

NO. 52627-1-II

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

2019 FEB 21 AM 11:19
STATE OF WASHINGTON
AP
DEPUTY

AARON WALLACE TROTTER,

Appellant, PRO SE

vs.

STATE OF WASHINGTON

Respondent.

REPLY TO PROSECUTOR'S RESPONSE

AARON W. TROTTER
D.O.C. # 406302
PRO SE

Monroe Correction Center - WSR
P.O. Box 777
Monroe, WA 98272-0777

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I. STATEMENT OF THE CASE

The Cowlitz County Prosecutor charged the defendant, Aaron Wallace Trotter, with two counts of second degree assault RCW 9A.36.021 for a “single assault” against a “single victim” for an incident on Mat 31, 2015. Count I. was by strangulation and count II. was by a firearm with a firearm enhancement stat ing at a time separate and distinct than count I. (charging information attached as Exhibit A).

A jury of the defendant’s peers found him not guilty on the merits in count I. and failed to reach a verdict on count II., leaving the verdict form blank in his first trial on August 14, 2015 (verdict forms attached as Exhibit B-1,2).

During the second trial on January 5th and 6th, 2016, the Judge was forced to step in and declare a mistrial due to “the allowing of inadmissible evidence or ineffective assistant” (verbatim report of proceedings 2nd trial Jan. 6, 2016 p. 131-132 attached as Exhibit B-3).

In Mr. Trotter’s third trial on March 30th and 31st, 2016, he was found guilty of count II. for the same assault he was acquitted of in count I. under the same case number 15-1-00616-6 used in all three trials (verdict form attached as exhibit 13-4).

II. ARGUMENT

The defendant's conviction and sentence for assault in the second degree in count II. for the "same offense", including the "same victim" as count I. violate his Washington State and United States Federal constitutional rights to be free from "double jeopardy" since he was already acquitted for the same assault in count I. as such jeopardy barred Mr. Trotter from trial on count II. for the same offense.

In *State v. Villanueva-Gonzalez* 180 wn. 2d 975, 984-85, 329 P.2d 78 (2014) it states -

Protection against "Double Jeopardy" afforded by the U.S. Constitution stems from the V Amendment, which provides, in part; "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb"... and

Protection against "Double Jeopardy" afforded by Washington State Constitution stems from Article 1, Section 9, which provides, in part; "No person shall ... in a criminal case ... be twice put in jeopardy for the same offense.

It also states the guarantee of the Double Jeopardy clause consists of three separate constitutional protections. It protects against a second prosecution for the same offense after acquittal, it protects a second prosecution for the same offense after conviction and it protects against multiple punishments for the same offense.

Double Jeopardy claims are reviewed de novo.

State v. Villanueva-Gonzalez 180 wn. 2d 975, 984-85 329 P.3d 78 (2014),

State v. Womac 160 wn. 2d 643, 658, 160 P.3d 40 (2007),

In re Pers. Restraint of Moi, 2015, 184 Wsh. 2d 575 (360 P.3d 811),

State v. Whittington Wash App LEXIS 71 (2008) No 57265-2-1,

In re Pers. Restraint of White 1 wn. App 2d 788; 407 P.3d 1173; 2017 Wash. App. Lexis 2930, and United States v. Chipps, 410 F.3d 438 (8th Cir. 2005). Except for In re Pers. restraint of Moi which was a “Collateral Estoppel” violation the other cases listed placed the defendants in “Double Jeopardy” by multiple verdicts of assault for the “same offense” including the “same victim”.

The prosecutor argues the constitutional double jeopardy provisions do not bar retrial following a mistrial granted because a jury was unable to reach a verdict and neither this court nor the United States Supreme Court has ever held that a hung jury bars retrial under the double jeopardy clauses of either the Fifth Amendment or Const. Art 1, sub section 9. That may be but he is missing the issue at hand here. Mr. Trotter is arguing that count I. and count II. arise from the same course of conduct and therefore are one offense with one judgement, and that the constitutional double jeopardy provisions do bar a second prosecution for the same offense after acquittal, and bot state no charge shall be duplicitous or multiplicitious.

