

NO. 46243-5

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

STATE OF WASHINGTON, RESPONDENT

v.

JOHN B. JONES, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 12-1-01063-5

BRIEF OF RESPONDENT

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

1. Has defendant failed to prove the trial court's challenged findings inadequately support his bench-trial conviction for second degree murder when they are grounded in evidence that proved he strangled his friend to death over a dispute, ritualistically mutilated the body and dismembered it in his own bedroom?

B. STATEMENT OF THE CASE.

1. Procedure

Defendant was charged with deadly weapon enhanced premeditated murder. CP 360. He proceeded to bench trial before the Honorable Bryan Chushcoff. CP 383. The court heard twenty two witnesses and admitted 264 exhibits during a twelve day trial. CP 392-406, 516-17.¹ By the trial's end the court had taken over 200 pages of notes. 14RP 2109. Twelve days later it issued a 22 page decision, finding defendant guilty of second degree murder. CP 479-510. The decision was incorporated into the court's 18 findings of fact and 4 conclusions of law. *Id.* A 204 month prison sentence was imposed. CP 464. Defendant's notice of appeal was timely filed. CP 457.

¹ Citation to Clerk's Papers above CP 515 reflect the State's estimate of its supplemental designation.

2. Facts

Wednesday, March 21, 2012, was a mostly sunny spring day cooled by light cloud cover. 5RP 669-70. Esther Jordan² was cleaning the old two story Tacoma house she shared with her friend William Calvert, brother Daniel, and two sons: Andrew (a teenage high school student) and defendant (an unemployed twenty seven year old). 5RP 668, 672, 671; 6RP 749; 7RP 924; 8RP 1067-69; 9RP 1246, 1291-92; App.Br., p.2. She noticed defendant's second floor room was in an unusual state of disarray. 9RP 1242-44, 1291-93. A foul odor filled the air. 9RP 1291. There was a strange tarp on the floor amidst the clutter. 9RP 1291-93. No one appeared to be in the room, which was also strange since defendant was typically holed up within, often with a fifty three year old transient named Wayne Williams; yet on that morning, defendant was sleeping on a downstairs couch near Calvert. 5RP 557, 559; 7RP 918-19; 8RP 1040, 1069; 9RP 1260; App.Br. 2; CP 480.

Esther called her brother into defendant's room. 5RP 561; 9RP 1295-97. Both saw a pale arm extending from the tarp. *Id.* There was a knife on the body. 5RP 561. Something that looked like a face was wrapped in a blood-covered sheet. 5RP 561, 689; 9RP 1296-1300. A tattoo on the arm led Esther to believe it was Williams. 7RP 921-22; 9RP 1300. It became clear Williams was dead. 7RP 921; 9RP 1300.

² The members of defendant's family will be referred to by first names for the purpose of clarity since several share the surname "Jordan". No disrespect is intended.

Esther confronted defendant about the dead body. 9RP 1300. Defendant's uncle told Esther to report the body to "homicide" police, but defendant was reluctant to involve the authorities, and "asked if anything else could be done." 5RP 562, 607; 7RP 924; 10RP 1505, 1522. Esther called the police. 9RP 1304. Defendant wanted to go into his room before they arrived, but refrained when cautioned against it. 7RP 925. No one went back into the room until police arrived. 7RP 925.

The second officer on scene encountered a powerful odor of decomposition as he approached the front door. 3RP 315. Every occupant, except defendant, seemed to be shocked by the presence of a corpse in their home. 3RP 318-19. Defendant, in "stark" "contrast" was jovial, even flippant, with a huge smile on his face. *Id.* He joked about having a friend's corpse in his room, and laughed. 3RP 319, 331-32. He was nervous, fidgety, and talkative. 8RP 1138-39. He seized opportunities to characterize Williams as a paranoid methamphetamine user while vaguely suggesting the death was drug related. 8RP 1139, 1143.

Police secured the residence. 5RP 671-673; Ex. 97-105, 110-112. Defendant's second floor bedroom could only be internally accessed by one old steep and noisy wooden staircase that would have made it virtually impossible for someone to sneak a body upstairs with anyone else in the home. 5RP 567-68, 617, 671-72, 749; 8RP 1063, 1082; 10RP 1503. The bedroom was positioned between two others respectively used by his

uncle and brother; the three rooms opened into a hallway extending from the stair landing to a bathroom. 5RP 559, 673; 8RP 1070. The bathroom had blood spatter across a wall adjacent to the shower, on the vanity door and several objects on a shelf. 5RP 677, Ex.87-88.

