FILED
Court of Appeals
Division II
State of Washington
4/19/2019 3:02 PM

NO. 51288-2-II

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

STATE OF WASHINGTON, Respondent

v.

BRENT WARD LUYSTER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01503-4

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (564) 397-2261

TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR 1

I. The trial court properly denied Luyster's motions to substitute counsel because there was not an irreconcilable conflict or a complete breakdown in communication between Luyster and his attorneys. 1

II. The search warrant affidavit for Luyster and Sibley's storage unit contained sufficient information to establish the reliability of the named or identified individuals. 1

III. The State agrees that the DNA fee, the criminal filing fee, and the jury demand fee should all be stricken upon remand. 1

STATEMENT OF THE CASE 1

A. Procedural History 1

a. Luyster's attorneys 2

B. Factual History 4

ARGUMENT 16

I. The trial court properly denied Luyster's motions to substitute counsel because there was not an irreconcilable conflict or a complete breakdown in communication between Luyster and his attorneys. 16

a. Standard of Review 16

b. Substitution of counsel 17

1. Extent of the Conflict 18

2. Adequacy of the Trial Court's Inquiry 22

3. Timeliness of the Motion 23

II. The search warrant affidavit for Luyster and Sibley's storage unit contained sufficient information to establish the reliability of the named or identified individuals. 24

a. Harmless Error 31

III. The State agrees that the DNA fee, the criminal filing fee, and the jury demand fee should all be stricken upon remand. 34

CONCLUSION 36

TABLE OF AUTHORITIES

Cases

Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) 26
In re Stenson, 142 Wn.2d 710, 16 P.3d 1 (2001)..... 17, 18, 19, 23
State v. Chamberlin, 161 Wn.2d 30, 162 P.3d 389 (2007)..... 25
State v. Chenoweth, 160 Wn.2d 454, 158 P.3d 595 (2007)..... 26, 27
State v. Davis, 3 Wn.App.2d 763, 418 P.3d 199 (2018)..... 16, 18
State v. Duncan, 81 Wn.App. 70, 912 P.2d 1090 (1996)..... 25
State v. Erickson, 168 Wn.2d 41, 225 P.3d 948 (2010)..... 27
State v. Espey, 184 Wn.App. 360, 336 P.3d 1178, 1184 (2014)..... 27
State v. Gaddy, 152 Wn.2d 64, 93 P.3d 872 (2004) 25, 29, 31
State v. Guloy, 104 Wn.2d 412, 705 P.2d 1182 (1985) 31, 33
State v. Hampton, 184 Wn.2d 656, 361 P.3d 734 (2015) 17
State v. Huft, 106 Wn.2d 206, 720 P.2d 838 (1986)..... 26
State v. Lair, 95 Wn.2d 706, 630 P.2d 427 (1981) 25, 31
State v. Laursen, 14 Wn.App. 692, 544 P.2d 127 (1975)..... 26
State v. Martin, 169 Wn.App. 620, 281 P.3d 315 (2012)..... 17
State v. Matlock, 27 Wn.App. 152, 616 P.2d 684 (1980)..... 26
State v. Neth, 165 Wn.2d 177, 196 P.3d 658 (2008)..... 27
State v. Northness, 20 Wn.App. 551, 582 P.2d 546 (1978)..... 25
State v. O'Connor, 39 Wn.App 113, 692 P.2d 208 (1984)..... 27
State v. Powell, 181 Wn.App. 716, 326 P.3d 859 (2014)..... 27
State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018)..... 35
State v. Schaller, 143 Wn.App. 258, 177 P.3d 1139 (2007)... 17, 18, 22, 24
State v. Tarter, 111 Wn.App. 336, 44 P.3d 899 (2002)..... 25
State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999)..... 24
State v. Thompson, 169 Wn.App. 436, 290 P.3d 996 (2012)..... 17, 22, 23
State v. Vickers, 148 Wn.2d 91, 59 P.3d 58 (2002)..... 25, 27
U.S. v. Gonzalez-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)..... 17
U.S. v. Moore, 159 F.3d 1154, 1161 (9th Cir. 1998)..... 23
U.S. v. Ventresca, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965)... 26
Wheat v. U.S., 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)... 18

Statutes

RCW 10.98.020(10)..... 2
RCW 36.18.202(2)(h)..... 34
RCW 43.43.7541 34
RCW 9A.32.030(1)(a) 2

Rules

CrR 3.6 20
GR 14.1 27
SPRC 2 2

Unpublished Opinions

State v. Allen, 2 Wn.App.2d 1052, 2018 WL 1172609 (2018) 27

RESPONSE TO ASSIGNMENTS OF ERROR

I. The trial court properly denied Luyster's motions to substitute counsel because there was not an irreconcilable conflict or a complete breakdown in communication between Luyster and his attorneys.

II. The search warrant affidavit for Luyster and Sibley's storage unit contained sufficient information to establish the reliability of the named or identified individuals.

III. The State agrees that the DNA fee, the criminal filing fee, and the jury demand fee should all be stricken upon remand.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On July 27, 2016, Brent Ward Luyster was charged by amended information with three counts of Aggravated Murder in the First Degree, one count of attempted premediated Murder in the First Degree, Unlawful Possession of Firearm in the First Degree, and Unlawful Possession of a Firearm in the Second Degree for the shooting deaths of Zachary Thompson, Joseph Lamar, and Janell Knight, and the attempt to kill Breanne Leigh, all of which occurred on July 15, 2016. CP 4-6. The murder counts were elevated to aggravated murder based on the aggravating circumstance that "there was more than one victim and the murders were part of a common scheme or plan or the result of a single act

of the defendant." CP 4-5; RCW 9A.32.030(1)(a); RCW 10.98.020(10). The first four counts also included a firearm enhancement. CP 4-5.

On February 12, 2017, following an attempt by Luyster to escape from the Clark County Jail, a second amended information was filed adding the charges of Possession of a Weapon by a Prisoner or Jail Inmate, Malicious Mischief in the First Degree, and Attempted Escape in the Second Degree. CP 30-33. On July 11, 2017, Luyster successfully moved to sever these counts from the murder and firearm counts. RP 70-78; CP 75-76. Luyster's jury trial on the murders would eventually begin on October 30, 2017 and end on November 17, 2017 with the jury's verdicts finding Luyster guilty as charged to include the aggravating circumstance and the firearm enhancements. CP 466-480.

a. Luyster's attorneys

Initially, when the State was still considering seeking the death penalty, Bob Yoseph and Edward Dunkerly were assigned to represent Luyster. CP 34-40, 551; Superior Court Special Proceedings Rules—Criminal Rule 2 (SPRC 2).Yoseph and Dunkerly titled themselves the Luyster Defense Team ("LDT"). CP 18, 36, 536. The LDT immediately began work on preparing mitigation evidence. CP 34-36, 536.

