

NO. 35056-4-II

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

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STATE OF WASHINGTON, Respondent

v.

BRENT ALLEN HEATH, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
THE HONORABLE BARBARA D. JOHNSON  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-02559-0

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

I. STATEMENT OF FACTS ..... 1  
II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1 ..... 1  
III. RESPONSE TO ASSIGNMENTS OF ERROR NO. 2 AND 3 ..... 21  
IV. CONCLUSION..... 24

## TABLE OF AUTHORITIES

### Cases

<u>City of Seattle v. Eze</u> , 111 Wn.2d 22, 27, 759 P.2d 366 (1988).....	22
<u>State v. Camarillo</u> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	3
<u>State v. Gentry</u> , 125 Wn.2d 570, 597-598, 888 P.2d 1105 (1995) .....	18
<u>State v. Griffith</u> , 91 Wn.2d 572, 577, 589 P.2d 799 (1979).....	19
<u>State v. Halstien</u> , 122 Wn.2d 109, 117, 857 P.2d 270 (1993) .....	22
<u>State v. Jackson</u> , 129 Wn. App. 95, 109, 117 P.3d 1182 (2005) .....	3
<u>State v. Locklear</u> , 105 Wn. App. 555, 20 P.3d 993 (2001).....	22, 23
<u>State v. Neslund</u> , 50 Wn. App. 531, 558-560, 749 P.2d 725 (1988) .....	19
<u>State v. Ortiz</u> , 119 Wn.2d 294, 312-313, 831 P.2d 1060 (1992) .....	18
<u>State v. Rodgers</u> , 146 Wn.2d 55, 43 P.3d 1 (2002).....	22, 23
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) .....	2
<u>State v. Smith</u> , 155 Wn.2d 496, 501, 120 P.3d 559 (2005) .....	2
<u>State v. Thorne</u> , 129 Wn.2d 736, 769-770, 921 P.2d 514 (1996).....	22
<u>State v. Tikka</u> , 8 Wn. App. 736, 742, 509 P.2d 101 (1973).....	19
<u>State v. Varga</u> , 151 Wn.2d 179, 201, 86 P.3d 139 (2004).....	2, 3
<u>State v. Walton</u> , 64 Wn. App. 410, 415-416, 824 P.2d 533, review denied, 119 Wn.2d 1011, 833 P.2d 386 (1992) .....	3

### Statutes

RCW 9.32.020(1).....	18
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I. STATEMENT OF FACTS

Because of the nature of the issues raised by the defendant, the facts will be set forth in the argument section of the brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is that there was insufficient evidence to establish the elements of the crime charged. Specifically, the defendant was charged with Aggravated Murder in the First Degree (no death penalty) (Amended Information filed May 30, 2006) (CP 34).

The elements of the crime were supplied to the jury in the elements instruction of the Court's Instructions to the Jury. (CP 53). Those elements were as follows:

Instruction No. 9

To convict the defendant of the crime of aggravated murder in the first degree, as charged in this case, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 11, 2005, the defendant caused the death of Heidi R. Heath;

(2) That the defendant acted with the intent to cause the death of Heidi R. Heath;

(3) That the intent to cause the death was premeditated;

(4) That Heidi R. Heath died as a result of the defendant's acts;

(5) That the murder was committed during the course of or as a result of a shooting where the discharge of the firearm is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm or both to the scene of the discharge; and

(6) That the acts occurred in the State of Washington.

