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Division III
State of Washington

NO. 31529-1-III
(Consolidated with 31563-1-III)

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

FRANK E. BRUGNONE,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellants make numerous assignments of error. These are set forth by **Appellant Gorski** as follows;

1. The trial court abused its discretion by allowing Cecil Toney to be coached and give altered testimony under the guise of ER 612, which prejudiced Mr. Gorski and requires a new trial
2. The evidence was insufficient to sustain the conviction for murder in the second degree as either a principal or an accomplice.
3. Since the directive to pay LFO's was based on an unsupported finding of ability to pay, the matter should be remanded for the sentencing court to make individualized inquiry into Mr. Gorski 's current and future ability to pay before imposing LFOs.
4. RCW 43.43.7541 violates substantive due process and is unconstitutional as applied to defendants who do not have the ability or likely future ability to pay the mandatory \$100 DNA collection fee.

For Appellant Brugnone;

- A. The trial court erred in making FF 70: "Ms. Appleton stated that she heard the person driving the vehicle ask:" Did you do it?" CP 153.
- B. The trial court erred in making FF 75: "Megan Nunley testified that she has some memory of the Defendant Frank Brugnone asking her for an alibi for the date of August 28, 1997." CP 153.
- C. The trial court erred in making FF 92: "The Defendant's statement is clearly self-serving." CP 155.
- D. The trial court erred in making FF 93: "The Defendant's statement is inconsistent with the evidence presented at trial." CP 155.

E. The trial court erred in making FF 94: "The evidence establishes that the Defendant was not an innocent bystander, as he has claimed." CP 155.

F. The trial court erred in making Conclusion of Law (CL) 1: "Based upon the totality of the evidence, both direct and circumstantial evidence, the Court finds that the Defendant, Frank Brugnone, is guilty of the crime of murder in the second degree as a principal or as an accomplice." CP 155.

G. The trial court erred in making CL2: "On August 28, 1997, Defendant Frank Brugnone, as a principal or as an accomplice to another, caused the death of Carolyn Faye Clift, a human being, and that she died as a result of the Defendant's acts, as a principal or as an accomplice." CP 155.

H. The trial court erred in making CL3: "The Court further finds, that the Defendant, or an accomplice was armed with a deadly weapon, a knife, with a blade between four and six inches that had the capacity to inflict death." CP 156.

I. The evidence was insufficient to sustain a conviction for second-degree murder as either a principal or an accomplice.

Issues Related To Assignments of Error

A. Did the State fail to prove Mr. Brugnone acted as a principal or an accomplice to murder when it proved only his physical presence at the time of the crime?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

Gorski:

1. There was no abuse of discretion regarding the testimony of Mr. Toney.
2. There was sufficient evidence to support the conviction of murder in the second degree.
3. The issue was not raised in the trial court therefore this court can and should exercise its discretion and deny review.
4. This is yet another challenge of LFO's, this issue was

not raised at the time of the sentencing and therefore this court should deny review. In the alternative RCW 43.43.7541 is not unconstitutional.

Brugnone

1. All challenged findings of fact are supported by the record.
2. All challenged conclusions of law are supported by the findings of fact and the evidence presented at trial as well as the oral ruling of the court.
3. There was sufficient evidence presented to support the conviction for second degree murder as a principle and/or an accomplice

II. STATEMENT OF THE CASE

On July 11, 2011, Gorski and Brugnone were charged with one count of second-degree murder, acting as a principal or an accomplice in the 1997 murder of Carolyn Clift. CP 1. The two defendants were joined at the time of charging. The defendants made separate motions to sever all such motions were denied. 8/10/12 RP 56–69; 10/29/12 RP 103–127; 11/2/12 RP 128. Gorski’s case was tried to a jury and Mr. Brugnone’s waived his case was simultaneously tried to the court. 1/17/13 RP 165.

When arrested on July 13, 2011 Brugnone gave an extensive statement to the police when he was questioned. The interview was recorded with both an audio/video as well as another digital recording was made at the time of the interview. (RP 1/24/13 200-1, 203-4, 212, 221, 247, 2/6/13 1500-6) A final “clean” copy of this was admitted for the court

review. The court had previously heard and seen then entire audio/video recording and the parties agreed that during the trial the court would take notice of the previous presentation and that a complete copy of the transcript of the interview would be placed into the record for the courts consideration when determining Brugnone's guilt or innocence. (2/6/13 RP 1500-06)

Brugnone initially told the police that he had not been to the victim's home but by the end of the approximately four hour interview he admitted that he and Gorski had been to the victim's home on the night of the murder and that he had witnesses Gorski stab the victim. He further admitted that he had left the apartment and gone to his truck after telling Gorski . As the interview progressed he admitted to having had sex with victim on one prior occasion and that Gorski he believed had had sex with the victim on two prior occasions. (Ex. 129)

The court and the parties had initially agreed that there would be a redacted version of Brugnone's statement admitted at the joint trial but eventually after a final motion by both defendant's the court agreed to leave the trial joined but would bifurcate portion of the trial where State presented of the statement made by Brugnone. 8/10/12 RP 56-69; 10/29/12 RP 124; 11/2/12 RP 132-33; 1/24/13 RP 184-86; 1/25/13 RP 264-66, 272-74, 282; 2/4/13 RP 1065, 1133-39; 1141-42; 2/5/13 1265-

74, 1281–1304; 2/6/13 RP 1485–86. This bifurcation resulted in only the court hearing testimony about Mr. Brugnone’s statement to police. 2/6/13 RP 1489–1522; 2/11/13 RP 1828–1923.

Testimony.

At 11:19 pm on August 28, 1997, a resident of the Selah Square Apartments called police to say she heard a scream and thought it was her neighbor, Carolyn Clift. Ms. Clift was known to local police officers; they had previously received calls about her and considered her “a little mentally challenged.” 1/29/13 RP 438–40, 448–50. Responding officers arrived within minutes and entered the apartment. 1/29/13 RP 443, 450, 468–69. They found Ms. Clift lying dead on the floor. 1/29/13 RP 443–44, 453, 481.

Dr. Selove performed the autopsy on the victim. He determined that the victim had four stab wounds that entered her body through three wound entrances; one at the lower region of the left ribcage, another on the lower left chest, and one between her shoulder blades that had two wound paths inside her body that came through the same stab wound. 1/30/13 RP 590. Dr. Selove testified that this wound would have caused paralysis and that the victim would not have been able to stand after having received that wound, that the victim would no longer have any motion or movement from her hips, her pelvis, her legs. She’s paralyzed at

that moment. 1/30/13 RP 603, 676 The wound to the back was unusual, requiring “a tremendous amount of force” to cut through the vertebrae. The doctor, a forensic pathologist, testified that he had never seen a wound like this that had gone through the bone. He stated that it would take the most force, he stated the knife may have been pounded into the back to penetrate as far as it did. 1/30/13 RP 585, 591–94. During the autopsy he indicated that something may have been used to force the knife into the vertebrae. 1/30/13 RP 661 He testified that something like a hammer may have been used and the hammer found in the apartment kitchen was of appropriate size, weight and mass to cause such a deep wound. 1/30/13 RP 660–62. He also described defensive cut wounds on the left hand and minor bruising on her face, neck, and elbow. 1/30/13 RP 606-07. Dr. Selove testified that the lividity that he observed in a photograph that he was shown and asked to presume that the picture was taken at 2:00 a.m. that what he observed would indicate that he could “give an approximate opinion about the minimum amount of time that has passed since death before the photo (was) taken. ...that death was not five minutes or probably not one hour ago but was probably a couple of hours ago or longer.” 1/30/13 RP 647-8 The pathologist estimated the time of death was probably 11:00 pm or earlier. 1/30/13 RP 647–648.

As part of the investigation officers interviewed neighbors in the apartment complex. One of those was Ms. Carolee Appleton who in her initial statement said she did not see anyone going in or out of the apartment on the night of the homicide. 2/1/13 RP 948, 972–733. During a later interview in September of 1998 Ms. Appleton told an officer that a month prior to the homicide she had seen two “kids” arrive in a blue pickup truck. 2/1/13 RP 954-57, 961-62, 981–82, 988, 994, 996, 1003, 1006, 1008. At that time Mr. Brugnone owned and drove an older blue Ford pickup truck that had a loud exhaust. State Ex’s. 43, 112, 113, 126, 2/4/13 RP 1152-4, 1162; 2/6/13 RP 1311-13, 1316, 02/07/13 RP 1551 Codefendant Gorski on cross-examination agreed that Brugnone had a blue truck at the time but claimed that it never ran. 2/7/13 1640

Ms. Appleton testified that one of the occupants, the passenger, got out of the blue truck with the “souped up engine” and after approaching the victim who was with Ms. Appleton outside at a table, went into Ms. Clift’s apartment. 2/1/13 RP 982. She testified that the one who had gone to the victim’s apartment had a tall bottle of booze with a bag wrapped around it. 2/1/13 RP 952-3

On cross examination counsel for Gorski elicited testimony from this witness that she had actually seen the two men on three separate occasions. Twice before the murder and on the day of the murder. 2/1/13

RP 977-8 She once again confirmed that she had seen these two men come to the apartments in newer large blue pickup. 2/1/13 RP 981-2 And on cross-examination for Brugnone's lawyer this witness stated "He was yelling at the other guy, get that started. We've got to get out of here. He said, what did you do? Something like that, in that order." 2/1/13 RP 1013

On redirect it was brought out that in a statement made shortly after the murder Ms. Appleton had stated to an officer that the voice on the night of the homicide was the same as a voice she has heard previously and that she had overheard the two men say something like "did you do it" and the response was "yeah, let's get out of here." 2/1/13 RP 1010-11

On September 17, 1998, Ms. Appleton gave a third statement. 2/1/13 RP 987. She again reported that she did not see anyone on the night of the homicide, and again, that she had seen a person three weeks prior to the murder: a man driving a blue pickup truck dropped his friend off at the apartment. 2/1/13 RP 987-88. She described the individual who entered the apartment at that time as late 20s to 30 years old, with a butch type haircut. 2/1/13 RP 990, 1035. When he was leaving, she heard him say to the driver of the truck, "C'mon let's get out of here." 2/7/13 RP 1562. She believed she heard the same male voice on the night of the homicide. 2/1/13 RP 992, 1035. She further testified that on the afternoon of the

homicide, between 5:30 and 6:30 pm, she sat with Ms. Clift and another tenant at a picnic table. 2/1/13 RP 951.

Additionally Ms. Appleton testified that on that same day, she heard the sound of someone running and she thought she heard a man knock lightly on Ms. Clift's door between 1:30 and 2:30 am; he did not enter the apartment. 2/1/13 RP 961-3; 997. She heard him say, "It's taking too long. Come on. Hurry." 2/1/13 RP 962-63. She described him as "the buddy...he owned the truck." The owner of the truck ran back to his truck, the same blue truck as earlier. 2/1/13 961-2 After the owner of the truck went back to his truck, Lila wen to the victim's apartment door and she yelled Carol, Carolyn. Do you need help? I can hear you screaming." Then Lila walked away. 2/1/13 964 The next thing that Ms. Appleton saw was the other man came running out of the apartment with a towel shielding his face. She testified that it was the same person who had gone up to the victim's apartment earlier. He was wearing the same jeans, and shirt. 2/1/13 RP 964, 998. She testified that he was running that he was in a hurry and he was yelling to the kid in the truck get it started get it started. 2/1/13 964-5

Virginia Maxine Jones testified that her neighbor Lila Powell called her about 9:30 pm saying she heard screams from the victim's apartment. 1/31/13 856-8 Ms. Jones went to the victim's apartment and

called out for her. When she did not get an answer, the two went into Ms. Powell's apartment. 1/31/13 RP 846-9, 848, 855-56, 867. Ms. Jones saw a man run by the door, with his head down, and something shielding his face. He was wearing an unbuttoned shirt, blue jeans, and was between 5'10" and 6' tall. 1/31/13 RP 849-51. He ran into Ms. Clift's apartment, turned around, and went back out. 1/31/13 RP 861-62. She testified that "he went right by the door, run into Carolyn's (victim) apartment, turn around and come right back out." 1/31/12 RP 850, 861-3) She testified that he ran around the building and then she heard the sound of a motor starting 1/31/13 RP 851, 863-4 She testified that this person was 5'10" to 6" and was wearing blue jeans 1/31/13 RP 852, 860-2 She testified she heard the motor of a car start. She saw a car, not a truck. She speculated there was another person in the car, but never saw anyone. 1/31/13 RP 863-64, 876-7

Investigating officers collected a variety of items from inside Ms. Clift's apartment, including Marlboro cigarette butts that were located inside near the front door and a pair of eyeglasses that were under a remote control found in the living room. 1/29/13 RP 566-67. Officers did not recover a knife.

Officers contacted Mr. Gorski on September 2, 1997, and on September 4, 1997, he gave a taped interview. He also gave an un-taped

interview on September 17, 1997. 1/31/13 RP 725–26. Mr. Gorski told police he had been at his former girlfriend Meghan Nunley’s home until 10:30 or 11:00 pm the evening in question and then went home. At the time, he lived with Mr. Brugnone and Mr. Brugnone’s wife. 1/30/13 RP 728–31; 1/31/13 RP 730; 2/1/13 RP 924.

On the evening of the murder, between 5:00 and 6:00 pm, Ms. Clift had gone to the local liquor store and purchased a bottle of whiskey. 1/30/13 RP 688, 690. She told the clerk she was excited because a boyfriend who had been in military was coming over for dinner. 1/30/13 RP 689, 701. Gorski entered and made a purchase. 1/30/13 RP 690–91. Ms. Clift and Mr. Gorski did not acknowledge one another in the store, but after they left, the clerk saw Ms. Clift talking to Mr. Gorski near his car. Although the clerk did not see the victim enter Gorski’s car the victim was no visible after that car left the parking lot. 1/30/13 RP 692–94.

