

NO. #40645-4-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

WILLIAM G. BERGQUIST, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Brian Tollefson

No. 09-1-03093-8

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the defendant has demonstrated that his trial counsel's performance was constitutionally deficient?
2. Whether the defendant has demonstrated prejudice from defense counsel's professional deficiency?
3. Whether the trial court properly excluded irrelevant evidence?
4. Whether the defendant was prejudiced by the ruling where the same evidence was presented to the jury despite the court's ruling?
5. Whether the prosecuting attorney's description of the victim's wound as a "stab" was misconduct where it was supported by the evidence?
6. Whether the trial court abused its discretion in finding against the defendant regarding these issues and denying his motion for a new trial?
7. Whether the State adduced sufficient evidence to prove all the elements of the offense beyond a reasonable doubt?
8. Whether cumulative error deprived the defendant of a fair trial?

B. STATEMENT OF THE CASE.

1. Procedure

June 29, 2010, the Pierce County Prosecuting Attorney (the State) charged William G. Bergquist (the defendant) with one count of assault in the first degree, also alleging a deadly weapon sentencing enhancement. CP 1. The defendant asserted self-defense. CP 14.

The case proceeded to trial on March 22, 2010, assigned to Hon. Brian Tollefson. 1 RP 1.<sup>1</sup> At the conclusion of the trial, the jury found the defendant guilty as charged. CP 153. The jury also found that the defendant was armed with a deadly weapon. CP 154.

Pending sentencing, the defendant hired a new attorney. CP 156, 158. New counsel filed a motion for a new trial, arguing that trial counsel had been ineffective, exclusion of defense evidence, and prosecutorial misconduct. CP 162-185. After hearing argument, the court denied the motion for new trial. 7 RP 497, CP 226-230.

April 23, 2010, the court sentenced the defendant. CP 205-218. The defendant filed a timely notice of appeal at the same hearing. 7 RP 505, CP 219.

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<sup>1</sup> The Report of Proceedings consists of 7 volumes of sequentially numbered pages. The transcript will be referred to by volume and page e.g.: 1 RP 1.

## 2. Facts

In the early morning hours of June 20, 2009, Don Taylor was awakened by some noises outside his home. 2 RP 53-54. He got up and went outside to investigate. 2 RP 55. Taylor went out the back door. 2 RP 56. As he looked around, he saw a man, later identified as William Bergquist (the defendant), by the corner of the garage. *Id.*

Taylor walked toward the back gate. 2 RP 59. He asked the defendant what he was doing there. 2 RP 61. The defendant was holding something white in his hands, which he threw at Taylor. 2 RP 61, 62. Taylor and the defendant approached each other. Taylor punched the defendant in the jaw. 2 RP 61. After Taylor punched him, the defendant went down. 2 RP 63. Taylor also saw a second male, later identified as Walter Derosia, in the alley standing nearby. *Id.*, 4 RP 291.

In the ensuing scuffle, the defendant struck Taylor in the ribs with a utility-type knife. 2 RP 66. The defendant and Derosia ran off down the alley and Taylor returned to the house. 2 RP 66.

When Taylor returned to the house, he discovered that he had been stabbed in the chest. 2 RP 67-68, Exh. 4. Medical aid was called. 3 RP 122. Taylor's injury required surgery and hospitalization. 2 RP 68, 70.

Unbeknownst to Taylor, the day preceding the altercation the defendant and Derosia had been working on an apartment remodeling job nearby. 4 RP 282, 284. After the workday was over, the defendant and

Derosia discussed their relationships with their respective girlfriends or ex-girlfriends. 4 RP 284. The defendant spoke about his ex-girlfriend, Melissa Raisbeck. 4 RP 285.

During their commiseration about relationships, the defendant made a cape of a sheet and wrote "Capt. Sav-A-Ho" on it. 4 RP 285. The defendant explained that it reflected the defendant's perception that he kept taking Raisbeck back, despite her troubles. *Id.* Generally jocular behavior followed with Derosia donning the cape and posing in it. 4 RP 286.

The defendant proposed that they drop the cape off at the house where Raisbeck was living nearby. 4 RP 286. The defendant intended it as a joke or prank. *Id.* Derosia drove as the defendant gave directions. 4 RP 287. They parked a couple of blocks from the house and walked down the alley. 4 RP 288. They found the intended house and approached the back gate to hang the cape on it. *Id.* Then, they saw Taylor approaching them from the house. 4 RP 289. The altercation then ensued. 2 RP 61-66, 4 RP 291-293.

C. ARGUMENT.

1. THE DEFENDANT FAILS TO DEMONSTRATE THAT TRIAL COUNSEL'S PERFORMANCE WAS CONSTITUTIONALLY DEFICIENT AND THAT THE DEFENDANT WAS PREJUDICED BY THE DEFICIENT PERFORMANCE.

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); *see also*, *State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First, a defendant must demonstrate that his attorney's representation fell below an objective standard of reasonableness. Second, a defendant must show that he or she was prejudiced by the deficient representation. Prejudice exists if "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *see also*, *Strickland*, 466 U.S. at 695 ("When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.").

There is a strong presumption that a defendant received effective representation. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121, 116 S. Ct. 931, 133 L.Ed.2d 858 (1996); *Thomas*, 109 Wn.2d at 226. A defendant carries the burden of demonstrating that there was no legitimate strategic or tactical rationale for the challenged attorney conduct. *McFarland*, 127 Wn.2d at 336.

The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that defendant received effective representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988).

Judicial scrutiny of a defense attorney's performance must be "highly deferential in order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. The reviewing court must judge the reasonableness of counsel's actions "on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

- a. Trial counsel's decision regarding impeachment of witness Taylor was strategic.

Cross-examination techniques are matters of trial strategy, and left to the professional discretion of counsel. *State v. Stockman*, 70 Wn.2d 941, 945, 425 P.2d 898 (1967).

Here, counsel's cross-examination of victim Taylor centered on questioning Taylor's credibility regarding his account of the incident. Counsel's cross-examination suggested that the defendant was in a vulnerable position, on the ground, when Taylor was wounded. 2 RP 102-104. Counsel also pointed out the difference in size between Taylor and the defendant; that Taylor is much larger. 2 RP 109. Counsel's method of cross-examination was not professionally deficient.

The trial court rejected this allegation, finding:

This Court, after hearing all of the evidence, determined that had counsel used this conviction to impeach Mr. Taylor it would not have changed the jury's view of the evidence.

CP 227.

- b. Failure to object to Taylor's testimony regarding the gas cap was strategic.

On direct examination, while describing a vehicle parked close to his house, Taylor stated that inside the gas cap, there was a substance that appeared to be white powder. 2 RP 51-52. This description of the substance inside the gas cap, and the remark "it could have been placed by anybody", was volunteered, it was not in response to a question.

Defense counsel closely cross-examined Taylor about this. Counsel brought out the fact that it was a locking gas cap and that it was unlikely someone could have tampered with it without the key. 2 RP 85-86. Counsel went on to point out that Taylor did not see the defendant by

the vehicle, nor anyone else. 2 RP 81. This questioned Taylor's credibility, suggesting that Taylor was exaggerating or making things up. As argued above, this approach to cross-examination was strategic and within the reasonable discretion of counsel.

c. Failure to object to the "in exchange for sex" remark was not deficient performance.

The defendant gave a taped statement to Det. Davis. Exh.'s. 17, 13<sup>2</sup>. The statement was played for the jury during Det. Davis' testimony. 3 RP 167. During the taped statement, the defendant asserted that, on more than one occasion, Melissa Raisbeck stole the defendant's mother's SUV, which contained the defendant's tools. Exh. 13, p. 2, 17. After the tape was played, Det. Davis explained that he investigated the allegation. 3 RP 169-170. Det. Davis said that, as part of the investigation, he contacted Raisbeck to get her side regarding the SUV. 3 RP 169. Det. Davis explained that Raisbeck did not return the SUV because the defendant asked for a sexual favor. 3 RP 170.

This remark could have been objected to as hearsay. *See*, ER 401. However, it would not be hearsay if it was not offered to prove the truth of the matter asserted. ER 801(c). The statement in this case was offered to explain why Det. Davis proceeded as he did in the investigation and what

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<sup>2</sup> Although Exh. 13, the transcript, was admitted as only an aid for the jurors listening to Exh. 17, the tape, this brief will reference the transcript for the sake of the reader's convenience.

actions he took or did not take. It was not offered to prove the matter asserted: either that the defendant requested a sexual favor; or that Raisbeck stole the SUV.

