong to Vern. However, it is suspicious that Luis would have an iPhone when he was reported to have trouble paying his rent. One of his friends described having to lend Luis money to buy groceries to feed the kids.

On 05-30-13 I served a search warrant at the Sunshine Motel, where Luis and Adriana had been staying. Inside of a garbage bag I found a piece of paper with phone numbers written on it. The numbers included two numbers for YCSO and the phone number for Det. Engquist, who Adriana had spoken to about setting up the 1:00 meeting. There was also a number listed for "Papoy" (Daniel's nickname). The number was listed as (509) 774-6199. Fonefinder.net and NPAC list that number as belonging to Level 3 Communications.

The manager of the Sunshine Motel told me that Adriana had a rich white friend named Daniel, who would often come to visit her. Daniel told the manger that he was a former employee of Aspen Real Estate, and was in the process of suing them. He said that he was about to come into a large sum of money, and was going to take Adriana, Luis, and their kids on a cruise to the Bahamas. The manager showed me a video of Daniel Blizzard walking into the office with Adriana, and paying her rent.

On 05-31-13 I obtained search warrants for both of Daniel's numbers, which were listed through Level 3 Communications; (509) 774-6192 & (509) 774-6199. On 06-20-13 I spoke to a representative from Level 3 Communications. He told me that Level 3 was the original carrier for the lines, but the lines had been sold to GOGII, Inc. GOGII, Inc. provides an Application for Apple products, which allows people to send messages via the Apple product. I called and spoke to a representative from GOGII, Inc. He confirmed that they owned both numbers.

THEREFORE, your affiant prays that a Search Warrant be issued directly to the Sheriff of Yakima County, Washington, or to any peace officer in the county duly authorized to enforce or assist in enforcing any law herein, commanding him to search the above-described

business, and to seize any and all of the above described evidence if found and safely keep same and make return of said warrant within three (3) days, showing all articles seized and the name of any person or persons in whose possession the same are found, if any, and if no person be found in the possession of said articles, that the return shall so state.

eRult #90

AFFIANT

SUBSCRIBED AND SWORN to before me this 21 day of June, 2013

JUDGE

32866 0-000000680

APPENDIX 4

September 26, 2013 - Search Warrant and Affidavit of Search Warrant to GOGII, Inc. (Yakima County Superior Court)

2013 SEP 26 A 10:01

JW 13-152A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

STATE OF WASHINGTON)
) ss.
County of Yakima)

SEARCH WARRANT

YCSO Case 13C07296
Daniel Blizzard Text Records

In the name of the State of Washington, to the Sheriff of Yakima County, State of Washington, his deputies or to any peace officer of the State of Washington duly authorized to enforce or assist in enforcing any law thereof, GREETINGS: whereas, complaint has been made to and signed before the undersigned Superior Court Judge by Detective Sam Perrault, of the Yakima County Sheriff's Office, stating under oath, that he has probable cause and does believe that corroborating evidence of the crime of Attempted First Degree Murder is located at at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

To wit: All call and text logs for telephone number (509) 774-6199 from May 23, 2013 to May 25, 2013. Text information is to include the content of the text messages when it's available. Also include all applicable IP addresses, and wireless Internet connection data and locations from May 23, 2013 to May 25, 2013. Include any known information regarding the device(s) associated with this account including but not limted to types, model numbers, serial numbers, etc. This warrant shall include all known information for the subscriber, including but not limited to name, address and personal information.

Your affiant has probable cause to believe that the above crime has been committed and the items being sought are in the location described hereafter: In the business records for (509) 774-6199 at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

NOW, THEREFORE, you are hereby commanded in the name of the State of Washington within ten (10) days of this date, to use such force as may be necessary to search the above-described business and to seize the above described evidence, and to safely keep the same as provided by law and to make a return of this warrant within three (3) days of the 32866 0-000000744

things done hereunder, with a particular statement of all articles seized and names of all persons in whose possession the same were found, if any, and if no person be found in possession of said articles, then your return shall so state.

You are further commanded to serve a copy of this warrant upon the person or persons found in the above-described location and if no person or persons be found in possession thereof, you shall leave a copy of this warrant inside the building. Service of this warrant by fax or mail is authorized.

HEREIN FAIL NOT.

WITNESS my hand and seal this 26 day of Sept, 2013.