Blood spatter was found in defendant's bedroom as the search progressed. 5RP 682-83, 703; Ex. 149-50. The spatter near Williams' arm cast from right to left at a slight downward angle. 5RP 683, 686-87, 707-10; Ex. 111. There was a gray bin on defendant's bed with a pair of gloves inside. 5RP 683-84, 688-89. A blood saturated cut ran through the fabric of the right thumb. 5RP 688-89; Ex. 107. Williams' DNA was on the outside of the stain, and DNA belonging to defendant and Williams was located where the blood seeped inside the glove. 9RP 1204-05, 1226. The bin also contained what first appeared to be a tight wad of clothing. 5RP 689. The object was bound in a plastic bag. 5RP 689. A detective pulled the plastic open to discover Williams' severed head. 5RP 689. Williams' severed legs were located in a blue bag that was also on defendant's bed when police arrived. 5RP 690-92, 801; 8RP 1103-04; 9RP 1312.

Several black garbage bags were discovered in defendant's room. 5RP 694. His finger prints were lifted from two. 8RP 1117-18, Ex. 11-12. One contained Williams' right arm. 5RP 700; 6RP 837. Esther could not find the garbage bags typically kept in the kitchen. 9RP 1285; 11RP 1626. The kitchen did contain clear plastic tape consistent with tape found near

Williams' body, along with a set of gardening sheers, a multitask tool, two screwdrivers, and two kitchen knives. 4RP 519; 5RP 694, 699, 702 711. A blood-stained folding knife was on the midsection of Williams' eviscerated, headless, legless, one-armed torso. 5RP 697, 726, 728, 808, 810; 6RP 853; Ex. 20. A large blood stained cross-cut style handsaw—longer than the torso was wide—lay across the waist. 5RP 697-98, 728; 6RP 809; Ex. 21, 121. Human tissue appeared to be lodged in the teeth. 5RP 809.

Defendant borrowed the saw from his mother several days before to "get rid of something in his bedroom", which he described as furniture. 7RP 933-34; 9RP 1271, 1286, 1311. There was no sign of cut furniture in his room Monday night. 10RP 1448. Defendant asked for garbage bags around the same time to dispose of the thing he was cutting up. 7RP 935. He declined Calvert's offer to help. 7RP 935. There was no evidence Williams' was killed outside the house. 6RP 816. The house had remained locked and equipped with an alarm. 4RP 464-65, 477; 5RP 592. No strangers or visitors were observed in the house from the time Williams' was last seen to the moment his body was found. 7RP 974-75; 8RP 1048, 1097-98.

Pierce County Medical Examiner Thomas Clark, M.D., performed the autopsy on Williams' remains, which arrived in two bags that weighed 225 pounds. 6RP 823-24, 832; Ex. 164-191. Clark determined Williams

was the victim of homicide by manual strangulation. 6RP 863-65, 873-76. All other plausible causes were ruled out. 6RP 903-04. The internal examination revealed the hyoid bone in Williams' neck was fractured with hemorrhage, which was "strong evidence ... strangulation occurred because there are few other things that would fracture th[e] bone." 6RP 859-60. The existence of a palpable fracture with hemorrhage showed Williams' "was strangled when he still had ... blood pressure." 6RP 860. Death occurring Monday, March 19th, was consistent with the body's state of decomposition. 6RP 869.

That said, Williams' wasn't just strangled to death. He had at least ten screw driver injuries on the right side of his head. 6RP 847. *Post-mortem* sharp force injuries crisscrossed his face. 6RP 847, 875. One was in the shape of an "A". 11RP 1589. Investigation into the symbol revealed its similarity to one used in various forms of "witchcraft". 11RP 1590-91, 1614. The symbol's presence was consistent with defendant's belief "he is a vampire, or something abnormal." 8RP 1089; 11RP 1590, 1614.

Incisions had been cut above Williams' right eye and below his left. 6RP 844. None of the facial injuries served any purpose in bringing about death or dismemberment. 6RP 875. There were several screwdriver injuries on the back of Williams' head, one of which had a 2 inch track. 6RP 845. Several of the head injuries fractured Williams' skull, consistent with the application of incapacitating force. 6RP 846, 848, 905; 9RP 1230.

There were numerous screwdriver injuries on Williams' neck and upper chest. 6RP 839, 843. Stab wounds with 1 to 3 inch tracks punctured his abdomen; none manifested reactions typical of *ante-mortem* infliction. 6RP 851-52. The hand connected to Williams' severed right arm had six screwdriver injuries on the palmar surface, with three more on the posterior side, and a lacerated thumbnail. 6RP 838. Williams' index finger was fractured. 6RP 838. The attached left arm bore a wound consistent with an unsuccessful attempt to remove it. 6RP 841. Similar to the right hand, the palmar surface of the left had at least five screwdriver injuries, with three on the posterior surface; there were two more on the arm. 6RP 841-42. Several of hand injuries were consistent with defensive wounds. 6RP 839, 842-43, 857-58, 876-77.

None of the sharp-force injuries caused Williams' death. 6RP 903-04. There was a 3 inch incised wound consistent with a *postmortem* attempt to sever Williams' right arm at the elbow instead of the shoulder. 6RP 838. Dismemberment of the head, right arm, and legs almost certainly began with a knife before a saw was employed to cut through the bones. 6RP 854-55. The process probably took several hours. 6RP 856.

