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

STATE OF WASHINGTON, Respondent

v.

STEPHEN MARK REICHOW, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-01458-7

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The trial court properly denied Reichow's request to instruct the jury on eyewitness identification testimony.**
- II. The trial court properly excluded evidence of Reichow's purported diminished capacity.**
- III. The trial court properly instructed the jury using WPIC 151.00.**

STATEMENT OF THE CASE

The State charged Stephen Mark Reichow (hereafter 'Reichow') with Murder in the First Degree by premeditation, Murder in the Second Degree by intent to cause the death of another person, and Murder in the Second Degree by attempt to commit a felony. CP 5-6. A deadly weapon enhancement was included on all three counts. CP 5-6. The charges were based on events that occurred on August 1, 2015, when Reichow killed Brandon Maulding (hereafter 'Maulding') by striking him multiple times in the head with a baseball bat outside of a storage facility in Battle Ground, Washington. CP 2-4.

On August 1, 2015, Reichow was hanging out with Maulding at the residence where Maulding was renting a room. RP 405, 404. Ann Tanninen (hereafter 'Tanninen'), who Maulding was in a romantic relationship with, picked the two men up and took them to a warehouse that she was renting. RP 587-88. The men left Maulding's residence at

some point after it got dark outside. RP 410. Tanninen's warehouse was located by a paint store at SE Second Street and SE Grace Avenue in Battle Ground, Washington. RP 576. At the time of this incident, Tanninen had concerns for her safety because she believed she was being "gang stalked" and had been threatened a lot. RP 578-79.

When Tanninen took Reichow and Maulding to the warehouse, she was driving a Ford Expedition, which she parked on the north side in the back of the warehouse, closest to Grace Avenue. RP 589-90. She began unloading sporting goods from her car, which included baseball bats, and took them into the warehouse. RP 591, 597. Reichow and Maulding helped her. RP 591. While they were unloading the car, Reichow was talking to Tanninen about gang stalking, telling her that he had been through it himself. RP 592. Maulding stood by Tanninen throughout the conversation. RP 594.

At some point while the three individuals were at the warehouse, Tanninen received a phone call from a number that was associated in her phone with Suzan Jenkins. RP 600. This was a prank phone call from a woman named Susan Eggleston and her husband Vince Eggleston. RP 493. They used a prank phone call app on Vince Eggleston's phone that allowed them to make a call to somebody using another person's phone number. RP 489-90. The app also allowed them to choose from various

recordings that could be played when making phone calls. RP 490. One of these recordings talked about the supposed caller having “the stuff” and the call recipient owing money. RP 491.

When the Egglestons prank called Tanninen, Tanninen was very angry and distraught. RP 494. Tanninen answered her phone and put it on speaker. RP 600-01. Both Reichow and Maulding were in the vicinity, by the trailer gate in the warehouse, during the call. RP 601. When Tanninen answered, she heard what sounded like a Hispanic male repeating something about “five thousand dollars”. RP 601. The voice sounded threatening to Tanninen, and she did not recognize who it was. RP 602.

After the call ended, Tanninen talked to Reichow and Maulding to see if they could understand what the caller was saying. RP 603. At this point, Reichow looked down and started fidgeting. RP 603. Tanninen then asked Reichow for his last name, and he would not answer her. RP 603. Tanninen then asked Maulding how long he had known Reichow, and Maulding told Reichow to give Tanninen his name. RP 604. Reichow continued to look down and mumbled something that sounded like “Reichow”. RP 604. Tanninen then asked Reichow to leave the warehouse. RP 605.

Reichow began walking toward the back of the warehouse and Maulding was walking with Tanninen in the same direction. RP 605.

When Reichow got to the back door of the warehouse, he stopped, blocking Tanninen, and became hostile. RP 605-06. Reichow then began insinuating that he was going to rape, torture, and kill Tanninen. RP 605-06. Maulding was present for this conversation and told Reichow not to speak to Tanninen that way. RP 609. Tanninen became firm with Reichow, telling him that what he was saying was not going to happen. RP 609. Reichow then looked over Tanninen's shoulder, stopped talking, and took off running. RP 610. Maulding went to see where Reichow had gone. RP 612. Maulding did not have anything in his hands when he left. RP 612. This was the last time Tanninen saw Maulding. RP 612.

On August 1, 2015, Jacqueline Olson was in the passenger seat of her friend Chelsea Sutherland's car driving southbound on Grace in the city of Battleground, when she saw two men between a shed and the paint store. RP 176. It was after 11pm and dark outside, but there was a lot of light coming from the front of the paint store and illuminating the area. RP 192. The shed was relatively shadowed, but not dark. RP 192. She described one of the men as shorter and heavier set, and the other as taller and skinnier. RP 177. Olson testified that the taller man was walking toward Grace away from the shorter man who was closer to the green shed. RP 177. Olson was unable to identify either of the men by clothing or by race, but only by their build at that point. RP 195. She described the

taller man as having his back turned to the shorter man, with his hands up and his palms facing out. RP 177. She described the shorter man as standing still and shaking something long and cylindrical – stick-like – in his hand. RP 178. She saw the taller man stumble just as he left her view. RP 180-81. She said it appeared as two guys who had probably been fighting and then were just going their separate ways. RP 181.

Olson and Sutherland then returned to Sutherland's house to get Sutherland's money, before driving back up, northbound, on Grace. RP 181-82, 459. When they passed the area of the paint shop the second time, Olson heard Sutherland say, "I think he's choking him". RP 182-83. Both Olson and Sutherland saw one man lying face-up on the ground in some rocks close to the shed, and the heavier set man kneeling with his legs on either side of the other man's torso, with his hands toward his neck. RP 183-84, 460-61. Olson said she could not see the heavier set man's hands because of the lighting cut off at his wrists, but it looked like the heavier set man was choking the other man. RP 183-84. Sutherland could see that the man on top was strangling the man on the ground. RP 461. Olson then called 911. RP 183-84.

