

JH

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

vs.

RANDALL CONNOR,

Appellant.

No. 67142-1-I

STATE'S RESPONSE TO  
APPELLANT'S STATEMENT OF  
ADDITIONAL GROUNDS FOR  
REVIEW

1. IDENTITY OF RESPONDING PARTY

The responding party, the State of Washington, seeks the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

The State respectfully asks this Court to affirm Randall Connor's conviction for first-degree murder.

3. FACTS PERTAINING TO RESPONSE

The appellant, Randall Connor, is represented by counsel on appeal. Connor's attorney filed an opening brief, challenging the sufficiency of the evidence presented at trial of Connor's premeditation, in April 2012. The State filed its responsive brief in August 2012.

1 Connor submitted a statement of additional grounds for review (SAGR) to this Court in  
2 June 2012. In his SAGR, Connor raised the following challenges to his conviction:

- 3 1. The King County Prosecuting Attorney's Office (KCPAO) should have been  
4 disqualified from Connor's case on the ground of appearance of unfairness, because  
5 the father of Connor's victim, Merianne Lorentson, was formerly employed at  
6 KCPAO.
- 7 2. The trial court improperly denied Connor's request for a Frye<sup>1</sup> hearing prior to  
8 testimony of State's witnesses from various cellular phone providers.
- 9 3. The trial court wrongly denied Connor's "discovery request" for production of  
10 medical records of Ms. Lorentson, which would show that she either was or was not  
11 pregnant with Connor's child at the time of her murder.
- 12 4. The search warrants issued during the police investigation lacked probable cause.
- 13 5. The trial court improperly allowed a forensic scientist from the Washington State  
14 Patrol Crime Laboratory to testify about the chronological sequence of deposits of  
15 semen found on Ms. Lorentson's person and clothing.
- 16 6. The trial court improperly barred Connor from presenting evidence of Ms.  
17 Lorentson's troubled relationship with her father.

18 By letter dated September 17, 2012, a commissioner of this Court asked the State to  
19 respond to Connor's SAGR.

20 4. ARGUMENT

21 A. The King County Prosecuting Attorney's Office was not required to recuse itself.

22 During pretrial hearings held on January 5, 2010, and January 29, 2010, Connor asked the  
23 trial court to disqualify KCPAO from prosecuting him for Ms. Lorentson's March 2007 murder  
24 on grounds of bias. 2RP 11-15; 3RP 2-11. Connor asserted that because Ms. Lorentson's father  
worked for KCPAO as a deputy prosecutor from 1968 until 1977, and as a support staffer from  
1989 to 2006, it would create an appearance of unfairness if a KCPAO prosecutor were  
permitted to prosecute him. 2RP 11.

At the January 29, 2010, Connor's counsel candidly conceded that consideration of his  
motion was controlled by State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999). In that case, the

---

<sup>1</sup> See Frye v. United States, 29 F. 1013 (D.C. Cir. 1923).  
STATE'S RESPONSE TO APPELLANT'S  
STATEMENT OF ADDITIONAL GROUNDS FOR  
REVIEW - 2

1 state supreme court held that the doctrine of “appearance of fairness” applies to judges, and not  
2 to prosecutors acting in their executive branch capacity as attorneys pursuing criminal  
3 defendants. Finch, 137 Wn.2d at 808-10; see also Marshall v. Jerrico, Inc., 446 U.S. 238, 248,  
4 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980), cited in Finch, 137 Wn.2d at 810. 3RP 3. Given this  
5 mandatory authority, and the absence of any evidence to suggest that KCPAO had treated  
6 Connor’s case differently than others referred to it for prosecution, the trial court denied  
7 Connor’s motion. 3RP 9-11.

8 In his SAGR, Connor asserts that the trial court’s decision was erroneous. SAGR, at 1-3.  
9 However, this Court, like the trial court, is bound by the rulings of the state supreme court. See  
10 State v. Watkins, 136 Wn. App. 240, 246, 148 P.2d 1112 (2006). Moreover, Connor presents no  
11 reason for this Court to question the trial court’s determination that his case was handled by  
12 KCPAO just as it would have been had the victim had no relationship whatsoever with a one-  
13 time employee of that office.