The fact that a criminal episode of assault involves several blows or wounds and different methods of administration does not convert it into a case of multiple crimes. The Supreme Court applies the “rule of lenity” and states that assault should be treated as a course of conduct crime and the courts of Appeals must treat it as such “until and unless the legislature indicates otherwise.” Villanueva-Gonzalez, 180 wn. 2d at 984.

This interpretation “helps to avoid the risk of a defendant being convicted for every punch thrown in a fistfight” ... [quoting State v. Tili 139 wn. 2d 107, 116, 985 P.2d 365 (1999)].

In State v. Womac 160 wn. 2d 643, 658, 160 P.3d 40 (2007), it states that the state may bring (and the jury may consider) multiple charges arising from the same criminal conduct in a

single proceeding. Courts may not, however, enter multiple verdicts for the same offense without violating and offending “Double Jeopardy”. It also states RCW 10.43.050 acquittal when a bar, which states when a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he or she cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such a crime, or any degree thereof.

In State v. Whittington Wash. App. LEXIS 71 (2008) no. 57265-2-1 it states the use of a different alternative to commit a crime charged under the same statutory authority has been prohibited by the Washington State Supreme Court and deemed a violation of “Double Jeopardy”.

To determine if multiple assaultive acts are part of the same course of conduct and one offense the Villanueva-Gonzalez court set out five factors.

- [1] The length of time over which the assaultive acts took place,
- [2] Whether the assaultive acts took place in the same location,
- [3] The defendant’s intent or motivation for the different assaultive acts,
- [4] Whether the acts were uninterrupted or whether there were any intervening acts or events,
- [5] Whether there was an opportunity for the defendant to reconsider his actions.

In the defendant’s case for number [1] the underlying acts count I. strangulation and count II. use of a firearm were within seconds of each other, [2] the assaultive acts took place in the same room which was the bedroom (defendant’s bedroom), [3] the plaintiff states the defendant was mad about an argument, [4] the acts were not interrupted and were within seconds, [5] being as the two charged acts were within seconds of each other there was no time

for the defendant to reconsider his actions, making the underlying acts one course of conduct and one judgement (probable cause sheet, Sheriff's office statement and plaintiff testimony from third trial March 30-31, 2016 attached as exhibit C-1, 2, 3).

In *Brown*, the appeals court interpreted RCW 9.94A.589 (1) (a) and (b), and addressed the interrelationship between the phrases "same criminal conduct" and "separate and distinct criminal conduct" and concluded that "crimes which fail to meet the statutory definition of 'some criminal conduct' are necessarily 'separate and distinct'" *Brown*, 100 Wn. App at 113-14. This interpretation of "separate and distinct criminal conduct" has been followed in subsequent cases, including the Washington Supreme Court's recent decision in *Cubias*. *Cubias*, 155 Wn. 2d at 552; See also *In re Pers. Restraint of Sarausad*, 109 Wn. App. 824, 853, 39, P.3d 308 (2001); *Price*, 103 Wn. app. At 855.

It is well settled when there are separate victims involved, that alone qualifies as separate and distinct criminal conduct. *Cubias*, 155 Wn. 2d at 552-53, 556 n.4 (recognizing that offenses involving separate victims arise from separate and distinct criminal conduct); *In re Pers. Restraint of Orange*, 152 Wn. 2d 795, 821, 100 P.3d 291 (2004) ("recognizing that offenses arise from separate and distinct [criminal] conduct when they involve separate victims"); *State v. Wilson* 125 Wn. 2d 212, 220, 883 P.2d 320 (1994) (holding "[f]our assaults, involving four victims, involve four separate and distinct acts"); *State v. Dunaway*, 109 Wn. 2d 207, 215, 743 P. 2d 1237, 749 P.2d 160 (1987) (holding that "crimes involving multiple victims must be treated as separately" and cannot constitute "same criminal conduct"); *State v. Salamanca*, 69 Wn. App. 817, 828, 851 P.2d 1242 (1993) (holding "[t]he assaults in this case arise from separate and distinct conduct because they involve separate and distinct victims"); *State v. Godwin*, 57 Wn.

