

68661-5

68661-5

NO. 68661-5-1

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PARAMJIT SINGH BASRA,

Appellant.

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DIVISION ONE

MAR 14 2013

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRIAN GAIN

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**CORRECTED BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED

1. Evidence is sufficient if, considered in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. In order to prove *actual* premeditation in a homicide by strangulation case, the State must prove more than the mere passage of time during the strangulation. Here, there was evidence that Basra was angry at his wife, Harjinder,<sup>1</sup> prior to murdering her, and that he beat and strangled her with one hand before switching to a ligature, which was the eventual cause of death. Afterward, Basra told police that he had murdered Harjinder because she had “problems with men.” In the light most favorable to the State and with all reasonable inferences in the State’s favor, was there sufficient evidence for a reasonable juror to find that Basra’s murder was premeditated?

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<sup>1</sup> The victim and witnesses share the same last name. This brief will refer to Harjinder Basra and her daughter, Amandeep Basra, by their first names to avoid confusion; no disrespect is intended.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The defendant, Paramjit Singh Basra, was charged with murder in the first degree in count I and felony murder in the second degree in count II. CP 8-9. The State alleged that Basra murdered his wife, first by strangling her manually, then by using a ligature. Basra was convicted of both counts after a jury trial and sentenced to the low end of the standard range, 240 months. CP 126. Count II was vacated. CP 124.

2. SUBSTANTIVE FACTS.

Basra and his son, Manjit Basra, worked as truck drivers. 6RP 460.<sup>2</sup> Initially, Basra and Manjit drove together, delivering goods for a trucking company, but eventually Manjit, who was tired of arguing with his father in the truck, told Basra that he did not want to ride with him anymore. 6RP 469-70. Basra wanted to continue doing "long hauls" with his son, but Manjit did not; Harjinder chose to support her son over her husband. 6RP 483.

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<sup>2</sup> This brief will refer to the Verbatim Report of Proceedings as follows: 1RP (12/9/11, 1/27/12); 2RP (2/1/12); 3RP (2/2/12); 4RP (2/6/12); 5RP (2/7/12, 2/8/12); and consecutively paginated 6RP (2/8/12, 2/9/12, 2/13/12, 2/14/12, 2/15/12, 2/16/12, 2/21/12).

A mental health expert for the defense, Dr. Gollogly testified that Basra had told him about the events that preceded the murder. 6RP 615. On July 26, 2009, the night before the strangulation, Basra was upset with Harjinder. 6RP 615. Basra complained to her that she had not made enough sauce for his dinner and Harjinder responded by "plop[ing] more sauce on his plate." 6RP 615. That night, Harjinder did not sleep in bed with her husband, but instead slept in another room. 6RP 615. Basra awoke in the middle of the night and told his wife to come join him in bed, and Harjinder complied. 6RP 615.

The next morning, Basra had to wake up early for work. 6RP 616. Before leaving, he confronted Harjinder and told her that she needed to "change her behavior" and not turn his children against him. 6RP 616. She responded by asking Basra if he would "ever learn," and left the room. 6RP 616. Basra went outside to start the car, but returned to remind Harjinder that she needed to "change her behavior" and that if she could not, she should stop cooking for him. 6RP 617. Basra told Dr. Gollogly that he left the house "upset" and, as he was driving off, realized that he had forgotten his wallet. 6RP 617.

Amandeep Basra, Basra's 24-year-old daughter, testified that she was working at the computer doing homework in the master bedroom when her father returned, looking for his wallet and the cord to his GPS device. 6RP 174-76, 343. Harjinder was still lying in bed in the same room when Basra entered and asked her where his wallet was; Harjinder looked around the bed area for it. 6RP 177, 305-06. The couple began to quarrel, and Basra ordered Amandeep to leave the bedroom. 6RP 176, 305. Amandeep said that she would not leave because she had to finish her homework, and Basra repeated his command. 6RP 176. When Amandeep refused again, Basra slapped her face with his hand. 6RP 177.

Seeing the slap, Harjinder rose from the bed and told her husband to "stop, don't do this"; Basra stopped slapping Amandeep but turned his attention to Harjinder. 6RP 179. Amandeep's call to 911 describing what happened next was played for the jury. 6RP 319. The 911 recording was admitted at trial as State's Exhibit 1; it captured Amandeep's frantic description of her father's actions moments after they occurred:

AMANDEEP BASRA: ...(unintel)... me and my mom  
sitting in the room and dad  
came.

OPERATOR: Uh, huh.

AMANDEEP BASRA: And he just beating at me and  
my mom and then he uh pulled  
her neck and pushing it.

OPERATOR: Oh okay. So he was beating  
you guys and then he started  
holding her neck down?

AMANDEEP BASRA: Yeah.

