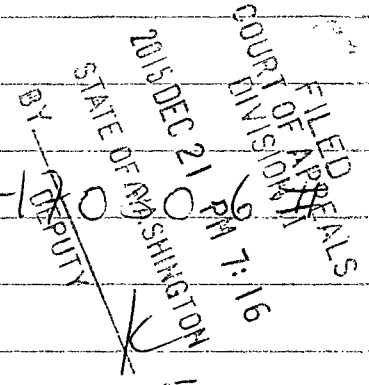
Court of Appeals
OF the State of Washington
Div 2

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| State of Washington, Respondent. | No. 47000-6 |
| Vs. | Statement of Additional Grounds For Review |
| Charles S. Longshore, Apellant. | |

Comes now after recieving and reviewing the opening brief of Appellant prepared by my Attorney. Hereby, Summarized below are additional Grounds for review that are not addresses in that brief. I understand the court will review this statement of additional Grounds for review when my Appeal is considered on the merits.

pm 12/17/15

Additional Ground 1

SAG



1. The prosecuter Commited Misconduct as well violated Mr. Longshores rights to confrontation. while during his closing Argument he Argued at Least (9) people Accused him of the crime but was never called to testify.

In the instant, the prosecuter during his closing Argument stated: " Anybody like Bobby, Kristina, Ida, Tammy, Armando, or anyone elss carrie, Mike anybody eles who may have been there or in the area, from saying it was Charles Longshore who did it. It didnt stop them from Identifying him at all" RP 2489

(A) Prosecuter Misconduct

In presenting a criminal case to the Jury, it is incumbent upon a prosecutor, as a quasi-judicial officer, to seek a verdict free of prejudice and based upon reason. A prosecutes duty to be Fair is as important as his duty to the general public to actively prosecute violaters of the Law. See state v. Torres 16 wn. App 254, 555 P.2d 1069 (1976), state v. Charlton, 90 wn.2d 657, 585 P.2d 142 (1978). Prosecuter misconduct which denies a defendant a fair trial violates due process. see state v. Belgarde 110 wn.2d 809, 558 P.2d 173 (1976) appeal on remand 62 wn. App. 684, 815 P.2d 812 (1991) review granted in part 118 wn.2d 1021, 826 P.2d 192 (1992).

But when a prosecuter Argues to a Jury and releases names of Alledged witness who where never called to testify. Arguing that they identified him as the shooter. This not only violates a fair trial, but violates the confrontation clause. As Ida, Armando, Carry, & Mike were never called to testify.

In re Glasmann, 175 wn.2d 696, 286, P.3d 673 (2012) our Supreme court spoke at length regarding prosecuter Misconduct.

In Stating " Although a prosecuter has wide latitude to argue reasonable inferences from the evidence, a prosecuter must seek convictions based only on Probative evidence and sound reason", It further stated "consideration of any material by a jury not properly admitted as evidence vitiates a verdict, when there is a reasonable ground To believe that the defendant may have been prejudiced."

" To prevail on a claim of prosecutor misconduct, a defendant is required to show that in the context of the record and all of the circumstances of the trial, the prosecutors conduct was both improper and prejudicial, to show prejudice, the defendant show a substantial likelihood that the misconduct affected the jury verdict, In re Glasman 175 Wn.2d 696, 286, P.3d 673 (2012)

In the issue at bar, prosecuter Argued to the jury multiple names of Alledged witnesses that where never called. with the ill-intention of persuading the Jury beyond question that Mr. Longshore is guilty. The prosecutor Argued that (8) names of witness said Mr. Longshore committed the Crime, and identified him, only (3) of which testified. Introducing evidence that was never used at trial, affecting the Jury's verdict.

This case is largly a circumstential case. The evidence at trial is both consistent with an exculpatory hypothesis and inculpatory hypothesis this court has ruled In State v. Bridge, 91 Wn. App. 98, 966 P.2d 918 998) " when the evidence presented is consistent with both an inculpatory hypothesis and exculpatory hypotheses, then such evidence is insufficient to support a conviction". There the court reversed a Conviction based upon fingerprint evidence because such evidence was insufficient to establish guilt beyond a reasonable doubt Bridge, 91 Wn App at 100 As such, the prosecutors improper comments and improper introducing

of evidence not only violated Mr. Longshore's confrontation right. But as well affected the Jury's verdict. As it posed to the Jury that the State has more evidence then what was presented.

In re Glasmann, the court also stated "A prosecuter cannot use his or her position of power and prestige to sway the Jury and may not express an individual opinion of the defendants guilt, independant of the evidence actually in the case".

This is exactly what happened here, The prosecuter expressed his personal opinion of guilt and improperly used evidence not admitted at trial to persuade the Jury's verdict.

B violation of confrontation

The Sixth Amendment provides "in all criminal prosecutions, the accused shall enjoy the right... To be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor" Article 1, section 22 of the Washington State constitution provides "in criminal prosecutions the accused shall have the right to testify in his own behalf, to meet witnesses against him face to face, to have compulsory process to compel the attendence of witnesses in his own behalf.

When the prosecuter argued to the Jury Ida, Armando, Connie and Mike stated Charles did it, and I identified him. See R.P 2489 This violated mr. Longshores Right to confrontation.

In State v. Connie j.c. 86 Wn. App. 453, 937 P.2d 1116 (1997) the court held "prosecuter offered statement of plea of guilty in wifes trial as accomplice, no evidence husband was not available to testify, Right to confrontation violated.

This case is remarkably similar as there the prosecuter offered evidence, and NO evidence ex. st that they where not available to

testify, violated Mr. Longshores rights to confrontation. This was Not harmless. As these weren't alleged to have been miniscule witness. The prosecute specifically stated " Prevents anybody like Bobby, Krishna, Ida, Tammy, Armando, or anyone elses carrie, Mike, anyone else who may have been there or in the area from saying Charles Did It. It didn't stop them from Identifying him at all" RP 3489.