The trial court found:

This evidence was elicited to explain why the detective did not arrest Ms. Raisbeck for stealing the vehicle after the defendant's taped statement was played for the jury, and was not offered for the truth of the matter asserted. In his statement he insisted that this incident was a result of her theft of the family vehicle. Defense counsel did not seek a limiting instruction for this testimony.

CP 228.

The decision whether to object to a remark by a witness, and thereby call attention to it, or to let it pass is a matter of trial tactics for counsel's discretion. *State v. Glenn*, 86 Wn. App. 40, 48, 935 P. 2d 679 (1997). "Only in egregious circumstances, on testimony central to the State's case, will the failure to object constitute incompetence of counsel justifying reversal." *State v. Neidigh*, 78 Wn. App. 71, 77, 895 P. 2d 423 (1995), quoting *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662 (1989). To demonstrate deficient performance, the defendant must show that the court would likely have sustained his objection. See *State v. Sanders*, 91 Wn. App. 575, 578, 958 P. 2d 364 (1998). In addition, there is no ineffectiveness if a challenge to admissibility of evidence would have failed. See, *State v. Nichols*, 161 Wn. 2d 1, 14-15, 162 P. 3d 1122 (2007).

In this case, it was evident that there was a history of conflict between the defendant and Raisbeck. Defense counsel could have easily decided to let Raisbeck's assertion pass as unsubstantiated finger-pointing in response to the defendant's allegation that she stole his truck.

In addition, to prevail in his claim of ineffective assistance, the defendant must also demonstrate that there is a reasonable probability that the trial result would have been different had counsel objected to the testimony at issue. *See State v. Hendrickson*, 129 Wn. 2d, 61, 77-78, 917 P. 2d 563 (1996). The defendant cannot show that, absent this remark, the result of the trial would have been different.

- d. Counsel was not ineffective where he elicited testimony regarding the urgency of the detective's investigation.

Det. Davis testified regarding his investigation of the case. Early in his testimony, he explained how the defendant became identified as the suspect. 3 RP 143. On cross-examination, he explained why he investigated the case with some urgency. 3 RP 208-209. This questioning was in the context of defense counsel pointing out inconsistencies between Taylor's trial testimony and his previous statement to Det. Davis. Defense counsel was trying to show that Taylor's statement to Davis was given soon after the incident, and, therefore was more accurate. This questioned the accuracy of Taylor's testimony and, in turn, his credibility.

- e. Det. Davis did not opine on the defendant's guilt.

It is improper for a witness to opine regarding the defendant's guilt. *See, State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). In deciding whether testimony is impermissible opinion as to guilt, the court considers the circumstances of the case, including "the type of witness involved," "the specific nature of the testimony," "the nature of the charges," "the type of defense, and" "the other evidence before the trier of fact." *Demery*, 144 Wn.2d at 759 (quoting *City of Seattle v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993)).

Here, Det. Davis explained the reasons for arrest, or whether or not there was probable cause to arrest. He was not expressing an opinion regarding the guilt or innocence of the defendant. Therefore, counsel's failure to object was not deficient performance.

- f. The tape of the defendant's statement did not refer to the defendant's prior assault convictions.

The defendant argues that playing the tape revealed evidence of his prior conviction to the jury. App. Br. at 27. The record does not support this assertion.

The record does not reflect that information regarding the defendant's prior convictions was revealed to the jury from the tape. Neither the defendant nor Det. Davis mentions or discusses the defendant's prior convictions. The prosecutor and Det. Davis were careful

to only play the permitted section of the tape. 3 RP 166. After the morning recess, the prosecutor again reminded Det. Davis to stop the tape at the appropriate spot. 3 RP 167. As the tape neared the end of the admissible portion, Det. Davis stopped the tape and checked to make sure he was playing the appropriate section. 3 RP 168.

The taped statement played for the jury did include the defendant's claim that he was not an assaultive person. 4 RP 237, Exh. 13, p. 20. The prosecutor wanted to introduce evidence of the defendant's prior assault convictions to rebut that claim. 4 RP 240. However, in an abundance of caution, the court decided not to admit the evidence unless the defendant affirmatively asserted in trial that he was a peaceful person. 4 RP 241.

Although he did not testify, the final result of the taped statement and the court's ruling benefited the defendant. The defendant's favorable version of events was placed before the jury, without cross-examination. He even got in an unchallenged statement that he did not assault people, despite the fact that he had several prior convictions for assault. This is not evidence of deficient performance by counsel, nor prejudice thereby.

- g. Counsel's decision not to call Holly Williams or her daughter was strategic.

An attorney's decision on what witnesses to call is strategic and cannot support a claim of ineffective assistance. *See In re Personal Restraint of Stenson*, 142 Wn.2d 710, 736, 16 P.3d 1 (2001). Here, counsel decided not to call Holly Williams or her daughter to testify about

events that occurred after the altercation with Taylor. The accounts of all three persons present during the altercation were before the jury. The defense was self-defense. Counsel may have made the reasonable decision to focus on that evidence.

The defendant now asserts that Williams would have testified to her observations that the defendant was injured after the altercation, and statements that the defendant or Derosia made before or after the altercation. App. Br. at 30. Ms. Bergquist testified that the defendant was injured. 4 RP 250-251.

As the trial court observed:

The testimony that she would have been permitted to testify to had already been presented to the jury through other witnesses.

CP 227. The court further observed:

Her testimony was at odds with the testimony of Walter DeRosia, another defense witness. It was based upon Mr. DeRosia's testimony that the defendant was entitled to instructions on self-defense. Thus his testimony was more valuable to the defendant than Ms. Williams's. There was nothing exculpatory about Ms. Williams's proposed testimony.

CP 227.

The out-of-court statements were likely inadmissible hearsay. ER 801. It was within counsel's discretion to decide whether to call Williams as a witness. This was not deficient performance.

- h. The defendant cannot demonstrate that, absent the alleged errors, the result of the trial would probably have been different.

The second part of the Strickland test requires the defendant to show that he was prejudiced by trial counsel's deficient performance. *Strickland*, 466 U.S. at 695.

In the present case, there was no doubt that there was a confrontation and altercation between the defendant and Taylor in the alley behind Taylor's home. The defendant argued self-defense. As such, he necessarily admitted that he assaulted Taylor. *See, State v. Pottorf*, 138 Wn. App. 343, 348, 156 P. 3d 955 (2007); *State v. Gogolin*, 45 Wn. App. 640, 643, 727 P. 2d 683 (1986). The defendant could not argue self-defense if he denied the underlying act of defending himself. *See State v. Barragon*, 102 Wn. App. 754, 762, 9 P. 3d 942 (2000).

The issue for the jury was whether the defendant acted lawfully. The jury rejected his claim of self-defense. The defendant does not show how, absent the alleged errors by his attorney, he probably would have been acquitted.

## 2. THE TRIAL COURT PROPERLY RULED ON IRRELEVANT EVIDENCE.

Washington courts have recognized, as a basis for the admission of other crimes evidence, criminal acts which are part of the whole deed. *State v. Bockman*, 37 Wn. App. 474, 682 P.2d 925 (1984)(citing *State v.*

*Jordan*, 79 Wn.2d 480, 487 P.2d 617 (1971)). Under this “res gestae” or “same transaction” exception, evidence of other crimes is admissible to “complete the story of the crime on trial by proving its immediate context of happenings near in time and place.” *Bockman*, 37 Wn. App. at 490 (citing E. Clearly, McCormick on Evidence, §190 at 448 (2d ed. 1972)).

The language of ER 404(b) does not specify or so limit it, but it is almost always used by the plaintiff against the defendant. *See, e.g., Brundridge v. Fluor Services, Inc.*, 164 Wn. 2d 432, 191 P. 3d 879 (2008). In a criminal case, such evidence is generally used by the State against a defendant to show the level of the defendant’s participation, *see, e.g., State v. Lane*, 125 Wn. 2d 825, 889 P. 2d 929 (1995); or to rebut a defendant’s assertion that he lacked criminal knowledge, *see, State v. Lillard*, 122 Wn. 2d 422, 93 P. 3d 969 (2004).