The events leading up to the discovery of Williams' body came into focus. Defendant met Williams' at the Nativity House shelter in Tacoma. 10RP 1490.³ Williams began staying at defendant's house, mostly

³ ER 201; http://www.ccsww.org/site/PageServer?pagename=homeless_nativityhouse.

in defendant's bedroom, several days a week for about a month prior to his death—but not without conflict. 5RP 557; 9RP 1240-41. Defendant and Williams' "always ... ha[d] disagreements." 10RP 1446. In February, Esther told defendant Williams retained twenty to forty dollars she paid him to serve divorce papers that were never delivered. 9RP 1252, 1309-10. This was not an insubstantial sum for defendant's family. 9RP 1246. Esther repeatedly told defendant she was uncomfortable having Williams live in the house. 9RP 1248-49, 1252. One of those conversations occurred about two weeks prior to Williams' death and was prompted by Williams staging a mattress on defendant's floor. 9RP 1248-49; 13RP 1867-68. Williams did not contribute to the payment of household expenses. 5RP 616.

Williams was last seen alive between March 17th and March 19th. He cleaned defendant's bedroom carpet Saturday, March 17th. 9RP 1244-45. He watched a NASCAR race with Clavert Sunday, March 18th. 7RP 975; 11RP 1619-20. Esther saw Williams in defendant's room Monday, March 19th. 9RP 1254; 10RP 1444, 1508. The room appeared normal at that time. 9RP 1255; 10RP 1447.

Defendant argued with Williams on or about the last day anyone saw Williams alive. 7RP 932; 8RP 1089. Defendant's brother heard someone in defendant's room yell "fuck you" over loud music Sunday or Monday night; he heard something fall in defendant's room Monday or Tuesday night. 8RP 1081-82, 1089. Defendant admitted to having a

disagreement with Williams. 7RP 932. Sometime between Sunday, March 18th, and when Williams' body was discovered March 21st, defendant told his family Williams would no longer be seen around the house. 7RP 982; 9RP 1280-81; 9RP 1443, 1446; 10RP 1443; 11RP 1624. Defendant told his mother to tell anyone looking for Williams that Williams did not want to be bothered. 7RP 928; 10RP 1443.

During a police interview, defendant's demeanor was oddly inconsistent with subjects he discussed. 10RP 1484. He did not appear upset "and he laughed several times throughout the ... interview ... at inappropriate times, times where you wouldn't expect someone to laugh." 10RP 1484. He vacillated between expressing certainty and uncertainty over whether the deceased person in his room was Williams, ultimately conceding he knew it was. 10RP 1487-88. Whenever police raised topics defendant was uncomfortable with he steered the conversation to the unidentified "really powerful Mexicans" allegedly after Williams. 10RP 1510. The gang allegedly pursuing Williams changed from Crips to Bloods to Mexicans. 10RP 1495.

Defendant first told police he asked Williams to leave because Williams made him uncomfortable. 10RP 1498. The story changed to defendant asking Williams to leave, fearing his presence might draw dangerous Mexicans to the house. 10RP 1511. Defendant admitted the request triggered an argument, during which Williams told him to "fuck

off" for kicking him out. 10RP 1510-11; 11RP 1624. Although allegedly taken back by Williams' response, defendant claimed he did not escalate the confrontation because Williams was a tough guy with a gun. 10RP 1534-35; 11RP 1677; Ex. 161-63. One of the detectives observed an abrasion on the outside of defendant's right hand knuckle. 10RP 1508-09.

Defendant did not account for most of his activities the day before Williams' body was discovered. 10RP 1493. He did recall stripping off his clothes, washing feces out of his underwear and showering in the downstairs bathroom. 4RP 527-28; 10RP 1493. Members of defendant's family walked in as he finished bathing Tuesday evening. 9RP 1266-67; 11RP 1623. Defendant left the jeans he changed out of in the bathroom. 9RP 1288; 3RP 284, 527-28. There were two blood stains on the left leg of those jeans 9RP 1201, 1206-1209. The first contained Williams DNA comingled with defendant's DNA; the second only contained Williams' DNA. *Id.* When confronted with the discovery of blood in the upstairs bathroom, defendant "w[o]ve a bizarre story about ... [Williams] ... having a "giant cyst" "on his butt" "and that the cyst popped ... [causing it to] blee[d] heavily."10RP 1525. Defendant claimed he gave Williams plastic bags to avoid sleeping in a blood stain. 10RP 1524. No boil or cyst was discovered during the autopsy and the relevance of the bags as a packaging material for the remains had yet to be discovered when defendant mentioned them. 6RP 853; 10RP 1525-26.

Defendant claimed he last saw Williams Sunday the 18th, which conflicted with Esther's account of seeing him in defendant's bedroom on the 19th. 9RP 1254; 10RP 1044, 1498. 1506. After running through several convoluted versions of events, defendant conceded his story sounded "like baloney". 10RP 1521. Defendant became extremely upset at his mother during a recorded jail call when she conveyed an understanding of the incident that differed from the version defendant settled on. 10RP 1530-31; Ex. 255, 292, p.11. Defendant told police "no good could come from telling the truth." 10RP 1522. Police never discovered any credible evidence suggesting Williams was murdered by anyone other than defendant. 11RP 1678-79.