It's known since the trial that Bobby, Krishna and Tammy testified. But the only Alledged actual witness was Bobby to the crimes. Bobby testified that a number of people were behind him when he said Mr. Longshore shoot and killed both Ms. Faber and Mr. Drake. while Mr. Longshore testified it was Bobby who shot and killed both Ms. Faber and Mr. Drake.

Here the prosecute declared at least (4) Names of individuals to the Jury during his closing Argument that Said Charles did it. These names Ida, Armando, Carrie and Mike where the (4) in addition to the (3) Bobby, Krishna, and Tammy. who where the only ones out of the list who testified. Bobby being the States only Alledged witness to the crime who happens to be the Alledge Accomplice and who the defence Accused of committing the murders.

The court held in State v. St. Pierre 111 Wn.2d 105, 759 P. 2d 383 (1988) " out of court statements of co defendants violated the defendants right to confrontation". Should these Alledged names have testified, they would have pursuant to a plea Agreement. As co defendants/Accomplices. As all present was charged with either (a) rendering Criminal Assistance or (b) murder in 1st degree.

In Lee v. Illinois 476 U.S. 530, 106 S.Ct. 2056 90 L.Ed 514 (1986) on remand 144 Ill App. 3d 155, 155 Ill Dec. 217, 517 N.E. 2d 628 (1987) " accomplices confessions that incriminate defendants are presumptively

unreliable, and defendants rights under confrontation clause of the Sixth Amend violated."

"The purpose behind the right given a criminal defendant by Sixth Amendment to confront witnesses against him is to allow cross examination to test the perception, memory, credibility and narrative power of the witness." see State v. Parris 98 wn.2d 140 654 p.2d 77 (1982)

"The right of confrontation under federal and state constitutions provisions is violated by admission of hearsay statements if the declarant is available or the statements are not shown to be reliable" see State v. Griffith, 45 wn.App. 228, 727 p.2d 247 (1986)

"So when the prosecutor was allowed to argue the additional names statements to the jury, it denied the defence to confrontation to verify if the statements are reliable" It allowed the prosecutor to testify on behalf of the witnesses, and state to the jury they said mr. longshore committed the crime, and were able to identify mr. longshore.

The error is not harmless, as it was misleading and improperly introduced evidence not admitted in trial. As well denied mr. longshore his right to confrontation and ability to crossexamin witnesses.

As such this court should reverse the conviction and remand for a new trial to allow mr. longshore to enjoy his right to confrontation as well cure the prejudice.

Additional Ground 2

2. The prosecutor committed misconduct when he improperly argued the wrong definition of "premeditation" to the jury.

In the issue at bar, The prosecutor stated during his closing Argument: "Essestially what You need to understend is that for a Killing to intentional killing to be premeditated what is necessary is that there was a decision made to Kill and then acted upon, and it can happen like that (snapfingers)" RP 2426 *

In The instructions to the Jury, Specifically #14. The court defined premeditation to be the following:

"premeditation means thought over beforehand. when a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. premeditation "MUST" involve more then a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately Formed"

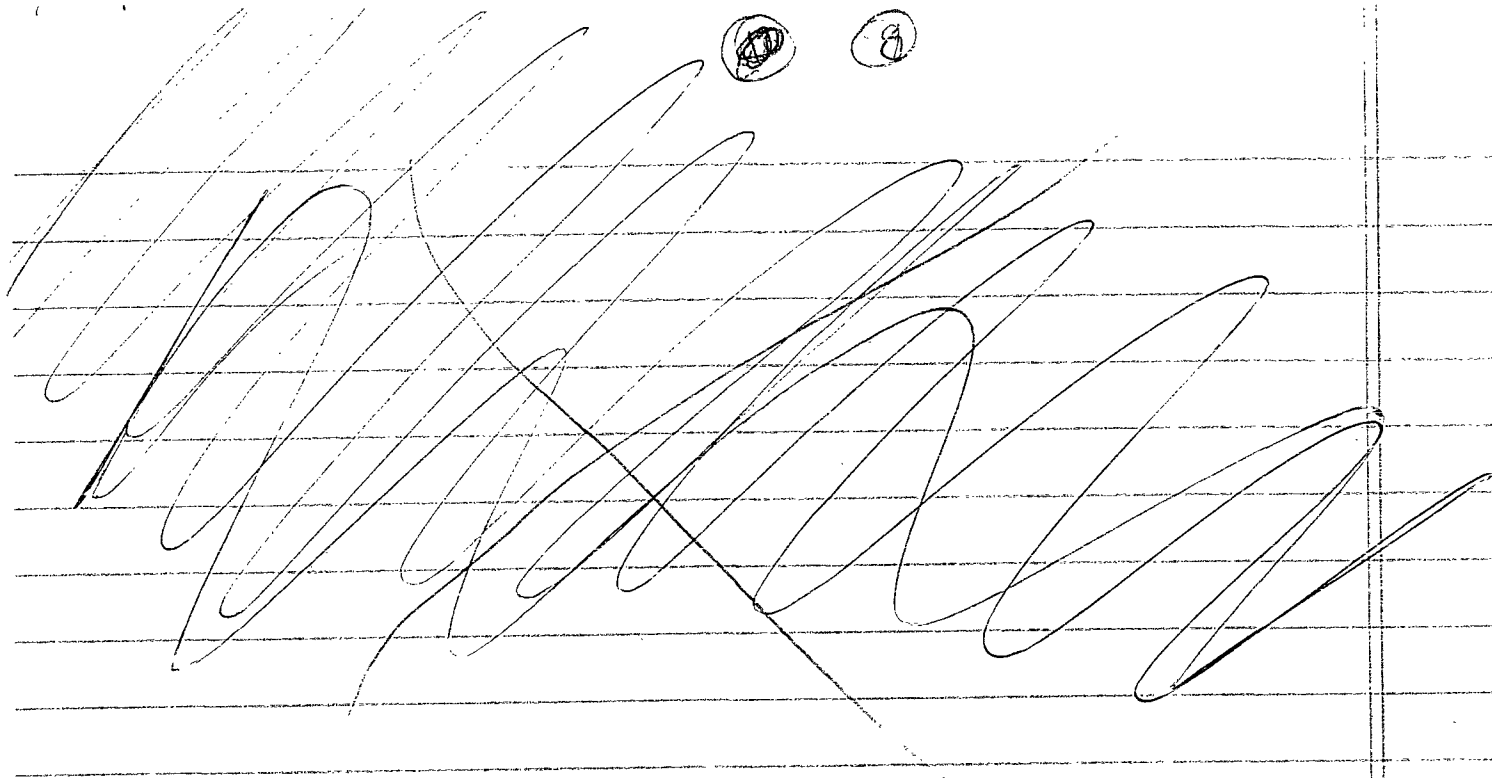
So when the prosecuter argued its essestially a decission made to kill and acted upon, and it can happen like that "snapfingers" RP 2426. It Mislead the Jury In State v. Brawing 38 wn. App 772 689 P. 2d 1169 (1984) This court held: "prosecuter improperly stating instruction is misleading." Further in State v. Davenpor, 33 wn. App 704 657 P.2d 794 (1983) ~~[illegible]~~ Conviction reversed 100 wn. 2d 757 675 P.2d 1213 (1984) Stating: "Argument on Law not given in the instruction."