The standard of review for a sufficiency of the evidence claim is whether, after viewing evidence in a light most favorable to the State, any rational trier of fact could have found essential elements of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the state's evidence and all inferences that reasonably can be drawn therefrom. Smith, 155 Wn.2d at 501; Salinas, 119 Wn.2d at 201. A reviewing court will reverse a conviction for insufficient evidence only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt. Smith, 155 Wn.2d at 501; Salinas, 119 Wn.2d at 201. "We may infer criminal intent from conduct, and circumstantial evidence as well as

direct evidence carries equal weight.” State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). The appellate court must defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. State v. Jackson, 129 Wn. App. 95, 109, 117 P.3d 1182 (2005); State v. Walton, 64 Wn. App. 410, 415-416, 824 P.2d 533, review denied, 119 Wn.2d 1011, 833 P.2d 386 (1992). Put another way, credibility determinations are for the trier of fact and are not subject to review on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The first witness called by the State of Washington in its case in chief was Lorrie Lee Armstrong. Ms. Armstrong was a friend and coworker with the deceased, Heidi R. Heath. Over the time that they worked together, they became good friends. (RP 82). She characterized the deceased as being a very cautious person and gave the jury an example of how cautious she would be. (RP 84-85). She also indicated that she had spoken with the defendant, Ms. Heath’s husband, on the phone but had never met him in person. She indicated that Heidi Heath did have a cell phone and that she would use it. (RP 85). She was asked to describe Ms. Heath’s demeanor during the last week of her life when she was at work and she indicated that Ms. Heath was pretty emotional that week

because she and her husband had been fighting and she remembers one morning when she got to work that Ms. Heath was crying about the fights with her husband. (RP 88).

The next witness called in sequence by the State in its case in chief was Dr. Dennis Wickham, M.D., the medical examiner for Clark County. (RP 92). Dr. Wickham performed the autopsy on the body of Ms. Heath and noted that the cause of death was gunshot wounds. During the autopsy, he identified two gunshot wounds. One of them to the upper portion of the left ear, went through her left ear and penetrated into her skull where the bullet fractured the bone which also fractured the bullet. (RP 97-98). The second gunshot wound entered in through her right eye and continued through bone at the back of her eye passing into her skull. (RP 98-99). On examination of the areas of the wounds, the doctor found fragments of the bullet which he turned over to law enforcement. (RP 102).

The doctor indicated that because of the lack of powder near the wound sites that he considered this to be a distant gunshot wound. When asked what he meant by that, he meant that the weapon that discharged the bullets would have been greater than 18-24 inches away from her head at the time that it was discharged. (RP 104). Finally, Dr. Wickham indicated that he was called out to the scene and did not see anything at

the scene that would indicate to him that Ms. Heath was killed in a different location than the one she was found at. (RP 115).

The next witness called in sequence by the State of Washington in its case in chief was Clark County Sheriff Deputy Tim Bieber. Deputy Bieber was working as a sergeant patrol supervisor on November 11, 2005, in Clark County when he was called out at approximately 10:30 p.m. to the place of the shooting. (RP 118-119). The area that he responded to was on St. Johns under the I-205 overpass. It took him approximately four minutes to respond and he got there somewhere around 10:36 p.m. (RP 119). The deputy described the scene as he saw it when he arrived:

QUESTION (Deputy Prosecutor): And what do you recall seeing when you arrived?

ANSWER (Deputy Bieber): There was three vehicles parked on the side of the road on the shoulder.

One vehicle had the park lights on with the car door -- the driver's side door open. A white female was seated in the crook of the door on the ground. And the car was still running.

QUESTION: Okay. And when you are describing that -- that particular vehicle of the three vehicles, was the white female inside or outside of the vehicle?

ANSWER: She was outside the vehicle seated on the ground, but her back and head were resting up against the crook of the door as it was open.

QUESTION: Okay. And where was her arms, if you recall?

ANSWER: I believe they were down to her side, if I recall correctly.

QUESTION: Okay. Was the -- the -- the vehicle that she was up against, you indicated the parking lights were on. Were the headlights on?

ANSWER: No, just the parking lights.

QUESTION: Okay. Were the -- was the vehicle running?

ANSWER: Yes.

QUESTION: Okay. Did you notice anything else about the white female?

ANSWER: She had discoloration, some bruising, around her right eye socket and there was a large amount of blood near her buttocks on the ground.

QUESTION: Okay. Do you recall the approximate length of area that -- that you noticed the blood on the ground, suspected blood on the ground?