Superior Court JUDGE

32866 0-000000745

FILED

2013 SEP 26 A 10:01

KIM EATON
BY DEPUTY CLERK

SW 13-152A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

STATE OF WASHINGTON)
) SS.
County of Yakima)

AFFIDAVIT FOR SEARCH WARRANT

YCSO Case 13C07296
Daniel Blizzard Text Records

I Detective Sam Perrault, being first duly sworn upon oath, before the undersigned Judge of The Yakima County Superior Court, hereby deposes and says: That your affiant is a duly commissioned law enforcement officer with the Yakima County Sheriff's Office, and that he has probable cause to believe and does believe that evidence of the crime of Attempted First Degree Murder is located at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com

To wit: All call and text logs for telephone number (509) 774-6199 from May 23, 2013 to May 25, 2013. Text information is to include the content of the text messages when it's available. Also include all applicable IP addresses, and wireless Internet connection data and locations from May 23, 2013 to May 25, 2013. Include any known information regarding the device(s) associated with this account including but not limted to types, model numbers, serial numbers, etc. This warrant shall include all known information for the subscriber, including but not limited to name, address and personal information.

This search warrant shall authorize the search of the telephone records for (509) 774-6199 at GOGII Inc/ TextPlus, Attn: Subpoena Compliance, 13160 Mindanao Way, Suite 217, Marina del Rey, CA 90292; Law Enforcement Fax: 800-883-8309; email: LawEnforcement@textplus.com.

Your affiant's probable cause is based on the following facts:

32866 0-000000746

The following incident happened in the County of Yakima and State of Washington. On 05-25-13 Vernon "Vern" Holbrook, who is a 78 year old realtor in Yakima County went to show houses in the Cowiche/ Tieton Area. Vern arranged to show a home located at 17481 Summitview RD.

The home was listed by Ricardo Villasenor. Vern arranged to meet Ricardo at the house at about 1100 hrs.

Vern & Ricardo communicated via telephone that morning. Vern mentioned to Ricardo that his clients were from out of town, and that he did not have a telephone number to reach them. He said that they were staying at the Oxford Suites in Terrace Heights. During one of the calls Ricardo told Vern that he was on his way to the house, and only five minutes away. Vern told Ricardo not to rush because he was going to show the clients another home on Franklin RD in Tieton before the Summitview RD home. Vern said that his clients were running late, but that they had called him to tell him that they would be there. Vern asked Ricardo to unlock the Summitview RD home, and leave it unlocked for him.

Vern's daughter- in- law, Terra Rockenfield, texted Vern Saturday morning, and arranged to meet him to borrow his pick-up. At 1116 hrs Vern texted Terra, and said, "I am delayed on my showing. Client got lost. Just arriving. See you soon."

Vern had plans to go fishing with his wife on Saturday afternoon, but never returned home. She called the office to see if anyone knew where Vern had gone. Vern's wife later said that Vern had scheduled a showing of the same house the previous night, but the clients had called to cancel due to an ill child. She had gone with Vern to that showing.

Saturday evening a co-worker, Javier Cardenas, went to Vern's last known location, 17481 Summitview RD. Upon arrival Javier noted that Vern's pick-up was parked in the driveway. Javier did not have a key to the residence, and feared that Vern had suffered a heart attack inside the residence. He called 911 at 1939 hrs. A neighbor with a key approached Javier to see what he was doing. Javier explained, and they decided the check the residence. They found that the front door was unlocked. As they were checking the residence they found Vern lying in a pool of blood in a bedroom in the northwest corner of the house. Vern had been severely beaten and his throat had been cut.

Vern was transported to Yakima Memorial Hospital, and later transferred to Harborview Medical Center in Seattle. He suffered multiple skull fractures, an orbital fracture, and multiple lacerations. The only reason that he was not dead when paramedics arrived was because when the suspects cut his throat they missed his artery. Vern suffered severe brain damage. His condition has improved, and he has periods of lucidity where he utters phrases. One of the phrases that Vern has uttered is, "That girl pushed me." Vern is still unfit to interview, and the full extent of his long term brain damage is unknown.