Its well settled the court's instructions are the Laws of the case. But when a party undermines the definition and argues the wrong Law to the Jury. Especially as to an element of a crime. It can be said the

defendant has had a fair trial. As the Jury is now permitted to Convict a person with a lesser definition to an actual Element. This prejudiced Mr. Longshore to the effect it allowed the Jury to Convict him on the wrong definition of premeditation. This error was not harmless.

Both Bobby & Charles testified to the same effect. "I was on the porch vs. By the door, Mr. Longshore/Mr. Raphael, hit Roxy in the head with the gun. Both testified Neither one of them knew this was going to happen, none was there on agreement and was shocked at what Accured. The only deference between the two's testimony in this Aspect is: Mr. longshore stated he only witnessed Ms. Taber get hit in the head then shot, while Mr. Raphael states: Mr. longshore hit her in the head then Bang, Bang. Killing both Mr. Drake and Ms. Taber. But no evidence exists of a plan, or even a thought ever before hand. what the evidence proves Someone hit Roxy a accidental discharge went off and it appeared one may have been shot. Then someone took a step back and shot Ms. Taber and Mr. Drake.

what was consistent by all testimony that there was a bang then 2 second pause then Bang, Bang. RP 243 Therefore Premeditation was important for the Jury to consider. As the evidence tends to show. As well what the Prosecutor Argued. Is what we call Intentional Killing, Not Premeditation, which makes this very important that the Jury be provided the correct definition. As Stated Earlier this error was not harmless. As such this should reverse and remand for a new trial.



## Additional Ground 3

The prosecuter commited Misconduct by expressing his personal opinion of Mr. Longshores credibility.

In the issue at bar, The prosecuter domenitly threw out his closing arguments expressed Mr. Longshore is a lier. Attacking his credibility by expressing his personal opinion.

See RP 2405 for example " I'll submit lies to police and says hey I'm going to red Apple". This was never Admitted to by Mr. Longshore to be a lie. Mr. Longshore testified that he was going to red Apple This was a question for the Jury to determin, not the prosecutor.

See RP 2413 " The only thing that you know he told the truth about on June the 4th is about his lies". This is another personal opinion comment on Mr. Longshore's credibility. As Mr. Longshore testified that June the forth was the most Accurate and to be told the truth.

See RP 2418 "He's lying and he's breaking down here. And finally he lies about who killed Anitrea Taber and Tyler Drake." This is another improper comment on credibility. As this was the main question for the jury to review. Who shot and killed Ms. Taber and Mr. Drake.

See RP 2473 "A man who's proven that he will lie, not just hey, I'm going to try to stay out of it. I don't know anything. I don't know anything. But he will lie at every turn for what ever suits his needs. He will continue to lie in the face of the truth he will lie, and that's what he did in this case." Is again personal opinion. As it goes to the credibility of Mr. Longshore.

See Also RP 2491 "why so many lies once he's captured? Mr. Longshore moves effortlessly from one story to another everytime he's challanged by investigators - ladies and gentlemen, may he could have given the version of events that night that he gave you on the witness stand at anytime to any one of those detectives and he didn't, because it's not true. It's just another test" - "He only fabricated this story that Bobby did it after detectives suggested it to him".

As shown above the prosecutor was attacking Mr. Longshores credibility, by expressing his personal opinion that Mr. Longshore is a liar and telling nothing but lies. Respectfully, this was for the jury to determin. Given the position of the prosecuter and his office the jury assumes its truth, without making an independent decision based on the evidence. This violated Mr. Longshores right to a fair trial.

The defence never stated: the prosecutor is a liar, its all lies ect. Even though Mr. Longshore claims Actual

Innocence. But remained fair and professional by not commenting on the prosecuter or his prosecuting decisions. Likewise the prosecuter should of not been allowed to make such arguments. Further its clear that the prosecuter was acting with ill intentions and his conduct was so flagarent as to deny a fair trial violating due process, as such Mr. Longshore respectfull asks this court to reverse and remand for a new trial.

Additional Ground 4

The prosecuter committed misconduct by displaying improper outbursts at the defences closing Argument in front of the Jury.

RP 2169

RP 2468 Mr. Hester stated "there was your honor, your honor what I observed, and it was done quite audibly was sort of a response that is sort of a reflective response when someone would suggest - I guess to mimic it was ptt (phonetic) type of response. And I dont know how to make a record and make that note, but it was something along those lines that suggests, you know what a crock how could he make that Argument, Then again later, within the same paragraph of argument, that Mr. Porter was making, and the first incident that I indicated was from Mr. Dorcy. The second incident was from Mr. Richards and it was when Mr. Porter referred to Mr. Longshore as a kid. within ear shot of me the comment was kid, as if thats some joke, like how could you call this guy a kid, suggesting that the reference in that argument was ridiculous. Those are the two incidences

that I picked up on, not because I was looking for it, because I couldn't help it."