ANSWER: I would say it's a radius of about probably close to three feet.

QUESTION: Did you -- while you were at the scene and when you first got there, did you notice or see anybody touch or move the body?

ANSWER: No.

QUESTION: Okay. Did you touch or move the body?

ANSWER: No.

(P. 120, L.7 – 121, L.19)

When Deputy Bieber arrived there were other officers there also but he was the first one to approach the body looking for a weapon and also to determine whether or not the person was still breathing or had any type of vital signs. He indicated that she did not have any vital signs and they were unable to find any weapon there at the scene. (RP 122-123).

On cross-examination, the deputy was asked about the area where the body was found. He described it as follows:

QUESTION (the defense attorney): Can you describe the area around where this vehicle was parked. Where there residences, or is it rural?

ANSWER (Deputy Bieber): It's -- it -- it -- there's a residential area on each side of the freeway, but this is a large area that is large gravel, a shoulder to the roadway underneath the overpasses, and the nearest house is probably five hundred feet away, six hundred feet away.

QUESTION: Are -- and the area has several houses, not just one house; correct?

ANSWER: Correct

QUESTION: It's a pretty typically developed street very close to this.

ANSWER: Right.

QUESTION: There's -- would you -- how would you characterize the traffic on St. Johns?

ANSWER: Well, St. Johns is a fairly -- fairly busy roadway, depending on the time day.

QUESTION: And this was a Friday night?

ANSWER: I don't recall the exact day. I'd have to check the dates, but it possibly was Friday night.

QUESTION: Do you recall what the traffic was like in the area that night during the time that you were at the scene?

ANSWER: At the time we were at the scene, it was light.

(RP 127, L.3 – 128, L.1)

The next witness called was Detective Rick Buckner of the Clark County Sheriff's Office. Detective Buckner was assigned as the lead investigator on the death of Ms. Heath. (RP 136). When he arrived at the scene where the body was found, he found her purse on the seat in the car next to her and from the driver's license was able to identify her as Heidi Heath. (RP 137). Part of his duties also required him to talk to the people who found the body. Apparently they just happened to be driving by and had stopped to assist. (RP 138). He also made contact with the deceased's husband, the defendant. He also identified him in court. (RP 138).

During Detective Buckner's testimony, the 911 call was played for the jury. (RP 139-141). The caller identified himself as Brent Heath and indicated that his wife was missing. The 911 call was made on Saturday, November 12, 2005, at 1:15 a.m. (RP 139).

The detective went out to the defendant's residence and told him that his wife had been found dead and that this was a criminal investigation. The defendant told the detective how he had talked to her a number of times during the evening and that it was his understanding that she had left at approximately 9:45 p.m. that evening going to a grocery store, Winco, and then she was going to go on to the Target store at the Vancouver Mall as opposed to shopping at Safeway or Fred Meyer's. He indicated that she liked going to Winco because she saved money there and she usually shopped at night because she didn't like the crowds. (RP 144).

The detective indicated that they had an additional conversation with him at a later time when he indicated that on the weekend that his wife was murdered, that he had responsibilities of taking care of the dogs of his good friends Kyle and Christina Hughes. They had left to go camping on the coast and he was asked to check on the dogs and make sure they were okay at the Hughes residence. He indicated that he drove over to the residence which was about two minutes away, checked on the dogs and came back home. He indicated that he drove a pickup truck. The pickup truck was a blue Ranger pickup probably a 2001, 2002 Ford. (RP 150-151). He discussed with the officer that he received a phone call

from his wife which was obviously from her cell phone because she was in her car and describes how she had thought she had just hit a cat and that she was going to pull over and check on the animal. (RP 159-160).

The defendant described for the officer, similar to one of the previous witnesses, that his wife was extremely cautious and would not be an aggressive driver nor would she seek out any type of confrontation. In fact, she would avoid a confrontation and she would do anything to get away from being put in that position. (RP 175). The officer also asked him whether or not he had any suspicions that his wife was having any type of extramarital affair and he responded that he did not know of any. (RP 176).