Meghan Nunley, a former girlfriend of Mr. Gorski, testified she saw Gorski the afternoon of the murder at the Wagon Wheel. 2/1/13 RP 923–24, 928. She knew the victim and both of the defendant’s. 2/1/13 RP 923-4 She had known the defendants for between fifteen and twenty years and that she had dated Gorski. 2/1/13 RP 922-4 She testified that she knew that the victim as well as defendants Gorski and Brugnone went to the Wagon Wheel 2/1/13 RP 922, 924-5 She testified that she and Gorski

lived with Brugnone. 2/1/13 RP 924 She testified that there were times when Gorski and Brugnone would call the victim “the crazy lady.” 2/1/13 RP 925-6 She testified that she “vaguely” remembered that Brugnone had asked her for an alibi and that she had refused to give him one. 2/1/13 RP 828 She testified that Gorski had a hairy chest and that he smoked Marlboro cigarettes and that he drank gin. 2/1/13 RP 927 She testified that she has seen Gorski on the date of the murder and that she had invited him to her home. She stated that he eventually came over to her home but it was much later in the evening and later than she had expected. She stated that they had consumed some gin and that Gorski only stayed for 30 to 45 minutes. 2/1/13 RP 928-31 She testified that he left at 10:00 p.m. 2/1/13 RP 931

On cross-examination she testified that Brugnone and Gorski were friends and that they hung out together. (RP 935) During this portion of her testimony Gorski’s attorney elicited testimony Gorski had told her that the reason that he was late to her home was because he had met a lady at the liquor store and given her a ride home. 2/1/13 RP 941 She once again stated that Gorski had left about 10:00 to 10:30 p.m. She also once again confirmed that she had been asked by Brugnone for an alibi, she could not remember any details about that the alibi that Brugnone had asked her for. 2/1/13 RP 944

Cecil Toney learned of the murder two days after it occurred. 1/31/13 RP 773–74, 777–79, 806; 2/1/13 RP 927–28. Mr. Toney read an article in the local paper indicating that the murder had not been solve, this was ten years after the 1997 murder, Toney gave information to police regarding the unsolved homicide.

The existence of this article was confirmed by Office Gray. 02/6/13 1326-7.

In his 2007 and 2011 interviews, Toney reported that while taking a friend to the Selah Square Apartments the night before the murder, he saw Gorski and Brugnone duck down as his headlights shone on them as they stood in the parking lot between two cars. 1/31/13 RP 782–83, 800; 2/6/13 RP 1326. He testified that he made a statement to his passenger “what are those two idiots doing?” 1/31/13 RP 782, 798-9, 800-2 Toney testified that he observed Brugnone and Gorski for half a minute. 1/13/31 RP 804-5 He testified that he found the fact that the two defendants ducked down between the cars suspicious. 1/31/13 RP 805-7, 815-6 Upon further questioning Toney stated that the period of time he observed the two defendants was between 11:00 PM and midnight. 1/13/31 RP 836

Mr. Toney testified during his live testimony that his sighting of Mr. Gorski and Mr. Brugnone in the parking lot occurred on the night of the murder rather than the night before as he had earlier told police.

1/31/13 RP 800, 840–41. He stated he told police he saw them between 12:00 and 12:30 am and the transcript of his interview verifies this.

1/31/13 RP 791, 843. On cross-examination, Toney changed his earlier testimony that he saw them between 11:00 pm and midnight, and testified he actually saw them between 12:00 and 12:30 am. 1/31/13 RP 780, 800.

Defense counsel objected to the State’s proposal to have the witness review a police summary of his February 22, 2007, interview with Detective Chris Gray and then be re-questioned about the timeframe.

1/31/13 RP 816– 24. The trial court heard argument while the jury was out regarding whether Mr. Toney could be allowed to review the report generated by Det. Gray. The State acknowledged and the court agreed Toney’s testimony clearly gave the time as between 12:00 and 12:30 a.m.

1/31/13 RP 822. After review Mr. Toney acknowledged the summary indicated he’d told police the time frame had to be between 11:00 pm and midnight. 1/31/13 RP 834–43. On final cross-examination by counsel for Brugnone Mr. Toney is asked to review yet another written statement.

Mr. Banda asks one more time “you say again that you saw these two gentlemen between 12:00 and 12:30 is that true? Mr. Toney’s response is “Yes, between 12:00 and 12:30, I believe.” 1/31/13 RP 834.

Erica Graham, supervising forensic scientist with the DNA section with the Washington State Patrol crime laboratory located in Cheney,

Washington. She tested two Marlboro cigarette butts. She had reference profiles for Carolyn Clift, Dennis Cayhill, Richard Embody, Taylor Dalton and Michael Gorski. 2/4/13 RP 1186 On one of the cigarette butts she found that the major contributor was Michael Gorski and the minor contributor was the victim Carolyn Clift. 2/4/13 RP 1185-6 “The statistical weight for the major component of item number one would be 1 in 2.3 quadrillion. So the estimated probability of selecting an unrelated individual at random from the U. S. population with that same profile would be 1 in 2.3 quadrillion.” Ms. Graham testified that “Dennis Cayhill, Richard Embody and Taylor Dalton were excluded as a source of this DNA profile.” 2/4/13 RP 1190 The same result was found for the second cigarette butt found inside the victims apartment. 2/4/13 RP 1191 Ms. Graham went back at a later date and using a more sensitive testing method was able to develop a profile off of the glasses that were found within the apartment of the victim. The profile “...from the eyeglasses matched the previously developed DNA profile of Michael Gorski.” The profile was determined to be 1 in 4 trillion. 2/4/13RP 1195-6 Frank Brugnone, Dennis Cayhill, Richard Embody, Taylor Dalton were all excluded as contributors to that profile. 2/4/13 RP 1196 Next Ms. Graham testified that she retested material that was found underneath the fingernails of the victim with a different method of DNA testing. She

testified “I was able to develop a profile from the other left-hand fingernail sample. I compared that to the other YSTR profiles I developed from the reference. It matched the YSTR profile of Michael Gorski.” 2/4/13 RP 1202 “So the profile that was developed from the left fingernails had been observed twice in the database. That converts into a frequency of approximately 1 in 1300 male individuals in the U. S. population.” 2/4/13(RP 1203, 1227 The new testing exclude all other individuals whose samples had been submitted to the lab. The same testing was done on the material from under the victim’s right fingernails and that resulted in “...the YSTR profile I developed from the right-hand fingernails was a mixture. It had a major component on it. That major component matched the YSTR profile I developed for Michael Gorski.” The same statistical result was found 2/4/13RP 1204, The hammer found in the dish rack was also tested but contained only trace amounts of DNA, which were not matched to anyone. 2/4/13 RP 1192–93.

James Lamson testified that he was at the Wagon Wheel and saw both the victim and the defendant there on the day of the homicide. 1/31/13 RP 887-9, 892-4 He stated that he and his wife left at midnight and that both the victim and Brugnone were gone before he and his wife left. He testified that he observed the victim leave by herself. 1/31/13 RP 889, 894

Wade Richard Franklin Kennedy testified he knew both defendants as well as being acquainted with that victim. 1/31/13 RP 989 Mr. Kennedy has observed the defendants at the Pastime Tavern once or twice a week and he had seen the victim at this same tavern occasionally. 1/31/13 RP 900-1 Mr. Kennedy later ran into the two defendant's at another tavern and approached them asking "listen; there's been a murder in Selah. Where in the hell have you two been?" 1/31/13 RP 902 Mr. Kennedy identified both defendants in the courtroom. 1/31/13 RP 902 Brugnone's response to that comment was "You should not have said that." 1/31/13 RP 909 Mr. Kennedy later explained that he meant it in jest but it was apparent to him that Brugnone was upset by the statement. Mr. Kennedy apologized to Brugnone about upsetting him stating "I'm sorry Mike. Were you close with the lady?" To which Brugnone stated "I don't give a fuck about her." Brugnone had gotten up suddenly from the table after the statement was made. 1/31/13 RP 910-11 It was also Mr. Kennedy's opinion that the victim "she was a vulnerable women.(sic)"

Det. Brumley testified that during the interview with Gorski at the Whatcom County Sheriff's Office, Gorski denied knowing the victim. (2/6/13 RP 1424) The detective also observed from two pictures of Gorski that he had changed his eye glasses. The Detective then went back to the evidence list from the victim's apartment from the date of the

murder and found that there had been a pair of eyeglasses that were seized. (2/6/13 RP 1428) When compared the glasses that were depicted in a Department of Licensing photograph from 1998, exhibit 46, it appeared that the glasses were seized where the same as those taken into evidence from the crime scene. (2/6/13 RP 1428)

Det. Brumley also obtained automobile titles from the Department of Licensing that indicated that Brugnone was the owner of a “76 Ford pickup” (2/6/13 RP 1433-4)

(The entire transcripts of Brugnone’s statements are contained in State’s exhibit 129 as well as Brugnone CP 21-57, Gorski CP 35-72)

On July 13, 2011, officers placed Mr. Brugnone under arrest. (2/6/13 RP 1491-92). Mr. Brugnone initially told officers he had no recollection of being at Ms. Clift’s apartment in August 1997. (State Ex. 129 p. 4,14;25;35). He stated that he had been to Ms. Clift’s apartment in July 1997, for a one-night stand with her. (State Ex. 129 p. 33). He believed that Mr. Gorski had had at least two sexual encounters with Ms. Clift. (State Ex. 129 p. 50). On the evening of the August 28,1997, he and Mr. Gorski had been drinking at the Wagon Wheel. Mr. Gorski and Ms. Clift danced. (2/1/13 RP 887-88). Ms. Clift left the tavern. Mr. Gorski asked him to take him to her home. (State Ex. 129 p. 68). When they arrived at the apartment, Ms. Clift greeted them with hugs. (State Ex. 129

p. 68). Gorski and Brugnone went into the apartment and Gorski and Ms. Clift where whispering and kissing and “doin it all while they were kissin there...” (State Ex. 129 p. 68, Gorski CP 32, 42). Mr. Gorski removed Ms. Clift’s robe. (State Ex. 129 p.68, Gorski CP 32)

In Brugnone’s initial statement he stated that about 15-20 minutes he went home. In the second full statement he did not state how long he was in the victim’s apartment he states that all of a sudden things started to happen between Gorski and the victim and that Gorski was pushing and shoving Ms. Clift into Brugnone. (State Ex. 129 p. 68). Mr. Brugnone pushed her back and away from him. (State Ex. 129 p. 68; 79).

He saw Mr. Gorski push, hit, or stab Ms. Clift in her back; he wasn’t sure if he saw him use a rod or a knife, describing it as “a big, big long thing, long knife but I couldn’t tell exactly what it looked like or what the handle looked like or anything, it was just a big long thing.” (State Ex. 129 p.68-70, 87, Gorski CP 64). As Ms. Clift went to her knees, Brugnone tried to catch her, but she fell to the floor. (State Ex. 129 p. 70, 82, Gorski CP 59). He got down on the floor to see if she was injured and saw blood. (State Ex. 129 p. 82-83, Gorski CP 59-60).

“I come over and ask her you alright, she’s kinda, well now she’s kinda screaming and groaning and I went asks are you alright. She says I don’t know I think so. I said well, Mike will take care of you. I said I’m

leaving.” (State Ex. 129 p. 82). He also stated “...I looked around and I seen blood and I said well Mike will take care of you, I’m leavin...I’m thinkin oh shit I’m outta, I’m getting outta here Mike. I’m leavin and as I’m goin by here he’s saying wait for me. I said well I ‘m not waitin long, I’m getting outta here.” (Gorski CP 60-1)

He told police that she grabbed him by his shoulder as he stood up. (State Ex. 129 p. 72). Frightened, Mr. Brugnone told Mr. Gorski he was leaving, saying, “I said I’m outta here Mike you did this, you, I’m outta here.” (State Ex. 129 p.71; 72; 74). He reported he “didn’t know what he had done. I didn’t know if he killed her or what you know at that time. I know he’d hurt her.” (State Ex. 129 p. 74). Brugnone stated to Gorski “I’m leavin, I don’t know what’s going on Mike, I said you take care of this.” (CP 40-1)

Mr. Brugnone did not see Mr. Gorski stab her a second time, however, as he was leaving, he thought he saw Mr. Gorski move toward her and do something to her side. (State Ex.129 p.70, 72, 83, and 98). He never saw a hammer. (State Ex.129 p. 94). He did agree that based on the statement of Gorski that he had stabbed the victim more than one time. (Gorski CP 49)

Brugnone left the apartment and sat in his car waiting Gorski. (State Ex. 129 p. 73-74). Gorski came out to the car, told Mr. Brugnone

not to leave, and went back into the apartment. (State Ex.129 p. 75).

Brugnone waited another four or five minutes Gorski returned and got into the truck and then he drove the two of them home. (State Ex.129 p. 76, Gorski CP 32). On the way home Brugnone says that there was discussion “Oh, ya, what’d I do, ah I stabbed her you know I don’t’ if I I hurt her or I don’t know if I killed her, this stuff. I said I don’t know how many times I stabbed her and I’m not anything, I’m just listening cause I don’t know that the hell they’re going to do to me.” (Gorski CP 63) Brugnone also stated that there was blood on both of Gorski’s hands and that the washed it off when they returned home. (Gorski CP 65)

When asked about when Mr. Toney’s headlights lit them up in the parking lot Brugnone stated “I don’t know who it was comin around there but...” he was then asked if they ducked down as Mr. Toney had stated and his response was “I prob, I might have, ya. I probably did ya cause I was scared. I didn’t... Ah, cause of what he’d done, I, I didn’t know what he’d done. I didn’t know if he killed her or what you know at that time. I know he’d hurt her.” (Gorski CP 37)

Brugnone stated that “when it come out” that the victim was dead Gorski had told him that he had had killed her.