In March of 2017, however, the State ultimately decided against seeking the death penalty; and, as a result, the SPRC no longer applied nor

did the requirement that Luyster have two attorneys appointed to his case. RP 42-43; CP 34, 36, 41; SPRC 1. Thus, the trial court, the Honorable Robert Lewis, determined that only one attorney would be needed going forward despite LDT's motion seeking continued appointment of co-counsel. RP 45-46; CP 34-42. Because of the trial court's ruling, the LDT moved to withdraw from the case. RP 46-47; CP 41-42. On March 7, 2017, the trial court officially granted the motion, allowing the LDT to withdraw, and appointed Jeff Barrar. CP 41-42.

Just two days later, on March 9, 2017, Barrar was conflicted off Luyster's case and Chuck Buckley was appointed. RP 52-53. On June 9, 2017, Buckley filed his own motion seeking appointment of co-counsel. CP 552-55. The trial court granted this motion and appointed Steven Rucker as co-counsel. CP 556-57. Thus, by this point, Luyster was once again represented by two attorneys.

As the case proceeded towards the October trial date, however, Luyster filed two motions seeking the substitution of counsel; he wanted the reappointment of the LDT. The motions were filed on June 27, 2017 and August 29, 2017. CP 559-562, 565-571. In his motions and in front of the trial court Luyster asserted that there was a breakdown in communication between himself and Buckley and Rucker, that this breakdown was harming his case, and that he no longer trusted his

attorneys. RP 66-70, 85-96; CP 559-562, 565-571. Each motion was denied. RP 66-70, 85-96. Luyster did not renew his motion to substitute counsel in the two months leading up to trial, during trial, or after trial.

B. FACTUAL HISTORY

Brent Luyster lived with his brother Michael Luyster at his brother's house in Woodland, Washington. RP 1016-17, 1020, 1622-24. Luyster had moved there in the beginning of July in 2016 along with his girlfriend, Andrea Sibley, and their, at the time, toddler son Alrick. RP 1016-17, 1621-23. When they were moving into Michael's home, Paul Sibley, Andrea Sibley's father, assisted them by moving additional items into a storage unit that was basically across the street from Michael's home. RP 679-681. Luyster's and Michael's mother, Susan Dvorak, also lived at the Woodland home. RP 700-01, 1622-23.

Luyster and Sibley had been in an on-again-off-again relationship since 2008. RP 1621-22. Luyster also had additional children with other women with whom he had been in relationships. RP 703, 1602. With April Moore, Luyster had three children, Molly, Clara, and Brent Jr. ("Jr."). RP 702, 1602. Jr. was around 12 years-old in July of 2016. RP 1602, 1622. With Erin Cochran, Luyster had another son named Saxon. RP 1622, 1625, 2319.

In July of 2016, Luyster had a pending criminal case in Cowlitz County in which he was charged with Assault in the Second Degree against Erin Cochran. RP 2168-69, 2256, 2319-2320. Luyster was bailed out of jail in that case by his best friend, Zachary Thompson, and another friend of his named Joseph Lamar. RP 513-16, 614, 1632, 2169-2170, 2291. On July 15, 2016, Luyster learned from his attorney that his Cowlitz County case was going to be picked up by the federal government and he believed that this meant that he was going to be arrested and put into custody. RP 526, 706-07, 709, 960, 1624, 2290, 2308-09, 2318. This topic was discussed frequently by Luyster throughout that day and into the night; the news displeased him. RP 530-31, 542, 960, 1565, 2291, 2317-18.

Sometime in the early afternoon of the 15th, Sibley drove Luyster, Jr., and Alrick in her gold Ford Explorer over to Marvin Schram Jr.'s house in Vancouver, Washington for a get together that involved friends and family drinking beer. RP 526-28, 567, 957-963, 1627. Thompson, and his girlfriend Brienne Leigh, came over as well. RP 526-28, 567, 962, 1628. The couple had been together for four years and Thompson was the father of Leigh's two young daughters. RP 511-12. As the afternoon became evening Lamar called over to the house to let the group know that he too wanted to see Luyster "before he goes away." RP 532.

Sometime thereafter, Luyster left Schram's house with Thompson and Leigh in Leigh's red Suzuki Forenza and headed to Lamar's house in Woodland, Washington. RP 525, 532-33, 569, 966. Luyster left Sibley, Jr., and Alrick behind, and did not tell them that he was leaving. RP 966-67, 1632-34, 1670. On the way to Lamar's, Luyster asked Thompson for his gun; Thompson replied "not right now." RP 534-35, 570. Luyster also abruptly asked the couple "You guys know I would never hurt you, right?". RP 537, 570.

The only people at Lamar's when Luyster, Thompson, and Leigh arrived were Lamar and his girlfriend Janelle Knight. RP 539. Everyone was drinking beer and socializing. RP 540-41. Meanwhile, at about 9 PM Sibley and the kids left Schram's house. RP 1634. Sibley would end up on the phone with Luyster and then headed to Lamar's home to pick him up. RP 543-44, 574, 1635, 1672. Sibley arrived about 45 minutes later in her gold Fold Explorer. RP 545, 574, 1636, 1673.

After arriving, Sibley and Jr. exited the car, but Sibley left Alrick in it since he was sleeping. RP 1637, 1675. At some point, Lamar says "girls why don't you give us a minute." RP 1637, 1675. Next, Leigh asks Jr. if he had eaten anything since she last saw him at Schram's house. RP 547, 577. Jr. said that he had not so Leigh and Knight took him inside and

made him chicken strips and chili. RP 547-48, 577-78, 1697-98. Sibley, on the other hand, returned to her car to be with Alrick. RP 1637, 1675. Luyster, Thompson, and Lamar remained outside talking. RP 1638-39, 1675.