The detective then described for the jury a continuation of his investigation. He met with the Hughes, took picture of their residence, and also seized some of his rifles and loose ammunition to be sent up to the crime lab for analysis. (RP 183-186).

The detective discussed with the jury how he and Detective Harper had driven the route from the defendant's residence at 219<sup>th</sup> Street in Battle Ground, Washington, down 72<sup>nd</sup> Avenue to the location where the body of Heidi Heath was found on St. Johns under the I-205 overpass. He indicated that the distance was 9.5 miles. (RP 292-293).

The detective received information from the crime lab concerning the testing of the weapon recovered from the Hughes residence and at that point they had another discussion with the defendant after advising him of Miranda rights. The detective asked him specifically if he knew that his wife had been cheating on him. He told the jury that the defendant nodded his head in an affirmative response. The defendant told the officer he didn't know who the boyfriend was but he knew that it had been going on for "a long time". (RP 298). He further indicated that he was aware that on the night she was murdered, that she was going to meet her boyfriend that evening. (RP 298).

The defendant told the detective that Heidi had left the house to go meet her boyfriend at about 9:45 p.m. and that she had put on Victoria Secret underwear for her boyfriend. He indicated that his wife had told him that she had been cheating on him. The detective continued to ask him questions about his knowledge of her boyfriend and the following questions and answers seemed like an admission that he was there:

ANSWER (partial, Detective Buckner): I asked Brent if he had called Heidi all night long on the cell phone, and Brent said yes.

I asked Brent if the man Heidi was going to meet was there when Brent got to where Heidi was. Brent said:

"I didn't see him."

(RP 301, L.5-10)

The next witness called by the State in its case in chief was Billy Brent Liddell. Mr. Liddell sells health insurance for a living and on the evening of November 11, 2005, he and his wife had gone out for the evening to play cards with some friends. (RP 201). He recalls that shortly after 10:00 p.m. on that evening, he and his wife were driving near St. Johns and the overpass to I-205. As he was near the area where the deceased's body was found, he noticed that there were two cars, one a regular car and the other was a pickup which were underneath the I-205 overpass. (RP 205). He remembers seeing the taillights lit up on the car but doesn't recall seeing any people around it. (RP 205-206).

The next witness called was Laurene Liddell. She is the wife of the previous witness and was in the passenger's seat leaving the friends house and returning home. She recalls the vehicles as follows: "and I saw two vehicles parked across the street under the overpass, a dark blue four-door sedan, and a pickup truck parked in front of it. But I wasn't sure what color it was; I knew it was dark." (RP 214, L.19-23). She indicated that the two vehicles were fairly close together. (RP 216).

Beverly Hankel was called as a witness. Ms. Hankel recalls an El Camino was in front of her as she was driving along. She indicated that she saw the deceased's woman's vehicle on the side of the road and that

the El Camino driver had flagged her down asking her if she had a phone so that they could call the police because he thought that the woman was dead. (RP 247-248). She said that she looked at the woman and realized that she had been shot. (RP 248). She indicated she also immediately then called 911.

The next witness called by the State was Sheriff's Detective Craig McCollom. Detective McCollom was the evidence officer and discussed with the jury the crime scene, the fact that he had taken some photographs of the crime scene and described those for the jury and he also described the shell casing that was found there at the scene. He indicated that the shell casing that was found was approximately a foot to a foot and a half away from the deceased. (RP 264-265). The shell casing was a .22. The deputy took possession of the shell casing and the bullet fragments that were recovered from the autopsy by Dr. Wickham and packaged and referred those on the State crime lab. (RP 280).

The next witness called by the State of Washington in its case in chief was Bill Crego. Mr. Crego indicates that he lives in Battle Ground, Washington, and that he knows Kyle and Christina Hughes. He told the jury that he and his wife live directly across the street from them. (RP 316-317). He also indicated that he knows the defendant who he had met

through Kyle and Christina Hughes and had seen him at different social activities over at the Hughes residence. He also knew Heidi Heath, the deceased, as being the wife of Brent Heath and was also at some of the social occasions at the Hughes residence. (RP 318).