Gorski testified that as of August of 1997 he had not seen the victim before. RP 2/7/13 1584-5 On direct he confirmed that he drank

gin and smoked Marlboro cigarettes. 2/7/13 RP 1589 He states that he went to the Wagon Wheel and ran into Megan Nunley Forenpohar the ex-wife of Mr. Toney and a woman whom Gorski had dated and lived with previously. He testified that he and Ms. Nunley agreed to go to her home and that was the reason that he had gone to the liquor store. 2/7/13 RP 1588-90, 1643-5 He stated that it was while he was at the liquor store that he met the victim. 2/7/13 RP 1591-2, 1644-49 He maintained that this was the first time he had met the victim. 2/7/13 RP 1591 He testified that the victim asked him for a ride home and that he told her no, but the victim was very persistent and so he gave her a ride. 2/7/13 RP 1593-4, 1649 He testified that he was smoking and as he drove the victim grabbed the cigarette that he was smoking and asked if she could have it and because she already had the cigarette in his hand he let her have it. 2/7/13 RP 1595, 1649-52 He testified that he did not just drop her off but actually went into her apartment. The main reason was that as the victim left the vehicle she reached back and took his bottle of gin and said let's go have a drink. RP 1595-6, 1653-5) He testified that he would take a few minutes and then "get the devil out of there." So he went into the victim's apartment. 2/7/13 RP 1596-98, 1655

Once he was inside the apartment he stated that it was a complete mess and in particular the kitchen "...there was stuff a foot, two feet tall

over the counter and the dish rack, inside the sink.” He also did not notice “the plate that apparently was a meal for somebody.” Gorski was sure that that was not there. 2/7/13 RP 1602-3 He testified that even though the victim had taken his cigarette he did not believe that the victim was a smoker. And that just by chance he had set his cigarettes down. (It is noteworthy that Gorski said it was a hoarder’s home and very messy and smelled bad and there were no clean glasses, and yet he basically in the next breath says that he sat down on the couch to have a drink and a cigarette. 2/7/13 RP 1659) He next took off his glasses they did not watch any TV and yet the glasses were found under the remote control. The then proceeded to either drink out of a glass or just straight from the bottle the he had purchased. 2/7/13 RP 1605-6 He testified that it was his routine to take his glasses off as he sat down and that he didn’t have his glasses for a while because he had left them at the victim’s apartment. 2/7/13 (RP 1663-4 After about twenty minutes the victim just starts kissing Gorski and they proceeded to mutually start to touch. Gorski testified that he stopped the victim but the next thing he knew she was “crawling, mauling, kissing, hugging, pulling” at him. He stated it was not mutual. 2/7/13 RP 1608, 1660 He testified that the victim unbuttoned his shirt and after a few minutes he grabbed his two bottles and just

walked out. 2/7/13 RP 1608-9 He stated that he left at 7:30-40 p.m.

2/7/13 RP 1657

He testified that when he left there was no one who was angry and that he then went to Meghan's home. 2/7/13 RP 1611) He testified that he had been to the apartment complex about a year earlier because he was dating a lady who lived there, this person had no name and had lived in the same section of the apartments as the victim. 2/7/13 RP 1611, 1652-3

He testified that he was at Meghan's place by about 8. 2/7/13 RP 1610

He stayed at Meghan's home until 10:00-10:30 and then went home to his and Brugnone's home. He testified that he was at Meghan's home from about 8:00 p.m. until 10:00-30. 2/7/13 RP 1610, 1613-14 Gorski did not

even realize he had forgotten his glasses and did not ever go back for them. His testimony was the glasses were just "reading glasses." 2/7/13

RP 1615-16 He testified that at some time later he became aware that the Carol has been murdered. When he realized that the woman he has seen had been murdered his reaction was "wow" and that he would just stay out of the matter that would affect his job, family or anything. 2/7/13 (RP

1616-17 He was worried that his daughter would know that he had been "out "womanizing...out drinking." 2/7/13 RP 1619

When approached by Officer Garcia he only told the officer that he had taken the victim home. He did not tell the rest of what occurred that night;

For fear of my wife, who works at the Yakima Herald, finding out, talking with my daughter and me not being allowed to see my daughter anymore. I didn't know where the other three kids were at. I'm selling furniture. If I get in the paper I'm going to lose my job. I'm not going to have any contact with my daughter, and I'm going to be back at square one, no job, no daughter, living at Frank's.

Gorski admitted that when Officer Garcia pressed him on whether he had been in the victim's apartment he stuck with his lie because he felt that he was in a

Catch 22 and that he should tell the truth but if he did he would be seen as a liar that he felt he "was locked into me having to stick with my lie..." When contacted again by the police Gorski determined it was best to stick with hi lie. 2/7/13 RP 1621-22

On cross examination the State elicited from Gorski that Brugnone owned a blue truck, Gorski stated that the truck had never run while he was living with Brugnone. He admitted that he frequented the Wagon Wheel but denied ever seeing the victim at that location. 2/7/13 RP 1641 He also expanded the time period that he could have been at the victim's

apartment to as early as 4:00 p.m. 2/7/13 RP 1656 He also testified that he did not want to be there but “I was just in disgust at how dirty it was.” But even though he was disgusted he did not leave and discussed having a drink. 2/7/13 RP 1659 When questioned about his cigarettes and the fact that he had stated to an officer that he purchased his cigarettes from the Little Brown Smoke Shack, a tribal location. 2/7/13 RP 731, 1664-5, 1049-50

Regarding his knowledge of the murder of Carolyn Clift and his lies and failure to act he stated that he told Officer Garcia that he did not know the victim because he thought her name was Sharon, not Carolyn but conversation with the officer refreshed his recollection 2/7/13 RP 1668-9 He affirmed that once he told the initial lie about not going to the victims apartment he stuck with that lie until the day he took the stand and testified. 2/7/13 RP 1669-70 He stated;

I didn't feel like I was going to be a prime suspect. I felt by not saying I wasn't there, that I didn't go in the house with her that they can go ahead and catch who they needed to catch. Therefore, I wouldn't have problems with my daughter or my ex-wife at the Yakima Herald, and I didn't have to worry about losing my job. 2/7/13 RP 1672

III. ARGUMENT.

The State shall address the allegations raised by each appellant that are similar at one time. If the allegations are raised separately the State will respond to them in that manner.

GORSKI - RESPONSE TO ALLEGATION ONE –Coaching witness.

Gorski alleges that the trial court abused its discretion when it allowed Mr. Toney to read a report written by an investigative officer in order to review what he allegedly stated in his interview with that officer. There was no abuse by the trial court, State v. Downing, 151 Wn.2d 265, 272-3 (2004);

We will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959)).

This rule, ER 612 WRITING USED TO REFRESH MEMORY, reads as follows;

If a witness uses a writing to refresh memory for the purpose of testifying, either: while testifying, or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the

remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires.

This issue is as the Shakespeare said “Much ado about nothing.”

The claim that Mr. Toney changed his testimony to reflect a time listed in a report written by an officer is wrong. The very last question asked of Mr. Toney by counsel for these defendants reaffirms the original statement made by Mr. Toney:

Q. By the way, looking again to line seven on that same page, you say again that you saw these two gentlemen between 12:00 and 12:30; is that true?

A. Yes, between 12:00 and 12:30, I believe. 1/31/13 RP 843.

Gorski’s claim is that Mr. Toney “adopted” the different time that was set out in the report written by an officer and reviewed by Mr. Toney during his testimony. Mr. Toney does not “adopt” that time 11:00- 11:30 he does acknowledge that the report states that is what he said at that time. He acknowledges again that he believed that he observed the defendants in the parking area at between 12:00 and 12:30. 1/31/13 RP 843. There is no error here.

The simple fact is there was no apparent time that could be discerned from the totality of the witness testimony. There was testimony regarding the time this all transpired that ranged from as early as 9:00 p.m.

to as late as 2:00 a.m. The only set facts are that the 911 call was placed at 11:19 p.m. and that the first officers responded just a few minutes later.

Even if the review of the officer's report was an error it clearly was advantageous to the defendants to make the testimony of this witness look confused and manufactured. The cross examination of Mr. Toney did just that. The attorneys for Gorski and Brugnone were able to get Mr. Toney to admit that the information that he gave at an earlier date did not match that which he was saying in trial. They were able to force Mr. Toney to admit that he had stated both the date and the time he had observed the defendants changed from the initial interview to the time of trial. This along with the obvious attempts of the defendants demonstrate the bias of Toney by putting before the jury the fact that this witness had deep feelings for and had been married not once but twice to Ms. Nunley, the person who had dated and lived previously in the defendant's house, who was in fact seen by one of the defendants on the night of the murder, was done to discredit Mr. Toney and place doubt in the mind of the jury. Clearly this was a sound trial tactic.

Even if the State had "coached" this witness, which clearly was not the case, this court in State v. Delarosa-Flores, 59 Wn.App. 514, 799 P.2d 736 (1990) addressed this issue as follows:

We find no abuse of discretion in allowing the recess and consultation between the victim and the prosecuting attorney. Mr. Delarosa-Flores could have attacked her credibility by cross-examining her as to the nature of the consultation and the reasons for the change in her testimony. He did not do so. As the court in Geders v. United States, 425 U.S. 80, 89-90, 96 S.Ct. 1330, 1336, 47 L.Ed.2d 592 (1976) observed:

The opposing counsel in the adversary system is not without weapons to cope with "coached" witnesses. A prosecutor may cross-examine a defendant as to the extent of any "coaching" during a recess ... Skillful cross-examination could develop a record [to be used] in closing argument ... raising questions as to the defendant's credibility ...

Moreover, there is an important ethical distinction between a prosecutor discussing testimony and improperly seeking to influence it. Geders, 425 U.S. at 90 n. 3, 96 S.Ct. at 1336 n. 3; see also Musgrave v. State, 555 So.2d 1190 (Ala.Crim.App.1989). Contra United States v. Malik, 800 F.2d 143 (7th Cir.1986); State v. Prater, 13 Ohio App.3d 98, 468 N.E.2d 356 (1983), overruled on other grounds, State v. Heidelberg, 30 Ohio App.3d 265, 507 N.E.2d 1149 (1986). Here, there was no evidence the State did anything more than refresh the victim's recollection as to previous statements. There is no evidence to suggest the State urged her to create testimony. Further, her testimony after the recess was consistent with her initial report to the police. We find no error.

Even if this court were to find error State v. Carlin, 40 Wn. App. 698, 700 P.2d 323 (1985) addresses the method of review where, as here, the totality of "untainted" evidence is overwhelming, "The Washington Supreme Court has applied two different tests to determine whether error is harmless beyond a reasonable doubt. Under the "contribution" test, the

question is whether the tainted evidence contributed to the finding of guilt. Under the "overwhelming evidence" test, the question is whether the untainted evidence is so overwhelming that it leads necessarily to a finding of guilt. Harris, at 157-58; State v. Jones, 101 Wn.2d 113, 125, 677 P.2d 131 (1984).”

As set forth above the evidence presented by the State was overwhelming, State v. Thompson, 151 Wn.2d 793, 92 P.3d 228 (2004):

This constitutional error may be considered harmless if we are convinced beyond a reasonable doubt that any reasonable trier of fact would have reached the same result despite the error. *State v. Brown*, 140 Wash.2d 456, 468-69, 998 P.2d 321 (2000). To make this determination, we utilize the "overwhelming untainted evidence" test. *State v. Smith*, 148 Wash.2d 122, 139, 59 P.3d 74 (2002). Under this test, we consider the untainted evidence *admitted at trial* to determine if it is so overwhelming [92 P.3d 236] that it necessarily leads to a finding of guilt. *Id.*

Even if there was an error as Thompson states that error was harmless or as Delarosa-Flores addressed and as was done in this case the two highly trained and skilled defense attorneys gave the jury every chance to find doubt in Mr. Toney’s testimony. Mr. Toney testimony was helpful to the State’s case but; the fact that Mr. Gorski placed himself in the victim’s apartment on the night she was murdered a story that was far from believable, Gorski’s DNA found beneath this dead woman’s fingernails, fingernails on hands that showed signs of defensive wounds,

Gorski's DNA found on cigarettes in the victim's apartment along with his eye-glasses found at the crime scene, other witnesses stating that Gorski had known the victim previously even though he denied knowing her, the fact that the physical description of the "buddies" who came to the victim's apartment in the past in a loud blue full sized pickup truck, proof that Gorski's "blood brother" and codefendant owned just such a truck and the fact that the officers were able to exclude other persons of interest, the fact that one of the two persons was seen going back into the crime scene even though a neighbor had just pounded on the door of the victim clearly and attempt to retrieve something or somethings (glasses and cigarettes?) All of this overwhelming evidence together more than support the conviction even if Mr. Toney had not testified.

RESPONSE TO ALLEGATION TWO (Gorski), ALLEGATION "I" (Brugnone) – Sufficiency of the evidence.

Both appellants raise the issue of the sufficiency of the evidence presented that this joint trial. The simple answer is that the evidence was overwhelming with regard to both defendants.

In reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in a light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green,

94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). A defendant claiming insufficiency admits the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. Circumstantial evidence and direct evidence are equally reliable. State v. Dejarlais, 88 Wash. App. 297, 305, 944 P.2d 1110 (1997), *aff'd*, 136 Wash.2d 939, 969 P.2d 90 (1998).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

Once again the decision to allow this to go to the jury, and to the bench, was a discretionary ruling on the part of the court. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

As stated above the evidence regarding Gorski was extensive and overwhelming. The DNA evidence alone was damning. Gorski's testimony did nothing to address how his DNA was found basically embedded underneath the fingernails of a dead person who he testified he had never met before until he grudgingly gave her a ride home, coincidentally on the day she was murdered. His testimony addressed how his DNA was found on this dead person was that after about twenty minutes the victim just starts kissing Gorski and they proceeded to mutually start to touch. Gorski testified that he stopped the victim but the next thing he knew she was "crawling, mauling, kissing, hugging, pulling" at him. He stated it was not mutual. 2/7/13 RP 1608, 1660 He testified that the victim unbuttoned his shirt and after a few minutes he grabbed his two bottles and just walked out. 2/7/13 RP 1608-9

Gorski's own testimony did as much to convict him as did any other individual piece of evidence. When he took the stand he was familiar with the case against him and was able to come up with a reason for everything in the victim's apartment, his glasses, well he always took

them off when he sat down, the cigarette butts well he had asked for an ashtray but she had none so he put them in some top and they must have been dumped, the victim's DNA on one of the cigarette butts well this non-smoking victim took it from him as she had done this his bottle of alcohol. Gorski even addressed the victim's daughter's testimony that her mother was not a smoker. Gorski stated that he too thought that she was not a smoker because she was not as comfortable with the cigarette. No other reasoning why obvious non-smoker would even take his cigarette in the first place, it just happened and therefore the DNA from Gorski and the victim on the same item was explained. But there was no reasonable explanation for the number of cigarettes found if he was there for only twenty minutes before his fled in disgust from an apartment that he said appeared to be occupied by a hoarder and which smelled bad.

Obviously the jury did not buy this story, State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Credibility determinations are for the trier of fact and are not subject to review.

The facts presented to the jury were without a doubt sufficient to meet the test set forth in, State v. Bucknell, 183 P.3d 1078, 1080 (WA 2008);

In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact

could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The elements of a crime may be established by either direct or circumstantial evidence, and one type is no more valuable than the other. State v. Thompson, 88 Wn.2d 13, 16, 558 P.2d 202, *appeal dismissed*, 434 U.S. 898 (1977). "Credibility determinations are within the sole province of the jury and are not subject to review." State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). Assessing discrepancies in trial testimony and the weighing of evidence are also within the sole province of the fact finder. State v. Longuskie, 59 Wn. App. 838, 844, 801 P.2d 1004 (1990). (Emphasis mine.)