App 760, 764, 790 P.2d 641 (1990) (holding that crimes involving different victims are separate and distinct regardless of the factual relationship between the offenses).

Citing *State v. Medrano* 132 Wn. App 1038 (Wash. Ct. App 2006), it states although there is no statutory definition of “separate and distinct criminal conduct,” it is well established that in *State v. Cubias*, 155 Wn. 2d 549, 552, 120 P.3d 929 (2005); *State v. Tili*; 139 Wn. 2d 107, 122, 985 P.2d 365 (1999); *State v. Brown*, 100 Wn. App. 104, 113, 995 P.2d 1278 (2000), rev’d in part on other grounds by 147 Wn. 2d 330, 58 P.2d 889 (2002). If two or more crimes fail to meet the statutory definition of “same criminal conduct,” they are necessarily “separate and distinct.” *Cubias*, 155 Wn. 2d at 552.

Two crimes constitute the “same criminal conduct” if they (1) require the same criminal intent, (2) are committed at the same time and place, and (3) involve the same victim. RCW 9.94A.589 (1)(a); *State v. Price*, 103 Wn. App 845, 855, 14 P.3d 841 (2000). The absence of any one of these elements prevents a finding of “same criminal conduct.” *State v. Vike*, 125 Wn. 2d 407, 410, 885 P.2d 824 (1994); *State v. Lessley*, 118 Wn. 2d 773, 778, 827 P.2d 996 (1992). The court of appeals reviews a trial court’s determination of whether two crimes involve the “same criminal conduct” for abuse of discretion or misapplication of the law. *Price*, 103 Wn. App at 855.

III. Conclusion

Based on the preceding argument the defendant requests to remand his 7.8 back to Cowlitz County Superior Court to vacate count II. second degree assault and the accompanying firearm enhancement, as he is not time barred by 10.73.090. (Mandate attached as exhibit c-4).

Please attach Appendix to PRP
Reply Brief.

Thank you

Dated this 18th day of February, 2019

A. W. Trotter

Aaron Wallace Trotter, Pro Se

DOC # 406302, MCE-WSR

Monroe Correctional Complex

P.O. Box 777

Monroe, WA - 98272

Exhibit A

Exhibit B

B-1

FILED
SUPERIOR COURT

2015 AUG 14 P 8:26

COWLITZ COUNTY
STACI L. MYKLEBUST, CLERK

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

BY _____

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 Aaron Wallace Trotter,)
)
 Defendant.)

No. 15-1-00616-6

VERDICT COUNT I

We, the jury, find the defendant, Aaron Wallace Trotter, not guilty
(write in "not guilty" or "guilty")
of the crime of assault in the second degree, as charged in count I.

DATED this 14 of August, 2015.

Perry Piper
PRESIDING JUROR

19

B-2

FILED
SUPERIOR COURT

2015 AUG 14 P 8 26

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

COWLITZ COUNTY
STACIL MYKLEBUST, CLERK

BY [Signature]

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 Aaron Wallace Trotter,)
)
 Defendant.)

No. 15-1-00616-6

VERDICT COUNT II

We, the jury, find the defendant, Aaron Wallace Trotter, _____
(write in "not guilty" or "guilty")
of the crime of assault in the second degree, as charged in count II.

DATED this _____ of August, 2015.

PRESIDING JUROR

20

Scanner

B3

1 THE COURT: You asked him if he was an expert in
2 bruising, and he said he wasn't. And that's the
3 problem is he's making an expert type of a conclusion
4 about an observation of a factual -- that's what an
5 expert does. It's not a fact, it's a conclusion being
6 drawn. And it's not the conclusion -- yeah, you get a
7 bruise, it gets darker as time goes on. That is a
8 common-sense assumption. I don't think there's a
9 problem with that, and I don't think anybody else
10 would. The problem is making a characterization of how
11 a bruise was received, particularly when that is a
12 central issue of this case.