Mr. Crego testified that the defendant usually drove a blue truck which he believed to be a Ranger and that Heidi Heath, the deceased, had a small blue car. (RP 319).

Mr. Crego indicated that on November 11, 2005, at approximately 7:30 p.m. he got home and noticed the defendant's truck was at the Hughes residence. He knew that Kyle and Christina Hughes had left to go to the beach so he was wondering why the defendant was at the residence. (RP 320-321). He saw the defendant come out of the Hughes residence and he spoke with him for a couple of minutes. The defendant told him that he and Heidi had some things that they needed to do on the weekend so they weren't able to go to the beach with the Hughes. (RP 321).

Mr. Crego also testified that he saw the defendant carrying a rifle out of the Hughes residence. He described it as a small caliber rifle and he thought it was unique the way that the defendant was carrying it. He testified for the jury that he felt the defendant was trying to conceal the weapon from him. (RP 322-323).

He indicated that the next day, the Hughes had returned from the beach and had told him that Heidi had been murdered. He indicated that he mentioned to the Hughes that the defendant had come out of their house with a firearm on the previous day. After discussing that, the three of them (Mr. Crego and Mr. and Mrs. Hughes) unlocked the house and went inside. They found that all the guns were there but that some bullets, (.22 caliber bullets) were lying on the floor. There were approximately five of them. There were three by the right-hand door of the closet and two up on the computer chair. They were surprised at seeing the ammunition out in the open like that. (RP 324-326). They discussed it for awhile and finally decided to call the police. (RP 327).

Christina Hughes was the next witness called by the State. She talked about the trip that she and her husband had taken on the weekend of November 11, 2005, and that they had made arrangements with the Heath's to take care of their dogs. They had exchanged keys to their respective homes with the defendant and his wife at a previous time. (RP 344). She testified that they learned about the death of Mrs. Heath while they were at the beach and they immediately came back. They went across the street and talked to Mr. Crego and then went back over to their residence and looked around to see if there was anything out of the

ordinary there in the house. She recalls that the closet doors (where the guns are kept) were opened. She distinctly remembered shutting them when they left. (RP 351). She also remembers finding the scattered ammunition there in the room. (RP 351).

Kyle Hughes was the next witness called by the State. He indicated that he was good friends with the defendant and that he owned several hunting rifles including a couple of .22 caliber rifles. (RP 360). He testified concerning the ammunition that was not where it was when he left for the beach:

QUESTION (Deputy Prosecutor): Okay. Do you recall when you guys left for the coast on November 11<sup>th</sup> how that ammunition was stored?

ANSWER (Kyle Hughes): It was sitting in the bottom of the closet. I had -- when I pulled the twelve gauge shotgun out earlier in the week to loan it to my brother-in-law for him to go hunting, he -- I hit the box of ammunition and it dumped over, and some where laying out when I pulled the twelve gauge out.

QUESTION: Okay. Did you at anytime before you left for the coast take any of the ammunition, put any of it on the computer or the computer chair?

ANSWER: No.

(RP 362, L.7-18)

Mr. Hughes indicated that he had talked to the defendant about taking care of the dogs on Saturday and Sunday but at no time did he ask the defendant to come over on Friday. (RP 363).

Mr. Hughes also talked with the jury about a telephone conversation that he had with the defendant after the defendant was in jail. The defendant had called him at work on the cell phone and was apologizing to him and telling him how sorry he was. The defendant told Mr. Hughes that his wife had been cheating on him, “he said that she was cheating with its like ten guys or something like that, that she had ten different guys that she was cheating with or something like that.” (RP 373, L.23-25).