Brugnone's challenge is even more daunting. In his four hour confession he changed his story from I know nothing to I was there and saw her stabbed but I had nothing to do with her actual death. The most chilling and telling statements made by Brugnone were when he says he was down with the victim whom he obviously knew had been stabbed or injured and he states to her "Mike will take care of you" and he states to Gorski, "You need to take care of this."

"I come over and ask her you alright, she's kinda, well now she's kinda screaming and groaning and I went asks are you alright. She says I don't know I think so. I said well, Mike will take care of you. I said I'm leaving." (State Ex. 129 p. 82). He also stated "...I looked around and I seen blood and I said well Mike will take care of you, I'm leavin....I'm thinkin oh shit I'm outta, I'm getting outta here Mike. I'm leavin and as I'm goin by

here he's saying wait for me. I said well I 'm not waitin long, I'm getting outta here." (Gorski CP 60-1)

He admits that he has had a sexual relationship with the victim as had Gorski. He states that he drove them over to the apartment on the night Carolyn was murdered, that he was part of the "pushing" back and forth that was going on between Gorski and Carolyn that he saw a knife that was big or perhaps it was just a bar and she was not bleeding but she was and she was scared of what Mike would do and yet when he had the chance to flee the scene and get the police Brugnone shoes instead to stay waiting for his "blood brother" to "take care" of Carolyn.

The original agreement to allow or use a redacted version of this statement was later set aside. One of the main protagonists for the use of the entire statement was counsel for Brugnone who made it clear that the theory of the case was that this statement had been coerced from Brugnone and that he really did not voluntarily make the admissions that came out, that in fact the officers had planted the needed information in this statement.

State v. Banks, 149 Wash.2d 38, 43, 65 P.3d 1198 (2003), "The criminal rules for superior court judges require that, following a bench trial, the judge enter findings of fact and conclusions of law. CrR 6.1(d). Findings and conclusions comprise a record that may be reviewed on

appeal. State v. Head, 136 Wash.2d 619, 622, 964 P.2d 1187 (1998). Each element must be addressed separately, setting out the factual basis for each conclusion of law. Id. at 623, 964 P.2d 1187. In addition, the findings must specifically state that an element has been met. State v. Alvarez, 128 Wash.2d 1, 19, 904 P.2d 754 (1995)”

The trial court sitting as the finder of fact started its ruling finding Brugnone guilty of murder as follows:

Your actions on August 28th of 1997 do not support an innocent bystander theory in any way, shape or form. I want to first start with your statement. The defense has made much of the fact that your statement is the only thing tying you to Ms. Cliff's apartment on the night of the murder. I disagree with this position and will articulate the additional evidence after discussing your statement.
2/15/13 RP 1977, CP 134-147/

The court then spent the next twenty pages of transcript making its oral ruling. The ruling was later memorialized by the court in its findings and conclusions. CP 148-156. The written findings and conclusions in Brugnone’s case were derived from the court having sat through this joint trial and included the lengthy review of Brugnone’s statement to the police. Sweeten v. Kauzlarich, 38 Wn. App. 163, 169, 684 P.2d 789 (1984) oral opinion does not become final unless or until it is incorporated in written findings of fact and conclusions of law; oral decision can be used to explain but not to impeach written findings and conclusions.

This court should first note that of the “97” findings of fact set out by the trial court in its written ruling for the CrR 3.5 hearing and the trial itself, Brugnone only assigned error to findings numbers 70, 75, 92, 93, 94 of the trial court's written, or oral, findings of fact. Thus, this court will consider the remaining findings verities on appeal. State v. Brockob, 159 Wash.2d 311, 343, 150 P.3d 59 (2006) (citing State v. Hill, 123 Wash.2d 641, 647, 870 P.2d 313 (1994)).

In addition, even if the trial court's written findings are incomplete or inadequate, this court can look to the trial court's oral findings to aid our review. State v. Robertson, 88 Wash.App. 836, 843, 947 P.2d 765 (1997), review denied, 135 Wash.2d 1004, 959 P.2d 127 (1998). In its oral ruling before issuing its written findings and conclusions, the trial court here discussed (1) the relevant facts in relation to the law and (2) the way in which the facts and testimony supported the elements of each offense. Reviewing the trial court's written findings and conclusions together with its oral ruling should persuade this court that the trial court clearly and thoroughly considered each element of the offense to include liability both as an accomplice and as a principle. Finally, given the written findings of facts that the trial court did enter, there is no probability that the outcome of the bench trial would have differed if the challenged findings were removed from the record. Further even if the trial court had failed to

make findings regarding essential elements of this crime, which clearly the challenged finding are not, this court ruled in See Banks, supra, 149 Wn.2d at 45-46, 65 P.3d 1198 (court's failure to enter finding on essential element following bench trial was harmless error).

Even if the findings were in error this type of error is subject to harmless error analysis. Banks, 149 Wash.2d at 43-44, 65 P.3d 1198 (citing Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999); State v. Brown, 147 Wash.2d 330, 344, 58 P.3d 889 (2002)). To determine whether such an error is harmless, this court shall examine whether " 'it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.' " Brown, 147 Wash.2d at 341, 58 P.3d 889 (quoting Neder, 527 U.S. at 15, 119 S.Ct. 1827)." An error is not harmless beyond a reasonable doubt where there is a reasonable probability that the outcome of the trial would have been different had the error not occurred A reasonable probability exists when confidence in the outcome of the trial is undermined." State v. Powell, 126 Wash.2d 244, 267, 893 P.2d 615 (1995) (citations omitted).

BRUGNONE - RESPONSE TO CHALLENGED FINDINGS and CONCLUSIONS.

Appellant has challenged only a small portion of the written findings and conclusions and did not object in the trial court nor does he

now assign error to any of the trial court's twenty pages of oral findings of fact or conclusions of law. RP 1977-97, CP 4-6. Therefore this court will consider the finding verities on appeal. State v. Brockob, 159 Wash.2d 311, 343, 150 P.3d 59 (2006) (citing State v. Hill, 123 Wash.2d 641, 647, 870 P.2d 313 (1994)). See also Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992), unchallenged findings of fact are verities on appeal. Further, this court may in addition, even where a trial court's written findings are incomplete or inadequate, look to the trial court's oral findings to aid review. State v. Robertson, 88 Wash.App. 836, 843, 947 P.2d 765 (1997), review denied, 135 Wash.2d 1004, 959 P.2d 127 (1998). This court reviews the trial court's conclusions of law de novo. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

1. Finding of Fact 70 - The first challenged finding number 70 reads as follows: "Ms. Appleton stated that she heard the person driving the vehicle ask: "Did you do it?" On redirect it was brought out that in a statement made shortly after the murder Ms. Appleton had stated to an officer that the voice on the night of the homicide was the same as a voice she has heard previously and that she had overheard the two men on the night of the murder say something like "did you do it" and the response was "yeah, let's get out of here." (RP 1010-11) Brugnone now argues

that Ms. Appleton retracted her earlier statement citing to recross examination by Brugnone's attorney. In that examination Ms. Appleton did not "retract" this statement, she did state clarify:

Q. But in reporting the case you told him {police officer} that you heard one of the men say, 'did you do it?'

A. That's what I think I did.

Q. I get it that he got that part right?

A. Yes, but I'm not sure that **I really heard that then.**

Q. Okay.

A. That's it. I just don't know. He was yelling at the other guy, get that started. We've got to get out of here. He said, 'What did you do?' Something like that, in that order. (2/1/13 RP 1012-13). (Emphasis mine.)

Ms. Appleton confirmed that the officer "got that part right" according to trial counsel's question, she was just expressing a doubt **when** she heard that statement not if she heard that statement.

Even if this court were to determine that this finding was made in error and remove it, it would be harmless error as discussed above and would not affect the outcome of the court decision. Brugnone by his own statements to the officers in his four hour confession had already admitted that he saw a knife, that he had seen that used by Gorski, that he knelt with the victim as she bled on the floor and stated to her that Mike would take care of her, and that is exactly what Mike did, with the knowledge of Brugnone. This finding is supported by the record.

2. Finding of Fact 75 “Megan Nunley testified that she has some memory of the Defendant Frank Brugnone asking her for an alibi for the date of August 28, 1997.”

This finding is not in error. The court merely substituted “some memory” for the word “vague.” Nunley did not equivocate she stuck with the same statement that she had a “vague” memory of being asked and stating that should would not give the defendant’s an alibi. This challenge is baseless.

This judge sat through this entire trial and was able to observe this witness. Brugnone’s claim that his interpretation of the black and white words from a transcript “Nunley..was equivocal, faint memory” (Appellant’s brief at 17) is his interpretation of this static text not the ruling of a court having witnessed firsthand the testimony with the ability that the judge had to witness in person this testimony. This finding comports with the record there is not abuse of discretion on the part of the trial court when it entered this finding of fact.

3. Finding of Fact 92 and 93 - “The Defendant’s statement is clearly self-serving” and; Finding of Fact 93: “The Defendant’s statement is inconsistent with the evidence presented at trial”

The trial court’s oral ruling:

With that being said, Mr. Brugnone, your statement to

the officers on that evening for the most part was completely self-serving in this court's mind. You start out denying everything. Then you acknowledge possibilities vaguely, and you finally end with the direct request of law enforcement to start over and then proceed to give the completely self-serving rendition of the facts on the evening in question, placing all blame for Ms. Clift's death on Michael Gorski. 2/15/13 RP 1978

This court need only read the transcript of Brugnone's interview to determine that these two findings are clearly supported by the record.

(See Appendix A) Brugnone dances a fantastical dance around his involvement in this murder. He pushes the victim away when Gorski and the victim are shoving each other, he does not see the knife, it could be just a rod, no it was a knife, don't know where it came from perhaps the kitchen at the wagon wheel, I got out of there when things started to happen after I kneeled down and told the bleeding dying woman that "Mike will take care of you." The care being Mike would finish pounding the knife through Carolyn's vertebrae while Brugnone waited with the blue Ford pickup truck running to complete the getaway from the scene of this murder. If he was as scared as he claims, once again why did he not just drive away to the police which his blood brother remained inside the apartment of again when Gorski ran back again to the scene of the crime. This finding is supported by the record.

4. Finding of Fact 94 - “The defendant was not an innocent bystander, as he has claimed.”

This statement is, as were the others that have been challenged, supported by the record. The evidence presented throughout this trial is that Brugnone did not just happen to be sheer luck in Ms. Clift’s apartment on the night she was murdered. The facts presented through Brugnone’s own statement are that both he and Gorski had known and been intimate with the victim, that Brugnone had driven them both, not just Gorski, to the apartment. Brugnone did not merely pull his blue Ford pickup truck into this apartment complex, drop off his blood brother and drive away. He went inside the apartment and was there while the victim was stabbed and lay on the floor bleeding, once again at this time he did not call 911, he did not render first aid, he did not stop Gorski he coldly knelt down next to the gravely wound woman whom he had previously slept with and said to the person who had been stabbed by Gorski “Mike will take care of you and I am leavin.”

There would appear to be few means that a person could employ that would more clearly negate innocence than the actions taken by and told to the authorities by the defendant himself.

This finding could also be characterized as a conclusion of law, that Brugnone was in fact an accomplice to this murder. State v. Niedergang, 43 Wn. App. 656, 658-9, 719 P.2d 576 (1986).

If a determination concerns whether evidence shows that something occurred or existed, it is properly labeled a finding of fact, but if the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law. Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc., 21 Wn. App. 194, 197 n.5, 584 P.2d 968 (1978). When findings of fact in reality pronounce legal conclusions, they may be treated as such. Fine v. Laband, 35 Wn. App. 368, 374, 667 P.2d 101 (1983).

It is the State's position that no matter how this "fact" is treated it is supported by the evidence and was within the discretion of the court to state this either as a fact or as a conclusion of law addressing the facts that had been presented. This finding too is supported by the record.

Once again if this court could completely remove these findings from the ruling of the court and the conviction would still be supported by substantial untainted factual evidence.

Brugnone Allegations G, H, I.

The judge spent considerable time in its oral ruling addressing very specifically the issue of accomplice liability;

You have argued correctly, Mr. Brugnone, that to be an accomplice there must be more than mere presence and knowledge of another committing a criminal act. That you must act with knowledge that it will promote or facilitate

the commission of a crime, that you either solicit, command, encourage or request another person to commit the crime or you aid or agree to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support or presence. A person who is present at the scene and ready to assist by their presence is aiding in the commission of the crime. That is the definition of accomplice.

The state's evidence has clearly proven this. And even by your own version, Mr. Brugnone, admitting to being in the apartment, involved in the shoving of Ms. Clift back and forth between you and Mr. Gorski while she was naked, watching her fall to the floor, unfortunately, Mr. Brugnone, the evidence doesn't support your description, back to the self-serving statement that was made. The evidence doesn't support the description of this attack.

Dr. Selove testified that Ms. Clift had an abrasion under her right eye, two defensive wounds on her left hand, two fresh, closely spaced injuries on the left side above the collarbone that could have been caused by either the tip of a sharp instrument or fingernails and a one-inch bruise on the inside of her left elbow, and fingernail clippings that later revealed, her fingernails on both hands, which later when analyzed, showed Mr. Gorski as a contributor. The injuries and cellular material under her nails are consistent with a woman who fought for her life, not the scuffle that you describe.

When this evidence is put together with the evidence of the fact that you waited for Mr. Gorski not once but twice, according to your statement, when you had the option to leave and, in fact, when you couple that with Ms. Appleton's testimony about the person, the shorter of the two, the driver going back to the door saying, come on, hurry up, in evaluating the totality of the evidence both direct and circumstantial, the court finds the state has met its burden of proving the elements of the second degree murder as either a principal or an accomplice beyond a reasonable doubt.

I am finding that on or about August 28th of 1997 you or an accomplice acted with the intent, as either a

principal or accomplice, acted with the intent to cause the death of Carolyn Faye Clift, that Carolyn Faye Clift died as a result of your actions as an principal or accomplice and that these acts, in fact, occurred in the State of Washington.

I'm making a further finding that the defendant or an accomplice, you as a principal or accomplice, was armed with a deadly weapon, a knife having a blade longer than three inches, four to six inches actually according to Dr. Selove's testimony, which had the capacity to inflict death, from the manner it was used that it was likely to cause death.

For all those reasons, Mr. Brugnone, I am satisfied beyond a reasonable doubt. In fact, I'm not even convinced that you weren't a principal in this matter, Mr. Brugnone, to be honest with you. But I don't have to be convinced beyond a reasonable doubt as to whether you acted as a principal or an accomplice. I'm finding you guilty of second degree murder as well as making a special finding as to the deadly weapon other than a firearm.