14 B. Connor was not improperly denied a Frye hearing prior to the testimony of cellular  
15 phone provider witnesses.

16 Next, Connor challenges the trial court’s purported denial of his request for a hearing on  
17 the admissibility of the testimony of certain of the State’s witnesses, who worked as engineers  
18 for a number of cellular phone service providers. SAGR, at 4. During pretrial hearings, Connor  
19 sought to contest, pursuant to Frye v. United States, the scientific validity of specific testimony  
20 he anticipated the State’s witnesses presenting, to wit, that it was possible to determine a cell  
21 phone user’s exact location by reference to his or her phone’s connection with a cell tower.  
22 10RP 270.

23 In response, the State explained to the trial court that it had no such expectation, and was  
24 intending to present evidence showing only that various cell phone calls made by Connor, Ms.

1 Lorentson and others connected with specific cell towers, and that these towers had specific  
2 physical addresses and limited range of coverage. 10RP 270. In other words, Connor sought a  
3 Frye hearing in order to prohibit evidence the State never intended to offer. 10RP 270-71.

4 The trial court expressed its desire to hear from Connor's expert witness on the subject of  
5 cell phone technology prior to ruling on his request for a Frye hearing. 10RP 272. Accordingly,  
6 Connor called Manfred Schenk, a professional expert witness in a variety of fields. 10RP 273-  
7 74. During his examination, Schenk confirmed that, during a phone call, a cell phone will  
8 connect with a particular tower, and that each tower has a predetermined, ascertainable coverage  
9 area. 10RP 299, 315-17.

10 Following Schenk's testimony and that of one of the State's witnesses, who also  
11 explained that cell towers have readily-determined coverage areas,<sup>2</sup> the trial court stated that it  
12 did not anticipate granting Connor's request for a Frye hearing, given that the State's evidence  
13 on cell phone technology was neither novel or untested or otherwise challenged by Connor's  
14 expert. 11RP 16-18. However, Connor's counsel indicated that he would attempt to gather  
15 further information and ask for a final ruling on the subject in the future. 11RP 18. The request  
16 for a Frye hearing was not raised again, and the State's witnesses from various cell providers  
17 testified without objection on the subject of cell tower coverage. 22RP 4-73; 23RP 6-117; 26RP  
18 37-93.

19 Where, as here, a trial court clearly indicates, in response to a pretrial motion, that it is  
20 not issuing a final ruling on the admissibility of particular evidence, a party waives its right to  
21 appeal if it neither seeks a final ruling nor objects at the time such evidence is offered during the  
22 trial. State v. Asaeli, 150 Wn. App. 543, 587, 208 P.3d 1136 (2009); see also RAP 2.5(a).

23  
24 <sup>2</sup> 10RP 329-34 (testimony of Jason Bodnar, radio frequency engineer for Sprint).

1 Furthermore, while review of the denial of a request for a Frye hearing is de novo,<sup>3</sup> the need for  
2 such review to be undertaken by this Court is wholly obviated by the fact that Connor sought  
3 such a hearing for evidence the State neither intended to present nor actually offered at trial.

4 C. Ms. Lorentson's medical records were irrelevant.

5 Connor complains that the trial court "denied" his "discovery request" for Ms.  
6 Lorentson's medical records, which, he contends, would establish whether or not she was  
7 pregnant with his child at the time of her death. In his SAGR, he states that Ms. Lorentson had  
8 told him she was indeed pregnant, and that the medical records, if they disproved her claim,  
9 would cast doubt on her credibility with regard to statements she made to others shortly before  
10 her death, in which she expressed her fear of Connor. SAGR, at 4.

11 Other than a passing reference in the first volume of the report of proceedings on this  
12 subject (at 1RP 23-24), the State is unable to find any other discussion of this subject in the  
13 remaining 36 volumes, including any indication that the trial court ever ruled on this subject.  
14 Even though an appellant is not expressly required to cite to the record or authority in his SAGR,  
15 he must still "inform the court of the nature and occurrence of [the] alleged errors." RAP  
16 10.10(c). This Court is not obligated to search the record in support of claims made in an  
17 appellant's SAGR. RAP 10.10(c).