Once inside, Leigh prepared food for Jr. and he began eating it at the breakfast bar in Lamar's kitchen while Knight sat down on the ottoman part of the couch in the living room. RP 548, 577-78. About 10 minutes passed since Leigh went inside when she heard two gun shots back to back. RP 440, 577-78. She immediately ran to the front door to tell the men to stop, but before she could get there Luyster stepped inside and shot her in the face. RP 551-53, 560, 565, 578, 617-18, 1162-63, 1168-1171, 2042-43, 2065. Leigh fell to the ground and passed out. RP 553.

Sibley was seated in the driver's seat of her car when she heard the men talking and then several gun shots back to back, her driver's seat window shatter, and then felt glass all over her. RP 1638-1640, 1676-77. Sibley immediately checked on Alrick who was okay and still asleep. RP 1640, 1676-77. Sibley could not see anything outside on account of the darkness but heard several more gun shots back to back and immediately thereafter Luyster got into the car with a scared and shaking Jr. and kind

of shouted "get out of here, go." RP 1641-42, 1678. Sibley began driving away and headed back to Michael's house. RP 1643.

Neighbors of Lamar also reported hearing a succession of gunshots at about 9:30 to 10:00 PM. RP 750, 755-57, 765, 771, 1004, 1006-08. Two neighbors stated that they heard two or three males yelling, several gunshots (3 or 4) a pause and then several more gun shots (3 or 4) that sounded fainter than the first shots. RP 755-57, 765, 771, 773, 777. After the last shots the neighbors then heard a car going down the gravel drive way or road that seemed to be going faster than normal. RP 772, 778, 1008.

In the meantime, Leigh woke up in a puddle of her own blood, with parts of her jawbone, tongue, some teeth, and bullet particles lodged in her throat. RP 553, 579. She coughed out what she could and started looking for her phone to call 911. RP 553, 579. Leigh went to the bathroom first but did not see her phone. RP 554, 580. She then laid down and started to "take a nap" while bleeding on the floor in front of toilet. RP 554, 580. At this point, she began "thinking about [her] kids, how [she] can't die" and "telling [her]self, you know, get up. . . ." RP 555, 581. Leigh then gave up on finding her phone and decided that she was going

to have to drive for help. RP 555. She noticed that Knight was dead on the couch. RP 555.

Leigh made it to her car, the red Suzuki, and drove to the AM/PM located nearby. RP 557-58, 586. Surveillance footage shows her arriving at the AM/PM just before 10:30 PM. RP 2053-2061, 2140.[1] People at the AM/PM recognizing how seriously Leigh was injured began helping her—luckily a registered and former paramedic was on the scene[2]—and called 911. RP 390-93, 557-58, 798-810. While waiting for help, Leigh was in shock and choking on her blood. RP 558, 590. Police and medical arrived shortly thereafter and Leigh was taken to the hospital. RP 400-03, 423-26.

While Leigh was at the AM/PM, Luyster, Sibley, Jr., and Alrick had made it back to Michael's house. Dvorak was present, but Michael was elsewhere. RP 713-14, 1024-26. After Luyster's arrival, Dvorak began calling Michael and requesting that he come home—she was insistent that he come pick up Jr. RP 1024-28. Call logs show that Dvorak called Michael at 10:10, 10:23, 10:27 and 10:34 PM. RP 1027, 1031, 1112-15. Michael acceded and headed that way instead of where he was

---

[1] The actual timestamp on the video was incorrect, but a detective was able to ascertain that the timestamp was 57 minutes fast. RP 2053-2061.

[2] She testified that Leigh was having trouble breathing and was gurgling and grunting due to the injuries and the large amount of blood. RP 799-804.

otherwise going, which was to pick up his daughter. RP 1025-27. Dvorak, at Luyster's request, went to the local Walmart, arriving at 11:04 PM and purchased a six-pack of beer for him and left at 11:10 PM. RP 1093-94, 1123-26. She then returned to Michael's house. RP 723, 1094.

At this point, in between 11:30 PM and midnight, everybody at Michael's house splits. RP 725-27. Michael, who admits that Luyster and Sibley seem shaken up when he got to the house, takes Jr. and drives out to his cousin Pam and Tim Chandler's house in Yacolt. RP 1035, 1043-44. This residence is about 30 minutes away from his home, but Michael still has to pick up his daughter so does that and arrives at the Chandler's in the middle of the night despite not calling ahead of time. RP 1035-40, 1058, 1072-73. He ends up staying there with Jr. for over two nights. RP 1063-64.

Luyster and Sibley, with Alrick, get back into Sibley's car and head to Luyster's uncle's (Steven Dvorak) trailer in Ocean Park and leave Sibley's phone, the only mobile phone they have, at Michael's house. RP 1649-1652, 1683. They arrive, without providing notice to Steven Dvorak, at around 1:00 AM. RP 1336-37, 1652. And at around 3:00 AM Susan Dvorak eventually heads to her sister's (Sharon Dvorak) house in Brush Prairie. RP 727-28, 1090-91. Thus, none of the adult residents of

Michael's house in Woodland, Washington were actually there nor were they asleep in the early morning hours of July 16, 2016.

By this time the police were investigating the homicides and due to Leigh's identification of Luyster as the shooter he was their main suspect. RP 506, 1162-64, 1168-1171. Leigh was able to, in between receiving medical treatment at the hospital, write Luyster's name down after she was asked by policed who the shooter was and she also wrote that he was in trouble with "the feds." RP 506, 1162-64, 1168-1171. Officers arrived at Lamar's house at approximately 11:00 PM. RP 459, 643. They observed the bodies Thompson and Lamar, deceased and laying in the driveway about 10 feet from the porch, and Knight's body, deceased and laying back on the couch inside Lamar's residence. RP 454, 457, 467, 470, 1192, 1197, 1248, 1262-64, 1295-96. Responding officers and investigating detectives observed, collected, and/or photographed large amounts of evidence to include: .45 caliber Federal cartridge casings, a tooth, beer cans, a cigarette butt, large amounts of blood at the front door and in the bathroom, a bowl of chili with a piece of chicken on the kitchen counter, piles of automotive glass found in the driveway, Leigh's cellphone, and the bodies themselves. RP 470, 474, 487, 628-29, 638, 1249-1251, 1280-1282, 1289-1290, 1304-05, 1318-19.