The last witness called by the State of Washington in its case in chief was Brenda Lawrence. Ms. Lawrence is a Forensic Scientist working for the Washington State Patrol Crime Laboratory in Tacoma, Washington. Her specialty is in firearms and tool mark examinations. (RP 424). Ms. Lawrence was asked to compare the shell casing recovered at the scene and the unspent bullets recovered from the Hughes residence together with one of the .22 caliber rifles from the residence and also the bullet fragments that were recovered at the time of autopsy of Ms. Heath.

The rifle in question was Exhibit No. 37, referred to as the Rossi rifle. She test fired that and found that it was operational and using the

information she obtained from that test firing she was able to compare it to other samples that she had. (RP 435-436). The shell casing that was found at the crime scene (Exhibit 47) was compared to the test firing from the Rossi rifle. She was able to make a 100 percent comparison and indication that the Rossi weapon had fired the bullet that had left the shell casing at the crime scene. (RP 438). The Rossi rifle was the one that had been recovered from the Hughes residence. She also compared the bullet fragments recovered at the autopsy with the rifle and determined that at least one of the fragments (Exhibit 40) had been fired from the Rossi rifle (Exhibit 37). She was 100 percent confident in that conclusion. (RP 440).

In our case, the defendant maintained that the State failed to prove any premeditated intent to kill his wife. Premeditation involves a deliberate formation of and reflection on the intent to take a human life and includes the “mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short the period”. State v. Gentry, 125 Wn.2d 570, 597-598, 888 P.2d 1105 (1995); RCW 9.32.020(1). Sufficient evidence may be found to support premeditation where a weapon was used, where the weapon was not readily available at the time that the victim was murdered, or where there is evidence of a motive. Gentry, 125 Wn.2d at 599; State v. Ortiz, 119 Wn.2d 294, 312-313, 831 P.2d 1060 (1992). The planned presence of a

weapon necessary to facilitate a killing is adequate evidence for a jury to consider as it relates to premeditated intent to kill. State v. Griffith, 91 Wn.2d 572, 577, 589 P.2d 799 (1979); State v. Tikka, 8 Wn. App. 736, 742, 509 P.2d 101 (1973). Other evidence of premeditation includes, but is not limited to, prior threats or quarrels, the planned presence of a weapon, and a possible motive for the killing. State v. Neslund, 50 Wn. App. 531, 558-560, 749 P.2d 725 (1988). The State submits that there is sufficient showing of premeditation here to allow this question to be presented to a jury.

At the scene when the officers arrived, there was obviously no evidence of robbery or other motive for the killing. The emergency lights were on her car, her headlights turned off, but the car was still running and the fact that she was outside her vehicle coupled with the previous testimony of her being an extremely cautious person, would indicate that she knew the assailant or felt comfortable in putting her car in park and exiting her vehicle. The defendant initially told the officers a story about her going to a store when in fact he knew that she was having a rendezvous with another man. It was obvious from comments made to the police and then a later comment to a friend that the fact that she was cheating on him was troubling to him. He obtained the murder weapon

surreptitiously. He took it from a neighbor's residence, tried to hide it from view by a friend, took it in his car, committed the crime, and returned the weapon to the storage area of the closet. The ammunition that he used he also obtained there at the Hughes residence. There is unconverted scientific evidence that the .22 caliber weapon from the Hughes residence was the weapon that was used to kill her. Finally, he had to travel over nine miles to get to where she was, commit this crime and get back in time to establish his alibi with friends from out of town. He then starts the rouse of calling 911 and attempting to make it seem as though he is concerned about the well being of his wife and the fact that she is missing. He drives a small pickup truck and a small pickup truck was viewed by a witness as being there. He is seen getting into his vehicle with the murder weapon within several hours of the actual crime, and his vehicle is seen at the murder scene. It is obvious that he has to use motor vehicle transportation to cover the large distance to get to the scene, commit the crime, and get back in time to establish his alibi.

The State submits that there is substantial evidence in this record to support the issue of Aggravated Murder in the First Degree being allowed to go to the jury under the instructions provided.