As Olson was calling 911, Sutherland turned the car around and the two women could see the heavier set man walking toward the two women in the car and toward a house. RP 185-86, 464. He appeared to be

in a daze. RP 186. He then continued to a house where two people were standing in the front yard, on the corner of Grace and SE First. RP 186. He had his hands up, and there appeared to be something dark on his clothing and hands, that Olson assumed was blood. RP 187. The women did not see any other people outside in the area, besides the two men and the couple in the yard, during either of the two times they drove by. RP 188, 470.

Sutherland estimated that it took the women a couple of minutes to drive from the paint store to her house and then back to the paint store again. RP 470-71. Detective Rick Kelly of the Battle Ground Police Department later timed the route and found that it was a five to seven minute round trip, including a stop inside the residence. RP 777-78.

When police arrived, Olson and Sutherland got into the back of a police vehicle and directed an officer to the shed. RP 199, 467. When they returned to the scene, Olson could see a man lying face-up on the ground with his head toward the shed, and there was blood on the ground. RP 199.

Neither Olson nor Sutherland identified Reichow as the person they saw choking the man on the ground when they were at the scene or while they testifying at trial. RP 168-206, 448-87. Sutherland could not observe any identifying features of the two men. RP 477-78. Even after turning her car around, she could not see who the man was that was

strangling the man on the ground. RP 478-79. She testified at trial that she could not really identify anyone. RP 479.

Amber Henley, who lives on the corner of SE First Street and Grace Avenue, was at home with her husband and children on the evening of August 1, 2015. Her husband came home from work between 10 and 11pm, and the two of them went outside to sit on their front porch. RP 341-43. As they were sitting, a man walked up to their fence, asked them to call 911, and stated, "I think I just killed somebody". RP 344. Henley then called 911. RP 345. As she was on the phone with 911, she got closer to the man and noticed that his shirt was ripped and that he had blood on his hands. RP 346. The man told her, in essence, that a car pulled up and somebody got out with a baseball bat and they were going to harm him with it so he took it and defended himself. RP 348. Henley asked the man why the person came at him with a bat, and the man said something about him knowing too much. RP 348.

That night, Officer Brian Archer of the Battle Ground Police Department was working patrol, and responded to the warehouse at SE Second and Grace in Battle Ground. RP 270. Officer Archer arrived at the location at 11:52 pm. RP 272. Per dispatch, there was a man lying on the ground and a suspect who was walking away wearing a gray top and dark bottoms. RP 273. As Officer Archer approached the corner of SE First and

SE Grace, he observed a male matching the description given by dispatch, standing on the corner. RP 274. Officer Archer stopped his patrol car and got out to talk to the male. RP 275. The male had blood all over him, including his hands, his face, his ear, his clothes, and his shoes, so Archer could not tell if he was the victim or the suspect. RP 275-77. The blood appeared to be blood spatter because it thinned out as it moved up the male's forearms. RP 277. The male was identified as Reichow. RP 277. After noticing the blood spatter on Reichow, Officer Archer had a conversation with him. RP 278. Reichow was not emotional, but rather, spoke matter-of-factly. RP 278.

Officer Archer asked Reichow if he was okay, to which Reichow responded that he was, "but the other guy's not". RP 278. Archer asked where the other guy was, and Reichow directed him to the area of the paint store and the warehouse. RP 278-79. Archer asked Reichow how badly the other man was hurt, and Reichow said "I think I killed him". RP 279. Reichow smelled of alcohol and his speech was a little bit slurred. RP 279-80.

Reichow then told Officer Archer that he had been with Maulding and Tanninen and that they were all in a vehicle together that night and went to the storage facility. RP 280. Reichow indicated that he was friends with Maulding. RP 280. Reichow told Officer Archer that Tanninen had

gotten a phone call while they were in the storage shed, and things started to get weird and awkward. RP 281-82. Reichow said that he then started getting scared for his life and he left and went and hid under an RV for a few minutes. RP 282, 283.

Reichow told Officer Archer that once he thought things cooled down he came out from under the RV and Maulding approached him. RP 282. Reichow claimed that Maulding had a baseball bat and was hitting it on his own shoe or the ground while saying something to the effect of “come on boy” or “hey boy” or “come here”. RP 283-84. Reichow said that he then had a scuffle with Maulding, and that his shirt was torn in the scuffle and he ended up taking the bat from Maulding. RP 284. Reichow told Archer that he defended himself with the bat and hit Maulding with it. RP 284. Reichow’s demeanor never changed through the course of his entire conversation with Officer Archer. RP 286. Reichow did not ask Officer Archer to get help for Maulding. RP 295. Later in the evening, Reichow was interviewed by Detective Kelly. RP 757. Reichow explained to Detective Kelly that he defended himself with the bat by knocking Maulding down. RP 772.

Officer Joshua Runnels of the Battle Ground Police Department was also working patrol on August 1, 2015. RP 503. He was dispatched to Grace and SE Second. RP 504. When Officer Runnels responded he was

the first on scene and noticed a male lying on the ground with blood on his face and a bat next to his head. RP 504. Officer Runnels rubbed his chest to try to wake him up but he did not respond. RP 505. The man was making a gurgling, snorting kind of sound with short fast breaths. RP 505. He had a severe injury to his head, and the front of his head appeared to be caved in. RP 506. The man had a pool of blood underneath his head. RP 506. Officer Runnels pulled the man's wallet out of his pocket to identify him and found an identification for Brandon Maulding. RP 515. When medical responded, Officer Runnels moved the bat and set it against the wall. RP 510. There was blood spatter and bone or skin fragments up the wall approximately seven to eight feet. RP 513, RP 230-31. The area of blood spatter in the vicinity was approximately thirty feet by twenty-seven feet. RP 230.