Other investigating officers fanned out to Michael's house, and to Yacolt and Brush Prairie seeking Luyster and/or his family members for questioning. They found, and interviewed, Michael Luyster and Susan Dvorak in the early morning hours of July 16, 2016 in their respective locations. RP 837-38, 1036-1044, 1088-1092, 1107-1110. Luyster and Sibley had not yet been located, but they left Luyster's uncle's house in Ocean Park that same morning and started driving back towards Cowlitz County. Sibley had been too scared and unsure to fall asleep. RP 1654. Luyster had told her that "people had been shot." RP 1664.

On the drive back Sibley was very tired and concerned that she would fall asleep so she stopped driving and pulled over many times. RP 1658, 1687, 1696. By early in the afternoon on July 16, 2016, Sibley and Luyster stopped at Abernathy Creek, walked down a slope and past the gate to get to the creek area, and there they laid down some blankets and tried to eat. RP 1659-1660, 1687. Unbeknownst to them, a maintenance worker who worked occasionally at the Abernathy Creek Fish Hatchery noticed Sibley's gold Ford Explorer as he was going to work and called 911 because he had heard on the news that the police were looking for the vehicle. RP 1074-77. Luyster and Sibley were at the location for about 30 minutes to an hour when they heard police dogs and police announcements over a PA system. RP 1161-62, 1689.

Multiple deputies had responded to the 911 call and made announcements for Luyster to surrender. RP 849-51, 854-56, 862, 875, 878, 889. Luyster yelled out "I'm unarmed don't shoot" and walked up to the deputies with his hands up, and was placed under arrest. RP 854-58, 878-89. Luyster told the deputies that Sibley had nothing to do with it as they separated her and Alrick from the area. RP 881, 886. Additionally, a responding detective secured Sibley's gold Ford Explorer, noticed that its driver's side window was broken out and shards of glass remained on the running board, and had it transported from the scene. RP 889, 897-98, 935-36.

After Luyster was arrested, the police executed search warrants on Sibley's Explorer, Leigh's Suzuki, and a storage unit that Luyster and Sibley utilized. RP 1375, 1397-98, 1412-13. Of relevance from the cars, the police seized shards of automotive glass from Sibley's Explorer and a beer can from the rear passenger compartment of Leigh's Suzuki—where Luyster had been sitting when they drove him from Schram's home to Lamar's residence. RP 1376-79, 1400-09. In the storage unit, in addition to finding indicia of dominion and control, officers discovered a box and case that likely carried a Kimber Ultra Raptor II pistol, part of an instruction manual for a Kimber firearm, and tools and chemicals used to clean and maintain firearms. RP 1412, 1414, 1423-32, 1503-04.

Officers continued their investigation by conducting additional interviews, securing cell phone data, and sending some evidence that had been collected to the crime lab. For example, the police learned from April Moore, Jr.'s mother, that when she got Jr. back into her custody on the 17th or 18th and brought him home that he just broke down crying and was devastated. RP 1605-1611. When officers tried to interview Jr. he was very, very angry, cursed at the police, said to them "I'm not a squealer," and would begin to cry before getting angry again. RP 936-37, 39. In the following weeks Jr. would attempted to commit suicide, had a panic attack after he watched a bloody movie, attempted to run away from home on multiple occasions, was diagnosed with PTSD, and had legal issues. RP 1611-15.

Additionally, the State's various experts concluded that (1) the samples of glass recovered from Lamar's driveway was "consistent in every characteristic" with the glass recovered from Sibley's Explorer; (2) a beer can found in the back passenger compartment of Leigh's Suzuki contained a finger print from Luyster; (3) all the six shell casings collected were from Federal brand .45 caliber ammunition and were fired from the same .45 caliber gun as were bullets recovered from Leigh, Knight, and Thompson; (4) a cigarette butt found outside at Lamar's residence had Luyster's DNA on it; and (5) Thompson's cause of death was a gunshot

wound to the neck, Lamar's cause of death was a gunshot wound to the head, and Knight's cause of death was a gunshot wound to the neck. RP 1709-1714, 1726-28, 1799-1860, 1910-1915, 1922-32. Also, as mentioned, detectives obtained cellphone records, which included Leigh's, Sibley's, Thompson's, and Lamar's. RP 2064. These records were utilized to confirm the timeline of communications between the parties as well as, and in particular, Leigh's and Sibley's locations throughout July 15. RP 2073-2099, 2121.

Leigh survived the gunshot wound to her face but suffered multiple jaw fractures, which a doctor characterized as shattered, displaced teeth, a tear in the back of her throat, and had to be intubated upon her arrival to the hospital. RP 914, 1220, 1224. She was considered a critical patient. RP 916. Doctors removed between 15 to 20 metal fragments and bone fragments from inside her mouth or airway as well as some teeth that were loose inside the body. RP 1221-24. To try to repair the damage doctors conducted a bone graft, utilized a reconstruction plate, and wired Leigh's jaw shut. RP 1229-1231. Throughout her time at the hospital Leigh continuously identified Luyster as the person who shot her. RP 2042-43. And when she was discharged about a month later and was able to speak, she verbally identified Luyster as the shooter. RP 2065. Finally, when asked at trial whether she had any doubt that Brent Luyster was the person

who shot her she responded "No. That – the look on his face will forever be engrained in my brain." RP 551, 665, 618.

ARGUMENT

I. The trial court properly denied Luyster's motions to substitute counsel because there was not an irreconcilable conflict or a complete breakdown in communication between Luyster and his attorneys.

Luyster argues that the trial court improperly denied his motions for substitution of counsel. The trial court, however, properly denied these motions because Luyster did not—and still cannot—show "good cause" sufficient to warrant substitution of counsel "such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication," significant enough "as to prevent presentation of an adequate defense." *State v. Davis*, 3 Wn.App.2d 763, 790, 418 P.3d 199 (2018) (citations and internal quotations omitted).

a. Standard of Review

Appellate courts review a "trial court's decision not to appoint new counsel" under the abuse of discretion standard. *Id.* at 791; *In re Stenson,*

42 Wn.2d 710, 723, 16 P.3d 1 (2001) (*Stenson II*).[3] An abuse of discretion occurs when "no reasonable person would adopt the trial court's view." *State v. Martin*, 169 Wn.App. 620, 628, 281 P.3d 315 (2012) (citations omitted).

b. Substitution of counsel

Preliminarily, "[m]ultiple requests to dismiss assigned counsel, without more, does not justify substitution of new counsel." *Schaller*, 143 Wn.App. at 260. Nor may a defendant "rely on a general loss of confidence or trust alone to justify appointment of a substitute new counsel." *Id* at 268. Similarly, a defendants desire to have a "particular advocate" cannot, by itself, form the basis for the substitution of counsel. *Id.* at 267. And more specifically, "indigent defendants with appointed counsel do not have the right to their counsel of choice." *State v. Hampton,* 184 Wn.2d 656, 662-63, 361 P.3d 734 (2015) (citing *U.S. v. Gonzalez-Lopez,* 548 U.S. 140, 151, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)).