Soon after Vern was located and family and friends were notified of what had happened, people started to call the Yakima County Sheriff's Office (YCSO). They were concerned that Daniel Blizzard had been involved in the attack on Vern. Daniel was said to have been a former business associate of Vern's, and their business dealings had gone badly. H 32866 0-000000747 dollar life insurance policy on Vern. Other family members called to report that Jill Taylor was dating Daniel, and had recently made indirect threats towards Vern saying things similar to "Vern needs to be careful who he makes an enemy."

Vern was known to have his iPhone with him when he went to the house, but it was missing from the scene. Vern's co-workers and family members knew his phone number to be (509) 952-3300. They knew his phone carrier to be AT&T Wireless. On 05-25-13 I did an exigent circumstances request with AT&T Wireless. Vern's phone was no longer active, and could not be located. AT&T faxed me a copy of Vern's call detail records for the day. The records confirmed the times of the calls between Vern and Ricardo. There were also two incoming calls from (509) 910-6581 at 1044 hrs and 1115 hrs. The call at 1044 hrs was flanked by the calls between Vern & Ricardo, and was likely the call that Vern received right before he told Ricardo that his clients were on their way. The call at 1115 hrs was the last call that connected, and it was right before Vern's text to Terra. I called the number, but the call went straight to voice mail. I asked for a return call.

Fonefinder.net and the Number Portability Administration Center (NPAC) listed (509) 910-6581 as belonging to Sprint Wireless. On 05-26-13 I obtained a telephonic search warrant for the number (509) 910-6581 through Yakima County District Court. I also filed an exigent circumstances request with Sprint. A short time later they e-mailed me the phone records. The call detail records included "Per Call Measurement Data", which estimated the position of the phone when each call was made. The position was given with a longitude and latitude. When I mapped the calls I noted that most of the calls were in the Northeast Yakima area, but the caller was in the Cowiche area when the call was made to Vern at 1115 hrs. The subscriber for the phone was listed as Adriana Mendez.

On the evening of 05-26-13 Adriana called YCSO dispatch and said that she had gotten my message. It was arranged for her to come to YCSO on 05-27-13 at 1300 hrs. Adriana did not make it to the meeting. She was later located at the Sunshine Motel in Yakima. She agreed to come to YCSO to speak to detectives. At the beginning of the statement she was read her Miranda Warnings. She agreed to waive her rights and provide a taped statement.

Adriana admitted that the phone number in question belonged to her. She said that she had used *67 to conceal her phone number from Vern when she called him. Initially, Adriana lied about why she had called Vern, and said that she had not been to Tieton for a few years. Eventually, she provided the following version of events. Adriana was a good friend of Jill Taylor. Adriana lived with Jill for 2-3 months at the beginning of 2013. Adriana met Daniel Blizzard through Jill, and also became good friends with him. Adriana had dated Luis Gomez-Monges off and on for approximately four years. They had a child in common. She introduced Luis to Jill and Daniel.

The week of 05-20-13 Luis told Adriana to call Aspen Real Estate, and set-up a viewing of homes in the country. Adriana said that she called Aspen Real Estate, and specifically requested to speak to Vern. Adriana said that she knew Vern's name because of her friendship with Jill and Daniel. Adriana said that she provided Vern with a false name, and a back story that she and her husband were in town from Texas. They were staying at the Oxfor 32866 0-000000748 purchase a home in the country. The initial appointment was set-up for 05-24-13 at 1900 hrs. However, Adriana said that she called to cancel. She gave Vern the excuse that she had to take her child to the doctor.

On 05-25-13 Adriana and Luis met Vern at a house in Tieton. At the time they had her three small children with them. The kids stayed in the car while they viewed the first house. Vern had told Adriana and Luis that the homeowner was around, and they saw a car in the driveway.

Next Vern lead Luis and Adriana to 17481 Summitview RD. They went inside the house, and left the kids in the car. They went through the house, and wound up in the northwest bedroom. Adriana was standing beside Vern, and he was looking out a window. Luis was standing behind Vern, and off to his right. Adriana said that she saw Luis take a bladed stance like he was getting ready to hit Vern. She turned to walk out of the room, and said that she was going to check the kids. She saw Luis hit Vern in the back right side of his head. She saw Vern's Knees buckle, and as she was leaving the room, she heard a loud thump that sounded like a body hitting the floor. Adriana said that Vern had been very respectful to both her and Luis prior to Luis assaulting him. She said that no angry words had been spoken, and there did not appear to be any provocation.