18 Additionally, not only is Connor's depiction in his SAGR of his conversations with Ms.  
19 Lorentson on this subject outside the appellate record,<sup>4</sup> his claim as to the relevance of Ms.  
20 Lorentson's gestational status is mistaken. The trial court prohibited the State from introducing

21  
22  
23 <sup>3</sup> State v. Gregory, 158 Wn.2d 759, 830, 147 P.3d 1201 (2006).

24 <sup>4</sup> See State v. McFarland, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995) (holding that matters  
outside the trial record will not be considered on direct appeal).

1 evidence of Ms. Lorentson's statements that she feared being harmed by Connor. 10RP 226.  
2 Her credibility was never at issue.

3 D. Connor fails to provide any argument regarding the validity of search warrants  
4 obtained in the course of the police investigation of Ms. Lorentson's death.

5 In his SAGR, Connor challenges the "validity of the searches [sic] and seizures  
6 conducted in the case pursuant to the warrants issued." SAGR, at 5. He states that the affidavits  
7 submitted in support of the warrants lacked probable cause and that they included false assertions  
8 and significant omissions. SAGR, at 5. He then provides multiple citations to case law on the  
9 general subject of search and seizure law. SAGR, at 5-9.

10 As noted supra, while an appellant need not provide citation to the record or to relevant  
11 authority in his SAGR, he still must sufficiently develop his arguments to allow review. See  
12 State v. Meneses, 149 Wn. App. 707, 716, 205 P.3d 916 (2009). Here, Connor does nothing  
13 more than make bald assertions without any specificity or support. He does not indicate which  
14 warrants he challenges, nor does he provide any explanation whatsoever as to why the trial court  
15 may have erred. The State is unable to respond to an argument that has not been made. This  
16 Court need not, either.

17 E. The trial court did not abuse its discretion in allowing a State's witness to opine on  
18 the sequence of seminal deposits on Ms. Lorentson's clothing.

19 Connor asserts that the trial court erred when it allowed Megan Inslee, a forensic scientist  
20 in the DNA section of the Washington State Patrol Crime Laboratory, to testify that she believed  
21 that Lorentson likely had sexual intercourse with Reginald Smith before having sex with Connor.  
22 Connor contends that such an opinion was outside Inslee's expertise. SAGR, at 9.

23 A trial court's admission of evidence is reviewed for abuse of discretion. State v.  
24 Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). Abuse of discretion exists when a trial

1 court's exercise of discretion is manifestly unreasonable or based upon untenable grounds. Id.  
2 Generally speaking, an expert is required to possess some special skill or knowledge going  
3 beyond that of the average person; whether a witness has such special skill or knowledge and is  
4 properly qualified to express an opinion as an expert is within the sound discretion of the trial  
5 court. State v. J-R Distributors, Inc., 82 Wn. 2d 584, 597, 512 P.2d 1049, 1058 (1973)

6 Inslee testified that she began working as a forensic scientist with the state crime lab in  
7 2002, after completing her master's degree in genetic medicine at the University of Washington.  
8 27RP 5. In addition to her academic work, Inslee received specific forensic training at the crime  
9 lab and was required to complete continuing education throughout her career there. 27RP 6.

10 Inslee described finding male DNA, matching Reginald Smith, in the crotch area of a pair  
11 of white sweatpants belonging to Ms. Lorentson, which were recovered by police from the floor  
12 of Lorentson's bathroom after the discovery of her body. 27RP 104-07. Inslee found Connor's  
13 DNA on the anal and vaginal swabs taken from Ms. Lorentson's body. Inslee testified that she  
14 concluded, based on her DNA findings, that Connor was the last person to have sexual  
15 intercourse with Lorentson. 27RP 111.