2/15/13 RP 1984-7

Deadly Weapon Aggravator

Appellants challenges the finding that there was a deadly weapon used in the filling of Carolyn Clift. RCW 9.94A.825. Deadly weapon special verdict – Definition

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: ...any knife having a blade longer than three inches....

Brugnone by his own statements made the record that what was used to stab the victim to death was a knife. However even if it was not a

knife the description by Brugnone meets the definition set forth in the statute for a deadly weapon:

“F.-BRUGNONE: Ya, it-was something, it was a big something, I don’t know what it was, a rod, knife, could have been a knife. It kinda looked like a butcher knife or whatever.

“F. BRUGNONE: And I really couldn't tell you know I, it just looked like it was a big, big long thing, long knife but I couldn't tell exactly what it looked like or what the handle looked like or anything. It just big long thing.” (CP 34, 49)

The testimony of Dr. Selove however is dispositive with regard to both defendants;

Q. Doctor, does the depth of the wounds provide for your consideration any information as to the length of the blade?

A. Yes, it does. Now, a longer blade may have been used and not fully inserted. So five to six inches that I'm measuring as my longest wound path doesn't exclude an eight-inch or a ten-inch knife, but it does exclude something much shorter. In other words, a two or three-inch blade did not cause the five or six-inch wound track. So it was probably four or five inches or longer.

Even though I told you one of these wounds is six inches long -- well, let me say four to six inches or longer is probably how long the blade was. All the wound entrances in the skin are consistently about one and three-fourths inches or one and seven-eighths inches long or wide. So probably a blade about an inch and a half or more wide and five or six inches or more long.

1/30/13 RP 598-9

There is a need for this court to look at this issue separately for these two appellants. The testimony presented for Brugnone includes his statements that there was a knife or some rod that was long, very long must be reviewed separately because that information was not presented to the jury.

Dr. Selove was qualified as an expert. The testimony that was presented through this expert clearly supports the deadly weapon allegation. Whether the instrument that was used was a knife as Dr. Selove testified to or was an “implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death” as alluded to by Brugnone in his portion of the trial the evidence clearly supports the finding that a “deadly weapon” was used to kill Carolyn Clift.

With regard to Gorski the testimony of Dr. Selove alone was and is sufficient to support the jury’s determination that the deadly weapon aggravator was proven beyond a reasonable doubt.

Once again this court must be cognizant that in Brugnone’s trial the court was sitting as the trier of fact and “credibility determinations are for the trier of fact and are not subject to review.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The oral ruling by the trial court in conjunction with the very extensive written findings of fact and conclusions of law support Brugnone's conviction for murder in the second degree.

RESPONSE TO ALLEGATION – LEGAL FINANCIAL

Appellant did not raise this issue in the trial court. This court should exercise the discretion allowed by the court in State v. Blazina, 182 Wn.2d 827, 344 P.3d 680, 683 (2015). The simple fact is that there are costs associated with the criminal acts that are committed by an individual. The legislature of numerous years has addressed these costs. This court as well as the other two divisions of the court of appeals have strongly and continuously denied this allegation. The court has on occasion allowed review where there was some basis in the trial court, there is none here. Public policy does not favor review as claimed by Gorski, the citizenry of this state has by its electoral voice expressed its desire to have those responsible for criminal acts committed in this state pay the costs associated with those crimes.

If this court were to review the entirety of the record it would find that Mr. Gorski held himself out as constantly employed and there is no indication that he would not be able to return to that form of employment.

Q. Let's talk about your life at that time then. Do you recall where you were working at that time?

A. I was selling furniture at a place called Heilig Meyers. It

was in the old MacBeth furniture building.

Q. How long had you been a furniture salesman?

A. I started selling there in 1997, I believe, pretty much to today. I had sold in the past. My whole time I would say 13, 15 years in selling furniture.

Q. Quite a bit of time?

A. Yes, sir. 2/7/13 RP 1574

This court need not and should not address this issue. As Division II of this court just ruled in State v. Lyle, 188 Wn.App. 848, 852, 355 P.3d 327 (2015).

Lyle did not challenge the trial court's imposition of LFOs at his sentencing, so he may not do so on appeal. Blazina, 174 Wn. App. at 911. Our decision in Blazina, issued before Lyle's March 14, 2014 sentencing, provided notice that the failure to object to LFOs during sentencing waives a related claim of error on appeal. 174 Wn. App. at 911. As our Supreme Court noted, an appellate court may use its discretion to reach unpreserved claims of error. Blazina, 182 Wn.2d at 830. We decline to exercise such discretion here.

This court has consistently ruled as the Lyle court did since this court's ruling in State v. Duncan, 180 Wn.App. 245, 250, 253, 327 P.3d 699 (2014). There this court ruled that the defendant's failure to object was not because the ability to pay LFOs was overlooked, rather the defendant reasonably waived the issue, considering "the apparent and unsurprising fact that many defendants do not make an effort at sentencing to suggest to the sentencing court that they are, and will remain, unproductive"

The opinion in Duncan was not changed by the ruling in State v.

Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). Blazina addressed RCW 10.01.160(3) which states a sentencing court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." When determining the amount and method for paying the costs, "the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3). In Blazina the Washington Supreme Court held RCW 10.01.160(3) requires a court "do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry"; rather, the record must show the court "made an individualized inquiry into the defendant's current and future ability to pay."

The Supreme Court ruling in Blazina also reaffirmed that RAP 2.5(a) provides appellate courts with discretion whether to review a defendant's LFO challenge raised for the first time on appeal. Blazina, 344 P.3d at 683. There, the Blazina court exercised its discretion in favor of allowing the LFO challenge. Id. Here, Gorski failed to object to the trial court's imposition of LFOs. This court therefore, has discretion to rely on the analysis in Duncan, supra, and not review the claimed error.

As this court is well aware the trial court has no need to address the individual's ability to pay when imposing mandatory costs. Evidence of ability to pay was unnecessary to support the mandatory financial

obligations imposed by the court. State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013) noting that, for these costs, "the legislature has directed expressly that a defendant's ability to pay should not be taken into account".

As Lundy so accurately states;

As a preliminary matter, we note that Lundy does not distinguish between mandatory and discretionary legal financial obligations. This is an important distinction because for *mandatory* legal financial obligations, the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these obligations. For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account. *See, e.g., State v. Kuster*, No. 30548-1-III, 2013 WL 3498241 (2013). And our courts have held that these mandatory obligations are constitutional so long as "there are sufficient safeguards in the current sentencing scheme to prevent *imprisonment* of indigent defendants." State v. Curry, 118 Wash.2d 911, 918, 829 P.2d 166 (1992) (emphasis added).

...

Additionally, a \$500 victim assessment is required by RCW 7.68.035(1)(a), a \$100 DNA collection fee is required by RCW 43.43.7541, and a \$200 criminal filing fee is required by RCW 36.18.020(2)(h), irrespective of the defendant's ability to pay. *See State v. Curry*, 62 Wash.App. 676, 680-81, 814 P.2d 1252 (1991), *aff'd*, 118 Wash.2d 911, 829 P.2d 166; State v. Thompson, 153 Wn.App. 325, 336, 223 P.3d 1165 (2009). Because the legislature has mandated imposition of these legal financial obligations, the trial court's "finding" of a defendant's current or likely future ability to pay them is surplusage. (Lundy at 102-3, Footnote omitted emphasis in original.)

Gorski is also raising for the first time on appeal the mandatory \$100.00 fee DNA under RCW 43.43.7541 as violating due process.

Generally the appellate court will not consider a matter raised for the first time on appeal. State v. Kirkman, 159 Wn.2d 918, 826, 155 P.3d 125 (2007). An exception exists for claims of error that constitute manifest constitutional error. RAP 2.5(a)(3). If a cursory review of the alleged error suggests a constitutional issue then the defendant bears the burden to show the error was manifest. State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992). Error is “manifest” if the defendant shows that he was actually prejudiced by it. State v. Kirkman, 159 Wn.2d 918, 926-7, 155 P.3d 125 (2007). Here, the error is not manifest because Gorski was not actually prejudiced when the fee was imposed.

Courts have held that statutes imposing mandatory financial obligations are not unconstitutional on their face. State v. Curry, 118 Wn.2d 911, 917, 829 P.2d 166 (1992) (crime victims penalty assessment); State v. Kuster, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (crime victims penalty assessment, DNA collection fee); State v. Lundy, 176 Wn. App. 96, 308 P.3d 755 (2013) (restitution, crime victims penalty assessment, DNA collection fee). Constitutional principles are only implicated if the State seeks to enforce the debt at a time when the

defendant through no fault of his own is unable to comply. Curry, 118 Wn.2d at 917.

The Supreme Court found the Sentencing Reform Act contained adequate safeguards to prevent imprisonment of indigent defendants. Those safeguards included former RCW 9.94A.200 that allowed a defendant the opportunity to show cause why he should not be incarcerated for a violation of his sentence. Id. at 918. Those same protections still exist. RCW 9.94A.6333. Because Gorski will not face any punitive sanction for failure to pay if he is indigent, he has not shown that he was actually prejudiced by imposition of the DNA collection fee under RCW 43.43.7541 without a determination of his ability to pay beforehand. For that reason the court should not consider this challenge to that statute for the first time on appeal.

Statutes are presumed constitutional and the party challenging a statute's constitutionality has the burden of proving otherwise beyond a reasonable doubt. In re Pers. Restraint of McNeil, 181 Wn.2d 582, 334 P.3d 548 (2014). The party challenging the statute bears the burden to prove the statute is unconstitutional beyond a reasonable doubt. If at all possible statutes should be construed to be constitutional. State v. Farmer, 116 Wn.2d 414, 419-20, 805 P.2d 200 (1991).

The claim is that RCW 43.43.7541 is unconstitutional as applied to

defendants who do not have the ability or likely future ability to pay the \$100 DNA fee. Except in circumstances not relevant here, a party may generally only challenge a statute if he is harmed by the feature of the statute that is claimed to be unconstitutional. State v. Cates, 183 Wn.2d 531, 540, 354 P.3d 832 (2015).

Here, the legislature found that DNA databases are important tools in criminal investigations, in excluding people who are the subject of investigations or prosecutions, detecting recidivist acts, and identifying the location of missing and unidentified persons. RCW 43.43.753. It created a DNA identification system to serve those purposes. RCW 43.43.754. Monies collected under RCW 43.43.7541 are put into an account administered by the state treasurer. They may be used only to create, operate, and maintain the DNA database. RCW 43.43.7532; State v. Brewster, 152 Wn. App. 856, 860, 218 P.3d 249 (2009). This is a legitimate basis for this fee and this court should not disturb the mandates of the legislature or the trial court's imposition of this minimal fee.

This court should once again decline to address this issue for the first time on appeal.

IV. CONCLUSION

For the reasons set forth above this court should deny the allegations raised by both appellants and affirm the actions of the trial court.

Respectfully submitted this 31st day of December 2015,

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APPENDIX A

FRANK BRUGNONE INTERVIEW ON CASE NO. 97-2759

The following statement concerns the murder of Carolyn F. Clift on or about August 28 of 1997, Selah Police Department Case number 97-2759, YSO Case number 97-15131. The date today is July 13th, 2011. The time is, time is 21:26. We're here in the interview room of the Selah Police Department. Present during this statement are Frank Eugene Brugnone and myself, Officer Martin and Detective Rich Brumley.

OFFICER MARTIN: What is your true name?

F. BRUGNONE: Frank Edward Brugnone. But we'll use Frank Eugene Brugnone because I've went by that all my life.

OFFICER MARTIN: Ok. And how do you spell your last name?

F. BRUGNONE: B R U G N O N E.

OFFICER MARTIN: Your address?

F. BRUGNONE: 1316 S. 16th Avenue Apartment D.

OFFICER MARTIN: And what city is that?

F. BRUGNONE: Yakima, Washington. 98902.

OFFICER MARTIN: And your age and date of birth?

F. BRUGNONE: 58 years old. 4/12/53.

OFFICER MARTIN: And your telephone number?

~~F. BRUGNONE: 930-5757.~~

OFFICER MARTIN: And do you understand you have the right to remain silent?

F. BRUGNONE: Pardon?

OFFICER MARTIN: Do you understand you have the right to remain silent?

F. BRUGNONE: Yes.

OFFICER MARTIN: Do you understand you have the right at this time to an attorney?

F. BRUGNONE: Yes.

OFFICER MARTIN: Do you understand that you have the right to talk to an attorney before answering any questions?

F. BRUGNONE: Yes.

OFFICER MARTIN: Do you understand that you have the right to an attorney present during the questioning?

F. BRUGNONE: Yes.

OFFICER MARTIN: Do you understand that if you cannot afford an attorney, one will be appointed for you without cost before or during questioning if you so desire?

F. BRUGNONE: Yes.

OFFICER MARTIN: Do you understand these rights?

F. BRUGNONE: I think so.

OFFICER MARTIN: K. Well is there something you don't understand I can explain for you?

F. BRUGNONE: No, I do.

OFFICER MARTIN: Ok. Is this statement voluntary on your part?

F. BRUGNONE: Yes.

OFFICER MARTIN: And do you understand this statement is being recorded?

F. BRUGNONE: Yes.

OFFICER MARTIN: Alright. K, first of all Frank um, we discussed the case of Carolyn Clift back from August 28th of 1997 and your possible involvement with having been there that night. So if you could maybe just start from the beginning from what you remember of being with Mike Gorski and how you ended up at Carolyn's apartment.

F. BRUGNONE: We're, we're drinking at the Wagon Wheel: Mike, mike and I or I and Mike. And playin this game and drinkin. And we drank quite a bit and Mike ah was talkin to ah, ah Carolyn out on the dance floor while we were drinkin, back and forth. And I don't know 9:30 or something 8:30, 9:30 or somewhere around there he decided he wanted to go to her house and wanted to know if I would take him over there and I said ya I'd take him over there. So we headed over there, I don't know it was 9:30,

10:00 something like that. We headed over there and met her over there and then went, went in her front door and and ah um bullshitted back n forth, some hugs and kisses and I was probably over there at the most 15 – 20 minutes and ah left him there. And then I left.

OFFICER MARTIN: You left and went where?

F. BRUGNONE: I left and went home.

OFFICER MARTIN: And....

F. BRUGNONE: I got home probably it must have been approximately 12 – 12:30, something like that. And I went home, got in my hot tub for an hour or two and then I went to bed.