13 I'm not going to grant a dismissal. I don't think
14 there's a basis for that. I am at this time going to
15 grant a mistrial however on that basis. I think if
16 this went up on that basis, it would be tossed out so
17 fast, so I'm not going to go there.

18 MR. LADOUCEUR: I'm just curious. What might the
19 error have been?

20 THE COURT: Well, the error is going to either be
21 the allowing of inadmissible evidence or it's going to
22 be on the basis of ineffective assistance, one of those
23 two bases. But frankly looking at that and looking at
24 the kind of decisions that we see coming out of the
25 Supreme Court, it seems to me pretty black and white.

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1 So I will declare a mistrial.

2 MR. BLONDIN: Do we want to go ahead and reset the
3 trial and readiness since we're here? Or do we need a
4 criminal --

5 THE COURT: We probably need to do that on the
6 docket is what I'm thinking.

7 MR. BLONDIN: Okay.

8 THE COURT: And I can set it on tomorrow's docket.

9 MR. BLONDIN: Tomorrow morning at 8:30 -- or at
10 9:00, I mean?

11 THE COURT: Yeah.

12 MR. LADOUCEUR: My proposal would be to set it next
13 week. Tomorrow is the readiness hearing docket. They
14 generally like to limit those matters.

15 THE COURT: Either one.

16 MR. LADOUCEUR: And at least counsel and I would
17 have some time to figure out scheduling.

18 THE COURT: Okay. That's fine. We'll put it on for
19 next Monday.

20 MR. BLONDIN: Monday is the 12th -- no, the 11th,
21 I'm sorry.

22 THE COURT: The 11th, 9:00 a.m. No, excuse me, it
23 will be at 2:00.

24 So I don't know if you folks want to be around.

25 I'll bring the jury back in and dismiss them. You're

Exhibit C

C-1

FILED
SUPERIOR COURT

2015 JUN -5 P 1:40

COWLITZ COUNTY
STACI L. MYKLEBUST, CLERK

BY: 

COWLITZ COUNTY SUPERIOR COURT

CAUSE # 15-1-00666-6

ARRESTEE INFORMATION AND PROBABLE CAUSE SHEET

Incident No.	A15-1685	AGENCY:	CCSO	Offense:	RCW 9A.36.011 - ASSAULT 1 ST DEGREE (D.V.)
Offense Date:	5/31/2015		Date/Time of Arrest:	6/4/2015 @ 0827	
			Date/Time of Booking:	6/4/2015 @ 0930	

ARRESTEE IDENTIFICATION

Name:	TROTTER, AARON WALLACE		DOB:	7/17/1988	
AKA:			SID#:	WA23812269	
Address:	3232 ROSE VALLEY RD. KELSO, WA 98626				
Phone:		Co-Arrestee/Suspects:			

VICTIM INFORMATION

Note:	1) PLEASE DO NOT USE NAMES OR ADDRESSES OF CHILD VICTIMS OR WITNESSES, USE JANE OR JOHN DOE WITH THE CHILD'S D.O.B. (BUT NO ADDRESS) 2) IF VICTIM CONTACT INFORMATION IS CONFIDENTIAL DO NOT LIST				
Victim Name:	ZIMMERMAN, SHANTELL I.		Victim DOB:	9/8/1986	
Victim Address:	815 N. 1 ST AVE. KELSO, WA 98626				
Victim Phone:	360-430-1519				

PROBABLE CAUSE STATEMENT

You must state probable cause for each new felony, misdemeanor, or traffic offense. Include the types and approximate value of property damage or property taken in property offenses and the type, amount, and field test of controlled substance in drug cases. For citation cases, attach a citation copy in addition to stating probable cause. Failure to provide a statement of probable cause will result in a prisoner's automatic release from custody. Attach extra sheet if necessary.

On 6/2/2015, I was dispatched to a Domestic Violence Report that had occurred at 3232 Rose Valley Rd. on Sunday, 5/31/2015. I contacted the victim and reporting party, Shantell Zimmerman, who reported that she was assaulted by her boyfriend, Aaron Trotter, sustaining numerous injuries. Zimmerman came to the Hall of Justice for interview.