C. ARGUMENT.

1. DEFENDANT FAILED TO PROVE THE CHALLENGED FINDINGS INADEQUATELY SUPPORT HIS SECOND DEGREE MURDER CONVICTION AS THEY ARE WELL GROUNDED IN EVIDENCE THAT PROVED HE INTENTIONALLY MURDERED HIS FRIEND OVER A DISPUTE, RITUALISTICALLY MUTILATED THE BODY AND DISMEMBERED IT IN HIS OWN BEDROOM.

Evidence is sufficient to support a second degree murder conviction if it would permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt when the evidence is viewed in a light most favorable to the State. *State v. Athan*, 160 Wn.2d 354, 378-79, 158 P.3d 27 (2007). An insufficiency claim admits the truth

of the State's evidence with all reasonable inferences interpreted most strongly against the defendant. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); *State v. Rangel-Reyes*, 119 Wn. App. 494, 499, 81 P.2d 157 (2003). Circumstantial and direct evidence are considered equally reliable; whereas, "[c]redibility determinations ... cannot be reviewed...." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Appellate courts determine whether substantial evidence supports challenged findings of fact and whether they support the conclusions of law. *State v. Smith*, __ Wn.App. __, __ P.3d __ (2015)(2015 WL 686817 at 5). Evidence is substantial when sufficient to persuade a rational person the findings are true. *Id.* (citing *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005)). A party challenging trial court findings must overcome the presumption they are correct. *Id.* (*State v. Vickers*, 148 Wn.2d 91, 116, 59 P.3d 58 (2002); *Nguyen v. city of Seattle*, 179 Wn.App. 155, 163, 317 P.3d 518 (2014)). Appellate courts will not substitute their judgment for that of a trial court, even when they might have resolved a factual dispute differently. *Nguyen*, 179 Wn. App. at 163 (citing *Sunnyside Irrigation Dist. V. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003)). Conclusions of law are reviewed *de novo*. *Stevenson*, 128 Wn. App. at 193.

- a. The unchallenged findings support the conviction even if one assumes the unfounded criticism of the challenged findings is correct.

Unchallenged findings are verities on appeal. *Stevenson*, 128 Wn. App. at 193. Review is limited to whether they support a challenged conclusion of law. *State v. A.M.*, 163 Wn. App. 414, 419, 260 P.3d 229 (2011); *State v. Baker*, 136 Wn. App. 878, 883-84, 151 P.3d 237 (2007); *see also State v. Folkerts*, 43 Wn. App. 67, 69, 715 P.2d 157 (1986)(citing *State v. Christian*, 95 Wn.2d 655, 657-58, 628 P.2d 806 (1981)).

Defendant assigns error to conclusion of law No. 3, which is the verdict finding him guilty of second degree murder. CP 487-48. Its elements conform to the applicable statute. CP 487, 511(citing RCW 9A.32.050(1)(a))⁴; RCW 9A.08.010. Findings 1-6, 8-10, and 14-18 are unchallenged verities in this appeal. App.Br. 1 (error assigned to FF 7 and 11-13); *Stevenson*, 128 Wn. App. at 193. Each element is supported by reasonable inferences drawn from these verities.

Unchallenged finding No. 1 incorporates the trial court's unchallenged 22 page written decision, which painstakingly sets forth the facts, circumstances, and inferences determined to be true after all the evidence was weighed. CP 479, 489-512. Unchallenged finding No. 2 makes the trial court's unreviewable credibility determinations express. CP

⁴ RCW 9A.32.050(1)(a): "A person is guilty of murder in the second degree when ... [w]ith intent to cause the death of another but without premeditation, he or she causes the death of such person or of a third person...."

480. These unchallenged findings support defendant's conviction, making his challenge to findings No. 7 and 11-13 moot. Page 2-4, § II-III, of the written decision supports the determination Williams was strangled to death in Tacoma, Washington, within the charging period. CP 490-492. Pages 4-22, § IV-VIII, likewise establish defendant intentionally killed Williams. CP 492-512. A conviction supporting summary of the evidence appears on page 21. CP 511. The circumstances supporting the decision include the method of strangulation, "the gratuitous mutilation of the body after death...", as well as the severe blows to the head, arms, hands and body with a screwdriver. CP 510. Guilty knowledge was implied by defendant's behavior before and after the body was discovered. CP 506.