Maulding appeared to be deceased when law enforcement responded to the hospital where Maulding had been transported. RP 217. Maulding's autopsy revealed that his cause of death was blunt head trauma. RP 966. He had a fractured skull and brain matter was pushing out of it making it visible from the outside. RP 938. The injuries to Maulding's face could not be separated out because there was so much damage. RP 939. Part of Maulding's ear had been torn off. RP 940-41. Part of one of his teeth was also missing. RP 942. Maulding had multiple

fractures to his face, including fractures to his upper jaw, lower jaw, zygomatic arch, and orbital bones. RP 945. Most parts of Maulding's skull were fractured. RP 952. During the autopsy, the forensic pathologist concluded that the injuries to Maulding's head were all caused by being hit with a blunt object. RP 952. One of the blows to Maulding's head would have been enough to knock him unconscious. RP 954. It was estimated that Maulding took around twenty blows to the head. RP 960-61. Approximately six of those blows were to the back of his head. RP 961. The forensic pathologist testified that Maulding also had an injury to his neck that could be a characteristic of strangulation. RP 964.

Maulding's blood was tested by the Washington State Patrol Crime Lab and he was found to have a blood alcohol content of 0.26 grams per 100 milliliters. RP 723. His vitreous eye fluid was also tested, and was found to have an alcohol content of 0.30 grams per 100 milliliters. RP 724. Reichow's t-shirt, the baseball bat, and a swab from Reichow's ear were all sent to the WSP crime lab and all three items had blood on them matching Maulding's DNA profile. RP 862-63. A mixed DNA profile was found on the handle of the baseball bat, matching both Maulding and Reichow. RP 868.

After being transported from the scene, Reichow was taken to the Battle Ground Police Department where he was later contacted by

additional officers. RP 540. Reichow did not have any visible injuries to his body. RP 542-60. There was blood spatter on his face, chest, neck, upper back, legs, and feet. RP 544, 552. Prior to Reichow's transport to the police department, Reichow told Officer Neal Seifert that he had to hide under an RV in the back of the warehouse. RP 307. Reichow said that law enforcement needed to look under the RV because they would be able to see where his belly drug on the ground in order for him to climb underneath. RP 307. A detective at the scene looked, and found that there was no disruption of the gravel or vegetation underneath a box van in the area, and no sign indicating that a person had been underneath it. RP 241-42, 243. The detective also looked underneath a travel trailer that was at the scene and there was no sign that a person had been underneath it. RP 244.

Prior to trial, the court held a hearing to determine the admissibility of Reichow's purported diminished capacity defense and expert testimony. RP 49-50. During the hearing, the trial court heard the testimony of defense expert Dr. Nicole Zenger, a clinical and forensic psychologist. RP 51-99. Dr. Zenger evaluated Reichow for diminished capacity after reviewing various witness statements and meeting with him for three hours. RP 51-6, 70.

Dr. Zenger testified that Reichow displayed a consistent pattern of paranoia that included his belief that he was being stalked by a gang, covering his camera phone, and making repeat purchases of computers under the belief that the computers had been infiltrated. RP 59-60. During her direct examination, Dr. Zenger concluded that Reichow had a mental illness that was “logically and reasonably connected to his impaired functioning”. RP 57. She further testified that Reichow’s use of the bat to strike Maulding was a volitional act, and that Reichow knew he was striking someone. RP 64.

Rather than the statutory definition of “intent,” Dr. Zenger used her own definition of “intent” in her analysis. RP 63. She also said that her role was to determine what the purpose of Reichow’s acts were and whether they rose to self-defense when determining whether he had diminished capacity. RP 66. Notably, Dr. Zenger confused whether Reichow had the capacity to act intentionally with whether he believed his actions were justifiable self-defense. In her written report, Dr. Zenger opined that:

This evaluator was unable to identify any source to support that Mr. Reichow had the *intention to commit a crime*, with the victim’s death resulting from *furtherance of that crime*. According to statute (9A.16.050), homicide is justifiable when the person slain was attempting to commit a felony or to do some great personal injury to the slayer and there is imminent danger of such design being accomplished. Mr.

Reichow's mental state at the time, as evidenced by his behaviors and reports of witnesses, does not reflect any intentions for a crime, namely, *intention to assault the victim unjustly*.

CP 69 (emphasis in original).

On cross-examination, the State elicited testimony from Dr. Zenger that during her interview of Reichow, he explained his acts prior to the murder. RP 77-9, 86-7. Dr. Zenger conceded that his actions leading up to the murder were all goal-oriented actions. RP 87-8. Dr. Zenger conceded that Reichow chose to swing the bat at Mr. Maulding, and that he did so many times. RP 88. Dr. Zenger also indicated that it was Reichow's goal to remove the perceived threat and protect himself. RP 89.

The trial court excluded Reichow's diminished capacity defense and expert testimony. RP 105-06. The trial court expressed concern with Dr. Zenger's application of self-defense in her diminished capacity analysis. RP 106. The trial court ultimately concluded that Dr. Zenger's proposed testimony failed to satisfy the legal requirement for a diminished capacity defense and conflated self-defense with the intent to commit a crime. Accordingly, the trial court excluded Dr. Zenger's testimony as to all three counts as unhelpful and inadmissible under ER 702. RP 106.

At trial, Reichow testified and said he felt that Tanninen and Maulding were setting something up after Tanninen received the strange

phone call. RP 1070. Reichow then went to a door of the warehouse and put his battery in his phone. RP 1076. Tanninen and Maulding were with him and smoked cigarettes while Reichow waited for a ride home. RP 1077. Reichow claimed that Tanninen then started getting accusatory toward Reichow, asking him if he had something to do with the phone call and gang stalking. RP 1077. Reichow testified that Maulding then pulled out a baseball bat and was asking Reichow what he had to do with gang stalking while tapping the bat on his own foot. RP 1079.

Reichow testified, "I really started fearing for my safety and my life at that point." RP 1080. Reichow then left. RP 1081. Reichow testified that he was in a panic to get out of the area and got the idea to hide, so he hid under a trailer. RP 1082. He said that his prior experiences influenced his decision to flee. RP 1084. Reichow said that his purpose in hiding under the trailer was to break visual with Maulding so he could get away. RP 1085.