Adriana went to the car, and sat with the kids. Within a few minutes Luis came to the car. He was excited, and seemed to be in a hurry. He was taking deep breaths, and sped all the way back to Yakima. He turned the radio up loud. During the drive back to Yakima Luis opened his door, and "may have" tossed something out. Luis took Adriana back to her residence, and left. She denied that there was a conspiracy with her, Luis, Daniel Blizzard, and Jill Taylor to kill Vern. She also denied that she knew Luis was going to attack Vern.

Not Ln 1845. DW

BUT IN DISPUTE- DENY INVESTIGATION

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he borrowed his mother's gray Hyundai Elantra to drive Adriana around. He said that they ran errands, and went job hunting at orchards in the Cowiche area. When they were finished he dropped Adriana and her kids off at the Sunshine Motel. He then returned the car to his mother's house.

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On 05-29-13 I went to the "Phone Lot" at 1731 S. 1st ST in Yakima. They provided me with the iPhone that Luis had traded in for his new phone. It was a blue iPhone 4, S/N 012751004002733. They informed me that Luis had been a repeat customer. I was able to confirm that the iPhone did not belong to Vern. However, it was suspicious that Luis lied about where he had gotten the phone. It was also suspicious that Luis would have an iPhone when he was reported to have trouble paying his rent. One of his friends described having to lend Luis money to buy groceries to feed the kids.

On 05-30-13 I served a search warrant at the Sunshine Motel, where Luis and Adriana had been staying. Inside of a garbage bag I found a piece of paper with phone numbers written on it. The numbers included two numbers for YCSO and the phone number for Det. Engquist, who Adriana had spoken to about setting up the 1:00 meeting. There was also a number listed for "Papoy" (Daniel's nickname). The number was listed as (509) 774-6199. NPAC listed that number as belonging to Level 3 Communications. However, a representative from Level 3 later told me that the number had been sold to GOGII, Inc.

The manager of the Sunshine Motel told me that Adriana had a rich white friend named Daniel, who would often come to visit her. Daniel told the manger that he was a former employee of Aspen Real Estate, and was in the process of suing them. He said that he was about to come into a large sum of money, and was going to take Adriana, Luis, and their kids on a cruise to the Bahamas. The manager showed me a video of Daniel Blizzard walking into the office with Adriana, and paying her rent. I later showed the manager and an employee a montage with Daniel Blizzard in position #3. They both identified Daniel Blizzard as b

GOGII, Inc. provides an Application for Apple products, which allows people to send text messages via their Apple product. I called and spoke to a representative from GOGII, Inc. He confirmed that they owned both numbers.

On 05-31-13 I obtained a search warrant for any known life insurance policies on Vern Holbrook through New York Life. I served the SW on the Yakima Office of New York Life. On 06-17-13 I received the search warrant results. Aspen Real Estate Blizzard III LLC had a $1.58 million dollar policy on Vern's life. The preferred phone number for Aspen Blizzard was listed as (509) 654-0283. The WA Office of the Secretary of State's Corporations Division had an online data search option. I located a record for "Aspen Real Estate/ Blizzard III LLC". The registered agent for the company was listed as Daniel Blizzard. The other two members of the LLC were Daniel's brothers, George Blizzard & Walter Blizzard.

On 06-18-13 I received a copy of a complaint file from an auditor at the WA Department of Licensing. The complaint was made by Daniel Blizzard against Vern Holbrook on 01-26-10. On the complaint form Daniel listed his phone number as (509) 654-0283. NPAC listed that number as belonging to AT&T Wireless. Daniel alleged that Vern had mishandled $5,000 in earnest money. An audit was conducted, but no irregularities were found. The complaint file was closed as of 04-27-11.

On 06-19-13 I spoke to Chantell Walker, the manger of the Lake Aspen Apartments, which is where Jill Taylor lived. She wanted me to know that both Adriana Mendez and Luis Gomez-Monges had been living with Jill Taylor a short time before the attack on Vern. Chantell did not know the exact dates that they lived with Jill because they were not on the lease, and were not supposed to live there. Chantell knew Jill's phone number to be (509) 731-7055. That matched the number listed in Spillman. Fonefinder.net and NPAC listed that number as belonging to New Cingular Wireless, which is a subsidiary of AT&T Wireless.