When I made contact with Zimmerman, I observed that she had a black left eye, abrasions under her right eye and right side of neck near the shoulder line. I also observed what appeared to be a contusion in her hair line on her upper left forehead and a small bruise to her center of her lower lip. During the interview, Zimmerman stated that she was at Trotters house, listed above, to barbeque that night where they both had consumed some alcohol.

Revised March 5, 2014

1

Scanned

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Zimmerman said between 2100 and 2200 hours that night, Trotter began yelling at her and arguing. Zimmerman was not sure why he was upset with her. This is when Zimmerman said that Trotter began to assault her by punching her in the mouth. There was the observed bruise and associated cut on the inside of Zimmerman's lip. She was also complaining about tooth pain as a result. Zimmerman said that she fled from Trotter from the kitchen to the bedroom, but Trotter immediately pursued her.

Zimmerman said that she got on the bed to conceal herself from Trotter, but he was right behind her. Zimmerman said Trotter proceeded to punch her numerous times throughout her body. Zimmerman said that she attempted to defend herself from Trotter's attack by trying to block his repeated punches. She showed her right forearm, which was covered in one large bruise from her hand and wrist, almost up to her elbow. This bruise was mainly to the outside of the forearm, which is consistent with being defensive in nature. Zimmerman said that at one point during this assault, Trotter grabbed her from behind, with his arm around her throat, and choked her. Along with the observed abrasion on the right side of her neck, there was also a large bruise that went from the observed abrasion, up her neck and behind her right ear into her hair line. Zimmerman showed me dozens of other bruises of various sizes across the entirety of her body, sizing from small to large, light purple to black in color, on her abdomen, back, neck, face, head, hips, legs, arms and hands. During this assault, Zimmerman remembers passing out for a short period of time, losing consciousness, which she described as a matter of seconds. Zimmerman said that the entirety of the assault last about 10-15 minutes, after she fled to the bathroom and pleaded with Trotter to leave her alone.

Zimmerman advised that during the assault in the bedroom, Trotter took his AR-15 platform rifle and put it to her head. Zimmerman was not able to recall any verbalized threat by Trotter, but stated the barrel of the rifle was pointed at her head, with the barrel touching her skin. Zimmerman showed me a laceration to the back of her head where she said Trotter struck her with the AR-15 rifle, which she believed was with the buttstock of the rifle. I observed a U shaped abrasion on Zimmerman's back, which appeared to have an associated bruise coming off the open end of the U shape. The shape of the observed abrasion and bruise is consistent with the size and shape of the end of a rifle buttstock. Amongst all the other observed bruises, abrasions and contusions on Zimmerman's body, there was a long, oblong shaped bruise on the left flank of her torso, which is consistent in size and shape with the end of a rifle buttstock. Zimmerman advised that Trotter has several firearms in his possession at the residence.

Zimmerman provided me with the clothing she was wearing that night, which had not been cleaned and still had blood on them. Zimmerman sent me photos of herself and her injuries. In one of those photos she was wearing 2 of the 3 bloody clothing items she provided me. In that picture, date stamped 5/31/2015 @ 10:00 PM, Zimmerman is crying with blood running down her chest from her head and hair, along with a blood covered finger in the photo. Zimmerman took this photo when she fled from Trotter into the bathroom after the assault. She also provided an audio recorded statement under the penalty of perjury. Based on the above information, statements and observed injuries, I believe there to be Probable Cause to arrest Aaron Wallace Trotter for Assault 1st Degree Domestic Violence against his girlfriend, Shantell I. Zimmerman.

On the morning of 6/4/2015, CCSO and Lower Columbia SWAT executed a Search Warrant at Trotter's address, 3232 Rose Valley Rd. Kelso. Trotter was taken into custody and booked into the Cowlitz County Jail on this Probable Cause charge and his confirmed Misdemeanor Warrant. Zimmerman is requesting a No Contact Order be issued against Trotter.