OFFICER MARTIN: At this point your roommate, Mike is your roommate, correct?

F. BRUGNONE: Ya, correct.

OFFICER MARTIN: And what time do you remember him coming home?

F. BRUGNONE: Boy that I really, I'm not sure really it had to of been after 2:00 – 2:30.

OFFICER MARTIN: Do you remember how he got home?

F. BRUGNONE: That I don't know. He always found away.

OFFICER MARTIN: And now we had talked about um, a witness seeing you guys in the parking lot on East end of that apartment complex.

F. BRUGNONE: Ah huh.

OFFICER MARTIN: So....

F. BRUGNONE: That was when we pulled up there, evidently when we pulled in there so I mean that's the only thing I can figure is when we pulled in I guess....

OFFICER MARTIN: So...

F. BRUGNONE: Cause I left long...

OFFICER MARTIN: So, so when you park there, you guys get out, walk to her apartment?

F. BRUGNONE: Correct, ya.

OFFICER MARTIN: Um, your greeted cause in the past you've said you have had a one night stand with Carolyn?

F. BRUGNONE: Yes.

OFFICER MARTIN: Ok and that was you're thinking July maybe August?

F. BRUGNONE: It was July or first part of August, somewhere in there somewhere. It was ya quick and out, ya.

OFFICER MARTIN: And, and you guys have also known her thru the Wagon Wheel?

F. BRUGNONE: Ya, we'd seen her there several times dancing.

OFFICER MARTIN: Now did you say you thought Mike knew her better?

F. BRUGNONE: Ya, he'd been with her more, more times than I had from what he told me.

OFFICER MARTIN: When you, sorry to interrupt. When you said been with her, do you mean in a sexual relationship?

F. BRUGNONE: Ya.

OFFICER MARTIN: Ok. And so you were with her the one time. So the night you were there, do you remember um, so you walked in maybe hugs were exchanged, kisses with Carolyn type thing of greeting.

F. BRUGNONE: Ah huh.

~~OFFICER MARTIN: And then do you remember of you stayed and had a drink?~~

F. BRUGNONE: Well I don't remember because I, I, I mean I really, I really don't think so because I had enough to drink and I had to drive home, no I, I, I'm sure I didn't. And she makes her drink and him and drink but I'm sure I didn't have one because I, I got out of there no longer than 15 minutes.

OFFICER MARTIN: Do you remember what kind of drinks she mixed for them?

F. BRUGNONE: That I'm not sure. I don't know what they were drinking.

OFFICER MARTIN: And do you recall if you were smoking at this time?

F. BRUGNONE: Ah, I walked in smoking so I'm sure, I'm sure I probably had a cigarette while I was there.

OFFICER MARTIN: And what kind of cigarettes do you smoke?

F. BRUGNONE: Um, just the cheap brand, Basics, Basic cigarette.

OFFICER MARTIN: And you said that you knew that Mike smoked?

F. BRUGNONE: Ya, he smoked. He smoked Marlboro. See he always smoked Marlboro, he wouldn't change.

OFFICER MARTIN: Ok. Do you know if he was smoking that night?

F. BRUGNONE: Oh, I'm sure he was.

OFFICER MARTIN: Ok. So did you have any part in Carolyn's murder?

F. BRUGNONE: No I didn't.

OFFICER MARTIN: Was there anything that Mike asked you to do about that? Help, help cover it up or talked to you about that?

F. BRUGNONE: No.

OFFICER MARTIN: He's never discussed anything like that at, at all even in all these years?

F. BRUGNONE: Nope. I never heard a thing about it.

OFFICER MARTIN: What kind of personality does Mike have?

F. BRUGNONE: Um, he's a rough character. Um, I don't know how you would explain it, a rough ah kinda he could be psychotic or ah crazy.

OFFICER MARTIN: Have you seen him have episodes of being a little on that crazy side like you say?

F. BRUGNONE: Ya.

OFFICER MARTIN: Could you maybe explain one of them.

F. BRUGNONE: Oh, he's gotten in fights, I mean just went off and got in fights and...

OFFICER MARTIN: We talked to about um, one time when he shot at you guys with a 370.

F. BRUGNONE: Oh, ya. He shot at us ya with a rifles and stuff when we were younger. So, ya he, he can get wild and crazy. Like I say shot at ya, ah I can't remember what else he did now but he ah, he can get crazy.

OFFICER MARTIN: Can you find him, would you believe he could do ah the type of violence that was involved in this murder?

F. BRUGNONE: Ya, I do.

OFFICER MARTIN: And at no time did he ever threaten you about keep quiet about anything?

F. BRUGNONE: No.

OFFICER MARTIN: And um, do you remember having a discussion with Megan Forenpohar(?) about needing an alibi?

F. BRUGNONE: No I don't.

OFFICER MARTIN: Because you'd been at Carolyn's that night.

F. BRUGNONE: No I don't remember that and I don't know why I would a needed one because I was there just a short time and I went home. So I don't, I don't understand why I would of asked her or needed one from her.

OFFICER MARTIN: Or if Mike would have asked one for you?

F. BRUGNONE: No. I don't know. I don't know I mean he was goin with, with Megan, so I don't know.

OFFICER MARTIN: Ok. And you said you knew Mike to be um with other girls besides, had several different....

F. BRUGNONE: He's with all kinds of different young women, young gals all the time.

OFFICER MARTIN: Ok. Do you know about how many times he was with Carolyn? Or that you knew of, how many times?

F. BRUGNONE: I knew of at least twice, at list twice before this that he'd told me about.

OFFICER MARTIN: And did you talk about anything how it was with her or...

F. BRUGNONE: No. He said it was in and out, just basically like I did, my little deal.

OFFICER MARTIN: Ok. Um, so you denying any, any involvement with her murder?

F. BRUGNONE: Correct.

OFFICER MARTIN: Any involvement with Mike having to ask you to try and destroy any evidence?

F. BRUGNONE: Correct.

OFFICER MARTIN: Any involvement with um, that you had witness him do anything or did he talk to you about that?

F. BRUGNONE: No he didn't talk to me about it, no.

OFFICER MARTIN: Detective Brumley?

DETECTIVE BRUMLEY: I have a few questions. Um, the night that you dropped him off at the apartment, do you remember what month that was?

F. BRUGNONE: Pardon me?

DETECTIVE BRUMLEY: Do you remember what month it was?

F. BRUGNONE: What month it was that I dropped him off, in August.

DETECTIVE BRUMLEY: In August. Do you know what part of August?

~~F. BRUGNONE: The end of August.~~

DETECTIVE BRUMLEY: Ok. So was it the next day that she you discovered that she'd been killed?

F. BRUGNONE: No. I didn't, I didn't even know anything about it, that she'd been killed.

DETECTIVE BRUMLEY: When did you find out?

F. BRUGNONE: Right now, or tonight when you guys ah cuffed me.

OFFICER MARTIN: So you never, you did not know about Carolyn Clift being murdered?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: How long have you lived in Yakima?

F. BRUGNONE: In Yakima? 4 years – 5 years. Selah 50 years.

DETECTIVE BRUMLEY: How long did you live in Selah? 50 years.

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: So the night that a she was killed, um, how many years after that were you still in Selah?

F. BRUGNONE: Three... Two, I guess two I guess if that was 97 I guess two years.

DETECTIVE BRUMLEY: And where did you move to after that?

F. BRUGNONE: Oklahoma.

DETECTIVE BRUMLEY: And how many years were you in Oklahoma?

F. BRUGNONE: From 99 to, let's see 99 to 2005, 2006 I think it was.

DETECTIVE BRUMLEY: And so when you moved back from Oklahoma, where did you move to?

F. BRUGNONE: Cemetery in Terrance Heights.

DETECTIVE BRUMLEY: Ok. So overall you've spent the majority of your life in Yakima-Valley?

F. BRUGNONE: Correct.

OFFICER MARTIN: Did you ever find it curious or wonder why you didn't see her around the bars anymore?

F. BRUGNONE: No because I never went around the bars anymore.

OFFICER MARTIN: Like after 97, like after that night?

F. BRUGNONE: I never went around the bars anymore.

OFFICER MARTIN: You were....

F. BRUGNONE: I'm divorced. I divorced (8:47:25) after that and I never went around to bars after that, that much. I never went around the Wagon Wheel, it wasn't even open I don't think. Shortly after that, it closed.

OFFICER MARTIN: After her murder, it closed.

F. BRUGNONE: Shortly after, ya, around that time it closed, ya.

OFFICER MARTIN: Just there was quite a bit of publicity on it, so to be honest it's surprising that you wouldn't of heard some or something about it.

F. BRUGNONE: Ya, I honestly I never, I never heard anything about it. I spent most of time out there at the house.

OFFICER MARTIN: K. So when you, when you say we contacted you and talked about that, that was the first you'd heard that Carolyn Clift had been murdered?

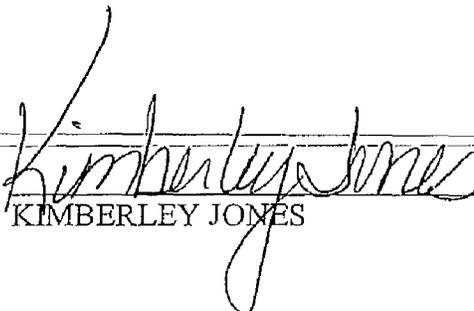
F. BRUGNONE: Ah huh. First I heard.

OFFICER MARTIN: You have any further questions?

DETECTIVE BRUMLEY: None at this time. Um, just go ahead and stop at 21:37 is the time.

I, Kimberley Jones, one of the Official Court Transcribers of the State of Washington in and for the County of Yakima, do hereby certify that the foregoing interview was transcribed verbatim on July 17, 2011.

Dated this 17th day of July, 2011.


KIMBERLEY JONES

Exhibit

B

FRANK BRUGNONE INTERVIEW ON CASE NO. 97-2759

The following statement concerns the murder of Carolyn F. Clift on or about August 28 of 1997. Selah Police Department Case number 97-2759, YSO Case number 97-15131. The date today is July 13th, 2011. The time is, time is 22:00 hours. We're here in the interview room of the Selah Police Department. Present during this statement are Frank Eugene or Edward Brugnone, Officer Martin and Detective Rich Brumley.

OFFICER MARTIN: What is your true name?

F. BRUGNONE: Frank Eugene Edward Brugnone.

OFFICER MARTIN: Could you please spell your last name, Frank.

F. BRUGNONE: B U R G N O N E.

OFFICER MARTIN: And what is your address?

F. BRUGNONE: 1316 S. 16th Avenue Apartment D.

OFFICER MARTIN: And what is your age and date of birth?

F. BRUGNONE: 58. 4/12/53.

OFFICER MARTIN: And a phone number for you?

F. BRUGNONE: 930-5757.

OFFICER MARTIN: And having your rights in mind that we read to you previously, having those rights in mind, do you wish to talk to us?

F. BRUGNONE: Ya.

OFFICER MARTIN: And you understand, you understand your rights, correct?

F. BRUGNONE: Yes.

OFFICER MARTIN: Is this statement voluntary on your part?

F. BRUGNONE: Yes.

OFFICER MARTIN: And do you understand this statement is being recorded?

F. BRUGNONE: Yes.

OFFICER MARTIN: Ok. Frank I would like you'd to begin then on starting on August 28th, 1997.

F. BRUGNONE: Me and ah Mike Gorski went to the Wagon Wheel and were drinking and playing this game, seven whatever it is, dice game seven for drinks and with a bunch of other guys, that and ah Carol come in and Mike went over there and danced with her while we were playing this game and stuff. And then she, came over and asked me if we wanted to go over to her house, wanted me to take him to his house, her house. I said ya I can or whatever ya, so we did. Then we went over there. I forget what time, 8:30 - 9:00 something like that, 9:30. And we went over there and walked over, drove over there and walked in there and she met us at the door. She left a little bit earlier then we did, she met us at the door and greeted us and so on. And give us hugs and stuff and I stayed for a little while and then Mike was whisperin back and forth to her and this, and talking to me and jumble this and jumble that and then all the sudden there's some pushin and shoving and, and ah, ah all the sudden she went down. I said I'm I'm leav, I'm getting out of here. I don't know what you're doin, I said I'm, I'm leavin, I'm goin home. He said alright meet me out in the car and I said alright I'm going out in the car, so I went out to the car. And then he come out afterwards and we left and went home.

DETECTIVE MARTIN: Ok. When the pushin and shoving was going on, was she naked?

F. BRUGNONE: Ya. Ya, she didn't have any close on. All she had was a bathrobe on when we, when we, she come to the door.

OFFICER MARTIN: How did her bathrobe get off?

F. BRUGNONE: Mike took her bathrobe off and then I don't know what happened in the pushin and shoving, I don't know what happened. I don't know if he hit her with something or if he stuck her with something, I don't know, but she hit the floor and I said that's, that's, I don't know what's goin on Mike here, I'm outta here, I don't know what you're doin.

OFFICER MARTIN: Where were you at when this was going on?

F. BRUGNONE: I was on the other side of her.

OFFICER MARTIN: On the couch or?

F. BRUGNONE: We were standing up, we were standing up there by the doorway, and just side by side and she was in the middle and he was on this side and she was in the middle and I was on the other side. He just pushed her back and forth against me and I'm trying to keep her back away from me and then I don't know, he kinda pushed her forward and she hit the floor....

OFFICER MARTIN: Well, now...

F. BRUGNONE: I said wow, what's goin on here.

OFFICER MARTIN: Now Frank when you're doing that, when you said push her forward, you made like a stabbing motion or...

F. BRUGNONE: Ya, it was ya, I don't know like he'd her, like he'd hit her with something or like he hit with something or stabbed with something or whatever. And I...

DETECTIVE BRUMLEY: Did she scream?

F. BRUGNONE: And, and she screamed and she hit the floor and, and ah, she tried to get back up you know and I, I said what's the matter you know, I got down I said what's the matter. She said I don't know. I said well I'm leavin, I don't know what's going on Mike, I said you take care of this. So I lef, I, I left I went outside. And I, he said well for me outside. I said alright I'll be out here if you're gonna be out here in a little bit, other than that, I'm gonna leave.

OFFICER MARTIN: Now Frank when she hit the floor, did you see any blood anywhere?

F. BRUGNONE: No, I didn't see any blood anywhere. But and acted she was, something happened to her bad.

DETECTIVE BRUMLEY: Did she scream?