Was the testimony of Mr. Hester after Mr. Portzer moved the court for a mistrial based on the prosecutors remarks to counsels argument. See RP 2467 - 2470. These improper remarks that the prosecutor uttered are outrageous and undermines defence counsels integrity. We had testimony by an officer of the court that it occurred and was prejudical to Counsels argument.

Inherently the court ruled it was not audible to the court. which isn't the test. The test is whether the jury interpreted the remarks. In the case at bar, the jury box was only 3ft from the prosecutors table, on ~~the~~ just the other side defence table is stationed. This is Mason county superior court. A small courtroom where its easy to pick up audible.

The prosecuter should not be allowed to benefit from his actions as they where not fare and harmful to Mr. Longshore. As such, this court should reverse and remand for a new trial.

Additional Ground 5

~~Cumulative Errors denied Longshore a Fair Trial~~ The court erred when It denied defence an adverse inference Jury instruction based on destruction of evidence.

Multiple times throught this case, the defence moved to dismiss the charges based on the destruction of evidence. This was because the Detectives failed to preserve Mr. Raphael's clothing for testing and prior to them being retrieved they where laundered. As well the state failed to persevre DNA found on the murder weapon when it ordered that the test must proceed, even if that means total consumption of the sample. without notice to the defence denying them the ability to have part or otherwise test the DNA sample found on the firearm. See Defence motion to dismiss. RP 556-567.

Subsequently, the court denied the motion because the defence failed to establish "Bad faith". At the conclusion of the evidentiary portion of the trial, the defence moved again for dismissal based on the destruction of evidence. The defence relied on the detectives testimony that policies are in place and where not followed, The court again denied the motion not seeing "Bad faith" RP 2198-2208 At that time Defence counsel moved for a spoliation instruction to level out. ~~The court said we can preserve this issue until~~

Stating it intended to submit the instruction at the time of the Jury instructions. RP 2197 During instructions defence counsel cited Pier 67 and Brady for grounds to allow the instruction. As all parties aggreed this is the first Washington State Criminal case to have the issue - see 2230-2239 As no party could find a Criminal case dealing with it.

Mr. Longshore contends the court erred. ~~State~~ United States v. Sivilla, No. 11-50484 (9th Cir May 7th 2013) where in the U.S. Court of Appeals explained that Bad faith must be shown to support dismissal and not need be shown for adverse

inference instruction. The trial court also erred by concluding it was a Mandatory inference and disfavored by Law. The defence submits it's not a mandatory inference as it allows the state to explain beyond a satisfactory. Therefor, not closing out the State from Arguing a satisfactory explanation.

In a civil case Henderson, 80 Wash. App at 604, 910 P.2d 522 stated: "denial of spoliation is reviewed for abuse of discretion."

Applying the wrong standard is Abuse of Discretion. In Arvilivene Tavai and their Marital Community Appellants V. Walmart Service, Inc 176 Wn. App. 122 307 P-3d 811 (2013) the court "decided whether to apply a spoliation inference the Court of Appeals uses two general factors (1) the potential importance or relevance of the missing evidence and (2) the culpability or fault of the adverse party."

Mr. Longshore contends this should be the same standard Applied in Criminal cases in determining whether it should be given. This error was not harmless, it denied Mr. Longshore meaningful testing, and the potentially useful evidence could of lead to who the perpetrator was. As Mr. Longshore stood that it was Mr. Raphael. But when the State failed to preserve murder suspect Mr. Raphael's clothing and failed to preserve the DNA found on the murder weapon this denied due process and Mr. Longshores Rights to a fair trial. It put the State at such a advance that all evidence that could of been used That was destroyed prevented the defence from putting forth evidence and violated the Brady Rule to preserve it.

This instruction was the only leveling of the scale the

defence had to be heard.

As such this court should reverse and remand for a new trial with instructions.

Additional Ground 6

(6) The court erred when it denied the defence request to include a mere presence jury instruction.

During jury instruction defence counsel moved to admit a 9th cir pattern instruction of "Mere presence". As it was the defence theory that Mr. Longshore was only present and a witness, not a participant. As well more than mere presence needs to be shown. RP 2225 - 2230. In order to find Mr. Longshore guilty. As counsel feared just the presence could be enough for the jury to believe Mr. Longshore is guilty. Counsel wish not only to seperate this thought but needed the instruction to argue its theory of the case. See Purpose #16 instruction JKT, 258

The court subsequently denied the instruction, as it believed the instructions are sufficient to argue the defence theory.

Mr. Longshore contentends the court erred and it denied him the ability to argue his case and denied due process and a fair trial. Because repeatedly every instruction the defence put forth was denied. There was no leveling of the scale.

Mr. Longshore asserts, as a result of the courts denial he was denied a fair trial. As such this court should reverse and remand for a new trial.

(8) The court erred when it closed the courts room by sending the jury to a secluded room to complete ~~and collect~~ the juror questionnaires.

In the issue at bar, the court removed the entire Jury panal to a secluded room ~~to~~ to complete Juror questionairs. Mr. Longshore contends this violated his right to a public trial. See voir dire. In violation of State v. Slert, 169 Wn. App. 766, 282 P.3d 101 (Div II 2012)

The Slert court delt with Juror's being taken to Chambers to complete Juror questionairs. It determined this to be a structual error, and reversed and remanded for a new trial. Like there, the Juror's where taken from the court room to complete questionairs. Although this was not a single questioning of individual Juror's. It was the same as that. Except the court removed the hole panal from the court room to the Juror Room to complete Juror questionairs. This structual error violated Mr. Longshores right to a public trial. In violation of State v. Slert, & Bone-Club.

Additional Grown 7

The court violated Mr. Longshore's right to a public trial when is sealed the Juror questionairs in violation of Bone-Club.

In the case at bar, the trial court not only removed the jury to a secluded room to complete Juror questionairs but sealed the records in violation of Bone-Club. Closing, Mr. Longshore and the public from participating in this portion of trial.

This court should reverse and remand for a new trial for the violation of Mr. Longshores public trial.

## Additional Ground 5

(4) The court violated Mr. Longshores right to a public trial when it answered a controversial Jury question regarding Accomplice determination.