**The facts of the alleged criminal activity took place in Cowlitz County, WA at:
3232 ROSE VALLEY RD. KELSO, WA 98626**

I certify under penalty of perjury and under the laws of the State of Washington that the foregoing statement(s) of probable cause is true and correct.				
Date	6/3/2015	City	KELSO	Officer's Signature:
				
Agency:	CCSO	Phone:	360-577-3092	Print Name: B. SPAULDING 1L26
Supervisor's Approval:				

I certify under penalty of perjury and under the laws of the State of Washington that I read the foregoing affidavit of Officer _____ verbatim telephonically to Judge/Commissioner _____ on _____ at _____ am/pm. I further certify that said Judge/Commissioner has authorized me to check the appropriate box below.

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Deputy/Officer Signature: _____
Print Name: _____

- The foregoing affidavit establishes probable cause sufficient to detain the above-named arrestee.
- The foregoing affidavit DOES NOT establish probable cause sufficient to detain the above-named arrestee.

Date Signed: 6-5-2015 Judge/Commissioner: 

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COWLITZ COUNTY SHERIFF'S OFFICE STATEMENT FORM

STATEMENT OF Shantell Zimmerman
ADDRESS 815 N. 1st Ave Kelso, WA
DAY TELEPHONE 360 4301519
NIGHT TELEPHONE Same
DATE OF BIRTH 9/8/86
BUSINESS _____

CASE NUMBER AIS-1685
DATE June 11, 2015
PERSONS PRESENT:

On 5/31/15 I went to Aaron Trotter's house to BBQ & hang out. I was living with him from 11/2013-12/2014. I moved out in December because he had assaulted me and gave me a black eye. We didn't see each other for a little while but then started hanging out again. On 5/31 we were BBQ'ing and drinking and then he started being verbally mean. He kept calling me names and I kept asking him why he was being so mean. This only made him act worse until he eventually started punching me. This started in the kitchen but when he wouldn't stop punching me I ran into his bedroom. He was right behind me so all I could do was try to cover my face and block his punches. He had me down on the bed and just kept punching me over and over. I tried to get up but he grabbed me and then put me in a choke hold. I tried to get his arm from around my neck and [★]as soon as I was about to pass out he let go and shoved me back on the bed and continued the punching. He then grabbed his AR15 from behind his door and put the barrel to my head. Then he took the end of the gun and bashed

I, Shantell I. Zimmerman, do certify (declare) under penalty of perjury under the laws of the State of Washington that I have read the foregoing statement or it has been read to me and I know the contents of the statement, and that the foregoing statement is true and correct. (RCW 9A.72.085)

Signed on this 11 day of June, 2015, in Cowlitz County, Washington.

Signature [Handwritten Signature]

Witness _____

Witness [Handwritten Signature] #1411

DEFENDANT'S EXHIBIT
#15-1-000166
JUN 11 2015

forms/patrol/statement.doc

Revised: 04/05

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COWLITZ COUNTY SHERIFF'S OFFICE STATEMENT CONTINUATION

STATEMENT OF Shantell I. Zimmerman CASE NUMBER A15-1635

PAGE NUMBER 2

me in the back of the head causing a huge gash that bled profusely. He also hit me in the back with the gun. At that point I blacked out for maybe a few seconds. When I came to he was in the living room. I ran into the bathroom and closed the door. There was blood everywhere and I just left it. I just wanted to go to sleep because I had to work in the morning so I yelled at him "just let me go to bed!" which he did and left me alone after that. When I woke up I grabbed my thing and went home. I tried to wash the blood out of my hair ^{but} it was a matted mess. When I got to work my coworkers could tell something was wrong. I told them what had happened. My manager is an RN so she checked my head wound and cleaned it up for me. I felt like I was in shock. It took me 2 days to find the courage to report the incident.

Regarding the choke hold he had one arm wrapped around my throat and was squeezing tighter with the other arm. It left a bruise/mark on my neck otherwise no other injury.

I, Shantell I. Zimmerman, do certify (declare) under penalty of perjury under the laws of the state of Washington that I have read the foregoing statement or it has been read to me and I know the contents of the statement, and that the foregoing statement is true and correct. (RCW 9A.72.085)

Signed on this 11 day of June, 2015, in Cowlitz County, Washington.