OPERATOR: Okay.

AMANDEEP BASRA: And then he—he—he grabbed  
a rope and just put it on my  
mom's neck and just—

OPERATOR: He used a rope?

AMANDEEP BASRA: Yes and then I came in the  
bathroom and I called you

guys.<sup>3</sup> Oh my God. Are you  
guys [coming]?

State's Exhibit 2 at 12.<sup>4</sup>

From the witness stand, Amandeep testified that after Basra slapped her on the face, he grabbed Harjinder by the throat with one hand, and moved her toward the bedroom wall, pushing her against it. 6RP 179, 316-17. Amandeep told him to stop, but he would not. 6RP 318. Amandeep slapped at her father, knocking his turban off of his head. 6RP 321.

When police arrived at the home, they noticed that the front door was slightly ajar; then they saw the silhouette of a man approach the door from the inside, shut it, and lock it. 5RP 60-61. After the police announced their presence more than three times, Basra opened the door and said, "Ah, ah, the problem is I killed my wife. She's in the room to the right." 5RP 68. One Auburn Police Officer testified that Basra was "very calm." 5RP 68-69. He told another officer that he had killed his wife because she had a "problem with men." 6RP 413.

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<sup>3</sup> During trial, Amandeep testified that Basra had nothing in his hand, but also testified that the "rope" was black, and that she had told a detective that she had seen Basra trying to take the GPS plug-in cord out of his pocket during the murder. The cord was found at the scene. 6RP 328-29.

<sup>4</sup> The transcript of the 911 call is State's Exhibit 2 and has been designated for review by this Court.

Inside the house, officers found Amandeep, crying and shaking. 5RP 75-76. When they entered the master bedroom, they found Harjinder on the floor; responding officers described her face as “purpling” and red marks across her neck. 5RP 77. Her head appeared swollen and she had a little blood on her top teeth. 5RP 144. The master bedroom was orderly in appearance, except for the comforter, which had been pulled to one corner of the bed. 6RP 108.

Dr. Michele Lubin, a forensic examiner, performed the autopsy on Harjinder, and testified that she had a bruise on the left side of her chin, two parallel lines across her neck, and petechial hemorrhaging on her skin. 6RP 367-68. Dr. Lubin showed the jury photographs of the body, noting that Harjinder’s eyelids were swollen. 6RP 379. Dr. Lubin testified that the red mark on Harjinder’s neck was consistent with a ligature, and that the cause of death was asphyxia due to ligature strangulation. 6RP 384. She testified that strangulation by ligature takes about 10 to 20 seconds to render its victim unconscious, and that when the vessels are compressed for “greater than a minute” you would have irreversible brain damage. 6RP 387-88. The ligature mark on Harjinder’s neck

was consistent with the GPS charging cord that was found at the scene. 6RP 390.

Prior to reaching its guilty verdicts, the jury asked to hear the 911 call one more time. CP 100.

3. PREMEDITATION: KNAPSTAD AND HALFTIME MOTIONS.

The elements of premeditated murder in the first degree require the State to prove beyond a reasonable doubt that the defendant acted with the intent to cause the death of the victim, that the intent was premeditated, and that the victim died. RCW 9A.32.030(1)(a). Here, premeditation was defined for the jury as follows:

Premeditation means thought over beforehand. When a person, after deliberation, forms an intent to take a human life, 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.

CP 73.

Prior to jury selection, Basra's attorney raised a Knapstad<sup>5</sup> motion, claiming that both parties agreed on the substantive facts, and that there were not facts sufficient for the State to prove a prima facie case of guilt for the element of premeditation in count I. 1RP 16-17. Relying on State v. Bingham, 105 Wn.2d 820, 719 P.2d 109 (1986), the defense attorney said that one act of strangulation is not sufficient on its own to prove premeditated murder. 1RP 16-31.

The State first responded that the facts were not mutually agreed upon as required by Knapstad. 1RP 31-32. Then the State addressed the alleged lack of premeditation evidence, arguing that these facts showed more than one act of strangulation. 1RP 32-35. Here, the State said, there were "multiple types of attack" against Harjinder, and Basra indicated his own motive to police when he admitted, "She has problems with other men, so I killed her." 1RP 34. These facts, the State argued, altogether differentiated the case at hand from Bingham. 1RP 32-35.

The trial judge agreed with the State, ruling that there were "a number of differences" between the current facts and those of

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<sup>5</sup> In State v. Knapstad, 107 Wn.2d 346, 352-53, 729 P.2d 48 (1986), the court held that, where there is no dispute as to material facts, the trial court may dismiss a case where those material facts do not provide a prima facie case for guilt.