---

[3] Luyster attempts to characterize the denial of his motions to substitute counsel as a "denial of counsel" requiring de novo review. Brief of Appellant at 19. But Luyster was represented by two attorneys during most of the pretrial proceedings, throughout trial, and at sentencing. *See generally* RP. And the denial of counsel when a defendant is actually represented is inextricably linked to the quality of the defense. *State v. Thompson*, 169 Wn.App. 436, 457, 463-64, 290 P.3d 996 (2012); *State v. Schaller*, 143 Wn.App. 258, 269-270, 177 P.3d 1139 (2007). Luyster does not claim that he received the ineffective assistance of counsel at any stage. *See* Br. of App. He, thus, cannot be said to have been denied counsel.

Instead, "[t]o warrant substitution of counsel the defendant must show "'good cause,' such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication," significant enough "as to prevent presentation of an adequate defense." *Davis*, 3 Wn.App.2d at 790 (citations and internal quotations omitted). The test for determining whether a trial court erred in denying a motion for substitution of counsel based on an alleged irreconcilable conflict has three factors that look to "(1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion." *Stenson II*, 142 Wn.2d at 723-24.

1. Extent of the Conflict

Inquiring into the alleged conflict requires an examination of "both the extent and nature of the breakdown in communication between attorney and client and the breakdown's *effect on the representation the client actually receives*." *Id.* at 724 (emphasis added). If the representation "is adequate, prejudice must be shown." *Schaller*, 143 Wn.App. at 270. Moreover, because the "purpose of providing assistance of counsel is to ensure that criminal defendants receive a fair trial, the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such." *Stenson II*, 142 Wn.2d at 725 (citing *Wheat v. U.S.*, 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)). Furthermore,

whether a defendant renews his or her motion to substitute counsel during the trial can be utilized in determining the extent of the conflict or the severity of the breakdown in communication between counsel and the defendant. *Id.* at 731.

Here, Luyster filed motions on June 27, 2017 and August 29, 2017 seeking to discharge Buckley and Rucker and to reinstate his prior defense team. CP 559-562, 565-571. In his motions and in front of the trial court Luyster asserted that there was a breakdown in the communication between himself and his attorneys, that this breakdown was harming his case, and that he no longer trusted his attorneys. RP 66-70, 85-96; CP 559-562, 565-571. Each motion was denied. RP 66-70, 85-96. Luyster's trial began on October 30, 2017, but he did not renew his motion to substitute counsel in the interim, during trial, or after the trial concluded. RP 349.

Luyster's decision not to renew his motion is evidence that the extent of the conflict between he and his attorneys was not substantial. *Stenson II*, 142 Wn.2d at 731. And no evidence exists to suggest that the conflict between Luyster and his attorneys, even assuming one still existed in the two months leading up to the trial or at trial[4], had a negative "effect on the representation the client actually receive[d]". *Id.* at 724. Buckley and Rucker (1) successfully moved to sever Luyster's attempted escape

[4] Luyster does not point to any evidence in the record or argue that a conflict existed after August 29, 2017. *See* Br. of App. 19-23.

and associated crimes from his murder case[5]; (2) moved to unshackle Luyster during client meetings in the jail in order for the meetings to be more productive; (3) filed two CrR 3.6 motions seeking the suppression of evidence; (4) filed a motion to change venue; (5) filed a motion to prohibit the testimony of Andrea Sibley based on spousal privilege; (6) vigorously represented Luyster at trial, e.g., by utilizing multiple defense experts; and (7) moved for a new trial based on alleged juror misconduct. RP 70-78, 99-106, 144-45, 300-05; CP 79-81, 84-90, 96-100, 123-25, 131-37, 237-241, 292-93, 494-98.

Additionally, both Buckley and Rucker opposed Luyster's substitution motions and explained to the trial court that they did not believe that there had been a complete breakdown in communication. RP 66-67, 86-89, 92-93. In July of 2017, Buckley told the court that "[w]e've been communicating on a weekly basis, for the most part" and that "there were a couple issues that we aren't in agreement on, but that's standard in every case. . . ." RP 67. In August of 2017, Rucker responded to Luyster's motion by informing the court that he was "engaged in vigorous representation on [Luyster's] behalf." RP 86. In fact, Buckley and Rucker so desired to communicate with Luyster and have a productive relationship with him that in September, and again in October, they moved

[5] Buckley successfully argued the severance motion immediately after Luyster's motion for substitution of counsel was denied. RP 66-78.

or argued to have him unshackled during their jail meetings despite Luyster's dangerousness and disruptive behavior in the jail—going so far as to sign waivers of liability in order to achieve this aim. RP 99-107, 300-05. Moreover, Luyster did not complain about his legal representation at either of these hearings. RP 99-107, 300-05. But perhaps the best evidence that the extent of the conflict was not substantial, however, is that even now Luyster does not allege that he received the ineffective assistance of counsel or argue that whatever conflict existed prevented him from getting a fair trial.

All in all, Luyster's primary aim in filing the substitution motions seems to have been to have his previous defense team restored based on a preference for them and not truly because of an irreconcilable conflict with Buckley and Rucker. *See also* RP 48-50. And the trial court recognized this telling Luyster:

> I can tell you I'm not going reappoint the prior defense team because both of them have two homicide or attempted homicide referrals right now. So whether I leave this team on or get another team on, it won't be Mr. Dunkerly and Mr. Yoseph. So if that's what you're trying to accomplish by repeatedly asking me for the same thing, you're not going to get there. They've moved on. They've got other cases and your case won't go any faster or any better because you keep asking for those people. . . .