The cases cited by the defendant, *State v. Tharp*, 96 Wn. 2d 591, 637 P. 2d 961 (1981) and *Lillard, supra*, involve additional incidents of a defendant’s behavior. Res gestae and ER 404(b) evidence in general is used by parties to an action regarding each other. There does not appear to be any legal authority for the defendant to seek to admit such evidence, such as in this case, regarding the acts of a person who was not a party and not a witness in the case.

To be admissible, res gestae evidence must be relevant to a material issue. *See, State v. Powell*, 126 Wn. 2d 244, 262, 893 P.2d 615 (1995). The admission or exclusion of relevant evidence is within the discretion of the trial court. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990); *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651 (1992).

In the present case, the defendant wanted to admit evidence that Melissa Raisbeck stole a vehicle belonging to the defendant or his mother. The State did not seek to admit evidence regarding the alleged theft. The evidence was irrelevant to the issue whether the defendant stabbed, cut, or assaulted Don Taylor. The defendant argued self-defense. The possible theft of a vehicle by someone other than the victim, Taylor, was irrelevant to the issue of whether the force used by the defendant was justified.

Although irrelevant, quite a bit of evidence regarding this incident was admitted. The defendant's mother testified that she reported the SUV missing on June 19. 4 RP 246. She also testified that she had permitted other persons, including Raisbeck, to use the SUV. 4 RP 261. In his taped statement to Det. Davis, the defendant explained the circumstances of why he went to Taylor's house. Exh.13, p. 5. In the taped statement, he said that Raisbeck took the SUV. *Id.*, p. 2. More pointedly, he said that she always stole it when tools were in it. *Id.*, p. 17. He also said that he went to the house to see if some of his stolen tools were in the back yard. *Id.*, p. 11.

Although inadmissible for several reasons, evidence that Raisbeck took the SUV without permission was before the jury. So was the defendant's explanation that that was why he went to the house where Raisbeck was living on the night of the incident. The court committed no error.

3. THE PROSECUTOR DID NOT COMMIT MISCONDUCT IN CLOSING ARGUMENT.

- a. The prosecuting attorney did not commit misconduct by using the word "stab" instead of "cut" or "laceration".

In order to establish prosecutorial misconduct, a defendant must prove that the prosecutor's conduct was improper and that it prejudiced his right to a fair trial. *State v. Carver*, 122 Wn. App. 300, 306, 93 P.3d 947 (2004) (citing *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003)). A defendant can establish prejudice only if there is a substantial likelihood that the misconduct affected the jury's verdict. *Carver*, at 306.

A prosecuting attorney is given wide latitude to draw reasonable inferences from the evidence and argue them to the jury. *State v. Hoffman*, 116 Wn. 2d 51, 94-95, 804 P.2d 577 (1991). A prosecuting attorney may draw conclusions, characterize testimony, or use terms, provided they are supported by the evidence. In *State v. McKenzie*, 157 Wn. 2d 44, 57, 134 P. 3d 221 (2006), the prosecutor called the defendant a rapist. The Supreme Court found that this was within the limits of arguing a conclusion from the evidence. *Id.*

A prosecutor's closing argument is reviewed in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. *Dhaliwal*, 150 Wn. 2d at 578.

In the present case, where the defendant argued that he was acting in self-defense, the issue was whether the amount of force used was reasonable under the circumstances; not whether the wound was a "stab" or a "cut". Photographic evidence showed that Taylor had a large wound, closed by several stitches. Exh. 4. He testified that he had been stabbed in the upper chest. 2 RP 68.

The trial court found:

During the course of the trial, counsel for the defendant did not object to the State's characterization of the defendant's actions as a "stabbing" and Mr. Taylor's injuries as a "stab wound." Had counsel objected to this characterization the Court would not have sustained this objection as describing the victim's wound as a "stab wound" was a reasonable characterization of the evidence. Disputed issues of fact are questions to be answered by the jury.

CP 228.

The respective attorneys were free to characterize this wound as they thought best as advocates. It was not error or misconduct for the prosecuting attorney to describe or refer to this as a stab wound.

- b. The prosecutor did not introduce evidence of a prior bad act and did not commit misconduct.

It is misconduct for a prosecutor to violate a court's pretrial order and pre-emptively introduce evidence of the defendant's prior bad acts. *See, State v. Fisher*, 165 Wn. 2d 727, 747-748, 202 P. 2d 937 (2009).

In the present case, when Det. Davis relayed Ms. Raisbeck's allegation that the defendant requested a "sexual favor", it was in the context of explaining his investigation of the reported stolen SUV. 3 RP 170. The prosecutor did not violate any prior ruling or order of the court. There had been no motion or order in limine to exclude the testimony. There was no objection to it. (*See* argument *supra*.) There was no misconduct.

4. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE DEFENDANT'S MOTION FOR NEW TRIAL.

Most of the issues the defendant argues in his Appellate Brief were raised and argued in his Motion for new trial in the trial court. 7 RP 454-474, 484-491. The trial court addressed these issues (7 RP 492-497) and entered Findings of Fact and Conclusions of Law regarding them. CP 226-230. The defendant does not assign error to the Findings.

The appellate court reviews a trial court's denial of a motion for a new trial for an abuse of discretion. *State v. Burke*, 163 Wn.2d 204, 210, 181 P.3d 1 (2008). The same standard applies where the motion is based upon a claim of prosecutorial misconduct (*State v. McKenzie*, 157 Wn.2d 44, 51, 134 P.3d 221 (2006)), insufficiency of evidence (*See, State v. Berry*, 129 Wn. App. 59, 68, 117 P. 3d 1162 (2005)), or ineffective assistance of counsel (*State v. West*, 139 Wn. 2d 37, 42, 983 P. 2d 617 (1999)).

As argued in detail above, the trial court's rulings were supported by the record and by the law. The trial court did not abuse its discretion in denying the defendant's motion for new trial.

5. THE STATE ADDUCED SUFFICIENT EVIDENCE FOR THE JURY TO FIND ALL ELEMENTS PROVEN BEYOND A REASONABLE DOUBT.

The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the State met the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*,

111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In the present case, the defendant was charged with assault in the first degree under RCW 9A.36.011(1)(a). This requires the State to prove that the defendant acted with intent to cause great bodily harm. *Id.* The defendant challenges the quantum of proof of intent. App. Br. at 45.

Here, Derosia testified that the defendant spoke disparagingly of Raisbeck. 4 RP 285. The defendant accused her of stealing from him. Exh 13, p. 17. The defendant and Derosia went to Taylor’s house to hang the sheet with a derogatory inscription on the fence. 4 RP 285, 286. The defendant had a utility knife with him when they went to Taylor’s. 4 RP 322. The defendant struck Taylor in the abdomen, causing a large gash which required stitches and hospitalization. 2 RP 67, 68, Exh. 4. The wound was in an area containing many vital organs such as the liver and spleen. 3 RP 124. A puncture wound through the rib cage could cause death. 3 RP 125.

From this evidence, the jury could conclude that the defendant had animosity toward Melissa Raisbeck and her new boyfriend. The jury could conclude from the means and manner that the defendant intended maximum injury by striking Taylor in the abdomen with a knife. Although the defendant argued at trial (4 RP 391, 393) and in now in his appeal (App. Br. at 45) that the manner of the blow was not intended to result in the requisite injury, the jury could and did conclude otherwise. The jury's verdict is supported by sufficient evidence.

6. CUMULATIVE ERROR DID NOT DENY THE DEFENDANT A FAIR TRIAL.

The doctrine of cumulative error recognizes the reality that sometimes numerous errors, each of which standing alone might have been harmless error, can combine to deny a defendant not only a perfect trial, but also a fair trial. *In re Lord*, 123 Wn.2d 296, 332, 868 P.2d 835 (1994); *State v. Coe*, 101 Wn.2d 772, 789, 681 P.2d 1281 (1984); *see also State v. Johnson*, 90 Wn. App. 54, 74, 950 P.2d 981, 991 (1998) (“although none of the errors discussed above alone mandate reversal....”). The analysis is intertwined with the harmless error doctrine, in that the type of error will affect the court's weighing those errors. *State v. Russell*, 125 Wn.2d 24, 93-94, 882 P.2d 747 (1994), *cert. denied*, 574 U.S. 1129, 115 S. Ct. 2004, 131 L. Ed. 2d 1005 (1995).