Bingham, pointing to Basra's anger leading up to the murder, the fact that Basra used two different means to strangle his wife, and the fact that the murder was preceded by an assault. 1RP 36. "That's enough right there," the trial judge ruled, denying the Knapstad motion to dismiss. 1RP 36.

After the State had rested its case, Basra's attorney revisited the issue, arguing that, even in the light most favorable to the State, the State had not proven in its case in chief that the murder was premeditated. 6RP 442-48. The State responded by arguing that the jury had also heard the 911 tape in this case, which "was pretty clear ... that he was manually strangling her, and then also mentioned the use of what she believed to be a rope." 6RP 449. Basra used "multiple means by which to attack and eventually kill his wife," the State added. 6RP 450. The court again agreed with the State:

...the 911 tape... is evidence, and it is evidence of Amandeep Basra explaining to the 911 operator what's going on, which they could find that there was [sic], in fact, manual strangulation and beating and use of a rope, and she basically used the words, "my father's killing my mother..."

6RP 454. Viewing this, along with the other evidence, and all of its reasonable inferences, in the light most favorable to the State, the

trial court denied the defense attorney's halftime motion to dismiss.  
6RP 454.

C. ARGUMENT

1. VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, A RATIONAL TRIER OF FACT COULD FIND THAT HARJINDER'S MURDER WAS PREMEDITATED.

Like his defense attorney in his dismissal motion, Basra contends on appeal that the State did not prove that Harjinder's murder was premeditated. Relying on Bingham, Basra argues that the State only proved a single strangulation, and a single strangulation, even one that lasts for an extended period of time, is not sufficient on its own to prove premeditation. But the facts and their inferences in the case at hand support the jury's finding that Basra's murder was premeditated; the jury's finding is also supported by Washington case law.

The State must prove every element of a crime beyond a reasonable doubt. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011). When an appellant challenges the sufficiency of the evidence, the reviewing court views the evidence in the light most favorable to the State, drawing all reasonable inferences from the

evidence in the State's favor and interpreting them "most strongly against the defendant." State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). This Court should interpret all reasonable inferences in the State's favor. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). Direct and circumstantial evidence carry the same weight. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). Credibility determinations are for the trier of fact and are not subject to review. State v. Cantu, 156 Wn.2d 819, 831, 132 P.3d 725 (2006). Premeditation is the "mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short." State v. Brooks, 97 Wn.2d 873, 876, 651 P.2d 217 (1982) (footnote omitted).

In Bingham, the defendant strangled his victim with his bare hands while he was having sexual intercourse with her. 105 Wn.2d at 822. The medical examiner who testified at trial claimed that, based on the victim's injuries, the strangulation would have lasted between three and five minutes. Id. The prosecutor argued to the jury that the murder would be "premeditated if Bingham had formed the intent to kill when he began to strangle [the victim] and thought about that intent for the 3-5 minutes it took

her to die.” Id. The jury found Bingham guilty of premeditated murder in the first degree. Id.

On appeal, the court found that the mere passage of time was not sufficient to prove premeditation: “Having the opportunity to deliberate is not evidence the defendant did deliberate.” Id. at 826. The court reasoned that the State needed “some additional evidence showing reflection,” otherwise “any form of killing which took more than a moment could result in a finding of premeditation.” Id. It was particularly difficult to determine premeditation in Bingham because there was a question of the defendant’s ability to “deliberate or reflect while engaged in sexual activity.” Id.

In State v. Ollens, 107 Wn.2d 848, 850, 733 P.2d 984 (1987), a Washington Supreme Court homicide case decided after Bingham, the victim was stabbed numerous times. The court relied on four factual characteristics in Ollens to distinguish it from Bingham: 1) in Bingham, the murder involved one, continuous act of steady strangulation vs. repeated stab wounds of Ollens; 2) in Ollens, the defendant procured a weapon, unlike in Bingham; 3) the victim in Ollens was struck from behind; and 4) in Ollens there was evidence of motive. Ollens, 107 Wn.2d at 853. Because the factual details of the murder provided evidence of reflection or

deliberation, the court found that there was sufficient evidence of premeditation.

In State v. Pirtle, 127 Wn.2d 628, 644, 904 P.2d 245 (1995), a Washington Supreme Court case that followed Ollens, the court stated that there are four characteristics of a crime that are particularly relevant to establish premeditation: motive, procurement of a weapon, stealth, and method of killing. 127 Wn.2d at 644. While these factors are “particularly relevant,” they are not elements of the crime, and the State need not prove all four in order to have sufficient proof of premeditation. Courts after Pirtle have found sufficient evidence of premeditation without the presence of all four Pirtle factors. See State v. Sherrill, 145 Wn. App. 473, 485, 186 P.3d 1157 (2008) (holding that, although there was no evidence of motive, procurement of a weapon, or stealth presented, there was still sufficient evidence to establish premeditation).