In the issue at bar, The Jury submitted a question to the court wherein it stated:

(1) "If by definition in instruction #11 someone is determined to meet the criteria of an accomplice would they therefore be guilty of the finding of Guilty 1st or 2nd degree murder?

(2) are we allowed a copy of Washington state law regarding 1st and 2nd degree murder.

(3) the court: You have all the instructions in this case.. See DKT # 270

At all times the State prosecuted Mr. Longshore on the principle, at all times the defence stood on merely present. The court never instructed the Jury to consider Accomplice liability. Yet the Jury determined to meet the criteria of accomplice. This is a disputed fact and not just ministerial.

In State v. Koss it was determined the defendant did not need to be present for ministerial Matters. In the issue at bar we have no record of counsel present, no record made as to it being placed on the record, and no record of Mr. Longshore being present. This is a violation of Mr. Longshores right to a public trial. 158 Wash. App. S 241 P. 3d 415 (Div 3 2010)

At three Trial, Defence counsel objected to Mr. Raphael

being an accomplice. Because there's no evidence of solicitation, aiding ect to meet the criteria. The state charged Mr. Longshore as the principle, the defence claimed innocence... There would of been an objection to this Answer by Mr. Longshore. As it did nothing to Aid the Jury. It Cont had Mr. Longshore guilty as an accomplice this was not Ministrial but controversial and deserved Argument, Mr. longshores presence, and placed on the record. As such this court should reverse and remand for a new trial. Citing State v. Koss, 158 Wash. App. 8 241 P.3d 415 (2010

## Additional Ground 9

The court erred by entering Aggravating Circumstances, because the evidence was insufficient.

"common scheme or plan"

It is examatic that the State must prove every element of the crime charged.

"In challenging to the sufficiency of evidence to prove an aggravating factor in Aggravated Murder, this court must view the evidence most favorable toward the prosecution to determine whether any rational trier of fact could have found the presence of aggravating factors, beyond a reasonable doubt" State v. Green, 94 Wash. 2d 216, 221 616 P. 2d 628 (1980)

In State v. Finch (1990) the defendant argued that sufficient evidence does not exist that he killed Ron Madlin and SGT. Kinard as part of a common scheme or plan. See RCW 10.95 020 (10) under this aggravator multiple murders are required and there "must" be a "nexus between the killings". Pirtle, 127 Wash. 2d 661 904 P. 2d 245 (quoting) State v. Dictado, 102 Wash. 2d 277, 285

687 P.2d 172 (1984)

Here, Theres no evidence of any plan or nexus, between e Killings. what the evidence shows is (2) people were killed nd no one knew why. thats it.

This Aggravator may refer to the situation where "several Crimes constitute constituent parts of a plan in which each crime is but a piece of the larger plan" Pirtle, 127 Wash. 2d at 662, 904 P.2d 245 (quoting) State v. Gough 125 Wash 2d 847, 855 389 P.2d 487 (1995).

Even though the prosecutor suggested that it was pursuant to a drug dept owed. Mr. Raphael and Mr. Longshore both testified there was no plan, no Agreement and what happened, no one knew t was going to happen.

"The term refers to a larger criminal design, of which the charged crime is only part" Pirtle, 127 Wash. 2d at 662 904 P.2d 245, State v. Bowen, 48 Wash. App 187, 192, 738 P.2d 316 (1987) "To prove the existence of this factor the Killings "must" be connected by a larger criminal plan. Pirtle, 127 Wash. 2d at 662 904 P.2d 745. Thus the "nexus" exists when an overarching criminal plan connects both murders" see 137 (Wn. 2d 836) Pirtle, 127 Wash. 2d at 662, 904 P.2d 245, see also Dictado, 102 Wash. 2d at 277, 687 P.2d 172 "(Killings were in furtherance of a gambling scheme) State v. Grisby 97 Wash. 2d 493, 496, 647 P.2d 6 (1982) (multiple Killings in revenge for being said bad dogs).

In Pirtle, the defendant argued that there must be evidence of a plan to commit multiple murders to satisfy this Aggravator. this court rejected the argument explaining that it misconstrued common scheme or plan. The court explained the evidence need not show the existence of a plan to kill the named individual

or even the Killings be committed for precisely the same reason" only that the killings are connected by a Larger criminal purpus.

Here looking at the evidence in the light most favorable to the state. It cant be said that there's a" nexus" between the killings or they are connected by a larger criminal purpose Even know the prosecutor speculated the murders was a resault of a drug debt owed. The evidence only shows (2) individuals were Killed and neither mr. longshore more mr. Raphael knew the crime was going to happen. But instead was a spontaneous murder. As such this count should reverse and remand For the sentence of murder #.

(or Resault of a single act of the person.)

Here the evidence shows there was multiple acts in the course of the murder's. And that they were seperate acts (1) Ms. Taber was hit in the head with the weapon, (2) a shot went into the wall of the house, (3) Ms. Taber was killed; (4) Mr. Drake was killed. (4) seperate act's. Its not like cases where You run over two people at the same time, or Bomb Somebodys house and they died as a resault.

As such this count should reverse and remand For the sentence of murder #.

(committed the murder to conceal the ~~commission~~ commission of a crime or to Protect the Identity of any person committing a crime.)

Mr. Longshore contends what crime did the defendant commit for the murder to conceal the commission of a crime.

Counsel suggests Assault, by the hitting of the head is sufficient. Mr. Longshore disagrees. There was no substantial bodily harm, there for would be Assault 4th degree a misdemeanor. Then counsels suggests "or" to protect or conceal the identity of any person committing a crime.

If this be the case, why is myself and Mr. Raphael here. There's no merit to these Aggravators. Respectfully it was a "spontaneous killing" no one knew it was going to happen. The evidence suggests that A decision was made to kill after the accidental discharge during the struggle between Ms. Tuber and Mr. Raphael.

As such, all aggravators should be dismissed and the charge should be reduced to murder 2. Intentional Killing's.

## Additional ground 10

The state failed to prove beyond a resonable doubt that Mr. Longshore acted with premeditation, an element due process requires the state to prove.