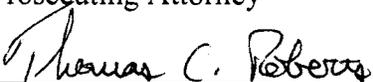
The record of this case, as a whole, shows that the defendant received a fair trial. As argued above, the State presented sufficient evidence for the jury to find the defendant guilty. The court correctly ruled on evidence and denied the defendant's motion for new trial. He was represented by effective counsel. The prosecuting attorney did not commit misconduct. There was no such accumulation of error to deprive the defendant of a fair trial.

D. CONCLUSION.

The defendant in this case received a fair trial where he was able to argue his theory of the case: self-defense. He was represented by effective counsel. The prosecuting attorney did not commit misconduct. The State presented sufficient evidence for the jury to find him guilty beyond a reasonable doubt.

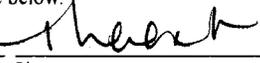
DATED: January 3, 2011.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
\_\_\_\_\_  
Thomas C. Roberts  
Deputy Prosecuting Attorney  
WSB # 17442

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1-6-11   
Date Signature

11 JUN -9 PM 4:44  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
CLERK

## **APPENDIX "A"**

DESTRUCTIVE ONLY

FILED  
DEPT. 8  
IN OPEN COURT  
MAR 24 2018  
By Bm  
DEPUTY

PLAINTIFF'S  
COUNT  
13

09-1-03093-8

Interview of William Berquist  
Case Number 09-171-0088

Davis: --- explanation of that. This is Detective Dan Davis with the Tacoma Police Department. Uh, today's date is Friday, June 26<sup>th</sup> and the time is approximately 1057 a.m. I'm in an interview room at the Tacoma Police Department Headquarters and I'm seated in that room with William Berquist. Uh, William, I've explained to you, I read you your rights here and you indicated that you understood those and wanted to speak to me about this incident. Is that right?

Berquist: Correct.

Davis: Okay. Uh, William, uh, also, uh, I, prior to, to going on tape, I wanna ask you if you're aware that I am tape recording this conversation that we're having and if I have your permission to do that.

Berquist: Uh, yes.

Davis: Okay. And William prior to going on tape, I advised you of your rights from this rights form. Is that correct?

Berquist: Yes, you did.

Davis: Okay. And William, I have to do that again on tape and I'm gonna go ahead and do that at this time. Uh, you have the right to remain silent. Any statement that you do make can be used as evidence against you in a court of law. You have the right at this time to talk to an attorney of your choice and to have him present before and during questioning and the making of any statement. If you can't afford an attorney, you're entitled to have one appointed for you, without cost to you and to have him present at any time during any questioning and the making of any statement. You may stop answering questions and ask for an attorney at any time during the questioning and the making of any statement. And, and, William,

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as I indicated when I read this to you earlier, you indicated that you do understand your rights. Is that correct?

Berquist: Yes, sir.

Davis: And you wanna go ahead and speak to me currently?

Berquist: Yes, sir.

Davis: And like I told you, William, off tape, obviously, it's a Friday and, and, you know, I mean, your, your, your ace in the hole in this rights advisement is this last one here. At any time you wanna stop, we're gonna stop. And I want you to continue to remember that throughout the interview. What I told you, William, off tape was that I am arresting you for assault and I, I told you that out at the scene. Or, excuse me, out at where I arrested you, which was Point Defiance. Uhm, you asked me ---

Berquist: You didn't, you didn't tell me until we talked \_\_\_\_\_ -

Davis: Okay. Okay. And I am telling you at this time that you are under arrest for assault. Uh, and also that I would, uh, discuss this further and give you some additional information about the situation. Uh, William, you asked me that, does this have something to do with a stolen SUV. And what you're saying is, is that your ex-girlfriend, Melissa Raisbeck, at some point in the last week or so took your SUV?

Berquist: My, my, yeah. The family SUV, right in front of my residence.

Davis: Okay.

Berquist: The second time she's done this now.

Davis: Okay. And, William, obviously, uh, we want to get to the situation at hand here. So, without getting into an, uh, a long drawn-out version of it, it sounds like, if, if

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I understand correctly, you and Melissa have had a relationship on and off for the past several years.

Berquist: No.

Davis: Okay.

Berquist: But we had a relationship, but it was over years ago.

Davis: Okay.

Berquist: She continue, has continued to harass my family.

Davis: Okay. And so what I wanna do, William, is, is obviously kinda cut to this situation here. Now, regarding this assault, it's being reported that you went over and assaulted her boyfriend, Don, uh, Saturday night, actually Friday night into Saturday morning. And you're, you've told me kinda off the tape here that you don't know anything about that.

Berquist: No. I assaulted nobody. My biggest worry right now, if, I mean, if I can talk to you about is is just ---

Davis: Sure.

Berquist: --- my mom and the situation we have down there. Is there, I mean you said I'm going to jail. Is there any way that I can work this weekend? I mean, I'm not gonna, I'm going anywhere or do anything. I just need to help my mom. She's 80. And I'm, I've been taking care of everything.

Davis: Well, and, uh, it did appear to me when I, when I spoke briefly with her out there that she does have a number of employees coming to work there also.

Berquist: Right. To, right, right, and also some, some \_\_\_\_\_

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Davis: Okay. And for purposes of clarification, William, uh, I arrested you this morning at the Taste of Tacoma out at Point Defiance and your mom was setting up a booth that, that she works there. Is that correct?

Berquist: Yeah. Yes.

Davis: Okay. Well, and I, obviously, I understand your, your con---, concern about that and, and I, and if I spoke, as I spoke to you earlier, and I, I did tell you off tape, William and I'll reiterate that now, you know, obviously you and I don't know each other, but I want you to know going in that I don't pull any punches or trick anybody or do anything like that. I'm gonna give it to you straight. I expect, you know, you'll try to give it to me straight.

Berquist: 100%. 100%.

Davis: And, and so again, getting back to this assault, of what happened Friday night and, and into early Saturday morning, right around midnight Friday night, was that, uh, uh, Don Taylor, who, uhm, you're probably aware ---

Berquist: Yeah. \_\_\_\_\_

Davis: Okay. But you know where he lives?

Berquist: Uh, I knew the vicinity and, and the area. Yeah. Yeah.

Davis: And is that area 45<sup>th</sup> and South Thompson?

Berquist: Yeah. Right where we picked up, right where that officer called us, I think it was the day before, and, uh, we went and recovered the vehicle and, my mother and I, and, uhm, an employee of ours.

Davis: Okay. And that was, was that Thursday when that vehicle was recovered?

Berquist: Yes.

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Case Number 09-171-0088

Davis: Okay. So, now William, on Friday, Friday evening, what were the circumstances that brought you back there?

Berquist: Uhm, I went to ask why it was stolen and, uh, if I could \_\_\_\_\_

Davis: Okay. And what time did you go there?

Berquist: Uh, after I got done working at the, uh, apartment complex that my family owns.

Davis: Okay.

Berquist: And that was right around midnight.

Davis: Okay. And, uh, ---

Berquist: And I have witnesses to that, that prove, uh, how late I work, including my mother and, uh, a temp.

Davis: And who is your witness? Who was with you when you went over there?

Berquist: Oh, one of my employees was with me, uhm, actually I was with him. I wasn't driving. Uh, Walt.

Davis: Okay. And what's Walt's last name?

Berquist: Oh, my God. Uh, it's B---, it's something. I don't, I don't know his whole last name. I'm sorry. I have---, uh, I haven't known him all that long.

Davis: Okay. And so what, what happened? What transpired when you were over there?

Berquist: Well, like I said, I didn't know exactly where, which house he lived in. So, Walt and I just had parked on, uhm, just, I don't know the streets either, but off of, uhm, the side of Thompson, like where Thompson turns into something else there. We parked right there. And we were walking down the sidewalk and went down a block, came back and were walking back through the, uhm, an alley back to where he had, Walt had parked his car, when this guy comes, not running but rushing I'd say was a good, a good description, out of the back door and I asked

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him if his name was Donnie and he didn't say anything. And I go, uh, I'd seen him one other time when, uhm, he had came by the apartments I worked at, uh, that we own and had asked for, uh, if I had any pain pills. 'Cause apparently, uh, uh, somebody had broke a tooth or something. And I, at that time I said, no I don't have any pain pills. I mean, I don't give pain pills out. But anyway, uhm, so I recognized the guy and I'm like, hey, you know, I'd like to ask you a couple of questions. You know, we just got the vehicle back, uh, a block away from your house here. Uhm, you know, can I, is there any way of getting some of my tools back that you guys stole? And he came out and assaulted me.