Signature [Handwritten Signature]

Witness _____

Witness [Handwritten Signature] 141

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RECEIVED
AUG 18 2016
Nielsen, Broman & Koch, P.L.L.C.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 15-1-00616-6
)	
AARON WALLACE TROTTER,)	Appeal No. 48933-3-II
)	
Defendant.)	VOLUME I - PAGES 1-132
)	

JURY TRIAL PROCEEDINGS
MARCH 30, 2016

APPEARANCES:

For the State:	THOMAS LADOUER Deputy Prosecuting Attorney
For the Defendant:	KEVIN GRAVELET BLONDIN Attorney at Law
BEFORE:	THE HONORABLE MICHAEL H. EVANS
PREPARED BY:	R.V. WILSON Wilson Transcription Services (425) 391-4218 rosievwilson@yahoo.com

C-3

- 1 A. I don't know, I wasn't keeping track of time.
- 2 Q. Okay. All right. Did anything else happen besides the
3 hitting in the kitchen?
- 4 A. It just escalated from there.
- 5 Q. How did it escalate?
- 6 A. I ran into the bedroom to try to get away from him, and
7 then he followed me in there and just kept hitting me.
8 I went on the bed and then he just kept hitting me on
9 the bed, and I just tried to get him off me.
- 10 Q. Okay. How was he hitting you on the bed?
- 11 A. Well, I was just like trying to cover myself and he was
12 just hitting me like a punching bag and just wouldn't
13 stop, just kept punching me everywhere.
- 14 Q. Okay. Were you hitting him back?
- 15 A. No, I was just telling him to stop and just trying to
16 cover myself.
- 17 Q. Okay. What happened next?
- 18 A. I tried to get off the bed and then he grabbed me and
19 put me in a chokehold.
- 20 Q. When you say he put you in a chokehold, what part of
21 his body was he using?
- 22 A. Like his arm. He had his arm around my neck like that.
- 23 Q. All right. And were you hitting him at this point, or
24 what were you doing?
- 25 A. No, I was just trying to get his arm off of me.

C-3

ZIMMERMAN - Direct

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- 1 Q. How long did that go on for?
- 2 A. Probably like a minute or so, I don't know. I felt
- 3 like I was going to pass out, but the he let go.
- 4 Q. What happened after that?
- 5 A. And then I just fell back onto the bed and then he
- 6 turned around and grabbed his gun from behind the door.
- 7 Q. Okay. Do you know what kind of gun he grabbed from
- 8 behind the door?
- 9 A. His AR-15.
- 10 Q. Had you seen that gun before?
- 11 A. Yes.
- 12 Q. Was he saying anything to you as he grabbed the AR-15?
- 13 A. I don't remember, probably just calling me names still.
- 14 Q. Okay. Did he do anything with the AR-15?
- 15 A. He started hitting me with the butt of it.
- 16 Q. Where did he hit you?
- 17 A. In the back and in the back of my head.
- 18 Q. Okay. How do you know that it was the butt of the
- 19 AR-15 that was striking your back instead of his fist?
- 20 A. I could tell the difference. It hurt a lot more.
- 21 Q. Okay. Did it feel harder or --
- 22 A. Yeah, just more solid.
- 23 Q. All right. Is all this happening pretty fast at this
- 24 point in time?
- 25 A. Yeah.

C-4

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	No. 76732-1-1
)	
Respondent,)	MANDATE
)	
v.)	Cowlitz County
)	
AARON WALLACE TROTTER,)	Superior Court No. 15-1-00616-6
)	
Appellant.)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Cowlitz County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on July 31, 2017, became the decision terminating review of this court in the above entitled case on January 26, 2018. An order denying a motion for reconsideration was entered on September 7, 2017. An order denying a petition for review was entered in the Supreme Court on January 3, 2018. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

c: Jared Berkeley Steed
Thomas A. Ladouceur
Aaron Wallace Trotter
Hon. Michael H. Evans

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 26th day of January, 2018.



RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