Looking at the record, and evidence in the light most Favorable to the state, Respectfully the evidence does not establish premeditation.

The evidence proves (1) on May 28th 2012 Antwon Tuber and Tyler Drake where shot and killed, (2) in the State of Washington

(3) with intent to kill, (4) Tyler drake and Antrea Taber died as a result.

"Premeditation means" thought over beforhand. when a person, after any "deliberation" forms an intent to take human like, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated- Premeditation "must" involve more than a moment in point of time." the law requires some time, however long or short, in which a design to kill is deliberately formed see instruction # 14.

When you look at the evidence as a hole and instruction # 15, where in it states: "A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes the crime That's what the evidence tends to show. A Intentionally acted killing. Because there's no evidence of thought over beforhand, we have testimony that it happened like Bang initial pause bang, bang. Where you'll see this is when Antrea taber was hit with the gun, a accidental discharge went into the roff, and then is the initial pause then bang, bang. Killing both Mrs. Taber and Mr. Drake spontaneously.

what the evidence suggests, is there was "no Premeditation As such this court should reverse and remand dismissing the murder charges and reducing the charges to murder 2.

Additional ground #1

(2) the court erred by admitting statements when the defendant was in the functional equivilent of being in custody requiring Miranda warnings. As well invoked his right to remain silent and to counsel.

Miranda warnings required"

Custody" Includes" the deprivation of freedom of action in any significant way" see Miranda, 384 U.S. at 444, see also Stansbury v. Cal. 511 U.S. 318, 322 (1994) (per curiam) (The ultimate inquiry is" whether there was a formal arrest" or restraint on freedom of movement" of the degree associated with a formal arrest.) (quoting) Cal v. Beheler, 463 U.S. 1121, 1125 (1983)

At issue Mr. Longshore was a rear seat passenger of a two tone dodge pickup. Crime scene tape was spewed accross the street. But was not visible in the dark. The ~~passenger~~ driver David Wilson accidently drove in to the crime scene tape. Where multiple officer's some with weapons drawn. Approached the vehical and questioned the driver and ordered him to step out, Then ordered Mr. Longshore and another passenger Tammy Aust out, Mr. Longshore was initially elusive and gave a false name. Of Jason Longshore who turned out to have a felony D.O.C warrent out for his arrest. So Mr. Longshore was arrested placed in handcuffed and placed against the vehicle. SGT. Heldreth recognized Mr. Longshore and asked why he lied about his name. Mr. Longshore stated: He thought he had a warrent. A warrents check was ran and Mr. Longshore turned out to have a warrent out of Olympia.

SGT Heldreth asked Mr. Longshore what he was doing here. Mr. Longshore while still in cuffs under Arrest stated to by dope. Mr. Heldreth then asked Mr. Longshore if he would be willing to provide a statement to detectives" while still handcuffed and surrounded by police" Mr. Longshore feeling the pressure said" yes". Shortly there after Det. Moran Appeared. Took the hand cuffs off and

police escorted him to a vehicle to make a statement. Police officers were constantly passing the vehicle and at 1 point interrupted the interview to Notify Det. Moran that a warrent for the house has been received.

At that time Mr. Longshore asked if he was under arrest or free to go. Attempting to end the interview while the detective kept questioning Mr. Longshore to the point Mr. Longshore asked for an Attorney because he wasn't being allowed to stop the interview and allowed to leave when he wanted.

After the interview stoped Det. Moran escorted Mr. Longshore to SGT. Heldreth and asked if Mr. Longshore is Free to go. Mr. Heldreth having nothing more to hold Mr. Longshore allowed him to leave. See RP 17, RP 31, RP 32, PR 33, RP 34, RP 38, RP 39, RP 41, RP 25, RP 43, RP 44 RP 45, RP 48, RP 60, RP 61, RP 62, RP 65, RP 66, RP 230, RP 253, RP 255, RP 256, RP 257, RP 260-262, RP 267, R 268, RP 269, RP 281, RP 321. For all examples of being in functional equivalent of custody.

In U.S. v. Newton, 369 F.3d 659, 676-77 (2nd Cir 2004) "In custody when handcuffed though police told defendant not under arrest because significant restriction on freedom".

In U.S. v. Jacobs, 431 F.3d 99, 105 (3d Cir 2005) "In custody because not informed was not under arrest, but defendant did not feel free to leave, asked confrontational questions".

In Moore v. Ballone, 658 F.2d 218, 225-26 (4th Cir 1981) "In custody because brought to police station not told free to leave at any time".

In Murray v. Earle, 405 F.3d 278, 287 (5th Cir. 2005)
"In custody because liberty constrained when taken from home and interviewed in closed room."

In Combs v. Coyle, 205 F.3d 269, 284-85 (6th Cir 2000)
In custody because officers drew guns and pointed there weapons at him, and ordered him on to the ground".

In U.S. v. Abdulla, 294 F.3d 830, 834 (7th Cir 2002)
"In custody because arrested and handcuffed".

In U.S. v. Ollie, 442 F.3d 1135, 1138-40 (8th Cir. 2006)
"In custody because ordered to meet with police and not informed of freedom to end interview or not to answer".

In U.S v. Kim, 292 F.3d 969, 978 (9th Cir 2002)
"In custody because doors locked not allowed to communicate and surrounded by police officers.

In U.S v. Griffin, 7 F.3d 1512, 1519 (10th Cir 1993)
"In custody because priver questioning, no disclosure that free to leave or not to answer and blocked by police.

At least in every Circuit accross this country, the courts have delt with and continue to uphold the functional equivalent requiring Miranda. In all the cases above in one way or another demonstrate why this court should reverse and remand for a new trial with instructions to suppress this statement.