RP 85. Thus, and for the other reasons mentioned above, the trial court was correct when it stated regarding the extent of the conflict that it "still

d[id] not see any indication that they are [sic] broken down in communication." RP 95.

2. *Adequacy of the Trial Court's Inquiry*

When a defendant files a motion to substitute counsel, the trial court has an "obligation to inquire thoroughly into the factual basis of the defendant's dissatisfaction." *Thompson*, 169 Wn.App. at 462 (citation and internal quotation omitted). The purpose of the inquiry is to provide the trial court with a "sufficient basis for reaching an informed decision." *Id.* (citation and internal quotation omitted). Accordingly, a trial court's inquiry is adequate when it allows "the defendant and counsel to express their concerns fully." *Schaller*, 143 Wn.App. at 271. In fact, a formal inquiry is not even necessary "where the defendant otherwise states his reasons for dissatisfaction on the record." *Id.* at 271-72 (citation omitted).

Here, the trial court, in response to Luyster's motions to substitute counsel, allowed Luyster multiple opportunities at each hearing to express his concerns regarding his appointed attorneys and the purported communication issues. RP 66, 68-69, 86, 90-92. And Luyster accepted these opportunities to express his dissatisfaction. RP 66, 68-69, 86, 90-92. That Luyster was not always loquacious when given the chance to address the court is irrelevant in determining whether the trial court inquired

thoroughly enough to make an informed decision on Luyster's request. *Thompson*, 169 Wn.App. at 462; RP 66, 68-69, 86.

The trial court's inquiry was sufficient because in addition to reviewing Luyster's written pleadings prior to the hearings[6] and hearing from Luyster, the trial court got input from both Buckley and Rucker on the issues Luyster raised before denying his motions. RP 66-70, 85-96. Nothing more is required by the law. Moreover, that the trial court ultimately did not agree with Luyster's claims regarding the extent of the conflict with his attorneys does not mean that inquiry into those concerns was insufficient. *See* Br. of App. at 23.

3. *Timeliness of the Motion*

Where a motion for substitution of counsel "comes during the trial, or on the eve of trial" a trial court may reject the motion as untimely. *Stenson II*,142 Wn.2d at 731-32. On the other hand, that granting a motion for substitution of counsel would result in the continuance of a trial date does not necessarily mean that the motion is untimely. *U.S. v. Moore*, 159 F.3d 1154, 1161 (9th Cir. 1998).

Here, Luyster's motions were timely as they occurred months before the scheduled trial date. And while the substitution of counsel

[6] COURT: "I've read your materials. You want to explain it in any more detail why you think you can't work with Mr. Buckley and Mr. Rucker, or do you want [sic] just stand on your written materials." RP 85.

likely would have required a continuance, this fact does not weigh heavily against Luyster.

When looking at the extent of the conflict, the adequacy of the inquiry, and the timeliness of the motion the trial court correctly concluded that there had not been a complete breakdown in communication and that an "irreconcilable conflict" did not exist. *See Schaller*, 143 Wn.App. at 271-72; RP 95. Accordingly, the trial court did not abuse its discretion when it denied Luyster's motions to substitute counsel.

II. The search warrant affidavit for Luyster and Sibley's storage unit contained sufficient information to establish the reliability of the named or identified individuals.

Under both the Constitution of the United States and Washington's Constitution, a search warrant may issue only upon a determination of probable cause. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Id.* When the affidavit in support of a search warrant is based on the tips of informants "the constitutional criteria for determining probable cause is measured by the two-pronged *Aguilar–Spinelli* test." *State v. Chamberlin*, 161 Wash.2d

30, 42, 162 P.3d 389 (2007). Under the *Aguilar-Spinelli* test, the affidavit must demonstrate the informants' (1) basis of knowledge and (2) veracity. *State v. Vickers*, 148 Wn.2d 91, 112, 59 P.3d 58 (2002).

The basis of an informant's knowledge can be established by his or her own firsthand observations. *State v. Tarter*, 111 Wn.App. 336, 340, 44 P.3d 899 (2002). Furthermore, even "passing on firsthand information satisfies the basis of knowledge prong." *Id.* (citing *State v. Duncan*, 81 Wn.App. 70, 76, 912 P.2d 1090 (1996)).

When an identified citizen informant or victim provides information to police that is utilized in a search warrant affidavit the veracity showing is relaxed. *State v. Northness*, 20 Wn.App. 551, 555-58, 582 P.2d 546 (1978); *State v. Lair*, 95 Wn.2d 706, 710-13, 630 P.2d 427 (1981) (holding that "even if nothing is known about the informant, the facts and circumstances under which the information was furnished may reasonably support an inference that the informant is telling the truth"). In fact, "[c]itizen [or identified] informants are deemed *presumptively* reliable." *State v. Gaddy*, 152 Wn.2d 64, 73, 93 P.3d 872 (2004) (emphasis added) (citation omitted); *Tarter*, 111 Wn.App. at 340 (stating that an "informant's veracity is established when the informant provides firsthand details and is a named citizen"). Courts grant citizen or identified informants this presumption because there "is less risk of information

being a rumor or irresponsible conjecture" and the "informant's report is less likely to be marred by self-interest." *Id.* Because the presumption of reliability obtains when the citizen informant makes a report it is the party contesting the information that must overcome the presumption. *Id.* at 74. Similarly, when the "commonsense inference to be drawn is that the person providing information is a police officer" his or her observations "are considered a reliable basis for the issuance of warrants." *State v. Matlock*, 27 Wn.App. 152, 155, 616 P.2d 684 (1980); *U.S. v. Ventresca*, 380 U.S. 102, 111, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965); *State v. Laursen*, 14 Wn.App. 692, 695, 544 P.2d 127 (1975).

Probable cause itself "may be based on hearsay, a confidential informant's tip, and other unscrutinized evidence that would be inadmissible at trial." *State v. Chenoweth,* 160 Wn.2d 454, 475,158 P.3d 595 (2007) (citing *State v. Huft*, 106 Wn.2d 206, 209-210, 720 P.2d 838 (1986));[7] *Franks v. Delaware*, 438 U.S. 154, 164-65, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). That these types of evidence can establish probable cause is unsurprising since "the concept of probable cause . . . requires not certainty but only sufficient facts and circumstances to justify a reasonable belief that evidence of criminal activity will be found." *Id.* (citation omitted).