On 06-20-13 I spoke to Chris Briskey. Chris is Walter Blizzard's partner in a cell phone store, and Chris has a daughter with Maria Blizzard, Daniel & Walter's sister. Chris said that on the first business day after the attack on Vern, Tuesday 05-28-13, Daniel Blizzard came to the phone store approximately mid-morning. Chris said that Daniel appeared to be stressed out and tired. He reportedly brought Jill Taylor's iPhone to the store to have Walter perform minor repairs on it.

Weeks later Walter gave Chris an iPhone motherboard with a SIM card and old phone body. Walter asked Chris to install the motherboard into the phone body, and overwrite whatever was on it with a customer's iCloud information, so that the customer could have a back-up phone. As a matter of practice Chris looked at the current programming of the motherboard prior to overwriting it. He found that the iTunes account for the motherboard was registered to Jill Taylor. Chris had worked on Jill's phone in the past, and based on watermarks on the motherboard he recognized it to be from Jill's phone. He believed that Daniel had brought Jill's phone to Walter so that Walter could swap out the motherboard.

Chris placed a different motherboard and SIM card into the phone [illegible] him. Chris said that he found Daniel and Walter's behavior to be very suspicious in light of the attack on Vern, and he wanted me to have the motherboard. On 06-21-13 I met Chris at his store. He had placed the motherboard into a broken white & black iPhone 3 body. He turned on the

phone, and showed me the iTunes log-in, which listed jilltaylor509@gmail.com. Chris gave me the phone & SIM card, and said that he wanted me to have them.

Ten SWs for phone & business records have already been written and issued related to this case through Yakima County District Court. On 05-25-13 there was a Yakima County Superior Court ruling, which stated that District Court SWs are not sufficient to obtain out of state third party records. This SW, along with a series of others is being written in an attempt to comply with the new stricter standard, and solidify the work that has gone into this case.

BE INDEPENDENT INVESTIGATED NOT IN TBL's. S.W DISCUSSED TO THE JUDGE

THEREFORE, your affiant prays that a Search Warrant be issued directly to the Sheriff of Yakima County, Washington, or to any peace officer in the county duly authorized to enforce or assist in enforcing any law herein, commanding him to search the above-described business, and to seize any and all of the above described evidence if found and safely keep same and make return of said warrant within three (3) days, showing all articles seized and the name of any person or persons in whose possession the same are found, if any, and if no person be found in the possession of said articles, that the return shall so state.

#90
AFFIANT

SUBSCRIBED AND SWORN to before me this 26 day of Sept, 2013

SUPERIOR COURT JUDGE

APPENDIX 5

May 21, 2014 Letter from
Prosecuting Attorney to Judge Ellofsen

James P. Hagarty
Prosecuting Attorney

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May 21, 2014

Judge David Ellofsen
Yakima County Superior Court

Re: Judge Ruth Reukauf

Dear Judge Ellofsen:

It is with great apprehension and concern that I am writing you this letter about Judge Ruth Reukauf.

For reasons unknown to me, it is apparent that Judge Reukauf dislikes me personally and also members of the Yakima County Prosecuting Attorney's Office. I am writing as a result of Judge Reukauf's recent comments about replacing Alvin Guzman as the prosecutor on the Holbrook murder case, and further stating that I should step in and handle the case. I do not understand the reason why Judge Reukauf felt the need to make such a comment concerning a pending case over which she is presiding This is a multiple defendant case that has been pending since May 30, 2013, and a change of prosecutors would be unusual as well as problematic. However, in giving it greater thought, and considering her conduct towards the Prosecuting Attorney's Office over the last several years, I conclude that it was a part of her continuing attack on the Prosecuting Attorney's Office based on her bias and prejudice and efforts to discredit my office.

Judge Reukauf has been assigned or taken most of the high profile murder cases. This situation recently resulted in delaying an ongoing trial so she could do a hearing in the Holbrook case. While it was only for one day, it is still extended the trial time and resulting in gaps in the juror's service time. Why did she take the second trial, knowing she had a hearing coming up on the murder trial? Are there no other judges who could have handled the other trial?