Davis: Where were you when that happened?

Berquist: In the, in the, I wasn't on his property. I was standing in the alley.

Davis: Tell me how the assault happened.

Berquist: He rushed me and assaulted me. \_\_\_\_\_ didn't say a word. I tried to talking to him, asking him what's going on. Why'd he steal my veh---, or my family's vehicle. Can I ask, can I, is there any way of negotiating to get some of the tools back. And he didn't say a good. Just came up and attacked me.

Davis: So, ---

Berquist: And like I said, Walt was standing right there and verified the whole thing. I mean, it took both of us by surprise.

Davis: And, uh, whose, uh, were, were you in Walt's car at the time?

Berquist: No, we were both on foot at the time.

Davis: Did you drive over there in Walt's car?

Berquist: Yes, sir.

Davis: Okay. So, if I have this straight, you guys, you drive over there.

Interview of William Berquist  
Case Number 09-171-0088

Berquist: Yeah. It's only like a few blocks from, uh, the apartment complex that we own.

Davis: Right. And then you park down the street.

Berquist: Yeah, 'cause I didn't know ---

Davis: Okay.

Berquist: --- exactly what house he lived in or anything. I don't even know the guy.

Davis: And then you, you guys were out on foot.

Berquist: Uh huh (affirmative).

Davis: And were you, you obviously, it sounds like you were near his house. You must have been close to his house obviously, if he comes out of his gate.

Berquist: Yeah.

Davis: Okay. And then what you're saying is he assaults you first.

Berquist: First, yeah. Yeah.

Davis: And then what happens?

Berquist: Uh, I got away from him. Asked him what the hell his problem was. And he said he was gonna kick both of our asses. And I just said, Walt, let's just get outta here. This guy is irrational. Uhm, there's no talking to him. Just forget it, you know. I'll talk to my mom about whatever, insurance claim. \_\_\_\_\_, you know, thank God we got the vehicle back. And I mean, that's basically, Walt and I left. I mean, we were like astounded that, that he, uh, reacted that way. After stealing a vehicle and then, and some tools and then he come out and assault me like that. So, that's, I don't know why ---

Davis: So, at, at what point in this William, did you stab him?

Berquist: Did I stab him?

Davis: Yeah.

Interview of William Berquist  
Case Number 09-171-0088

Berquist: Uh, I didn't stab him. I, well, I tried to get away from him is all. I didn't stab him. Who said I stabbed him?

Davis: Well, tell me what happened.

Berquist: I just did, sir. He attacked me. Walt will attest to that. Uhm, uh, and then I got away from him, thank God. I think Walt probably had something, uh, some help with that, helping me get away from him.

Davis: Uh, didn't Walt get, didn't Walt come at him and he, didn't Walt get some scratches on his face from kinda getting tussled into the fence?

Berquist: \_\_\_\_\_

Davis: Is that what happened, though? Did Walt ---

Berquist: I have ---

Davis: \_\_\_\_\_

Berquist: --- \_\_\_\_\_ any scratches or have any scratches. Thank God. I mean, he hit, he hit me pretty darn hard. Almost knocked me out.

Davis: What about this, uh, what, what's the deal with this, this sheet or whatever that you threw at him? He says you threw some thing at him.

Berquist: I threw something at him? No, I never threw anything at him at all. That's a downright lie, and Walt can attest to that, too. I had nothing in my hand. I threw nothing at him. I was standing there, not on his property, asking him, you know, if I could talk to him for a minute. Why did he steal the vehicle?

Davis: Right.

Berquist: You know, 'cause we just got it a, a few feet away from your, from your home here.

Davis: Now, when was the vehicle reported stolen?

Interview of William Berquist  
Case Number 09-171-0088

Berquist: Uh, within 45 minutes of noticing it was gone.

Davis: And where was it taken from?

Berquist: 108 Point Fosdick Drive.

Davis: Okay. From your home.

Berquist: Yeah.

Davis: Okay.

Berquist: Uhm, you wanna know what night? I mean, I ---

Davis: Yeah.

Berquist: \_\_\_\_\_ Tuesday night around 8 o'clock and you can verify that by checking the "Good to Go", uh, transponder that was located in the windshield. And, uh, I have two nei---, or one neighbor, Mike and Camille ---

Davis: So, you ---

Berquist: --- who witnessed her and him, he, he driving a silver car, dropping her off at the top of the drive---, driveway, uh, uh, Point Fosdick Drive. Her walking down the driveway. She walked right by our neighbors.

Davis: And, uh, did, so obviously the report was made to Gig Harbor PD.

Berquist: Uh, no. I believe it was to Pierce County Sheriffs.

Davis: Pierce County. Okay.

Berquist: Yeah.

Davis: And so then a couple days later, the vehicle was, was, uh, recovered.

Berquist: Around 9, 8:30, 9 o'clock in the morning. One of the neighbors called because, uh, it had been sitting there for a couple of days.

Davis: And where, where was it recovered from?

Berquist: Just right down, uh, 46<sup>th</sup> and I think it was Tacoma Avenue.

Interview of William Berquist  
Case Number 09-171-0088

Davis: Okay. So, Friday night into the early morning hours of Saturday is when you go over there to ask him about these tools that ---

Berquist: Yeah. It's just right after midnight. Right after I got through working at the apartment.

Davis: Okay. And what do you do at the apartment?

Berquist: I'm doing a complete gut and a remodel.

Davis: But you work for yourself?

Berquist: My fam---, my, yeah.

Davis: Okay. Do you think that's a good idea to go over there then at that hour? It seems to me that common sense would say maybe you would go over there during the daylight hours and ask this guy? Knock on his door?

Berquist: Uhm, I didn't know what door to knock on or anything like that. I just sort of  
\_\_\_\_\_

Davis: You don't know what door to knock on at, at midnight or 1 in the morning either, right?

Berquist: No. Huh uh (negative).

Davis: Are you gonna knock on his door?

Berquist: No. I wasn't planning on any kind of a confrontation other than if, if I did see somebody, Walt and I were just basically, it was a nice evening and I said, do you wanna go for a walk? You know, let's, I'll take you over, let's go over and I'll show you where they found the vehicle. And basically what started it all is I needed some of the tools to, to finish the, uh, to finish the remodel that I'm doing. They were stolen.

Davis: So, when you guys walked over, but it sounds to me like you guys drove over.

Interview of William Berquist  
Case Number 09-171-0088

Berquist: Yeah.

Davis: Okay.

Berquist: Right.

Davis: So, where's this coming from about you and Walt taking a walk 'cause it's a nice evening?

Berquist: We walked around the block. Around the, I'm not explaining right, but there's, I think it's Thompson and then there's, uh, you just go down a block and then around. That's all we did because I didn't know exactly, like I said, who this guy was, where he lives. I'd only seen him once when he came by the apartment.

Davis: And that, that's what I'm asking you, William. I mean that, that to me, what I'm telling you is, wouldn't common sense say, oh, okay, I'm gonna ask this guy about my tools, so I'm gonna go over there ---

Berquist: \_\_\_\_\_ if I see him or anything.

Davis: Right. So, what are you doing out there walking around?

Berquist: It was just by, uh, by chance. Thinking if I, if I did see him or if I recognize any of my tools sitting out, there was a tool box out of the back of our truck that was stolen a few, a couple of months ago also. And I'm kinda looking for that in somebody's back yard or something.

Davis: Okay. And so ---

Berquist: I c---, can I, can I tell you the, briefly give you a, some background here?

Davis: Well, no.

Berquist: Okay.

Interview of William Berquist  
Case Number 09-171-0088

Davis: I, I mean, I'm not saying, no, you can't. But let me tell you, I, I've looked enough to see that you and Melissa have a number of issues going on and, you know, you've got this---

Berquist: In the past ---

Davis: Right. You got this thing going on. But it doesn't sound to me, and you correct me if I'm wrong, like you have a real problem or relationship with Don, ---

Berquist: No.

Davis: --- whose her current boyfriend.

Berquist: No. I don't even know him.

Davis: Okay.

Berquist: And I don't nothing about her other than out of the blue, every once in a ---, she shows up like, uh, this is the third time now and steals something.

Davis: Okay.

Berquist: There have been a couple of attempts at breaking into the apartment, but uh ---

Davis: Now let me ask you this. You, you reported your vehicle stolen. The SUV. Did you make that report or did your mother?