[7] In fact, probable case, as established by a search warrant affidavit, "may be based in whole . . . upon hearsay." *Id.* at 465.

A judge exercises judicial discretion in determining whether to issue a search warrant. *Vickers*, 148 Wn.2d at 108. That decision "is reviewed for abuse of discretion." *Id.*[8] A search warrant, once issued, is entitled to "a presumption of validity" and reviewing courts shall accord "great deference to the magistrate's determination of probable cause." *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007); *Vickers*, 148 Wn.2d at 108; *State v. O'Connor*, 39 Wn.App 113, 123, 692 P.2d 208 (1984) ("Both *the superior court* and [the Court of Appeals] are required to give great weight to a magistrate's determination that probable cause exists . . .") (emphasis added). As a result, "[d]oubts concerning the existence of probable cause are generally resolved in favor" of the validity of the search warrant. *Vickers*, 148 Wn.2d at 108-109; *Chenoweth*, 160 Wn.2d at 477.

Here, deputies served a search warrant on storage unit #36 at O'Neill Storage in Woodland, Washington. The deputies were interested in the storage unit because the storage unit was located in close proximity

---

[8] Luyster claims that on appeal "the validity of a search warrant is reviewed de novo" citing *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). Br. of App. at 24. This claim is incorrect and unsupported by *Neth*. *Neth* stands for the proposition that a trial court's assessment of probable cause when acting in an appellate capacity is reviewed de novo while the issuing magistrate's determination of probable cause is always reviewed for abuse of discretion. 165 Wn.2d at 182. This Court has reached that same conclusion as has our Supreme Court. *See State v. Powell*, 181 Wn.App. 716, 723, 326 P.3d 859 (2014); *State v. Espey*, 184 Wn.App. 360, 336 P.3d 1178, 1184 (2014) (unpublished portion); *State v. Allen*, 2 Wn.App.2d 1052, 2018 WL 1172609 (2018) (unpublished); *State v. Erickson*, 168 Wn.2d 41, 45, 225 P.3d 948 (2010). Unpublished decisions "may be accorded such persuasive value as the court deems appropriate." GR 14.1

to the home where Andrea Sibley and Luyster had just moved, during that move the storage unit was accessed, they were at the house contemporaneous to the crime, and the vehicle in which Andrea Sibley and Luyster were found contained a large amount of items suggesting a "preparation to leave the area." CP 108-09, 113, 115. The commonsense inference from the evidence is that Sibley and Luyster, after committing the crimes, went to the storage unit to collect property in order to leave the area, but also that he or Sibley may have also left—purposefully or inadvertently—evidence of the crimes at the storage unit.

Together, Andrea Sibley, the owner of O'Neill Storage LLC, and Paul Sibley, Andrea's father, established the existence, location, and utilization of Andrea Sibley's storage shed by providing firsthand knowledge to the police and by each corroborating the information provided by the others. CP 108-09, 113, 115. Andrea Sibley told the police she and Luyster were staying with Luyster's brother (Michael) in Woodland, but that she did not know the address because they had only "been there for two weeks." CP 108. She did know, however, that the house was on Green Mountain Road. CP 108. Andrea Sibley also reported that her dad "did help her move some stuff" but that she had not spoken to him "in a week or so." CP 109.

Paul Sibley provided similar information. CP 113. He told the police that:

> two weeks ago he helped Andrea Sibley and Brent Luyster move from Longview, Washington, to Michael Luyster's house, in Woodland, Washington. Paul said that he also helped them move some of their belongings into a storage unit that is located roughly across the road from the residence of Michael Luyster, 7104 Green Mountain Road, Woodland, Washington. Paul said that the storage unit had been rented in Andrea's name, and was Andrea's storage unit.

CP 113. Paul Sibley was also able to "describe[] the specific location of the storage unit used by Andrea Sibley." CP 113.

With the above information in hand, an officer "contacted the owner of the storage unit business, O'Neill Storage LLC, and learned that approximately two weeks ago, Andrea Sibley began renting unit #36, at O'Neill Storage LLC." CP 113. That officer also "obtained a description of the storage unit" from the owner. CP 113.

Given that "[c]itizen [or identified] informants are deemed presumptively reliable" and that the party contesting the information must overcome the presumption, Luyster must show why Andrea Sibley (his girlfriend) and Paul Sibley should not be considered reliable. *Gaddy*, 152 Wn.2d at 73-74. He cannot do so. Instead, he ignores the information provided by Andrea Sibley and merely claims that "[n]othing in the affidavit supports a conclusion that Paul Sibley is sufficiently reliable that

his information could be used to establish probable cause for a search." Br. of App. at 27. But that analysis gets the burden backwards and also ignores that fact that Andrea Sibley corroborated Paul Sibley's report that she and Luyster moved two weeks ago to stay with Luyster's brother in a house on Green Mountain Road in Woodland and that her father helped her move. CP 108-09. With that information corroborated—the presumption of Paul Sibley's reliability intact—there remains no persuasive reason to doubt Paul Sibley's description of also helping Andrea Sibley move some belongings into a very specific storage unit that was rented in her name. CP 113.

Likewise, the report from the owner of the storage unit business O'Neill Storage LLC in Woodland, Washington that Andrea Sibley began renting a specific storage unit approximately 2 weeks ago—the same time she moved to the house across the street from the storage unit business—is specifically corroborated by Paul Sibley and generally corroborated by Andrea Sibley. CP 108-109, 113. And while the owner's name is not included in the search warrant affidavit, he or she spoke directly to the police about the business he or she owns, the location of which is known and reported. This level of identification far exceeds what information is generally known about confidential informants or anonymous tipsters. Moreover, here, just like with a named person, there "is less risk of

information being a rumor or irresponsible conjecture" and the "informant's report is less likely to be marred by self-interest." *Gaddy*, 152 Wn.2d at 73-74. No incentive exists for the storage unit business owner to mislead the police. Instead, here "the facts and circumstances under which the information was furnished may reasonably support an inference that the informant is telling the truth." *Lair*, 95 Wn.2d at 710-13.