Reichow testified that after he came out from under the trailer, he saw Tanninen in an SUV. RP 1088. Maulding got out of the vehicle and had the baseball bat in his hand. RP 1089. Reichow claimed that Maulding then charged at him. RP 1089. Reichow claimed that he caught the bat with his hand and pulled the bat and pried it from Maulding's hands. RP 1090-91. Reichow testified that he then saw Maulding reach into his

pocket for a knife, so he defended himself with the bat. RP 1091. Reichow further described how he defended himself:

- Q: Okay. And can you describe how you ended up defending yourself?
- A: I struck my attacker several times –
- Q: Okay.
- A: - on the head.
- Q: Meaning you're swinging it?
- A: Yeah. I – back and forth – side to side.
- Q: Okay.
- A: I – I swung the bat several times – about as fast as somebody would pull a trigger – you know – less than a second between – you know – between swings – there was no hesitation in swings.
- Q: Okay. And so all of this action occurring of him running into you – wrenching the bat – swinging the bat – is it over an extended period of time or is it shorter or can you describe it?
- A: No. I – I believe this is ten seconds – fifteen seconds – ten seconds.
- Q: Okay.
- A: Or less.

RP 1091-92. Reichow claimed that he swung the bat seven times. RP 1095. Reichow testified that when he stopped swinging he saw that Maulding was on the ground. RP 1092. Reichow claimed that he then crouched down and tried to take Maulding's pulse. RP 1093. Reichow then went to the Henley's residence to ask for help. RP 1094.

On cross-examination, Reichow explained that while he was at the warehouse, he had intentionally put his thumb print on a phone so police could find him in case he disappeared. RP 1110. Reichow denied knowing

that he had Maulding's blood all over him, and denied feeling it hit his face and hands. RP 1132. Reichow claimed that Olson and Sutherland were "false witnesses". RP 1136. He also denied saying that he thought he had killed Maulding when he contacted the Henleys and Officer Archer. RP 1137.

During trial, it was elicited that approximately three years prior to his murder, Maulding had suffered an injury after being involved in a dirt bike accident that shattered his leg and foot. RP 165-66. The accident left Maulding with a noticeable limp that never went away and prevented him from running like he used to. RP 166-67. At the time of his death, Maulding was five feet seven inches and weighed a hundred and thirty-one pounds. RP 926. Reichow weighed more than Maulding, and would be considered clinically overweight at the time of the incident. RP 1101, 1144.

At trial, Reichow's attorney did not object to the general concluding instructions proposed by the State. RP 1151-74. Neither the State nor Reichow proposed lesser included or inferior degree offense instructions. RP 1151-74. Reichow's proposed jury instructions included separate definition and element instructions for each of the three counts, and listed each crime as its own count. CP 119-24.

The jury returned verdicts of guilty on Murder in the First Degree, Murder in the Second Degree, and Felony Murder in the Second Degree. CP 224, 226, 228. The jury found that Reichow was armed with a deadly weapon at the time he committed each crime. CP 225, 227, 229. After delivering guilty verdicts, the jury was instructed on two aggravating circumstances: (1) whether Reichow's conduct during the commission of the crime manifested deliberate cruelty to the victim; and (2) whether Reichow knew or should have known that the victim was particularly vulnerable or incapable of resistance. RP 1264-66, CP 230-37. The jury returned special verdicts on all three counts finding that Reichow acted with deliberate cruelty, that Reichow knew Maulding was particularly vulnerable or incapable of resistance, and that Maulding's vulnerability or incapability to resist was a substantial factor in the commission of each crime. CP 238-40. The trial court sentenced Reichow to a standard range sentence of 288 months. CP 307. This appeal follows.

ARGUMENT

I. The trial court properly denied Reichow's request to instruct the jury on eyewitness identification testimony.

Reichow argues the trial court erred in denying his request to instruct the jury on WPIC 6.52, regarding eyewitness identification testimony as it pertained to the testimony of Jacqueline Olson and Chelsea

Sutherland. He alleges that this instruction should be given broadly “to all aspects of eyewitness identification and testimony”. *See* Br. of Appellant, p. 14. Neither Olson nor Sutherland could describe the assailant beyond his general physique and apparel, and neither witness identified Reichow at the scene of the crime or in court. RP 168-206, 448-87. Accordingly, the trial court’s denial of this instruction did not constitute an abuse of discretion. Furthermore, Reichow makes no assertions as to how the failure to give this instruction affected the outcome of the trial.

Identification was not at issue in the case, as Reichow was covered in blood when contacted near the scene, quickly said that he killed the victim when contacted, and claimed self-defense at trial. RP 275-77, 279, 1091. Thus, the failure to give the instruction was harmless error at best.

A trial court’s decision to reject a party’s proposed jury instruction is reviewed for an abuse of discretion. *State v. Stacy*, 181 Wn.App. 533, 569, 326 P.3d 136, *review denied*, 335 P.3d 940 (2014). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Thomas*, 138 Wn.App. 78, 81, 155 P.3d 998 (2007); *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). WPIC 6.52 is intended for use solely in criminal prosecutions in which the jury has heard eyewitness identification testimony. WPIC 6.52, *Eyewitness Identification Testimony*, 11 Wash.

Prac., Pattern Jury Instr. Crim. WPIC 6.52 (4th Ed). “Due process requires that jury instructions (1) allow the parties to argue all theories of their respective cases supported by sufficient evidence, (2) fully instruct the jury on the defense theory, (3) inform the jury of the applicable law, and (4) give the jury discretion to decide questions of fact.” *State v. Koch*, 157 Wn.App. 20, 33, 237 P.3d 287 (2010). There is no case law establishing a due process requirement to instruct the jury on eyewitness identification testimony under the U.S. or Washington constitutions. *State v. Allen*, 176 Wn.2d 611, 624, 294 P.3d 679 (2013).