Berquist: We made it at, uh, from the house.

Davis: Okay. And when you reported that, did you, did you tell 'em, hey, there's a bunch of tools in it and things?

Berquist: I believe so. Yeah.

Davis: Okay.

Berquist: I know the, uh, uh, our insurance guy knows.

Davis: Okay. So, you've made an insurance claim for these missing tools?

Berquist: Not yet. We haven't done the final thing on it yet.

Interview of William Berquist  
Case Number 09-171-0088

Davis: Okay.

Berquist: Her and I have been talking about whether it's, if we're just gonna absorb it, like we have the other ones, 'cause it's really not cost effective to pay a \$500 deductible, you know, and then have the insurance go up, uhm, he's pretty much guaranteed us our, our insurance guy that we're not, we wouldn't get dropped, you know, so you see where I'm ---

Davis: Yeah.

Berquist: --- coming from.

Davis: Okay. And it doesn't seem to me like you'd get dropped for having your vehicle stolen.

Berquist: Uh, yeah. The claim. Right.

Davis: Uhm, so you haven't made a claim yet for the missing tools, but you, you're thinking about it.

Berquist: Yeah. Right.

Davis: Okay. Uhm, but what I wanna ask you again, William, is, is my question, is that, let's say you are gonna go over there and, and you wanna look around for your tools in the yard as you say. It seems to me that would be better suited to do that at 3 or 4 or 5 o'clock in the afternoon when it's light out.

Berquist: Probably, but I'm working now every so, so ---

Davis: Right.

Berquist: --- all day.

Davis: Right. But you work for yourself. Right? You can leave any time you want.

Berquist: I could. Right. Yeah.

Interview of William Berquist  
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Davis: I mean, you and Walt coulda had this conversation and said, let's go over there and ask this guy about it. You don't know this guy. I mean, you, you know, do, how do you think that would go? I mean, it doesn't seem to me like it, ---

Berquist: I, yeah, I mean, every time I'd seen he was, he seemed amicable and friendly.

Davis: Okay. And, uhm, so the situation is, is that when you get over there, you and Walt and are out in the alley?

Berquist: Yeah.

Davis: Had you been in his yard looking ---

Berquist: No.

Davis: --- for the tools?

Berquist: No. No. Didn't try to go into, on anybody's property.

Davis: And so what happened again when he comes out?

Berquist: Well, I didn't even know. I mean, it, the back to the residence was black. There was no lights on or anything. All of a sudden the door opens and Walt goes, uh, oh. Here comes somebody. And then as he came out, I recognized him and that's when I proceeded with, you know, I, I think I said, why did you steal our vehicle. Uhm, is there any way of, you know, getting some of my \_\_\_\_\_ tools back, I think I said. And he didn't say a word. And I go, don't feel like talking after stealing my vehicle. And he comes up and he straight assaults me.

Davis: Okay. And then at, at some point did Walt assist you by ---

Berquist: No. No, I never, no, Walt never \_\_\_\_\_ the guy. He never, as far as, no, Walt never touched the guy. I think it was just his presence that kept me from, well, he's got a probably a hundred pounds bigger, heavier than I am.

Davis: How much do you weigh?

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Berquist: I'm only 160.

Davis: Okay. And how ---

Berquist: 165.

Davis: --- how about Walt?

Berquist: I'm not sure. Probably 1---, 180 maybe. Something like that.

Davis: He's a little bigger than you?

Berquist: Little bigger. Yeah.

Davis: Okay.

Berquist: Well, he's, uh, you know.

Davis: What's his, what's his number?

Berquist: Who? Walt's?

Davis: Yeah.

Berquist: His cell phone number is, oh geez, 465-oh, my gosh. You know. It's one of the, it's in my phone. It's, it's in the phone. I don't know it by heart. It's in my mom's, my mom has it, too. 'Cause, uh, it's in her cell phone, too.

Davis: Do you know his last name?

Berquist: I don't know it. It's D---, D--- something. D-E or D-A something.

Davis: Okay.

Berquist: Kinda, let me look and see if I have anything in here. No, I don't. Sorry. I don't have it written down.

Davis: Okay. All right. But it's, well, what kinda car does, does he drive a car?

Berquist: He has a Honda. A red Honda.

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Davis: Okay. So, what happened then, William, is, obviously, we got a little bit of a discrepancy here. You've got somebody saying that you've stabbed him after this and you're saying that didn't happen.

Berquist: Yeah. I mean, is, is Walt telling you exactly what happened just like I have, but the guy comes up and assaults me, would, would that make a, that would have a huge bearing on this, wouldn't it? 'Cause I never, uh, I mean that's just mind boggling actually how I end up being charged with assault when I had my, our stuff was stolen and I'm assaulted. I, I, I'm totally confused.

Davis: Well, and you know, ---

Berquist: Can I call my mom and, uh, get, have her get, uh, Walt's number out of her phone?

Davis: Yeah. I'll, I'll, you know, I'll make some effort over the next few days to try to talk to Walt.

Berquist: Well, is there any way to talk to him, then maybe I could not be a---, go to jail or whatever today? And, and be able to work?

Davis: Uh, no. You're gonna, as I said, I mean, I wanna be clear about that. I'm gonna arrest you and, uh, the reason for that, William, is, it sounds to me like is what you're saying is after this, after Don punched you, you and Walt essentially take off and get in his car and leave the scene.

Berquist: Yeah, I went home.

Davis: Okay.

Berquist: Went to bed. \_\_\_\_\_

Davis: Okay.

Berquist: \_\_\_\_\_

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Davis: Obviously, what you're finding out, it sounds like now is that I'm advising you that Don was obviously stabbed and that makes it a fairly serious assault and maybe that makes it a little more clear why I'm, I was able, you know, why I felt it necessary to come to the Taste of Tacoma and have to arrest you under those circumstances.

Berquist: Sure, but I didn't assault anybody. I was assaulted. I had stuff stolen. My, my father and I had stuff stolen from us and I was assaulted, so this, I don't understand why I'm being, going to jail.

Davis: Well, and, you know, I mean, I'm, I don't, I don't think it's any real big mystery. He's saying ---

Berquist: They're lying. They stole, they stole our vehicle and now he's lying. Just thief, lying, you know. I mean, ---

Davis: And, and you know, ---

Berquist: She stole the vehicle back in, was it February of '08 and there's a Pierce County Sheriff's, uh, report filed on that, too.

Davis: Okay.

Berquist: And once again, you know, bunch of, you know, it's ironic. She always steals it when, uh, if there's tools or valuables in it.

Davis: Well, and, I, I a---, you know, I'm not gonna get into you, in depth with you, what's going on with you and Melissa. Obviously, I think that's, what, what, your history is part of this.

Berquist: She has keys. She stole keys from my deceased father.

Davis: Okay.

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Berquist: My mom and I have, uh, realized that. So, we, we have taken the, the necessary steps and changed all the locks around the residence and stuff.

Davis: Okay. And believe me, William, I see this a lot. I've been a cop for 25 years. Okay. I, I understand that these things that, that happen between you and Melissa, they happen in this world.

Berquist: Yeah.

Davis: Okay. People have that. They can't, can't, okay. And, uh, the reason I don't wanna get deeply involved in that currently is because, it's a long, long story. Right? And there's back and forth.

Berquist: \_\_\_\_\_

Davis: Okay. Maybe it's not too long for you. But what the point I wanna make is, and this is why it's, it's important for me to make sure that, you know, I arrest people when, when I have an opportunity because Don is really an innocent person in all this.

Berquist: He is?

Davis: Yeah. He's, he's ---

Berquist: He's not a thief?

Davis: --- he happens ---

Berquist: He assaulted me.

Davis: --- he happens, well, let's back up for a minute. He happens for one reason or another and I'm not making any claims about his judgment, hook up with Melissa. But, you know, he doesn't have any on-going thing with you.

Berquist: No.

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Davis: But what does happen is, is that, uh, at midnight or 1 a.m., he hears noises around his home. Now, whether you're in the alley or not, I had a similar situation at my home not too long ago. And I, I heard someone out around my garage. And you bet I went out and confronted 'em. That's what people do. They either, you know, they get scared or worried. But they, they wanna see what's going on around their home. They have a right and he has a right to, to be safe at his home.

Berquist: Uh huh (affirmative).

Davis: It's, it's almost 1 o'clock in the morning.