In the recent multiple defendant case handled by Troy Clements, several concerns and issues arose. Judge Reukauf excluded clearly relevant gang evidence, despite having affidavits from the victims indicating it was gang related; and a body of case law that clearly established the relevance and admissibility of the evidence. When asked to reconsider her decision, made it clear that she would not consider the State's additional briefing and materials, basically indicating, without argument, that she would not change her mind. Additionally, she took great efforts to go after Mr. Clements, a fact which was comme

indicated that it was clear she had it in for Mr. Clements and was not hiding the fact. Judge Reukauf determined which potential jurors would have private interviews, then performed the majority of questioning of those jurors. Her questioning of potential jurors favorable to the State was more extensive than those with opinion less favorable or neutral. Basically the Judge created a "cause" challenge for the defense. Other potential jurors whose questionnaire's indicated a negative opinion of the State were not questioned. One in particular indicated he was with the ACLU and expressed a very strong negative opinion against the State. He was not selected for private interview, when he most certainly should have been.

In State v. Holbrook, a four defendant murder, the Judge ordered the State to review approximately 33, 000 pages of phone records, and advise defense counsel what specific items were to be used at trial. This request came from Pete Mazzone and Rick Smith. Mr. Guzman pared it down to 150 pages, however, defense counsel has again objected, and asked that it be more specific. Instead of initially asking the requesting parties (Mazzone and Smith) to establish a basis for the Court to grant that request, the Judge shifted the burden onto Mr. Guzman to give her authority not to so order. It is not the State's obligation to establish why admissible, relevance evidence should not be stricken or limited, but rather for defense counsel to establish what authority the Court has to so. We have complied with our discovery obligation, but Judge Reukauf continues to demand the State comply with the request of defense counsel. Judge Reukauf has permitted Mazzone to file multiple briefs associated with his motion to suppress without comment or taking control over the briefing. Judge Reukauf has allowed Smith to participate and argue suppression of evidence, despite not filing any motion in his case, or any other pleading adopting the brief of other counsel.

Judge Reukauf has made public statements that she does not like Deputy Prosecutor Sam Chen, Ken Ramm and Duane Knittle, but still takes every murder case they are involved in. This personal dislike has no place in the criminal justice system, and has clearly influenced her decisions in their cases. Judge Reukauf should recuse herself from any case involving these prosecutors because an open and clear bias and dislike of those prosecutors. To date she has not seen fit to do so. I question why, as it is no secret that she dislikes these attorneys.

In State v. Elledge, Judge Reukauf exhibited the above described animosity towards Sam Chen. She bent over backwards to facilitate every request of Mr. Smith. When Smith would make comments about the victim and the State's witnesses, Judge Reukauf would not permit Mr. Chen to respond. Despite both financial and physical hardship, Judge Reukauf ordered the victim to travel from the west side for an interview requested by Smith. Of greater concern are her unsolicited comments about plea negotiations without knowledge of the details of the negotiations, and the negative impact the comments had on the case. At one point, the parties indicated there were discussions about resolving the case other than as a strike offense. Judge Reukauf without invitation or necessity indicated to the defendant – so assault 3, 5 year maximum and with credit for time served you will be out. However, this was not what was being discussed. As a result, the negotiations became more difficult because the defendant kept going back to what Judge Reukauf had said. There was no reason for her to have said anything, no reason for her to be part of the negotiations, and the end result was that she interfered with negotiations, almost to the degree that it didn't get done. Such unsolicited and unnecessary comment was not an isolated incident, but rather a regular, ongoing and persistent pattern of conduct for Judge Reukauf.

In State v. Harper, the Judge showed a clear and obvious bias against Ken Ramm. This case also involved Pete Mazzone, and as in the Holbrook case, Mazzone was given wide latitude and when he ranted and raved and made requests, Judge Reukauf routinely granted those. Mazzone complained he had not received discovery, and the State showed he had. But he continued to complain, and Judge Reukauf ordered that the State Bate stamp all discovery so Mazzone could be sure he had it all. Again, Judge Reukauf accepted Mazzone's statements about discovery and immediately chastised the State and Mr. Ramm. Mazzone had all the discovery, but Judge Reukauf gave no credence to the State. There were numb cases