As our US Supreme court stated "A suspect is in custody if under the totality of circumstances, a reasonable person would not felt free to terminate the encounter and leave" see Yarborough v. Alvorado, 541 U.S. 652, 663-65 (2004)

Its apparent here, that Mr. Longshore would not of felt free to leave. Because when he attempts to leave by coming Det. Mason if he was free to go while Attempting

To stop the interview. The detective didnt initally allow Mr. Longshore to leave and began to ask confrontational Questions see exhibit 3 statement of may 28th.
As well prior to allowing Mr. Longshore to leave at any times was under arrest, in handcuffs and not free to go. yes the handcuffs were eventually removed But this was only done if Mr. Longshore spoke to detectives. But was not told Free to leave or he didnt have to answer any questions. As such the only answer is mr. Longshore under the totality of circumstances did not feel free to leave. As such Mr. Longshore should of been advised of Miranda warnings and this statement should of been supressed.
(1) See exhibit 3 pg 1" no advisement of right to leave or that Mr. Longshore did not have to answer questions".
(2) Pg 4 Line 36 - Pg 5 line 14," where officers interrupt interview"
(3) pg 5 line 24" Mr. Longshor Attempts to stop the interview invoking his right to remain silent"
(4) pg 5 line 27" detective continues to ask Questions.
(5) pg 5 line 38" advising detective he told police he wanted an attorney present before any questioning"
(6) pg 6 line 3" mr. Longshore confirms he wants the interview stoped"
(7) Pg 6 line 7" mr. Longshores asks if hes free to go.
(8) pg 6 line 30" mr. Longshore again states if Im not under arrest I want to leave this place".
(9) pg 6 line 36" Mr. Longshore again asks to go"
(10) pg 6 line 38" the Detective tells him just a second.
(11) pg 6 line 40" mr. Longshore again states I want an

attorney here cause I feel like you guys are purposely then the tape ends abruptly.

As such and shown, this court should reverse and remand to suppressed this statement. And grant a new trial As not only did Mr. Longshore invoke his right to remain silent numerously throw this statement but was demanding an Attorney. All while under the circumstance feeling he wasn't free to leave requiring miranda warnings.

Additional Ground 12

(6) The court erred by addmitting the June 1st statement after Mr. Longshore Invoked his right to remain silent.

IF an individual indicates in any manner at any time prior to or during questioning, that he wishes to remain silent or speak to an attorney, the interrogation must cease. See Miranda v. Arizona, 384 U.S. 436. 86. S.Ct. 1602 16 L.Ed 2d 694 (1966), Edwards v. Arizona 451 U.S. 477. 101. S.Ct. 1880 68 L.Ed. 2d 378 (1981), State v. Coles 28 wn. App 563. 625 P.2d 713 (1981) State v. Chapman, 84 wn. 2d 373 576 P. 2d 64 (1974) "The defendants assertions of these rights must be scrupulously honored see State v. Mercer 24 wn. App 441 601 P. 2d 975 (1979) State v. Mason 31 wn. App 41 634 P. 2d 870 (1982) USCA Const Amend 5.

Here on (3) seperate occassion's Mr. Longshore invoked his rights to remain silent. An exhibit 5 the June 1st statement

(27)

Beganing on pg 62 Line 30 Mr. Longshore states that "concludes it." again on pg 63 line 36 Mr. Longshore says theres nothing further. On Line 22+ 23 Mr. Roades states "do you or do you not wanna continue to talk to us." On 23 Mr. Longshore states I'd were not willing to fucking go that route to try to get this dued". Then on Line 39, JR states "so you dont want to continue on with the interview." Line 41 Mr. Longshore states what else is there to do.

On pg 64 Line 6 "soon then its done" were mr. longshores final words on line 8 JR states Lets make it a normality then. Line 30 Mr. Longshore signes the termination form ending the interview.

After its over Mr. Longshore states "This cant be nobody's even taken in consideration to even try to." on line 32. where detective picked up and Ran another 24 pages of transcripts,

But on page 78 Line 20 JR: "Okey so you dont wanna talk anymore? Line 22 "well I concluded that Fucking ten minutes ago and you guys kept asking me questions". Line 27 "Thats when I signed that piece of paper that it was done recording, everything was done and nothing stop yet." Line 30 JR confirm nothings stoped, Line 36 Mr. Longshore states yeah, that I asked her it to be stopped ten minutes ago and my signature was signed and

it wasn't, and everything kept going. Pg 79 Line 14 JR "Okay and previously it was ~~signed~~ 7:28 is when you sign that, it is now 752 hours and that will conclude this statement.

Here (3) seperate times Mr. Longshore has shown he wished to end the interview (1) verbally beginning on pg 62 line 3 & (2) By Signing the termination form pg 64 line 30. (3) again verbally pg 64 line 6 "so ok then it's done"

On several different occasions during Mr. Longshores June 1 2012 statement, he indicated verbally and in writing that he wanted to end the interview on each occasion the detectives continued to question Mr. longshore. Under such circumstances all statements made after mr. longshore invoked his right to remain silent must be suppressed.

As stated above IF an individual indicates in "any manner" at anytime prior to or during questioning, that he wishes to remain silent or speak to an Attorney, The interrogation must cease. Miranda Id - see also Piatnitsky, 180 wash.2d 407, 412, 325 P.3d 167 (2014) writing is a manner, In State v. I.B. 348 P.3d 1250 (Div III April 28 2015). "Invocation can be made by simply shaking your head no." "In order to unequivocally assert the right to remain silent, a suspect need not verbally invoke his right to remain silent. US CA CONST Amend 5 Miranda 384 U.S. at 473-74 86 S.Ct 1603, Law Enforcement officials are required to "scrupulously honor" an accused "right to cut off questioning" such that the failure to do so precludes admission of the Accused's statements at

trial - only where the accused has actually asserted that right. Davis, 512 U.S. at 458-59, 114 S. Ct 2350. As such and demonstrated above. This court should supress these statements after Mr. Longshore invoked his rights to end the interview. And remand for a new trial.

## additional Grand 13

(13) Mr. Longshore was misadvised of his Miranda rights to counsel by detective Roades when the detective stated ~~You would~~ will not get a lawyer until the Court Appoints one.

In the issue at BAR on June 1st 2012. Mr. Longshore was arrested and subjected to interrogation.