Berquist: Uh, it wasn't, no, it wasn't 1 o'clock in the morning. It was, I quit, we quit working a little bit before midnight. So, it wasn't 1 a.m.

Davis: Okay. So, maybe it was around midnight and if I got that wrong, I apologize.

Berquist: I understand, sir.

Davis: I'm not trying to, I'm not trying to ---

(Berquist/Davis speaking over each other.)

Berquist: --- I'm just kinda blown away here. Okay. Because you're telling me the guy's innocent when we re---, uh, the Tacoma Police Department recover our stolen vehicle a block from his house.

Davis: Okay. And you know, I don't know a lot about the stolen vehicle, but I do know -  
--

Berquist: He didn't mention that to you, huh?

Davis: I do know, uh, William, that there's proper channels for handling that. It was stolen. It was recovered.

Berquist: Uh huh (affirmative).

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Davis: And if there were missing tools, you know, I mean, obviously, I'm saying it, it would have been more prudent for you to just report him to the police rather than going over there ---

Berquist: But I didn't have no proof to, to do anything like that. That's why I thought I'd ask if, if I had saw the guy.

Davis: Okay. Okay.

Berquist: But I don't assault people. I don't go around assaulting people.

Davis: Okay. William, you heard that little beep there a minute ago. And that's indicating that I'm almost at the end of the tape. And I'm gonna go ahead and turn off the tape. Get you another glass of water or something if you want it. And I know you probably wanna make a call to your mom at some point and I'll let you do that. But let me grab another tape if we're not quite finished here. And, and I'll come back. All right?

Berquist: Sure.

Davis: I'm gonna turn off the tape. Uh, we've been speaking on tape for, uh, 28 and a half minutes.

(End of Side A, Tape 1)

(Start of Side A, Tape 2)

Davis: Test. This is Detective Dan Davis again. I took about a five minute break to get another tape. Uh, William, I asked you off tape if you needed to use the rest room or anything like that. Do you, do you need to do that at all?

Berquist: No. I'm fine. Thanks, sir.

Davis: Okay. William, uh, we've been, you know, talking about this situation and obviously, what, what we're, where, where we're at here on this is we have a

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situation where it sounds like you and Walter go over there and you're saying it's maybe around midnight. It's not 1 in the morning. And you know, if, if I had my times ---

Berquist: \_\_\_\_\_ how late it was.

Davis: Okay. If I had my times off a little bit, I'm not trying to trick you with the time --

Berquist: I understand, sir.

Davis: --- or anything like that. After the assault happened, when you were assaulted, where were you, where were you hit? In the face? In the body?

Berquist: Yeah. In the face. He tried to, yeah, he just hauled off and smacked me and uh, like I said, I didn't expect that at all. It was the last thing on my mind. ---

Davis: Was, was that ---

Berquist: --- any kind of confrontation other than a verbal, you know, why did you steal the vehicle type thing.

Davis: What, was, uh, ---

Berquist: Are you aware of that part? I, I'm sorry.

Davis: Yeah.

Berquist: You are aware that, our stolen vehicle ---

Davis: Right.

Berquist: --- that it was recovered in that area.

Davis: Right.

Berquist: Okay.

Davis: So, after that, after the punch was thrown, is that when you and Walter took off running?

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Berquist: Uh, I wouldn't call it taking off running.

Davis: Okay. And again, correct me if I use language that ---

Berquist: Yeah. And that's when we left.

Davis: Okay.

Berquist: That's when I told Walt, I go, this guy's crazy. Walt's like, yeah. Let's just get outta here, dude.

Davis: What did Walter do?

Berquist: There was no tool box there. What did Walt do?

Davis: Yeah.

Berquist: Nothing. That's when we left. He drove.

Davis: Okay. And, uhm, you had said just a minute ago that you were gonna ask him why he took the vehicle.

Berquist: Yeah. Why did he, yeah.

Davis: Okay. And again, what I come back to, William, is, you know, and, you know, maybe what I'm dealing with and quite often I do deal with people that maybe don't use a whole lot of good, common sense. And that's what I'm asking you. I'm not trying to insult you, but looking back, this doesn't seem like a very good idea on your part.

Berquist: It wasn't. No.

Davis: Okay. And the fact of the matter is, if he had a part in taking the vehicle, that's a, that's a police matter. Is it not?

Berquist: Yeah. I wasn't trying to do any police work. I was just, you know, why did you take it? Uh, we just got it, you know, a block away from your house. I wasn't, I wasn't, I wasn't in any, any kind of a confrontational, uh, mood or, I didn't

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anticipate any confrontation at all. I was basically just looking to see if I could see my tool box. It's a big, stainless steel tool box out of the back of a pick-up truck that was stolen here a couple of months ago.

Davis: Okay.

Berquist: So, I've lost things twice now.

Davis: Okay. Is it the kind that sits in the back of a truck?

Berquist: Yeah.

Davis: Okay. Well, then let's back up a minute because you, you, is that what you were looking for?

Berquist: Yeah. That's what, yeah.

Davis: Okay.

Berquist: --- the tool box.

Davis: Okay.

Berquist: Seeing if I could see my tool box laying around. That's why I was walking.

Davis: When was that taken?

Berquist: A couple of months ago. Not from the apartments ---

Davis: Okay.

Berquist: --- while I was working.

Davis: Okay. And was that in the back of your gray pick-up truck?

Berquist: Yes, sir. The same pick-up that you saw today.

Davis: Okay. So, let me ask you, you had said you were looking for some tools, were, were they, but you're saying it was a tool box.

Berquist: Okay. The Explorer had tools in it when they stole that.

Davis: Okay.

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Berquist: And the, another incident that took place prior to the Explorer of, uh, two weeks ago, was my tool box out of my pick-up truck.

Davis: Was there two ---

Berquist: \_\_\_\_\_

Davis: --- two weeks or two months?

Berquist: Two weeks on the Explorer ---

Davis: Okay.

Berquist: --- being stolen, and just recovered last week.

Davis: Okay.

Berquist: Two months my tool box out of the back of the pick-up.

Davis: Okay. So, you're just basically looking for any evidence of it. You're looking for the big tool box or anything that came out of the Explorer.

Berquist: Uh, or the pick-up. Correct.

Davis: Okay. The, and when I say the big tool box, I'm referring to the, the one in the pick-up.

Berquist: I under---, right. I understand.

Davis: Okay. Now, what's your plan there if you see the tool box in his back yard?

Berquist: I don't even, I don't even know. Call the police, tell the police that I've spotted what I suspect is my stolen property.

Davis: Okay. Now you were around, you, I know you're saying you were in the alley and right off of the alley is his garage. Would you think that would be a place where maybe the tool box was?

Berquist: Where? In the all---

Davis: In his garage?

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Berquist: No. I didn't look in any garage. I don't know. Like I say, I don't know where he lives or anything. I was just looking to see if I saw a tool box sitting, you know, uh, in the yard, up against the house or something. Just, I was just looking for a tool box or any case of tools, like a Milwaukee case that tools come in, the big hard plastic kind, you know.

Davis: Okay.

Berquist: That's all.

Davis: And, and should you have seen those you're not sure what you would have done.

Berquist: No. \_\_\_\_\_ I would have made a note, wrote down the address and called the police and told the police that that's where I think my stolen tools are.

Davis: Okay. So, and this is what I wanna ask you, William. Let's say, you know, let's say for a minute that you are on this mission here to locate these tools.

Berquist: It wasn't really a mission, but ---

Davis: Okay. Whatever you want to call it.

Berquist: Yeah.

Davis: Why don't you just stay in your vehicle? You can certainly see his back yard from driving through the alley? Right?

Berquist: Uhm ---

Davis: But you park it down the road a little bit and you get out and walk.

Berquist: Yeah. We walked.

Davis: I mean, it seems to me, you just roll down the alley slowly, shine a flashlight down there. You never have to get out of your vehicle.

Berquist: That would, would look kinda weird I, I would think. That would draw attention to somebody.

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Davis: Well, I mean, even if, even if it does, I mean, you're, you're in your vehicle and you just drive off. There, there's, there's never any confrontation under those circumstances.

Berquist: Uh, yeah. Well, I didn't think there'd be any confrontation under the, the circumstances that there were, uh, you know. It just blows my mind.  
\_\_\_\_\_ that I'm being charged with assault, when I was assaulted.