F. BRUGNONE: Ya, kind of a scream and a huh or a HUH sort of noise. And I, I didn't like it, I didn't like the noise I mean it's like he'd hurt her or something.

OFFICER MARTIN: What do you think....

~~F. BRUGNONE: And I said, I said Mike whatever you've done you take care of her. You did whatever. I said you take care of her.~~

OFFICER MARTIN: What did you think he had done?

F. BRUGNONE: I don't know, hit her, push her down or, I don't know. I wasn't sure I think that or he stabbed her or something.

OFFICER MARTIN: Why would you think he would have stabbed her?

F. BRUGNONE: I mean just the way, way the motion was, the pushin motion. The way, as hard as he'd pushed on her and the way she went down on her

knees and went down you know it was like you know like kinda like somebody was stabbed or something.

OFFICER MARTIN: You didn't know him to carry a knife?

F. BRUGNONE: No, I didn't know him to carry a knife or something. But I don't know, he could of got it from there or something, I don't know.

DETECTIVE BRUMLEY: Did you see him holding a knife in his hand Frank, be honest?

OFFICER MARTIN: I saw something in his hand. But I'm....

DETECTIVE BRUMLEY: It was a big knife.

F. BRUGNONE: Ya, it was something, it was a big something, I don't know what it was, a rod, knife, could have been a knife. It kinda looked like a butcher knife or whatever.

DETECTIVE BRUMLEY: Did you also see him stab her in the back with it? Be honest with me.

F. BRUGNONE: Well, I saw what it looked like, ya he stabbed her with it.

DETECTIVE BRUMLEY: In the back?

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: Did you didn't, did you see him hammering it into her back?

F. BRUGNONE: No, I didn't see him do that. He must of done that after I left. Cause I, I left right after she hit the floor after he stuck her the first time, I went out the door.

OFFICER MARTIN: K. So he sticks her the first, she goes to her knees?

F. BRUGNONE: Goes down to her knees ya and down so, so far, I don't know how you'd say it, down to her knees like this....

OFFICER MARTIN: Ok.

F. BRUGNONE: And she's kinda lookin at me, I'm, and I kinda touched her and I said ah, take it easy Mike will take care of ya, whatever. That was kinda dumb thing to say.

OFFICER MARTIN: Well....

F. BRUGNONE: but you know I said I'm leavin, I'm out of here.

OFFICER MARTIN: So, so she's on her knees now, she's looking at you, you can tell something's happened to her because she's....

F. BRUGNONE: I know, I know something happened to her.

OFFICER MARTIN: So then do you see him stab her again? When she's on her knees?

F. BRUGNONE: I think he probably did after I left or as I was going out the door because it wasn't very long after that, he come out behind me.

OFFICER MARTIN: Ok, but when she went on her knees, did you see her go down the floor on, on her arms too? Did she lay on the floor? Or when did you see his stab her in the back?

F. BRUGNONE: When she was standing up. He stuck her and then, then he went, she went down and I got up talked to her, I got up and left, I says Mike I'm leavin. I'll meet you out in the car if your comin, if not fine. And he must of, he, he, he probably right then when he stuck it in farther. Because he, it wasn't long and he was out in the car with me.

OFFICER MARTIN: So was the first stab wound to the front or the back of her?

F. BRUGNONE: Back of her.

OFFICER MARTIN: The first one went to the back of her neck?

F. BRUGNONE: Ya.

OFFICER MARTIN: And that's when she went to her knees?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: She yells, she groans, you kinda say like Mike's gonna take care of you cause you can tell she's hurt....

F. BRUGNONE: Ah huh.

OFFICER MARTIN: Did you see him stab her again?

F. BRUGNONE: No. I didn't see her stab her again but...

OFFICER MARTIN: Did you see her try to fight off or what was she doing?

F. BRUGNONE: Well she wasn't fighten me off, you know I mean she just got kind of a I don't know ah, ah help me look on her face and....

DETECTIVE BRUMLEY: Did she grab you?

F. BRUGNONE: Ya, she kind a grabbed me as I was tryin to leave and I didn't know what to do.

OFFICER MARTIN: Where did she grab you at, do you remember?

F. BRUGNONE: Well I don't know, right here. I don't know what you call it.

OFFICER MARTIN: Ok, up by your shoulders?

F. BRUGNONE: Ya, by my shoulders or I don't know like....

OFFICER MARTIN: Your neck maybe?

F. BRUGNONE: Ya, right here someplace....

OFFICER MARTIN: Did you get some scratches from that?

F. BRUGNONE: No. I didn't, I didn't get any scratches.

OFFICER MARTIN: K.

F. BRUGNONE: But, and I, I just, I was scared. I said I'm outta here Mike you did this, you, I'm outta here.

OFFICER MARTIN: Because at that point you knew he had stabbed her?

~~F. BRUGNONE: Ya. After I got up, after I got up and got on my feet and looked down, I could see the blood then. I see...~~

OFFICER MARTIN: On the back of her neck?

F. BRUGNONE: On the back of her neck so I seen he done something. So I says No I'm not goin for this shit, it's not me. So I got out and went out to the car and that's when we went home.

OFFICER MARTIN: Well Frank she has three stab wounds.

F. BRUGNONE: Well, then he must of done it afterwards then.

OFFICER MARTIN: And she has stab wounds on her left hand from defense wounds.

F. BRUGNONE: Huh. Well I don't know. That's all I saw was that part.

OFFICER MARTIN: Ok. And that took her down to her knees?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: And your getting out of there then?

F. BRUGNONE: I'm out of there, ya.

OFFICER MARTIN: After you look at her, see that she's hurt?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: So...

F. BRUGNONE: I didn't like the look on her face and I, I didn't know what to do and I'm, I'm, I'm getting out of here.

OFFICER MARTIN: So you go to the car and wait for Mike?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: Now had you parked there in that parking lot....

F. BRUGNONE: Ya.

OFFICER MARTIN: So when, when Cecil came around and his headlights hit you guys...

~~F. BRUGNONE: I don't know who it was comin around there but...~~

OFFICER MARTIN: Ok. K. Well he's sayin he pulled in there then he sees you guys, do you remember kinda duckin then out of the way?

F. BRUGNONE: I prob, I might have, ya. I probably did ya cause I was scared. I didn't....

OFFICER MARTIN: Right.

F. BRUGNONE: Ah, cause of what he'd done, I, I didn't know what he'd done. I didn't know if he killed her or what you know at that time. I know he'd hurt her.

OFFICER MARTIN: So when he comes out to the truck then, or to your car, what is he wearing?

F. BRUGNONE: I don't remember what he was wearing.

OFFICER MARTIN: Or what was he not wearing? Was he fully clothed, do you remember?

F. BRUGNONE: Ya, he had his clothes on, the same clothes he had on I guess, ya. He, I mean he didn't have anything different, he still had all his clothes on.

OFFICER MARTIN: Do you remember havin a hat or towel or anything on his face or anything like that?

F. BRUGNONE: No.

OFFICER MARTIN: Do you remember him having blood on his hands?

F. BRUGNONE: I didn't look.

OFFICER MARTIN: What do you...

F. BRUGNONE: Cause, I told him to get him and let's go.

OFFICER MARTIN: So what did you guys talk about in the car?

F. BRUGNONE: I didn't talk about a thing. He might of talked but I didn't talk about nothing. I was too scared. I was drunk, too scared. I just I wanted to go home.

DETECTIVE BRUMLEY: When he come out to the truck, did he go back in?

F. BRUGNONE: Car, out the car.

DETECTIVE BRUMLEY: Car. When he came out, did he go back again and then come back?

F. BRUGNONE: Ya. He went the car, he came out the car, he came out the car, and said something. Oh, he said don't leave. He said I, cause I was just getting ready to leave. I just startin to pull off when he pulled up there or ran up there. He said don't leave, I'll be right back.

OFFICER MARTIN: K. So you wait...

F. BRUGNONE: I said well I said don't, don't be too long because I'm leavin. And he said I won't be long, I said alright. So I waited, I don't know four or five minutes whatever.

OFFICER MARTIN: What did he come back with something?

F. BRUGNONE: And then, and I didn't know. I was getting ready, I was getting ready to leave and he came back and we left.

OFFICER MARTIN: Did he have anything on him, I mean carrying anything?

F. BRUGNONE: No. Not that I could see. I just watched him jump in, I, I'm drivin.

OFFICER MARTIN: Did you peel out of there to get out of there quickly?

F. BRUGNONE: I just left and the thing wouldn't peel out or any....

OFFICER MARTIN: Ok.

F. BRUGNONE: I just took off. I'm headin for home, I wanna get home and that's it.

DETECTIVE BRUMLEY: Think carefully Frank because ah when he came back the second time, think very carefully about what he was or was not wearing, clothing wise.

F. BRUGNONE: Let's see, he has his, let's see, well he had his shirt on. He had his under shirt on.

OFFICER MARTIN: Just his under shirt and not....

F. BRUGNONE: Ya, he had what do you call it, that white shirt on.

OFFICER MARTIN: Right.

DETECTIVE BRUMLEY: A wife beater they call it.

F. BRUGNONE: Ya, I guess you call that thing. I don't know, whatever.

OFFICER MARTIN: Like white tank top.

F. BRUGNONE: His other shirt wasn't there.

DETECTIVE BRUMLEY: Was it low cut in the front?

F. BRUGNONE: Ya. Low cut shirt, ya.

DETECTIVE BRUMLEY: Ok. So what did he do with the knife?

F. BRUGNONE: I don't know what he done with that.

DETECTIVE BRUMLEY: He must have had it with him. He didn't, he didn't leave it there.

F. BRUGNONE: I don't know what he done with it. If he had it with him, he didn't show it to me. If he....

DETECTIVE BRUMLEY: Did he ask you to pull over somewhere....

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Take him somewhere?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: To go get rid of this?

F. BRUGNONE: No, I, I wasn't goin no place. When he got in that sucker, I drove right straight for the house.

OFFICER MARTIN: Do you remember like did he roll the window down at some point and toss anything out the window?

F. BRUGNONE: Not that I remember. He must of tookin it all the way to the house and he must of gotten rid of it the next day.

OFFICER MARTIN: Do you remember seeing anything at your house, a knife you didn't recognize?

F. BRUGNONE: No. Uh huh.

OFFICER MARTIN: What was the discussion in the car? You say you didn't say anything, but did say like holly shit or....

DETECTIVE BRUMLEY: Something was said. Absolutely.

OFFICER MARTIN: Something was said. You don't do that and then get in a car and nothing said.

F. BRUGNONE: Let's see, what did he say. Oh, he said something about what did I do and I said I don't know what you did but I didn't have nothing to do with it I know that.

OFFICER MARTIN: Then at some point did he tell you that he killed her?

F. BRUGNONE: It was the next day. Or not the next day it was when it come out, when, when I found out that she was dead, then he said he'd killed her.

OFFICER MARTIN: What was that conversation? Where were you guys at?

F. BRUGNONE: We was at the house. We was at the house just all over the house. He was ironing his shirts and stuff and clothes, stuff ready for work and he told me, he says she died and I said well ya you killed her didn't ya, ya so I did it. He said you keep your mouth shut.

DETECTIVE BRUMLEY: Why did you keep your mouth shut, Frank? All these years, why would you....

F. BRUGNONE: Well because I'm scared of him. I'm scared to death of him. I mean I don't know what he'll do. I mean hell he'd probably kill me. Probably kill me next, I don't know.

OFFICER MARTIN: Fears a big thing isn't it?

F. BRUGNONE: Huh, oh ya. Really, ya, he about shot me one time already.

DETECTIVE BRUMLEY: Tell us about that Frank.

F. BRUGNONE: I, he was at his house out there in the Wenas and me and Joe Poysal(?) runnin threw the field for our life, he shootin at both of us with a 270 rifle with a scope on it. I don't know how he kept from missin us, except for we were zig zaggin back and forth and landed in a ditch and got away from him. But, it scared me to death.

DETECTIVE BRUMLEY: What was the other guys name that he was shootin at?

~~F. BRUGNONE: Joe Poysal.~~

DETECTIVE BRUMLEY: Poysal?

F. BRUGNONE: Ya, he's still alive, but he's in a nursing home and....

DETECTIVE BRUMLEY: Do you know what year this was this happened?

F. BRUGNONE: Um, I don't know back in 78, 80.

DETECTIVE BRUMLEY: So let's go back to the apartment. What started the argument? Did he, what was it?

F. BRUGNONE: I don't know. He was talking to her, they were talking to each other in their ear, whisperin back and forth, they were whisperin back and forth.

OFFICER MARTIN: So you guys weren't there all that long. She came to the door with nothing on except a robe?

F. BRUGNONE: We were there probably 15 - 20 minutes. I was there about 15 - 20 minutes when all of this stuff broke loose. I mean she made him drink and then come over there and then they were both sittin back and forth, I don't hear what the dam, anyway, but they were whisperin so that made it worse yet. So they were just, I don't know what happened between them there.

OFFICER MARTIN: Were they kissin and doin some foreplay before that?

F. BRUGNONE: Ya, they were kissin and, they were doin it all while, they were kissin there, kissin this and talking going back and forth then I don't know what happened.

OFFICER MARTIN: And then Mike took her, takes her robe off at some point?

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: Did he take his shirt off?

F. BRUGNONE: I don't remember. I don't remember him taking his shirt off. I wasn't payin any that much attention. When they were whisperin back and forth it was none of my business, so I didn't pay any attention.

OFFICER MARTIN: And so then....

F. BRUGNONE: And I was ready to leave anyway. All I, with them doin their thing. So I wasn't gonna stay long any way.

OFFICER MARTIN: Now you all three guys were standing up when he stabbed her in the back of the neck?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: And it was....

F. BRUGNONE: I tried to catch her but, it didn't work.

DETECTIVE BRUMLEY: Well let's clarify again, where was the first stab? What part of her body was stabbed?

F. BRUGNONE: As far as I, it was in the back as far as I could tell.

OFFICER MARTIN: And did you notice before this was going to happen, that something was going to happen? Did he....

F. BRUGNONE: No.

OFFICER MARTIN: Did you see where he picked this knife up from?

F. BRUGNONE: No. It just all the sudden, all of the sudden she just boom, started movin forward. What's going on here you know, I mean like kind of a stumble you know, she's kinda stumbling on the floor and I thought god he's got that drunk already.

OFFICER MARTIN: And that, she was comin towards you then?

F. BRUGNONE: Huh?---

OFFICER MARTIN: Is that right, she was comin towards you sort of?

F. BRUGNONE: No, she was going forward.

OFFICER MARTIN: Ok.