On Page 2 line 14-21 Det. Roades was reading Mr. Longshore his Miranda rights. on Line 23 Mr. Longshore stated "How quick can that be done", In response to detectives Line 19 "if you cannot afford to hire a lawyer, one will be appointed to represent you before questioning if you wish. where on Line 35-40 Det Roades States" And to answer that question, if Youre not gonna have a lawyer appointed for you or to you until you go to court, okay".

Mr. Longshore contends that this was a misadvisement of right to counsel and violation of CrR 3.1(c)(2).

In State v. Gasteazor-Paniagua (2013) the court ruled statements by defendant during police questioning are inadmissible if police tactics prevent the defendant

From making a rational, independant decision about giving a statement."

Here Mr. Longshore asked how quick he can get an Attorney provided to him if he could not afford an Attorney. where detectives instead of following Rule CrR 3.1(c)(2) "at the earliest opportunity a person in custody who desires a lawyer shall" be provided access to a telephone, and the telephone number of the public defender or official responsible for assigning a lawyer".

"Although the rule does not require the officers to actually connect the accused with an Attorney, it does require reasonable efforts to do so" see State v. Kirkpatrick 89 Wn. App 407, 414, 948 P.2d 882 (1997) see State v. Pierce 169 Wn. App 533, 280 P.3d 1158 (2012).

Additionally CrR 3.1(b)(1) provides

(b) State of proceedings

(1) the right to a lawyer shall accrue as soon as feasible after the defendant is taken in to custody, appears before a committing magistrate, or is formally charged, whichever occures earliest.

Here, a warrent was issued May 30th for the Arrest of Mr. Longshore charging him with (2) counts of Aggravated murder. This was the earliest the right to counsel Attached. June 1st Mr. Longshore was Arrested and taken into custody for interrogation prior to booking Mr. Longshore a Jail. Mr. longshore was Misadvised and didnt make a rational independent decision about given a statement in violation of State v. Gustegar-Pantiagua (2013)

Had Mr. Longshore correctly been advised of his right to counsel. ~~Mr. Longshore would of contacted counsel.~~ It cant be said he would not of waived his right to counsel.

As such this court should reverse & remand for a new trial with instructions suppressing the statements.

Additional ground 14

The court erred by admitting Mr. Longshores June 4th statements in trial after Mr. Longshore unequivocally invoked his right to counsel.

In the case at bar in exhibit 7 Mr. Longshore At Pg 22 Line 36 - 39 Mr. Longshore states: "And uh, Ive already told my federal people they told me that if uh one of those come about to deny it and allow them to be involved with the interview" Pg 23 Line 19 - 21 mr. longshore states: "I - I already told you just now. I already told you that I have nothing to hide. Im just doing to follow through with the recommendation thats made by the attorney" allow them to uh be apart of it, or anything like that".

In State v. Dever Nysta 168 wn. App. 3a, 275 P3d 1163 (2012), the appellate court faced comparable situation in a manner in a case where defendant Nysta was being asked questions by a detective and the question of whether he would submit to a polygraph examination was raised. Although Nysta was at first willing, he then suggested that he needed to speak

with his attorney first. See Deven Nysta 168 wn. App at 37-39. The court then focused on what was required to successfully invoke right to Counsel. The Court stated that "the suspect must articulate his desire to have counsel present sufficiently and clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney" Id at 41. The state contended that Nysta's request for an attorney was equivical because Nysta's answers suggests that he "was willing to continue the interview without the assistance of Counsel, but he wanted to consult with counsel before make a final decision about whether or not to take a polygraph. Id at 42. The court rejected this analysis of the "interpretation" and stated Nysta did not say "maybe" or "perhaps" or condition his request under any circumstances. Rather, he stated that "I gotta talk to my lawyer" was unambiguous Id. The court held that "where nothing about the request for Counsel or the circumstances leading up to the request would render ambiguous all questioning must cease. Id. at 42 ~~The Court held that "where nothing about the request~~

Further "The interrogator may not proceed on his own terms as if the defendant has requested nothing" Id. The court held that it was error for the trial court to determine that Nysta did not effectively invoke his right to counsel.

Here the same assessment can be made based on Mr. Langshores request for Counsel at the time he

polygraph discussion was raised. Rather than end the questioning or inquire into if it was Mr. Longshore requesting an Attorney Det Rhoades and SGT Heidrich continued with there questioning.

As such this court should reverse and remand for a new trial with instructions to supress the statements made after Mr. Longshore Invoked counsel.

(~~[redacted]~~)

~~Based~~

Additional ground 15

(10) Cumulative Errors Denied Mr. Longshore a fair trial.

Reversal May be required due to the cumulative effects of trial courts errors, even if each error standing alone would otherwise be considered harmless. See state v. Coe, 101 wn.2d 772, 789, 684 P.2d 668 (1984), State v. Badda, 63 wn 2d 176, 186, 385 P.2d 859 (1963), State v. Alexander, 64 wn. App 147, 154, 822 P.2d 1250 (1992) Error May take one of two forms - constitutional and non-constitutional error. State v. Wheeler, 115 wn 2d 708, 728 801 P.2d 948 (1990), State v. Guloy, 104 wn.2d 412 425, 705 P.2d 1182 (1985) cert denied 475 U.S. 1020, 106 S.Ct 1208 89 L.Ed 2d 321 (1986)

Constitutional error requires reversal unless the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in absence of the error. Whelchel at 728, Conley, at 425, Non-constitutional error requires reversal if, within reasonable probabilities, it materially affected the outcome of trial State v. Halstien, 122 Wn.2d 109, 127, 857 P.2d 270 (1993), State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981)

Here the errors mentioned above unfairly prejudiced mr longshores right to a fair trial. This case is where the jury weighed credibility of Mr. Raphael and Mr. Longshore. Absent the errors set forth above in this brief mr. longshore would have been aquitted. Because it cannot be stated beyond reasonable doubt that mr. longshores conviction would stand absent the jury receiving and not receiving the evidence as outlined above reversal is required.

(Conclusion)

As such this court should grant the relief described above. And IF for whatever reason this court Can't find that this brief is sufficient to ask That counsel add Additional brief to assist in what I'm trying to get Across.