Davis: Well, because what happened, William, and, and obviously you're denying any knowledge of this, is that Don was stabbed in the torso and, and severely injured. He had to go to the hospital and he was in the hospital for a couple of days. And the only, the only discrepancy right here I kinda have is it kinda matches from both you and Don.

Berquist: What does, sir?

Davis: The, the assault. Except you seem to say that you never stabbed him.

Berquist: I didn't assault him. He assaulted me. He came out of his house, off of his property into, uh, an easement way, an alley, and assaulted me.

Davis: Right.

Berquist: After I repeatedly tried to ask him questions.

Davis: Were you guys standing near his garage when he ---

Berquist: No.

Davis: --- came out?

Berquist: No. Actually, no. Uh, we were actually, now that I'm thinking about it, we were only maybe, I don't know, not far from his car. The end of the alley is just right there. The street. And we weren't by any, we were out in the open. There was no garage or anything like that. We're out in the open.

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Davis: Behind his house.

Berquist: In the alley. Correct.

Davis: Okay.

Berquist: Yeah.

Davis: And that's what I'm saying, and that's what I'm advising you, William. We got a pretty decent story from both you and him that kinda matches up. Yeah. He says he came out there and confronted you and, and ---

Berquist: He doesn't say he assaulted me?

Davis: Yeah.

Berquist: Oh, \_\_\_\_\_

Davis: He said he assaulted you.

Berquist: Okay.

Davis: After you tried to assault him.

Berquist: Oh, that's a lie. Yeah.

Davis: Okay.

Berquist: He's lying.

Davis: And then the other ---

Berquist: After I assaulted him.

Davis: The other part of the lie is, is that he's saying that he, that you stabbed him and you're saying that didn't happen.

Berquist: No. He, no. He didn't tell you that they stole my, our vehicle and tools and all that either I suppose, of course not. You need to talk to Walt and Barbara, my mom.

Davis: I will. I, I will.

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Berquist: But I have to go to jail and, and stuff, huh?

Davis: Yeah.

Berquist: Is he going to jail?

Davis: As I explained, I mean, what I have here, William, is a fairly serious assault with a knife.

Berquist: Uh, yeah. Yeah, I guess, but what else do you have? I'm, actually, I'm the vic---, I'm the victim.

Davis: You're saying on the basis ---

Berquist: I, I had surgery, I have surgery scheduled on Monday for my jaw.

Davis: Okay.

Berquist: From where he punched me.

Davis: Okay.

Berquist: I mean, he's probably 250 pounds and I'm just standing there, asking him why did you steal my Explorer and the guy comes outta nowhere. I'm just standing there with my hands at my side and he just belts me.

Davis: He doesn't come out of nowhere, though. He comes out of his house. That's his house.

Berquist: By nowhere, I mean the ad---, the, uhm, what, the attitude, the, the rage or whatever. Okay? Uh, there was, there was no provocation other than I was asking why did you steal my vehicle. Did you know we just got it back this morning?

Davis: Did you, did you feel, let me ask you this, William, did you feel like you needed to have another person like Walt with you for this or ---

Berquist: No, Walt was my ride.

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Davis: Okay.

Berquist: Uh, well, I didn't know, uh, no, I don't think I felt like I needed somebody with me. I wasn't, I didn't anticipate anything like that, so, no.

Davis: Okay. But what you're saying is that at no point did a knife come into play and you stabbed him.

Berquist: No. Gosh, no. I just got away from him after he assaulted me.

Davis: Okay. How do you ---

Berquist: I think, see, what I think, sir, is that he's just trying to cover up for stealing the vehicle.

Davis: Do you think he would ---

Berquist: And for her, I guess. She's the one who stole it.

Davis: Do you think he would stab himself?

Berquist: I think she probably would. She's psychotic. I mean, she's been committed a few times that I know of.

Davis: Okay.

Berquist: Uhm, geeze. This is, I'm sorry, I'm just, I'm blown away here. You got me off totally blown away.

Davis: Well, and I mean ---

Berquist: Is he being, is he, has he been arrested for the assa---, uh, the theft of the vehicle or assault on me?

Davis: No.

Berquist: No.

Davis: One, it doesn't even sound to me, I don't know any, I don't know the particulars about the theft of the vehicle. You're saying he took it. Or, or ---

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Berquist: They did.

Davis: --- she took it and he dropped her off.

Berquist: Yeah. He, yeah ---

Davis: But ---

Berquist: Mike and Camille will give you statements on that, if you want 'em.

Davis: And obviously that's something that, that should, you know, that, if that, if that happened, then you know, somebody needs to look into it whether it's me or Pierce County. But I'm not gonna, I'm not going to, uh, say that, that this guy took your vehicle based on you telling me that. I mean ---

Berquist: No, I know you won't. I know. I know.

Davis: And what ---

Berquist: Mike and Camille's would help you believe it a little bit more, though.

Davis: Right. And ---

Berquist: And the fact that the guy used to have gray hair, when I saw him the first time, he had gray hair and now he dyed it. Did he have gray hair when you, when you, have you seen the gentleman?

Davis: Yeah.

Berquist: Does he have gray hair now? It looked brown that night.

Davis: Well, it's kinda brownish with a little gray in it.

Berquist: Yeah. Well, it was all gray here when ---

Davis: How was your ---

Berquist: --- when my tool box was stolen.

Davis: Okay. How was your hair that night? It looks like you've cut it?

Berquist: Okay.

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- Davis: How, I mean, how ---
- Berquist: It was, was, I've had my hair cut for a couple weeks now.
- Davis: Okay. Well, and what we keep coming back to, William, and I wanna make sure I'm being clear with you is that, that is the crux of this assault is that, comes out and sees you and Walt out there and gets into a, a tussle with you guys and you stabbed him.
- Berquist: No. He started, he assaulted me and then I le---, I got, I got away and left, 'cause it just blew, blew my mind that he, after stealing, oh, my God, my stuff and then he's, then he's going to assault me. I mean, I think that's what I kept saying to Walt was, God, man, he, he steals my stuff and then assault me.
- Davis: The tools and the tool box.
- Berquist: Yeah. And the vehicle.
- Davis: But, but to be honest ---
- Berquist: Then he assaults me.
- Davis: --- to be, to be fair, William, you don't, you don't have anything that says he, you don't have any proof that he took your tools or took anything of yours and basically what you're telling me, according to your neighbors is, and this is, of course, something that I don't know anything about is you're saying he dropped her off to get the vehicle.
- Berquist: Uh huh (affirmative).
- Davis: Okay. So, he may not even know what's going on between you and Melissa when he drops her off for that vehicle.
- Berquist: What do you mean?
- Davis: He, he doesn't, you know ---

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Berquist: What's going on between ---

Davis: Maybe she thi---, maybe he thinks that you gave her permission to take it.

Berquist: Oh, oh, oh. I see what you're saying.

Davis: But what I'm telling you, William is ---

Berquist: Probably not, though.

Davis: --- what I'm telling you is you guys show up at his house around the midnight around and he doesn't know what's going on. He comes out into his yard.

Berquist: Why doesn't he talk? Or, I asked a question, why didn't he answer my, or talk?

Davis: Well, then that's what, well, that's, obviously, where we're having a, a discrepancy in the two.

Berquist: Yeah.

Davis: Uh, in his report.

Berquist: \_\_\_\_\_ broken jaw, so.

Davis: Right. And he says, you know, that isn't a question that, uh, that, uh, and, and ---

Berquist: I never hit him, though.

Davis: And, uh, and at no time you didn't try to throw something that you had in your hand in the way of a sheet or something at him?

Berquist: I had no sh---, no. I had not sheet in my, and I threw nothing at him. I, uh, did not assault him. All I did was try to protect myself from being assaulted by him and unfortunately, I sustained a ma---, a major injury.

Davis: Okay. And what I'm telling you is, and I'm not being unsympathetic about your broken jaw, he sustained a major injury. He was knifed in that assault.

Somebody lost some blood ---

Berquist: \_\_\_\_\_

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Davis: Somebody lost some blood out there in the alley and I don't think it was you, was it?

Berquist: No. No. Other than, no, I was, like I said, I got a broken jaw.

Davis: Okay. So, you know, where, where, where is this coming from? You're saying, you're, you're saying that maybe Melissa stabbed him?

Berquist: I'm not, I'm saying I don't know. I'm saying that she is psychotic and that's all I know.

Davis: Okay.