In *Allen*, the Supreme Court found that it was not an abuse of discretion to deny a defendant’s request for an instruction on cross-racial eyewitness identification where the eyewitness described the defendant by his general physique and apparel, as opposed to his facial features, and did not do an in-court identification of the defendant. *Id* at 624-26. There, an eyewitness, who was white, was walking at dusk when the defendant threatened to kill him and then lifted up his shirt displaying what appeared to be a gun. *Id* at 613-14. The eyewitness called 911, and described the defendant as an African-American man in his mid-20s, weighing between 210 and 220 pounds, being around 5’9”, and wearing a black hooded sweatshirt, a hat, and big, gold-framed sunglasses. *Id* at 614. Law enforcement responded and located the defendant near the scene of the

crime. *Id.* His race and clothing matched the description given by the eyewitness, however he was physically larger than the eyewitness's description. *Id.* The eyewitness was transported to the arrest location and identified the defendant as the man who threatened him. *Id.* The defendant was charged with felony harassment, and at trial, requested a jury instruction regarding cross-racial identification. *Id.* The trial court denied this request, reasoning that no expert testimony on cross-racial identification reliability was given. *Id.* at 614-15. The defendant was convicted, and on appeal, argued that the trial court's failure to give the instruction violated his right to present a defense and to due process. *Id.* at 615-16. The Court of Appeals affirmed the trial court's decision not to give the defendant's requested jury instruction. *Id.* at 616.

The Supreme Court denied the defendant's request to adopt a general rule requiring the giving of a cross-racial instruction in cases where cross-racial identification was at issue, and affirmed the Court of Appeals, holding that the refusal to give the instruction on eyewitness identification did not violate the defendant's due process rights. *Id.* at 621-26. In so holding, the Court noted that giving an instruction on cross-racial identification would not solve the purported unreliability of cross-racial eyewitness identification any more than cross-examination, expert evidence, or arguments to the jury would. *Id.* at 622. The court considered

a number of safeguards that were at play in the trial that prevented the jury from placing undue weight on the eyewitness testimony. *Id.* at 622-24. These safeguards included the defendant's right to effective assistance of counsel, counsel's opportunity to cross-examine the eyewitness to expose unreliability, counsel's ability to argue that unreliability during opening and closing argument, the requirement that the State prove its case beyond a reasonable doubt, and the instructions that were given to the jury pertaining to the State's burden of proof and witness credibility generally. *Id.* The Supreme Court found that the trial court did not abuse its discretion in denying the eyewitness identification instruction because it would not have added to the safeguards that were already present, and the identification was not based on facial features, but rather general physique, apparel and sunglasses. *Id.* at 624.

Here, it is clear that Reichow's due process rights were not violated by the trial court's denial of his request to instruct the jury on eyewitness identification testimony. While the trial did not specifically involve cross-racial identification, the *Allen* opinion is instructive in determining whether the trial court's refusal to instruct the jury on WPIC 6.52 was appropriate.

Olson and Sutherland did not identify Reichow at the crime-scene, and did not identify him in court. RP 168-206, 448-87. Like the witness in

Allen, supra, Ms. Olson was only able to give general descriptors of the assailant's body type and apparel. In her call to 9-1-1, she described the assailant as a white male, in his thirties, wearing a gray shirt and short black pants. RP 379-80. When asked how tall he was, she described him as looking about five foot seven, or average male height. RP 380. Olson did not testify to any additional identifiers at trial. RP 168-206.

Sutherland's testimony was even less descriptive than Olson's, as it pertained to identifying the assailant. Sutherland testified that she could not observe identifying features of either the man on the ground or the man that she saw strangling him. RP 477-78. Even after turning her car around to go back to the scene, she still could not see who the man was that had been strangling the man on the ground. RP 478-79. She testified that she could not really identify anyone. RP 479. Olson and Sutherland did not testify to an identity, but rather, to an event that they saw. Because neither woman identified Reichow at trial or during the investigation, it was not an abuse of discretion to decline to instruct the jury on WPIC 6.52. The trial court's decision was reasonable and was not based on untenable grounds or made for untenable reasons.

Even if Olson's description of the general physique and apparel of the assailant that she saw is enough to be considered an identification for purposes of WPIC 6.52, there were safeguards in place that prevented the

jury from putting undue weight on her testimony. Reichow's attorney cross-examined Olson, specifically highlighting the poor lighting situation, her far vantage point, and the short amount of time she was able to view the men. RP 192-95. Reichow's attorney also was able to argue any perceived unreliability in Olson's and Sutherland's testimony during his closing argument. RP 1215-18. He told the jury to consider the women's opportunity to view what was going on, in terms of the time they had to view it, their level of awareness, and the visibility in the dark, and their emotional state at the time of the 9-1-1 call. RP 1216-18.

The jury was instructed on the requirement that the State prove its case beyond a reasonable doubt. CP 195. The jury was also instructed on which factors could be considered in determining the credibility of the witnesses. CP 192. These factors included the following:

[T]he opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

CP 192. Had Reichow's proposed eyewitness identification instruction been given, the jury would have been given the following factors to consider in assessing any eyewitness identification testimony:

[T]he witness's capacity for observation, recall and identification; the opportunity of the witness to observe the alleged criminal act and the perpetrator of that act; the emotional state of the witness at the time of the observation; the witness's ability, following the observation, to provide a description of the perpetrator of the act; the period of time between the alleged criminal act and the witness's identification; the extent to which any outside influences or circumstances may have affected the witness's impressions or recollection; and any other factor relevant to this question.

CP 118. There is overlap between the factors given to the jury to consider for witness credibility and the instruction proposed by Reichow. In light of the instructions that were given, the court's denial of WPIC 6.52 did not preclude Reichow from arguing his theory of the case, and was proper. The trial court did not abuse its discretion.

Even if the failure to give the eyewitness identification testimony instruction was error, it was harmless. A non-constitutional error requires reversal only if there is a reasonable probability that the error materially affected the outcome of the trial. *State v. Gower*, 179 Wn.2d 851, 854–55, 321 P.3d 1178 (2014). The defendant bears the burden of showing the error materially affected the outcome of the trial. *State v. Barry*, 183 Wn.2d 297, 317-18, 352 P.3d 161 (2015). If the alleged error involves a

constitutional right, this Court applies the constitutional harmless error analysis to determine whether the error was harmless beyond a reasonable doubt. *State v. Stephens*, 93 Wn.2d 186, 191, 607 P.2d 304 (1980). Under either analysis, any error was harmless.