### III. RESPONSE TO ASSIGNMENTS OF ERROR NO. 2 AND 3

The second assignment of error raised by the defendant is that the aggravating factor that the State charged is void for vagueness as applied in this case. The third assignment of error is that there is insufficient evidence to support Aggravated Murder in the First Degree. Specifically, the jury was asked to decide whether or not the murder was committed during the course of or as a result of a shooting where the discharge of the firearm is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm or both to the scene of the crime. (Court's Instructions to the Jury, Instruction No. 9, CP 53).

As set forth in detail in the Statement of Facts as set out in Response to Assignment of Error No. 1, the scene of the shooting was a freeway underpass. Obviously, the only way that the defendant is going to get there from nine and a half miles away, was by use of a motor vehicle. Further, he is seen getting into a motor vehicle armed with the murder weapon by a neighbor. Further, there are two eyewitnesses who are driving by who see the pickup in close proximity to and immediately adjacent to the vehicle where the woman was found killed. The State

submits that this is enough information to allow this type of issue to go to a jury to determine whether or not it has been proven beyond a reasonable doubt.

A statute is vague if it does not give fair notice of the prescribed conduct or clear standards to prevent arbitrary enforcement. State v. Halstien, 122 Wn.2d 109, 117, 857 P.2d 270 (1993). But a statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his questionable actions are prohibited. City of Seattle v. Eze, 111 Wn.2d 22, 27, 759 P.2d 366 (1988). It is sufficiently definite if persons of ordinary intelligence can understand the statute's meaning, notwithstanding some possible areas of disagreement. City of Seattle v. Eze, 111 Wn.2d at 27. A statute is presumed constitutional and the challenging party bears a heavy burden of proving unconstitutionality beyond a reasonable doubt. State v. Thorne, 129 Wn.2d 736, 769-770, 921 P.2d 514 (1996).

The defendant cites for the concept of vagueness the companion cases of State v. Locklear, 105 Wn. App. 555, 20 P.3d 993 (2001) and State v. Rodgers, 146 Wn.2d 55, 43 P.3d 1 (2002). Ishaq drove Locklear and Rodgers to a location about two blocks from the intended victim's house. Locklear and Rodgers then approached the house on foot, fired

shots into the home, and ran back to where Ishaq was waiting. They were convicted of drive by shooting, but the Washington Supreme Court dismissed due to insufficient evidence. The high court held that under the ordinary definition of “immediate,” “a person discharging a firearm two blocks away from a vehicle cannot be said to be in close proximity to that vehicle.” (State v. Rodgers, 146 Wn.2d at 62.) Hence, there was no evidence that a firearm had been discharged “from the immediate area of the motor vehicle.”

The State submits that our factual scenario is much different than that set forth in Rodgers and Locklear. The primary difference is the actual location, and the relative isolation of that area, from anything other than using a motor vehicle to get there. The motor vehicle must be used not only to transport the person there but to get away very quickly after committing the homicide. Mr. and Mrs. Liddell testified for the State. They recalled seeing a pickup with the deceased’s vehicle and that they were fairly close together. (RP 216). The timing of their recollections (around 10:00 p.m.) and the nature of what they observed would clearly indicate that they were witnesses to the murdered victim’s vehicle and the vehicle that had transported the shooter. Certainly, this is direct and circumstantial evidence to support the aggravator. There is nothing vague

or inconsistent about this information. It is for the trier of fact to determine what weight to give to it. When the defense made its motion to dismiss based on this, and the trial court denied it, it indicated that this was a question for the jury. (RP 454-455). The State agrees with the trial court. There is sufficient evidence in the record to support the aggravator.

IV. CONCLUSION

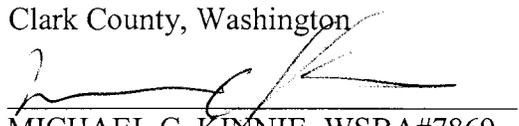
The trial court should be affirmed in all respects.

DATED this 28 day of March, 2007.

Respectfully submitted:

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