pending and being handled by Mr. Ramm at the time Harper was pending. At one point, Judge Reukauf decided to move the homicides cases by scheduling them one after another. This occurred at the same time Mr. Ramm was getting pressure from Judge Reukauf on discovery issues in Harper, but could not address because he had been scheduled to do back to back homicide cases by Judge Reukauf, who also presided over all the cases. This action limited Mr. Ramm's ability to address the discovery issues. As a result, Judge Reukauf sanctioned Mr. Ramm in an amount four times the sanction imposed on any other attorney during the period I have been prosecutor. Many attorneys have engaged in more egregious conduct, but never received a sanction. I agree Mr. Ramm should have asked for help, but the issue is why Judge Reukauf found it necessary to knowingly put Mr. Ramm in that position and then monetarily sanction him, a remedy very seldom if ever used by Judge Reukauf or any other judge. Again, it is clear that her dislike of Mr. Ramm influenced her actions in that case.

Although there are more examples, I want to conclude by noting the decision of Judge Reukauf in the Harper cases with respect to the State's motion to revoke the plea/cooperation agreement. Judge Reukauf issued a written opinion denying the motion. The first two pages outline her position and thought process. While we believe it flawed and in error, we understand her position. However it is the rest of the opinion that shows her bias. The balance of the opinion was unnecessary for the decision, which she candidly admits in the opinion. She reaches conclusions about the evidence, without benefit of testimony, and each conclusion is weighed against the State. She then attacks the prosecutor's office by saying our reliance on the witnesses and evidence in seeking a breach was "unconscionable." She reaches evidentiary and credibility conclusions all without benefit of a hearing in which the State could present evidence in support of breach. Clearly this conduct was improper and certainly exceed the bounds of appropriate judicial conduct. It was an unprecedented, and significant personal attack on the Prosecuting Attorney's Office arising from clear bias and prejudice against the office. Judge Reukauf took great pain to turn this motion against the prosecutors and make unnecessary and untrue allegations against the prosecutor, because of her bias, and her own opinion about this case. She overstep her authority and entered a realm of personal bias and opinions and made rulings clearly based on bias, rather than in an appropriate judicial role..

Judge Reukauf concludes that by saying "..due to the tortured procedural history, which is extremely troublesome,to this Court, it only emphasizes a continued pattern of conduct on behalf of the State that has deprived this community and Mr. Harper of the closure they deserved." This rather pointed attack was based on Judge Reukauf's own personal opinion of the evidence, which was never subject to a hearing, but simply allegations made by Pete Mazzone, and clearly not reflective of the real source of the failure of this case. The identity and statements of crucial witnesses were not disclosed to the State until trial had commence, all of which changed the State's case and the State's ability to prove the necessary elements. Physical evidence of vehicles entering and leaving the housing development during the period before and after the homicides was seized, but later returned to its owner without copies made. It was later destroyed. Jail calls between Harper and his attorney were listened to by the Sheriff's Office, without knowledge of the Prosecutor's Office. Pursuant to the recent *Fuentes* case, this conduct was fatal to our prosecution, regardless of any other issue. The State may have made some errors, but there was no continued pattern of conduct which deprived the community and Mr. Harper of a fair trial as asserted by Judge Reukauf. It was the extremely poor investigation done by the Sheriff's Office, the failure to provide discovery by the Sheriff's Office and the Sheriff's Office 's violation of the defendant's rights are what caused this terrible result. But Judge Reukauf won't accept that, but rather must places blame on the Prosecutor's Office and publicly attacks my office, something she has done and continues to do now.

Judge Reukauf has a bias and prejudice against the Yakima County Prosecuting Attorney's Office, and that bias and prejudice has and continues to make it impossible for the State to get a fair trial with her as Judge. Judge Reukauf does not conceal her bias and prejudice, which has been observed and noted by multiple defense

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

THE STATE OF WASHINGTON, Respondent, vs. DANIEL BLIZZARD Petitioner.	Case No. 328660 PROOF OF SERVICE

I, Aleshia Cooke, hereby certify that the following information is true and correct: That the original pleading of the foregoing document entitled "Motion for Discretionary Review" was filed electronically at the Court of Appeals, Division III, Spokane, on the 30th day of September, 2016. And further, that a true and correct copy of the foregoing pleading was served by Email and U.S. First Class Mail, correct postage paid, on the following parties on this 30th Day of September 2016:

(Via Email and U.S. First Class Mail)
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Dated: This 30th Day of September, 2016.

Aleshia M Cooke

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