Reichow was covered in blood and quickly said that he killed the victim when contacted near the scene, and claimed self-defense at trial. RP 275-77, 279, 1091. Reichow makes no assertions as to how the failure to give WPIC 6.52 affected the outcome of his trial. Moreover, even assuming constitutional error occurred, the error was harmless beyond a reasonable doubt because identity was not in issue and neither Ms. Olson nor Ms. Sutherland identified Reichow as the assailant. In reviewing all the evidence presented at trial, it is clear that Reichow's proposed instruction would not have changed the outcome of the jury's verdict. Reichow's claim should be denied.

II. The trial court properly excluded evidence of purported diminished capacity.

Reichow argues that he was denied the right to present a defense when the trial court excluded evidence of his purported diminished capacity defense. His argument fails, as he was unable to produce admissible expert testimony demonstrating that his mental disorder impaired his ability to form intent. Dr. Nicole Zenger, his defense expert,

applied the incorrect definition of intent when analyzing Reichow's capacity. RP 89-90. She testified that Reichow engaged in goal-oriented behavior throughout the time before, during, and after the murder, and she focused her analysis on whether Reichow committed the act in self-defense. RP 76-90. Thus, the trial court's exclusion of both the diminished capacity defense and the expert witness testimony regarding Reichow's ability to act intentionally was proper.

The decision to admit or exclude evidence lies within the sound discretion of the trial court and will not be overturned on appeal absent a manifest abuse of discretion. *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001).

State courts have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. However, a criminal defendant's constitutional right to "a meaningful opportunity to present a complete defense" limits this latitude. An evidence rule abridges this right when it infringes upon a weighty interest of the defendant and is arbitrary or disproportionate to the purpose it was designed to serve. But the defendant's right to present a defense also has limits. The defendant's right is subject to reasonable restrictions and must yield to "established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence."

State v. Donald, 178 Wn. App. 250, 263–64, 316 3d 1081, 1087 (2013)

(footnote citations omitted). "Defendants have the right to present a defense, but do not have the right to introduce evidence that is irrelevant

or otherwise inadmissible.” *State v. Thomas*, 123 Wn. App. 771, 778, 98 P.3d 1258, 1262 (2004), (citing *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651, 654 (1992)). In *State v. Atsbeha*, the Court indicated that “[t]o maintain a diminished capacity defense, a defendant must produce expert testimony demonstrating that a mental disorder, not amounting to insanity, impaired the defendant’s ability to form the culpable mental state to commit the crime charged”. *State v. Atsbeha*, 142 Wn.2d 904, 914, 16 P.3d 26 (2001). There, the Supreme Court upheld the exclusion of a defense expert who wished to testify that, though the defendant did have the intent necessary to commit the crime, he was doing so for potentially delusional reasons. *Id* at 920-21.

The pattern instruction for diminished capacity may be submitted to the jury only if the defendant satisfies the following three requirements: (1) the crime charged must include a particular mental state as an element; (2) the defendant must present evidence of a mental disorder; and (3) expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged. *State v. Atsbeha*, 142 Wn.2d 904, 914, 921; *State v. Eakins*, 127 Wn.2d 490, 502, 902 P.2d 1236 (1995); *State v. Griffin*, 100 Wn.2d 417, 418–19, 670 P.2d 265 (1983); *State v. Guilliot*, 106 Wn.App. 355, 363, 22 P.3d 1266 (2001). If evidence on any

element is lacking, the instruction should not be given. *State v. Ager*, 128 Wn.2d 85, 95, 904 P.2d 715 (1995).

In the present case, Dr. Zenger's testimony did not logically and reasonably connect Reichow's alleged mental condition with his asserted inability to form intent because Dr. Zenger did not employ the correct definition of intent when making her determination that Reichow was unable to form intent. Under RCW 9A.08.010(1)(a), "[a] person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." This definition does not require that a person intend to commit a crime in order to act intentionally. Dr. Zenger testified that she was looking at the meaning of intent according to how her professional community would look at it. RP 63, 89. She explained that she was being asked to address what the purpose or intention of an act was in determining whether a person acted with intent. RP 64. When specifically asked to define her version of intent, Dr. Zenger stated,

[I]ntention is a cognitive activity and when you're talking about the purpose of a behavior you have to understand what the purpose is. You – if you're talking about just behavior that's a – that's a volition – it's not an intention.

RP 89. Dr. Zenger's understanding of intent added a subjective component that does not comport with the legal definition of intent. Accordingly, her

conclusion regarding Reichow's diminished capacity was not based on the law, and the trial court properly excluded the purported diminished capacity defense.

Even if Dr. Zenger's interpretation of "intent" was consistent with the legal definition, the trial court properly excluded evidence of diminished capacity because Reichow engaged in goal-oriented behavior before, during, and after his murder of Mr. Maulding. During the hearing on the admissibility of the diminished capacity defense, Dr. Zenger testified that Reichow's use of the bat to strike the victim was a volitional act, and that Reichow knew he was striking someone. RP 64. Dr. Zenger testified that during her interview of Reichow, he explained his acts prior to the murder, which included positioning himself by the door of the storage shed because he felt at risk, running away from the storage shed because he felt unsafe, trying to find a place to hide, and doing a maneuver to get the bat away from Maulding. RP 77-9, 86-7. Dr. Zenger conceded that these were all goal-oriented actions. RP 87-8. Reichow indicated to Dr. Zenger that he then struck Maulding with the baseball bat. RP 79. Dr. Zenger agreed that Reichow chose to swing the bat at Maulding, and did so many times. RP 88. During his interview with Dr. Zenger, Reichow also told her that he needed to make sure that he wasn't going to be harmed, that he was fighting for his life, and that he made the choice to

protect himself. RP 80. Dr. Zenger agreed that it was Reichow's goal to remove the perceived threat and protect himself. RP 89. After the murder, Reichow went to a neighbor's house to seek assistance. RP 93-4. Dr. Zenger agreed that Reichow took intentional steps to do that. RP 94. Reichow clearly engaged in goal-oriented behavior before, during, and after his murder of Maulding. Dr. Zenger's testimony failed to show that Reichow had an inability to form the mental state required for the crimes charged, thus the trial court did not abuse its discretion in excluding Reichow's purported diminished capacity defense.