Unchallenged finding No. 16 provides defendant intentionally caused Williams' death in Tacoma, Washington, during the relevant charging period. CP 486. Both finding No. 16 and the unchallenged written decision incorporated through unchallenged finding No. 1 are reinforced by unchallenged findings No. 4-6 and 10, 14-15. They collectively summarize the suspicious circumstances of Williams' death, to include: (1) the preceding argument between defendant and Williams, (2) Williams' death in defendant's room, (3) defendant's near exclusive dominion over the room where Williams' mutilated and dismembered corpse was found; and (4) the incriminating nature of defendant's statements. CP 481-82, 485. Each is supported by the evidence adduced at

trial. *Supra* p. 2-11. The independent support for defendant's conviction makes the accuracy of challenged findings No. 7 and 11-13 immaterial to the result.

- b. Defendant failed to prove challenged findings 7 and 11-13 are inadequately supported.

Appellate courts presume trial court findings are correct, so a defendant challenging such findings must prove they are not supported by substantial evidence. *Smith*, __ Wn. App. ___, ___ P.3d ___ (2015)(2015 WL 686817 at 5) (*Vickers*, 148 Wn.2d at 116); *Nguyen*, 179 Wn. App. at 163). Substantial evidence is sufficient to persuade a rational person the asserted premise is true. *Nguyen*, 179 Wn.App. at 163.

Defendant failed to prove finding No. 7 is unsupported.

Finding No. 7 communicates the trial court's factual determination of the victim's cause of death. See *Stevenson*, 128 Wn. App. at 193. It was based on a forensic pathologist's opinion even though it could have been established by other means. See *State v. Engstrom*, 79 Wn.2d 469, 476, 487 P.2d 205 (1971). Such opinions are typically described in terms of reasonable medical certainty. This standard may be met through proof of a medically probable cause combined with the reasonable elimination of other theoretical causes. See *State v. Terry*, 10 Wn. App. 874, 884, 520 P.2d 1397 (1974)(superseded on other grounds by *State v. Young*, 160 Wn.2d 779, 161 P.3d 967 (2007)); *In re Twining*, 77 Wn. App. 882, 891,

894 P.2d 1331 (1995); *see also* 65 A.L.R.3d 283 (citing *People v. Toland*, 2 A.D. 3d 1053, 770 N.Y.S. 148 (2003); *State v. Vinzant*, 716 SW.2d 367 (1986); *People v. Giangrande*, 101 Ill.App.3d 397, 428 NE.2d 503 (1981)). A trier of fact can decide cause of death in the absence of medical certainty when medical testimony combines with corroborating evidence to establish a connection between an identified agency and the death. *See Id.*; *see also* 65 A.L.R.3d 283 (citing *McCoy v. Cabana*, 794 F.2d 177, 184 (5th Cir., 1986); *State v. Carter*, 670 S.W.2d 104, 106 (1984)).

Defendant assigns error to finding No. 7's assertion: "The autopsy conclusively established ... Williams had been intentionally killed by manual strangulation." App.Br. 1.⁵ Defendant apparently takes exception to the finding's use of "conclusively" because the Medical Examiner refrained from expressing his opinion in terms of absolute certainty. App.Br. 16.

The assignment of error fails to appreciate the finding reflects the court's resolution of competing inferences. "Conclusively" commonly denotes the "end to debate or question"; it need not refer to an irrefutably

⁵ The finding's full text provides: "The autopsy conclusively established that Mr. Williams had been intentionally killed by manual strangulation. Dr. Clark listed the cause of death as manual strangulation and the manner of death as homicide. These conclusions were based on findings from the autopsy. In particular, findings from the internal examination revealed that the hyoid bone in Mr. Williams' neck was fractured before his death. A hyoid fracture with associated hemorrhage into surrounding tissue is diagnostic of manual strangulation. No other findings of injury or disease were observed that could have caused the death of Mr. Williams." CP 482.

proven fact. Webster's Third New International Dictionary 471 (2002). As the trier of fact, the trial court was empowered to conclude manual strangulation caused Williams' death based on the indicia of its occurrence combined with the absence of another medical explanation. CP 482; 6RP 859-60; 863-65, 873-76, 903-04. The expression of uncertainty defendant relies upon to challenge this finding only acknowledged the theoretical possibility of intervening homicidal causes that left no trace of their occurrence. As the Medical Examiner explained:

"[Williams] could have been killed with a plastic bag over his head, and it would leave no evidence. That could have happened after the strangulation was partially successful. I would have no way of knowing that. Because I don't want to write anything that I can't defend, I word cause of death in a conditional way" 6RP 904.

This testimony did nothing more than conscientiously express the Medical Examiner's appreciation for what scientists refer to as the problem of falsifiability⁶, which recognizes confirming observations can never verify a universal generalization since it will remain logically vulnerable to the theoretical existence of a non-conforming variable.

Although such analytical precision befits the medical opinion of a forensic pathologist, it is not demanded of a trial court's finding of fact. The abstract possibility defendant caused Williams' death in some imperceptible way following strangulation does not undermine defendant's

⁶ *E.g.*, <http://philosophy.wisc.edu/forster/220/Notes2.html>; ER 201.

conviction. And any identified inaccuracy as to causation would be non-constitutional harmless error as a particular cause of death is not an element of second degree murder. RCW 9A.32.050(1)(a); *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980); *State v. Crenshaw*, 98 Wn.2d 789, 800, 659 P.2d 488 (1983). The challenge to finding No. 7 should fail.