As a result, the search warrant affidavit established the basis of knowledge and veracity of each of the individuals who provided information to the police and this information could properly be used to establish probable cause. Accordingly, the magistrate did not abuse its discretion when it found probable cause to search the storage unit.

a. Harmless Error

Even assuming, however, that search of the storage unit was not supported by probable cause, any error in admitting the subsequently discovered evidence was harmless. A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). In making such a determination reviewing courts should look to the untainted evidence. *Id.* at 426. If the "untainted evidence" is so overwhelming that it would necessarily lead to a finding of guilt than the error is harmless. *Id.*

"The 'overwhelming untainted evidence' test allows the appellate court to avoid reversal on merely technical or academic grounds while insuring that a conviction will be reversed where there is any *reasonable possibility* that the use of inadmissible evidence was *necessary* to reach a guilty verdict." *Id.* (emphasis added).

Here the untainted evidence included (1) eyewitness identification of Luyster by Leigh (in court and immediately after the incident) as the person who shot her; (2) the fact that Leigh had no motive to lie about who shot her; (3) Luyster's fingerprints and DNA that placed and linked him, respectively, at or to the scene of the crime; (4) Sibley's testimony that she was in the car at the scene when she heard gun shots, the car window break, followed by more gun shots, and Luyster's entry into the vehicle where he ordered Sibley to drive away; (5) Luyster's admission to Sibley that some people had been shot; (6) cellphone location data corroborating the substance and chronology of Leigh's and Sibley's testimony; (7) physical evidence at the scene that corroborated Leigh's testimony, e.g., Luyster's son's meal; (8) shattered auto glass at scene consistent with the vehicle in which Luyster left the scene, which was missing auto glass; (9) Luyster's decision that night to—in the middle of the night—drive to the coast; (10) Luyster's son's behavior after the incident that suggested that he witnessed a traumatic event; and (11)

Luyster's simply unbelievable story about what had happened. This untainted evidence is so overwhelming that it necessarily leads to the conclusion that Luyster is guilty of the crimes for which he was convicted.

Furthermore, while the evidence found in Sibley's and Luyster's storage unit was corroborative of Luyster's guilt, there is not a "reasonable possibility" that the evidence was "*necessary* to reach a guilty verdict." *Guloy*, 104 Wn.2d at 426. This evidence consisted of a box and case that likely carried a Kimber Ultra Raptor II pistol, part of an instruction manual for a Kimber firearm, and tools and chemicals used to clean and maintain firearms. RP 1412, 1414, 1423-32, 1503-04. Based on the other evidence presented, a .45 caliber pistol was likely the murder weapon and Kimber Ultra Raptor II is a .45 caliber pistol. RP 1910-1915, 1932-33. But, as both the State's and Luyster's gun experts testified, a large number of other companies manufacture .45 caliber pistols that were capable of firing the bullets at issue and leaving the observed markings. RP 1932-33, 1944-45, 2369-2370. Moreover, the Kimber gun case that was discovered could have been used to hold a different caliber of weapon and the related manual applied to Kimber firearms in general—it referenced a number of models of Kimber firearms—and not just the .45 caliber pistol. RP 1432, 1503-04. In fact, Luyster claimed the case was for Sibley's .380 Micro Raptor. RP 2339. In short, the evidence did not establish that the murder

weapon was a Kimber Ultra Raptor II or that Luyster owned such firearm. That both parties recognized this is evidenced by the lack of attention paid to the firearm evidence found in the storage unit in the closing arguments. RP 2536-37, 2562-63, 2573. Accordingly, any error in admitting the evidence was harmless beyond a reasonable doubt.

III. The State agrees that the DNA fee, the criminal filing fee, and the jury demand fee should all be stricken upon remand.

Former RCW 43.43.7541 required the imposition of a $100 DNA fee when a defendant was convicted of a felony regardless of whether the State had previously collected the defendant's DNA as a result of a prior conviction. Last year, however, the legislature amended the statute to provide that "[e]very sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.* RCW 43.43.7541 (emphasis added); Laws of 2018, ch. 269 § 18. Luyster has been convicted of multiple felony offenses in the State of Washington that would have required the collection of his DNA.

Similarly, when modifying Washington's statutes concerning legal financial obligations the legislature concluded that trial courts shall not impose the criminal filing fee on an indigent defendant. RCW 36.18.202(2)(h). Luyster's convictions occurred while the former versions

were in place and so the DNA fee and the criminal filing fee were imposed by the trial court. This appeal, however, was pending at the time the statutes were amended.

In *State v. Ramirez*, our Supreme Court held that the statutory amendments applied prospectively. 191 Wn.2d 732, 426 P.3d 714 (2018). This means that the amended statutes, and the relief they offer, apply to all pending cases, including those "pending on direct review and thus not final when the amendments were enacted." *Id.* at 747. Consequently, this Court should remand Luyster's case with instructions for the trial court to strike the DNA fee and criminal filing fee from his judgment and sentence.

Additionally, despite making a finding that "the defendant is indigent and is not anticipated to be able to pay financial obligations in the future" the court imposed a discretionary legal financial obligation—the jury demand fee, which is $250. CP 513-16. Based on the trial court's own findings this legal financial obligation should also be stricken upon remand.

///

///

///

///

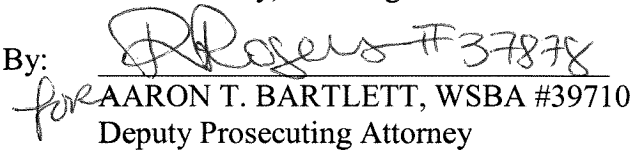
CONCLUSION

For the reasons argued above, this Court should affirm Luyster's convictions and remand to strike the improperly imposed legal financial obligations.

DATED this 19th day of April, 2019.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: 
for AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

April 19, 2019 - 3:02 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	51288-2
Appellate Court Case Title:	State of Washington, Respondent v. Brent Luyster, Appellant
Superior Court Case Number:	16-1-01503-4

The following documents have been uploaded:

- 512882_Briefs_20190419145927D2970509_6259.pdf
  This File Contains:
  Briefs - Respondents
  The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- glinskilaw@wavecable.com

Comments:

Sender Name: Ashley Smith - Email: ashley.smith@clark.wa.gov
Filing on Behalf of: Aaron Bartlett - Email: aaron.bartlett@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:
PO Box 5000
Vancouver, WA, 98666-5000
Phone: (360) 397-2261 EXT 5686

Note: The Filing Id is 20190419145927D2970509