Dr. Zenger's diminished capacity analysis was also flawed because it conflated diminished capacity with self-defense. She appeared to conclude that Reichow thought he was acting in self-defense and he therefore did not have intent to commit a crime. When explaining how she reached her opinion, Dr. Zenger stated,

And so for – when I make my conclusions that he – his ability to form the intent of assault was impaired there is – that he didn't intend to assault with a guilty act. And I see how maybe I'm overstepping the – the act portion because it's not my place to decide whether or not it was an assault.

And I realize that but I'm talking about his mental state behind what – what was he intending? What was the purpose of his behavior? So whether or not it arises to an assault or self – quote/unquote self-defense or – or self-preservation I'm not suggesting that I ultimately decide whether or not it was.

I'm stating what his mental state was – which was fear and believing he was in danger in the situation. So again I'm just speaking to his mental state as I'm asked to do.

RP 66. If Reichow had the ability to commit the murder in self-defense, he had the ability to act intentionally. Dr. Zenger's testimony failed to satisfy the requirements of a diminished capacity defense, thus its exclusion by the trial court was proper.

Even if the exclusion of Dr. Zenger's testimony regarding diminished capacity was error, it was harmless error at best. Dr. Zenger conceded that Reichow's actions were deliberate and her testimony would not have had an effect on the outcome of the trial. If anything, her testimony would have supported the State's theory that Reichow acted intentionally.

Reichow also appears to argue that Dr. Zenger should have been allowed to testify about the context of Reichow's statements to law enforcement and Reichow's mental state as it pertained to his self-defense claim. Reichow has failed to provide this Court with a sufficient record of this issue, and accordingly, this issue should not be considered.

On April 5, 2017, after prospective jurors were sworn in, Reichow's motions in limine were heard. CP 244. During this time, there was a five-minute discussion regarding testimony of Dr. Zenger, concerning self-defense. CP 244. The trial court excluded the third

paragraph of Defendant's Offer of Proof Regarding Dr. Zenger's Testimony re: Self Defense. CP 244. This paragraph concluded that Reichow was impaired in his ability to think rationally, due to his mental illness. CP 95.

The Defendant's Offer of Proof Regarding Dr. Zenger's Testimony re: Self Defense consisted of two additional paragraphs. CP 93-5. The second paragraph indicated that Reichow was diagnosed with schizophrenia and had a well-documented history of paranoid delusions, which had disrupted his life and thought processes. CP 94. The State did not object to this second paragraph in Defendant's Offer of Proof. CP 244. The record does not show that the trial court excluded the anticipated testimony from the second paragraph. CP 244.

The trial court only excluded paragraph three of the offer of proof. The trial court did not exclude paragraphs one or two of this offer of proof, nor did the State object to the admission of the evidence contained in those paragraphs. It appears that Reichow could have called Dr. Zenger to discuss his schizophrenia and history of paranoid delusions. Reichow did not call Dr. Zenger to testify during trial. RP 985-1146. Thus it is clear it was Reichow's decision not to admit evidence from his expert on the contents of paragraphs one and two.

Reichow has failed to provide this Court with the verbatim report of proceedings for the hearing on the admissibility of Dr. Zenger's testimony regarding self-defense held on April 5, 2017. The appellate rules provide that "[a] party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review." RAP 9.2(b). Because Reichow has presented this issue for review, he has the burden of providing the record of the evidentiary hearing. *Id.* This Court, lacking an adequate record, can require supplementation of the deficient record, pursuant to RAP 9.10, or it can decline to consider the issue. *See, e.g., State v. Wade*, 138 Wn. 2d 460, 465–66, 979 P.2d 850, 853 (1999). RAP 9.10 provides that, "[i]f a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision." The rule allows the appellate court, in its discretion, to order supplementation of the record. *Id.* Alternatively, an appellate court may decline to address a claimed error when faced with a material omission in the record and allow the trial court's decision to stand. *Wade*, 138 Wn. 2d 460 at 465; *see also State v. Tracy*, 128 Wn. App. 388, 395, 115 P.3d 381, 385 (2005), *aff'd*, 158 Wn. 2d 683, 147 P.3d 559 (2006). Because Reichow has failed to provide a sufficient record, and because it appears from the

partial record that the trial court allowed limited testimony from Dr. Zenger regarding Reichow's self-defense claim, the trial court's decision should stand.

III. The trial court properly instructed the jury using WPIC 151.00.

Reichow argues that he was charged with a lesser degree of a crime and therefore the jury should have been instructed using WPIC 155.00 as opposed to WPIC 151.00. Reichow did not request that the jury be instructed on lesser degree offenses at the trial court, his proposed jury instructions did not include WPIC 155.00, and he did not object to the use of WPIC 151.00 at the time of trial. RP 1150-74; CP 119-24. Consequently, he is precluded from raising this issue now. Furthermore, each of the three offenses was charged as a separate count, and the jury was not given lesser degree offenses to consider. CP 190-222. Therefore, Reichow's claim that the jury should have been given the concluding instruction for a lesser degree offense is baseless.

The general rule is that an issue, theory, or argument not presented at trial will not be considered on appeal. RAP 2.5(a); *State v. Hayes*, 165 Wn.App. 507, 514, 265 P.3d 982 (2011) (citing *State v. McFarland*, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995)). This "rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts

will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.” *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1998) (citation omitted).

The rule has additional force when applied to criminal cases in which claimed errors in jury instructions are raised for the first time on appeal because “CrR 6.15(c) *requires* that timely and well stated objections be made to instructions given or refused ‘in order that the trial court may have the opportunity to correct any error.’” *Id.* at 685-86 (emphasis added) (quoting *Seattle v. Rainwater*, 86 Wn.2d 567, 571, 546 P.2d 450 (1976)). Accordingly, our Supreme Court has “with almost monotonous continuity, recognized this procedural requirement and adhered to the proposition that, absent obvious and manifest injustice, we will not review assignments of error based upon the giving or refusal of instructions to which no timely exceptions were taken.” *State v. Louie*, 68 Wn.2d 304, 312, 413 P.2d 7 (1966) (citing cases). Thus, it is unsurprising that our Supreme Court “on many occasions has refused to review asserted instructional errors to which no meaningful exceptions were taken at trial.” *Scott*, 110 Wn.2d at 686 (citing cases).