Defendant failed to prove Finding No. 11 is unsupported.

The challenged portion of Finding of Fact No. 11 provides:

"On Tuesday, March 20, 2012, in the late afternoon or early evening the defendant was not in his room. By that time the body of Mr. Williams had been *substantially* dismembered and package...."⁷ CP 483 (emphasis added).

Defendant's meritless challenge to this finding claims the trial court could not reasonably infer Williams' head had been removed by Tuesday evening because three witnesses allegedly saw the head near the body Wednesday morning. App.Br. 15. This argument has three critical flaws. It inexplicably refutes a fact that is not included in the finding. The finding uses "substantially" to characterize a significant yet incomplete degree of dismemberment. There is no reference to the head's location. The trial

⁷ The unchallenged portion of the finding provides: "Esther Jordan, William Calvert and Andrew Jordan returned home in the late afternoon or evening after running errands and a doctor's appointment [sic]. They found that the defendant was downstairs at the bathroom. He had taken a shower and was draying his hair. He had also changed clothes. The defendant left clothing, including his jeans, near the bathroom and adjacent to the laundry. The jeans were seized as evidence by the police and found to be stained with blood."

court very well may have been referring to the dismemberment of the right arm and legs to the exclusion of the head, so describing Williams' body as substantially dismembered Tuesday evening is not incompatible with the defense-endorsed scenario in which the head was removed sometime between Tuesday night and Wednesday afternoon.

Defendant's assumption the head had not been severed because it was allegedly seen in close proximity to the body when first discovered is also flawed since the testimony detailing those observations does not exclude the possibility the already severed head had simply yet to be removed from the place where dismemberment occurred. One witness claimed he saw "[m]aybe a face ... wrapped up ... [in an apparent] sheet covered in blood maybe...." 5RP 561. A second described seeing part of a partially covered head. 7RP 973-74. The third described seeing a partially covered face next to defendant's bloody slipcover. 9RP 1296-1300. No witness claimed the neck was still attached to the torso.

The final flaw is that defendant's challenge fails to render due deference to the trial court's authority to decide among competing versions of events. Although three witnesses described seeing a partially covered head near the torso with varying degrees of certainty, they also claimed no one moved the body before police arrived. 5RP 562, 589, 607, 690-92, 700, 801; 6RP 837; 7RP 924-25; 8RP 1103-04; 9RP 1304, 1312; 10RP

1505, 1522. It is consequently reasonable to assume the body was found in the condition defendant left it in before he retired downstairs Tuesday evening. *See Id.* It is theoretically possible defendant snuck upstairs to hide the head in the bin between the moment his mother discovered the body and when police arrived, but the court was free to reject that inference and its adoption would not have impacted the verdict.

The inference substantial dismemberment occurred prior to Tuesday evening was further supported by a combination of factors, to include: (1) Williams was seen alive Monday night, (2) the dismemberment required a considerable amount of time, and (3) defendant's only clear opportunity to accomplish the grisly task was in the period between when his family left Tuesday morning and returned Tuesday evening. 5RP 557, 559; 6RP 856; 7RP 918-19; 8RP 1040, 1069; 9RP 1254, 1260, 1266-67; 10RP 1444, 1508; 11RP 1623.

Defendant's criticism of the finding is also immaterial to the verdict as his conviction does not depend on the court identifying when substantial dismemberment was achieved, making the challenged detail harmless if error. *See Cunningham*, 93 Wn.2d at 831; *Crenshaw*, 98 Wn.2d at 800.

Defendant failed to prove Finding No. 12 is unsupported.

The challenged portion of Finding No. 12, provides: "The gloves also were conclusively found to contain DNA from both the defendant and Mr. Williams." App.Br.(citing CP 484).⁸ The Court should decline to review this assignment of error as it is not supported by meaningful legal analysis. *Raum v. City of Bellevue*, 171 Wn. App. 124, 149, 286 P.3d 695 (2012) (citing *see Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992)).

To the extent the challenge can be interpreted as taking exception to the DNA match being described as having been "conclusively" found, defendant is again quibbling over semantics. As stated above, "conclusively" denotes a court-determined fact. The finding was supported by the DNA expert's testimony, which described the combined profiles as being 11 quadrillion times more likely to belong to defendant and the

⁸ The complete text of Finding No. 12 provides: "DNA samples from the defendant's jeans were submitted for DNA testing. The testing was done by forensic scientist Jeremy Sanderson from the Washington State Patrol Crime Laboratory. Mr. Sanderson's findings were conclusive and proved that the samples contained DNA from both the defendant and Mr. Williams. Additional DNA testing was done on a pair of gloves that were found by police in the bin with the packaged severed head of Mr. Williams. The gloves also were conclusively found to contain DNA from both the defendant and Mr. Williams. Two black plastic bags, Ex. 238 and Ex. 239, were recovered during the police search of defendant's bedroom. A fingerprint from the middle finger of defendant's right hand was located on Ex. 238. A palm print from defendant's right hand was found on Ex. 239. These plastic bags were of the same color, size and type as those bags used in the packaging of the body parts."