16 Connor's attorney objected to that final statement, on the ground that Inslee lacked  
17 foundation. 27RP 110. The trial court sustained the objection, and soon after excused the jury  
18 so that the State could make an offer of proof on this subject. 27RP 111. Outside the presence  
19 of the jury, Inslee explained that she had been told by investigators that Lorentson had been  
20 wearing the white sweatpants earlier in the day, and that the only semen and male DNA she  
21 found in the crotch of those pants belonged to Smith. 27RP 112. Based on her training and  
22 experience, Inslee concluded that the seminal deposits in the pants were the result of draining  
23 from Lorentson's vaginal vault. 27RP 112. Given that she also found Connor's, and not

1 Smith's, DNA on the swabs taken from inside Lorentson's vagina, as well as on the underpants  
2 that Lorentson was wearing when her body was found, Inslee concluded that Connor likely  
3 deposited his semen inside Lorentson after Smith. 27RP 113. This was particularly likely,  
4 Inslee testified, given that vaginal drainage happens fairly quickly, and that it would be  
5 extremely odd for Smith to have ejaculated inside Lorentson after she had had sex with Connor,  
6 but to have left no trace, with only Connor's DNA turning up on the vaginal and anal swabs.  
7 27RP 115. The trial court ruled that this testimony was admissible, and Inslee so testified once  
8 the jury returned. 27RP 119-21.

9 In his SAGR, Connor presents no argument as to why the trial court's final ruling was so  
10 manifestly unreasonable as to constitute not only an abuse of discretion, but also reversible error.  
11 Given Inslee's extensive background in forensic DNA testing and her personal involvement in  
12 the testing in this case, the trial court can hardly be faulted for permitting the State to present an  
13 expert opinion that was clearly based on a rational interpretation of the physical evidence.

14 F. The trial court properly excluded evidence of familial discord between Ms. Lorentson  
15 and her father.

16 Finally, Connor contends that he should have been allowed to present evidence showing  
17 that Ms. Lorentson and her father had a "volatile" relationship. SAGR, at 10. At his January 10,  
18 2011, pretrial hearing, Connor sought permission to present evidence of this familial friction in  
19 order to argue that Mr. Lorentson was responsible for his daughter's death, notwithstanding the  
20 fact that he was wheelchair-bound at the time. 10RP 38-40. The trial court ultimately prohibited  
21 Connor from suggesting that Mr. Lorentson, or a number of other individuals besides Reginald  
22 Smith and the father of Lorentson's daughter, were "other suspects" in Ms. Lorentson's murder.  
23 10RP 225.

1 In his SAGR, Connor argues that the trial court erred not by excluding Mr. Lorentson as  
2 an "other suspect," but by refusing to allow his attorney to present evidence of the Lorentsons'  
3 discord, because, he asserts, the "mere fact someone had a stormy relationship with the decedent  
4 did not make him [Connor] the killer nor made it more likely." SAGR, at 10.

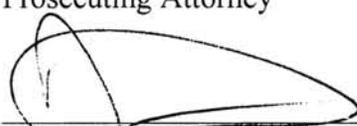
5 The purpose of an appeal is to review decisions that were made by the trial court. When  
6 the trial court was not asked to make a decision on a particular subject, there is nothing for this  
7 Court to review. See RAP 2.2; RAP 2.5(a). Here, Connor never sought at trial to introduce this  
8 evidence on the basis he now relies upon in his SAGR. Moreover, the basis that he now relies  
9 upon is fairly specious. It was never suggested to the jury, either during the evidentiary phase or  
10 in closing arguments, that Connor must have been Ms. Lorentson's killer because he was the  
11 only person whom she ever argued with.

12 5. CONCLUSION

13 The State respectfully asks this Court to consider this response to Connor's statement of  
14 additional grounds for review, and affirm his conviction and sentence.

15 Submitted this 16<sup>th</sup> day of October, 2012.

17 DANIEL T. SATTERBERG  
18 Prosecuting Attorney

19   
20 DAVID SEAVER, WSBA #30390  
21 Senior Deputy Prosecuting Attorney  
22 Attorneys for Respondent

23 W554 King County Courthouse  
24 Seattle, WA 98104  
Telephone: 206-296-9000

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Response to Statement of Additional Grounds for Review, in STATE V. RANDALL CONNOR, Cause No. 67142-1-I, in the Court of Appeals, Division I, for the State of Washington.

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

W Brame  
Name  
Done in Seattle, Washington

10/16/12  
Date