An exception to this rule exists, however, for manifest errors affecting a defendant’s constitutional rights. RAP 2.5(a)(3); *Hayes*, 165

Wn.App. at 514. To determine whether the exception applies, a reviewing court employs a two-part test. *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007) (citing *State v. Lynn*, 67 Wn.App. 339, 345, 835 P.2d 251 (1992) (overruled on other grounds by *State v. Jasper*, 174 Wn.2d 96, 271 P.3d 876 (2012))). “First, the court determines whether the alleged error is truly constitutional. Second, the court determines whether the alleged error is ‘manifest.’” *Id.*

To be manifest, the alleged error must have had “practical and identifiable consequences in the trial of the case.” *Kronich*, 160 Wn.2d at 899 (citing *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001)). In other words, the defendant must show, in the context of the trial, actual prejudice as it is this “prejudice that makes the error ‘manifest,’ allowing appellate review.” *McFarland*, 127 Wn.2d at 333 (citing *Scott*, 110 Wn.2d at 688). Consequently, a “purely formalistic error will not be deemed manifest,” nor will an error that is not “unmistakable, evident, or indisputable.” *Kronich*, 160 Wn.2d at 899; *State v. Burke*, 163 Wn.2d 204, 224, 181 P.3d 1 (2008) (citation omitted). Because “permitting every possible constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals, creates undesirable re-trials and is wasteful of the limited resources of prosecutors, public defenders and courts,” courts must not give the term

“manifest” an expansive reading. *Lynn*, 67 Wn.App. 343-44; *McFarland*, 127 Wn.2d at 333. Importantly, this court held in *State v. Lindsey*, that the failure to object at trial to jury instructions giving rise to the claim of an uncharged alternative in a Trafficking in Stolen Property in the First Degree case waives the alleged error if the defendant fails to *argue* that any of the exceptions to RAP 2.5(a) apply. 177 Wn.App. 233, 247, 311 P.3d 61 (2013).

Reichow attempts to do what the defendant in *Lindsey* did: he failed to raise an objection to an instruction at trial and now raises the issue for the first time on appeal. See *id.* The error that Reichow asserts is not manifest, as he points to no practical and identifiable consequences in the trial. He argues that the jury could have convicted him only of Murder in the Second Degree or Felony Murder and acquitted him on Murder in the First Degree if they had been instructed on WPIC 155.00. However, this argument fails because the jury was instructed to decide each of the three counts separately and thus could have done exactly what Reichow argues they were precluded from doing: acquit on one count and convict on the remaining counts. CP 196. As Reichow failed to make a timely objection to WPIC 151.00 at the trial court, and fails to argue that any exceptions to RAP 2.5(a) apply, he is prevented from complaining about it now on appeal.

Even if Reichow could raise this issue for the first time on appeal, his argument that WPIC 155.00 should have been given fails. The jury was given three counts to consider, each of them charged separately, and no lesser included or lesser degree offenses were submitted for consideration by either party or by the court. RP 1150-74. Reichow appears to be conflating the issues of instructing a jury on lesser degree offenses of a single charged count with submitting multiple charged counts to a jury that just so happen to be inferior degrees of the highest charged count.

WPIC 155.00 must be given whenever the court instructs on crimes of a lesser degree or on a lesser included offense. WPIC 155.00 Concluding Instruction—Lesser Degree/Lesser Included/Attempt, 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 155.00 (4th Ed.2016). This pattern instruction explains the order and manner in which to consider multiple verdict forms for a particular charge and instructs jurors that they may consider the lesser crime “if after full and careful consideration” they “cannot agree” to a verdict on the greater charge. *Id.* Because the jury in Reichow’s trial was not given multiple verdict forms for any single count, it does not follow that they should have been instructed on WPIC 155.00.

WPIC 151.00 is substantively identical to WPIC 155.00 with the exception that it does not contain directions on how to consider multiple

verdict forms for a particular charge. WPIC 151.00 Basic Concluding Instruction, 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 151.00 (4th Ed. 2016). This basic concluding instruction contains the same constitutional guarantees as WPIC 155.00, and when coupled with WPIC 3.01, it ensures that a jury is not only unanimous, but that a jury is considering each count separately and not letting a decision on one count control a decision on any other count. WPIC 3.01 Multiple Counts—Single Defendant, 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 3.01 (4th Ed. 2016). A jury is presumed to follow the court's instructions. *State v. Johnson*, 124 Wn.2d 57, 77, 873 P.2d 514, 526 (1994). In the present case, the jury was instructed on WPIC 151.00 and WPIC 3.01, which in conjunction guaranteed that the jury could convict or acquit Reichow on each count independent of the other counts. CP 190-222.

Reichow asserts that WPIC 151.00 could have given the impression that the jury had to make a determination on all three counts, and argues that they were not actually required to do so. Br. of App. at 24. He points to no authority for this contention. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193

(1962)); *State v. Dow*, 162 Wn.App. 324, 331, 253 P.3d 476 (2011). An appellate court need not consider issues unsupported by citation to authority. *State v. Lord*, 117 Wn.2d 829, 853, 822 P.2d 177 (1991). As Reichow points to no authority in his argument that the jury was not required to decide each count, this court does not need to consider the issue. Reichow's claim that the jury should have been instructed on WPIC 155.00 fails, and is harmless error at best.

CONCLUSION

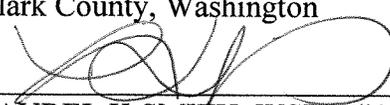
Reichow has failed to show any error denied him a fair trial. The trial court should be affirmed in all respects.

DATED this 23rd day of February, 2018.

Respectfully submitted:

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