victim than two other people selected at random. 9RP 1204-05, 1207-08, 1226. Since it is generally estimated no more than 108 billion⁹ (or 108,000,000,000) people have ever lived on the planet Earth, a rational trier of fact could reasonably consider the 11 quadrillion (or 11,000,000,000,000,000) probability of accuracy a conclusive match. To the extent the finding can be construed as a mischaracterization, it would be a harmless one as the subtle mathematical difference between certainty and an 11 quadrillion probability of accuracy is inconsequential in this case.

Defendant failed to prove Finding No. 13 is unsupported.

Error has been assigned to the following portion of Finding No. 13:

"His reason for sleeping downstairs was that he had already killed, dismembered, and packaged the body of Mr. Williams for disposal. He had left the body packaged in the way that the police found it in his room" App.Br. 1 (citing CP 484).¹⁰

⁹<http://www.prb.org/Publications/Articles/2002/HowManyPeopleHaveEverLivedonEarth.aspx>; ER 201.

¹⁰ Finding No. 13: "After having been seen by his family at the downstairs bathroom, the defendant did not sleep in his room Tuesday night. That night he slept downstairs on a couch. It was unusual but not unheard of for the defendant to sleep downstairs. His reason for sleeping downstairs was that he had already killed, dismembered and packaged the body of Mr. Williams for disposal. He had left the body packaged in the way that the police found it in his room. The body was emitting the odor of decomposition. After changing his clothes and showering the defendant spent most of Tuesday evening with Esther Jordan and William Calvert. They watched TV together in the downstairs living room. The defendant also spent a short amount of time with his uncle Daniel Jordan, his brother, Andrew Jordan and his brother's girlfriend, Emily Morris. This was in Andrew Jordan's bedroom and included the sharing of marijuana. While in Andrew's room the defendant displayed symptoms of nausea. Considering the defendant having spent the evening out of his room and having slept downstairs, it would have been impossible for the defendant to have killed or dismembered or packaged the body of Mr. Williams Tuesday night."

This finding is supported by the same evidence that amply supports the challenged portion of Finding No. 11. *E.g.*, 5RP 562, 557, 559, 589, 607, 690-92, 700, 801; 6RP 837, 856; 7RP 918-19, 924-25; 8RP 1040, 1069, 1103-04; 9RP 1254, 1260, 1266-67, 1304, 1312; 10RP 1444, 1505, 1508; 11RP 16231522; see also *supra* p.2-12, 22-24. Defendant's challenge to it amounts to an irrelevant disagreement with inferences the trial court reasonably decided were true.

A rational trier of fact could conclude the condition of the body observed by police reflected defendant's interrupted effort to dispose of Williams' remains. Defendant did not have an opportunity to complete the dismemberment once his family returned Tuesday evening, he was asleep when the body was discovered Wednesday morning, and the testimony supports an inference no one moved the remains before police arrived. *Id.* The court was free to discount testimony placing the severed head outside the bin Wednesday morning as mistaken or dishonest. CP 480 (FF No.2). Any error would be harmless since the challenged component of Finding No. 13 does not declare a fact essential to defendant's conviction.

- c. The evidence adduced at trial supports the second degree murder conviction announced in Conclusion of Law No. 3.

Defendant's second degree murder conviction must be affirmed if there is evidence to support each of the following elements:

- (1) That on or about the period between March 18, 2012, and March, 21, 2012, the defendant acted with intent to cause the death of Wayne Williams;
- (2) That Wayne Williams died as a result of defendant's acts; and
- (3) That any of these acts occurred in the State of Washington. (CP 360); RCW 9A.32.050(1)(a); WPIC 27.02.

Every reasonable inference from the admitted evidence must be reviewed in a light most favorable to the State. *Thomas*, 150 Wn.2d at 874.

Defendant acted with the intent to cause Williams' death.

Intent is a question of fact. *State v. Caliguri*, 99 Wn.2d 501, 507, 664 P.2d 466 (1983); CJS CRIMLAW § 41. A person acts with intent when acting with the objective or purpose to accomplish a result constituting a crime. RCW 9A.08.010(1) (a); WPIC 10.01. Intent need not be proved through direct and positive testimony. *State v. Romano*, 41 Wash. 241, 248, 83 P. 1 (1905).

Intent may be inferred from a defendant's acts, words, other objective facts and all relevant circumstances. *State v. Samalia*, __ Wn.