Other Washington cases have followed suit. In State v. Rehak, 67 Wn. App. 157, 834 P.2d 651 (1992), the defendant shot her husband three times from behind. Id. at 164. While the shooting happened quickly, because the jury could have inferred from the evidence that the defendant sneaked up on her husband

from behind, gun in hand, and shot three times (twice after he fell to the floor), the court found sufficient evidence of premeditation. Id. In State v. Massey, 60 Wn. App. 131, 803 P.2d 340 (1990), the court found that evidence that the defendant brought a gun to the murder site was sufficient to prove premeditation. In State v. Gibson, 47 Wn. App. 309, 734 P.2d 32 (1987), the court found that evidence of a brief lapse of time between blows to the head followed by strangulation was sufficient.

The facts in the case at hand differ significantly from those in Bingham; this jury had substantial evidence beyond a single method of murder from which to infer premeditation. First, when Basra confessed to police, he told them that his wife “has problems with men, so [he] killed her.” 6RP 413. But Basra’s confession to a motive for the murder did not stand alone – it was placed in context by Basra’s own statement to Dr. Gollogly regarding Basra’s feelings toward his wife leading up to the murder. 6RP 615. The jury also heard testimony that Harjinder supported her son against his father, leading Basra to accuse Harjinder, just before the murder, of turning his children against him. 6RP 616.

The jury also heard that, on the night before the murder, Basra and his wife quarreled over supper because Harjinder had

not served him enough sauce with his meal, and that, following the argument, Harjinder elected not to sleep with Basra. 6RP 615. Basra admitted that he had told her to “change her behavior” and that he was upset with her. 6RP 615-17. Given this evidence, a reasonable juror could easily have inferred, as the State argued in its closing, that when Basra said that his wife had problems with “men,” Basra meant that she had a problem with *him*, and so Basra killed her. Evidence of a motive is evidence that Harjinder’s murder was premeditated.

It is not Basra’s explicitly stated motive alone that distinguishes these facts from Bingham. In Bingham, the defendant committed one, long act of strangulation, until his victim died. 105 Wn.2d at 822. Here, Basra’s attack began when he “beat” his wife, as described by Amandeep on the 911 call. Exhibit 2 at 12. Harjinder’s facial injuries, the bruising on her face, the swelling of her eyelid, and a small amount of blood on her teeth, were all consistent with Amandeep’s rendition of events on the 911 call. Similarly, the position of the comforter on the bed, which was pulled to a corner, was consistent with a struggle between Basra and Harjinder prior to the murder. 6RP 77, 108, 144, 368-79. After Basra “beat” her, the evidence was that he grabbed Harjinder by

the neck and shoved her against the wall, where he began to manually strangle her. Exhibit 2 at 3-4, 6-8, 11-12; 6RP 179, 311-17.

Basra's actions up to this point are already distinguishable from the one, long, manual squeeze of the victim's neck in Bingham. But Basra went on to change his method of attack to a more effective weapon, removing his hand from Harjinder's neck long enough to grab the GPS cord from wherever it was, and use it to finish strangling his wife to death. Exhibit 2 at 12; 6RP 384. Like the defendants in Ollens and Pirtle, Basra selected a weapon and used it, yet another indicator of premeditation. Exhibit 2 at 12.

Basra had numerous opportunities to stop before he selected the GPS cord and used it to asphyxiate Harjinder, including after he beat her, after he placed his hand on her neck, after Amandeep slapped at him and begged him to stop, knocking his turban off of his head, and after Basra shoved Harjinder against the wall. At each interval, Basra elected to proceed with the murder, and eventually to select the more efficient method of strangulation by grabbing and using the GPS cord. These changes from one method of violence to another provide an insight into the "mental process of thinking beforehand, deliberation, reflection,

weighing or reasoning for a period of time, however short.” Brooks, 97 Wn.2d at 876. The inference that Basra reflected on his actions as his violence escalated, culminating in his use of the GPS cord as a final weapon, is significantly bolstered by his calmly proclaimed motive, that he killed her because she had problems with men.

Interpreting the evidence and its reasonable inferences in the light most favorable to the State, the facts here support the jury’s finding that Basra’s murder of Harjinder was premeditated, and the conviction should be affirmed.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm Basra’s conviction of premeditated murder in the first degree.

DATED this 14 day of March, 2013.

Respectfully submitted,

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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 THOMAS KUMMEROW, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the CORRECTED BRIEF OF RESPONDENT in STATE V. PARAMJIT SINGH BASRA, Cause No. 6661-5 -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.

Dated this 14 day of ~~February~~ <sup>March</sup>, 2013



Name Bora Ly  
Done in Seattle, Washington