App. ____, 344 P.3d 722, 725 (2015). A trier of fact may infer a defendant intends the natural and probable consequences of his actions. *Caliguri*, 99 Wn.2d at 507. Intent may likewise be inferred from evidence of motive, procurement of a weapon, stealth, or the method of killing. See *State v. Elmi*, 138 Wn. App. 306, 314, 156 P.3d 281 (2007). The manner of inflicting multiple wounds is indicative of one's intent to kill as is hostility or threats between the defendant and victim. *State v. Gentry*, 125 Wn.2d 570, 608-09, 888 P.2d 1105 (1995); *State v. Wilson*, 125 Wn.2d 221, 217, 883 P.2d 320 (1994).

Defendant maintains the State's evidence of intent to kill is wanting because no direct evidence of intent was adduced. The absence of such evidence is typical, for "[t]he intent with which an act is done is a mental process, and as such generally remains hidden within the mind where it is conceived, and is rarely, if ever, susceptible of proof by direct evidence" *State v. Farley*, 48 Wn.2d 11, 21, 290 P.2d 987 (1955)(quoting *State v. Gaul*, 88 Wash. 295, 152 P. 1029 (1915)).

An abundance of interconnected facts and circumstances provided the court more than enough information to conclude defendant intended to kill Williams. *supra*, p. 2-12; e.g., *State v. Athan*, 160 Wn.2d 354, 378-79, 158 P.3d 27 (2007); *State v. Groth*, 163 Wn. App. 548, 565-66, 261 P.3d 183 (2011); *State v. Green*, 182 Wn. App. 133, 145, 328 P.3d 988 (2014).

There was a history of hostility between them, punctuated by an argument prior to the murder, in which Williams told defendant to "fuck off" in response to defendant asking him to leave the house. Defendant's brother heard something fall in defendant's room around that time. The Medical examiner observed several skull fractures indicative of an incapacitating screwdriver strikes to the back of Williams' head. The court could infer defendant's brother heard Williams' 250 lbs body hit the floor in response to being bludgeoned with defendant's screwdriver. Defendant revealed his fear of Williams at the time of the eviction, which would support an inference the murder was intended to ensure Williams could not retaliate against defendant for the eviction.

The sustained pressure applied to effect death through manual strangulation is another factor indicative of defendant's intent to kill. 6RP 862-63, 866; *State v. Bingham*, 105 Wn.2d 820, 821-22, 827-28 (1986). Meanwhile the mutilation of Williams' body manifests extreme rage, perhaps tied to Williams' lack of appreciation for the considerable hospitality defendant already extended to him, or a prurient interest in engaging in bizarre behavior with Williams' remains. Given the condition of the body, coupled with the fact defendant believes himself to be a "vampire" or something "abnormal", it is entirely possible the latter was defendant's true motive for the killing.

Defendant's efforts to deter people from asking questions about Williams' disappearance and to induce them to consider ways other than calling police to deal with the remains after attempting his own macabre solution to the problem they presented manifested defendant's guilty conscience. As did a number of defendant's other statements to his family and police.

Defendant inexplicably argues against these inferences by analogizing what happened to Williams to a hypothetical discussed in *Bingham, i.e.:*

"Holding a hand over someone's mouth or windpipe does not necessarily reflect a decision to kill the person, but possibly only to quiet her or him." App.Br. 16 (105 Wn.2d at 826).

The comparison is just slightly more difficult to comprehend than his reliance on *Bingham*. The evidence established Williams' skull was fractured from the application of several blows independently capable of rendering him unconscious. He was at least a 225 pound man with defensive wounds on his hands strangled to death with enough force to break his hyoid bone in two places. His body was then mutilated and dismembered. Nothing about the evidence suggests Williams inadvertently died during some overzealous effort to silence him.

Bingham is an odd case for defendant to rely on since it affirmed a second degree murder conviction predicated on similar evidence of strangulation. 105 Wn.2d 821-22. The controversy in *Bingham* was whether premeditation could also be inferred through *mere* strangulation. The Court reasoned it could not without obliterating the line between first and second degree murder. *Id.* at 826. The case supports rather than undermines the trial court's verdict.

Williams died as a result of defendant's acts.

As detailed above, the evidence reasonably supports an inference Williams died as a result of being strangled by defendant. 6RP 859-60; 863-65, 873-76, 903-04. There is no evidence of another cause.

Death occurred sometime between March 18th and 21st.

One eyewitness testified to seeing Williams March 19th, another may have heard him March 20th, but he was most certainly dead by March 21st. 7RP 921; 8RP 1081-82, 1089; 9RP 1254, 1300; 10RP 1444, 1508.

These acts occurred in the State of Washington.

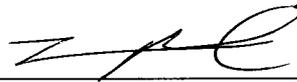
Undisputed testimony established the crime occurred in Tacoma, Washington. 5RP 668.

D. CONCLUSION.

Defendant's second degree murder conviction should be affirmed. It is substantially supported by unchallenged findings of fact, which are reinforced by challenged findings founded on substantial evidence that establishes each element of the offense.

Dated this 28th day of April, 2015.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



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Deputy Prosecuting Attorney
WSB # 38725

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.

Date Signature

PIERCE COUNTY PROSECUTOR

April 28, 2015 - 4:28 PM

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