F. BRUGNONE: We were standing side by side in a row and, and he was kind of um, behind her at an angle behind, I don't know how'd you say that. We was in a row like this....

OFFICER MARTIN: Ok.

F. BRUGNONE: He was kinda behind her with his arm around her like so.

DETECTIVE BRUMLEY: Tell you what, why don't we stand up and let's just roll play it out this way.

~~OFFICER MARTIN: Ok, ya.~~

F. BRUGNONE: Something like that or something, I don't know.

DETECTIVE BRUMLEY: So let, Paulie you want to be Carolyn?

OFFICER MARTIN: I'll be Carolyn.

DETECTIVE MARTIN: You be Mike and I'll be you. Or I'll be Mike.

F. BRUGNONE: Ok, whatever. It would be easier for me to explain if your Mike I guess.

OFFICER MARTIN: Ok.

F. BRUGNONE: You in the middle.

OFFICER MARTIN: I'm in the middle?

F. BRUGNONE: Ya. And Mike's about like that right there.

DETECTIVE BRUMLEY: Ok, so. Is Carolyn facing me or away from me?

F. BRUGNONE: Um, about so so.

DETECTIVE BRUMLEY: Ok.

F. BRUGNONE: So so like so. Ya-like this. And I'm-like, I'm about like this here and you guys are whisperin back and forth, talkin, kissy face, kissin here, this and that and all the sudden she kinda comes, comes kinda this way.

DETECTIVE BRUMLEY: Was that after he did...

F. BRUGNONE: That's when he, ya, that's when he done that.

DETECTIVE BRUMLEY: So where was the first stab wound?

F. BRUGNONE: As far as I thought it was right in here.

DETECTIVE BRUMLEY: Right in here?

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: Ok.

F. BRUGNONE: And then, cause she started going, I, I tried to catch her
~~but I, I couldn't do it.~~

OFFICER MARTIN: So she goes down to her knees then?

F. BRUGNONE: Ya.

OFFICER MARTIN: And then you come over....

F. BRUGNONE: I come over and ask her you all right, she's kinda, well now she's kinda screamin and groanin and I went asks are you alright. She says I don't know I think so. I said well Mike will take care of ya. I said I'm leavin.

OFFICER MARTIN: Now, was she on her knees like this? This way or was she...

F. BRUGNONE: Like that.

OFFICER MARTIN: Ok.

F. BRUGNONE: Ya. She had one hand down.

OFFICER MARTIN: One arm down?

F. BRUGNONE: Ya.

OFFICER MARTIN: Ok. And so now do you see the blood on the back of her neck?

F. BRUGNONE: Not until after, tell I got down.

OFFICER MARTIN: Then you went down to see if she was ok?

F. BRUGNONE: To when I went down to see if she was alright and I kinda I said you alright and I kinda looked around her and then I saw it.

OFFICER MARTIN: Because actually that would be, she would be this way to you, right?

F. BRUGNONE: Right, ya.

OFFICER MARTIN: And so you come look around, and then when you come over you see...

F. BRUGNONE: Kinda dark in there so I come over....

OFFICER MARTIN: Right.

F. BRUGNONE: like this and, and I, I said you all right, she kinda looked at me like that.

OFFICER MARTIN: K.

F. BRUGNONE: I said you all right and she said ah I think so and I looked around and I seen the blood and I said well Mike will take care of you, I'm leavin.

OFFICER MARTIN: Ok.

F. BRUGNONE: And that.

OFFICER MARTIN: So at that time your thinkin holy shit what the hell....

F. BRUGNONE: Ya, I'm thinkin oh shit I'm outta, I'm getting outta here Mike. I'm leavin and as I'm goin by here he's sayin wait for me. I said well I'm not waitin long, I'm getting outta here.

OFFICER MARTIN: Did you see anything else after you checked on her and you, before you walk out, did you see him stab her again?

F. BRUGNONE: No because when I, when I went like this, I'm, I'm headin out the door, I'm grabbin the door knob headin out the door, I ain't lookin at nothing else.

OFFICER MARTIN: Because she....

F. BRUGNONE: Oh he could-of, he could-of, she could-of turned around and he could of, they could have had a little battle and fought again, I don't know because I'm headin out the door. I'm not, I'm, I said bye's and I'm headin outta here.

OFFICER MARTIN: Cause when you leave the doors....

F. BRUGNONE: I'm grabbin the door, I'm headin out.

OFFICER MARTIN: The door is that way and she's still kind of facing in the apartment?

F. BRUGNONE: Ya I'm grabbin the door, I'm headin out and I'm slammin the door, I'm headin out. I'm goin out the door, out this way and I'm outta here.

OFFICER MARTIN: And her back is kind a still to the door?

F. BRUGNONE: Right.

OFFICER MARTIN: Ok.

F. BRUGNONE: I'm not and she could've when I, my backs to her, she could've turned around at the time when he come over to her, he was goin to her as I'm headin out the door, I think he was but he was goin that way. I'm headin out the door, I'm not, I'm, I'm outta there.

OFFICER MARTIN: You ran out there?

F. BRUGNONE: Basically, fast walk. I'm outta there.

DETECTIVE BRUMLEY: So then again he, he came out of the house, apartment to do...

F. BRUGNONE: He came out because I was leavin. He probably saw me leavin.

DETECTIVE BRUMLEY: K.

F. BRUGNONE: He come out and said wait a minute and I'll be right back. And he kept, he went in the house and then he was in there for I don't know few, three or four minutes then he's back out again. Then I left. I said that's it.

DETECTIVE BRUMLEY: Was he washing the apartment when he was in there?

F. BRUGNONE: Well I was looking at it but you can't see it. Cause when you come out there's a another apartment door....

OFFICER MARTIN: Correct:-----

F. BRUGNONE: right there. And then that building, it sits kind a back in like this you know you have to go around the building and come in, in like this, you gotta door here and you gotta door over here. So when you're over in the parking lot you can't really see in between there, can't see what's going on there.

OFFICER MARTIN: Right. Would you be willing to take us over there and show us that? Exactly where you were parked?

F. BRUGNONE: Um, ya I can, ya.

DETECTIVE BRUMLEY: So he came out, asked you not to leave.

F. BRUGNONE: Ah huh. Is this mine?

OFFICER MARTIN: Yes. I can get you some more if you'd like.

DETECTIVE BRUMLEY: And then what did he do? He went back again?

F. BRUGNONE: Went back, went back as far as I know.

DETECTIVE BRUMLEY: K.

F. BRUGNONE: And was there I don't know, three or four minutes cause I told him I wasn't gonna be out there much longer, I was leavin with him or without him.

DETECTIVE BRUMLEY: And then what happened?

F. BRUGNONE: He come back out. I took off. I wasn't sayin I'm waitin to leavin. When he got in, I'm out, I'm gone.

DETECTIVE BRUMLEY: Do you drove up to Wenas?

F. BRUGNONE: Ya, drove out went up Wenas trial to Wenas to my house.

DETECTIVE BRUMLEY: So you would've turned right or left?

F. BRUGNONE: When I come out I would've took a right.

DETECTIVE BRUMLEY: Were you driving fast?

F. BRUGNONE: Oh just flip the sign, stop, took my right, I did the speed limit.

DETECTIVE BRUMLEY: What kind of car were you driving?

F. BRUGNONE: Ah, Dodge Colt. 80, what was that, 87 Dodge Colt.

DETECTIVE BRUMLEY: Do you know what color it was?

F. BRUGNONE: White.

DETECTIVE BRUMLEY: Where's that car now, probably long gone?

F. BRUGNONE: Uh huh. I sold it to Brian Harris and got a Pontiac ah 6000.

DETECTIVE BRUMLEY: So on your drive home, what was Mike saying? Remember clearly as you can.

F. BRUGNONE: Just oh shit, oh shit this, oh this that you know just, what'd I do, this that.

OFFICER MARTIN: When you say this and that, are there words in there or you not real sure what he said?

F. BRUGNONE: Oh ya, what'd I do, ah I stabbed her you know I don't if I, I hurt her or I don't know if I killed her, this stuff. I said I don't know how many times I stabbed her and I'm not anything, I'm just I'm listening cause I don't know what they hell they're gonna do to me.

OFFICER MARTIN: Ah huh.

F. BRUGNONE: I'm listening, I'm cruising home getting fast as I can get home. He..

OFFICER MARTIN: So when he...

F. BRUGNONE: So he can go to bed and I can go to bed.

OFFICER MARTIN: So when he says I don't know how many times I stabbed her did that, your assumption that there was more than one?

F. BRUGNONE: Ya.

OFFICER MARTIN: And when you're in the apartment you can't think about looking back now where he might have got that knife from? If he brought it with him or?

F. BRUGNONE: I don't know where we was at and where we was standing I mean, I don't know where he could've got the knife at or unless he, unless he stole it out of the kitchen of the Wagon Wheel or if he and brought hit with him or what but...

OFFICER MARTIN: Do you remember about what it looked like? Did it have a wooden handle, did it have a long blade or?

F. BRUGNONE: God it was kind of it was you know, that house, she always had that house so dark all the time.

OFFICER MARTIN: Right.

F. BRUGNONE: And I really couldn't tell you know I, it just looked like it was a big, big long thing, long knife but I couldn't tell exactly what it looked like or what the handle looked like or anything. It just big long thing.

OFFICER MARTIN: As far as you know, he's not known to carry knives that you know of?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Think carefully, on your way home, did he, did he roll the window down, did he ask you to pull over somewhere?

OFFICER MARTIN: I know I didn't pull over. I went right straight, as soon as I made that right I went straight home.

DETECTIVE BRUMLEY: K. Did you notice him having the knife in your car?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Did you notice him having anything in his hands in the car?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Anything at all?

F. BRUGNONE: Nope.

OFFICER MARTIN: Do you remember seeing any blood on his hands?

F. BRUGNONE: Cigarettes. He was smoking a cigarette. I think he had blood on his hands.

OFFICER MARTIN: You remember seeing blood on his hands?

F. BRUGNONE: Ah huh.

OFFICER MARTIN: On both of them?

F. BRUGNONE: Ya. When he got in the house, he got in the house he washed them off in the sink.

DETECTIVE BRUMLEY: All he had on was a wife beater shirt?

F. BRUGNONE: That's all I remember havin on, ya.

OFFICER MARTIN: Do you remember there being blood on that?

F. BRUGNONE: God I don't remember, I don't think so. I don't think there was anything on it.

OFFICER MARTIN: Pretty freaked out by the whole thing?

F. BRUGNONE: Oh ya. I was fr freaked. I's freaked just about as bad as I was freaked when you guys picked me up tonight or more.

DETECTIVE BRUMLEY: The, the next day did you, do you remember asking Megan...

OFFICER MARTIN: Megan.

DETECTIVE BRUMLEY: If somebody was looking for you?

F. BRUGNONE: Ya I remember.

OFFICER MARTIN: And what...

DETECTIVE BRUMLEY: Do you, do you remember telling her that you were there the night that Clift was murdered?

F. BRUGNONE: Ya, I, ya I remember telling her that and I told her Mike was there too.

DETECTIVE BRUMLEY: You told Megan that?

F. BRUGNONE: Ah huh.

DETECTIVE BRUMLEY: Did you ask Megan for an alibi?

F. BRUGNONE: That I don't remember.

DETECTIVE BRUMLEY: If you did, that's fine.

F. BRUGNONE: Ya.

OFFICER MARTIN: Ya, it would make sense if you did.

F. BRUGNONE: I don't remember. I may have, I may have but I don't remember.

OFFICER MARTIN: And the alibi was to say that you guys were at her house for the night?

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: And what did she tell you?

F. BRUGNONE: I don't remember. I think she said she would or something I don't know. I think she said she would but.

OFFICER MARTIN: Do you remember Mike talkin about an alibi with Megan or you or let's get our story straight?

F. BRUGNONE: No he never said anything about that. He just told me he says-just-keep-your-mouth-shut, don't say nothing.

OFFICER MARTIN: And when he said that you, what did you think you needed to do?

F. BRUGNONE: Huh?

OFFICER MARTIN: When he told you that what did you think you needed to do?

F. BRUGNONE: Keep my mouth shut.

OFFICER MARTIN: Why's that?

F. BRUGNONE: Until ah, well be he, he would've killed me or had somebody kill me if I'd a said anything.

OFFICER MARTIN: So your honestly in fear of your life, that if you would've said something he was going to kill you?

F. BRUGNONE: Yes. Yes.

DETECTIVE BRUMLEY: And in the 14 years since this happened, how many times has he brought this up to you? Has he called you? Has he asked you if there's any updates on the case?

F. BRUGNONE: He just asked me, he just asked me if I, if I, if he was still on Crime Stoppers for hit or run or whatever. I'd say every once in a while I see your deal on Crime Stopper.

OFFICER MARTIN: So how many times have you guys talked about this, the murder since then?

F. BRUGNONE: I don't know. Tell you the truth, I don't remember. I don't think, he told me to keep my mouth shut so I don't remember sayin anything about it.

OFFICER MARTIN: So you were to fearful to bring anything up?

F. BRUGNONE: Ya, I wasn't gonna bring anything up to him. Cause if I did then he would think that I was tellin somebody else. So no I don't remember bringing anything up.

DETECTIVE BRUMLEY: Ok, so, so I can understand your state of mind. Now your fearful of him. I'd like to know, do you know of any murders that he has been involved in the Bellingham area?

~~F. BRUGNONE: No I sure don't.~~

DETECTIVE BRUMLEY: Some other reason that would make you very fearful of this person, any other murders you know that he's committed?

F. BRUGNONE: No. Not really uh huh. All the one that I would think would probably have any would be Pat, but I would think. Not knowing for sure that he would, but I think he probably would as mad as he is, he's I think he's probably the same or if not worse.

OFFICER MARTIN: Ok, and that's Pat Gorski?

F. BRUGNONE: Ya.

OFFICER MARTIN: Ok.

F. BRUGNONE: I think he's in prison now for doin something to his daughter or something. I forget what he done to his daughter and Mike always thought he was gonna kill his brother of course he never did.

OFFICER MARTIN: Would you've been surprised if he would have?

F. BRUGNONE: No. I wouldn't be surprised if he did.

DETECTIVE BRUMLEY: Frank, ah now that we've got, you've got all this off your chest, how to you feel?

F. BRUGNONE: Good. But I feel good but I don't know where I'm gonna end up still.

DETECTIVE BRUMLEY: You can say anything right now to, to, to the, to her family.

F. BRUGNONE: Only thing that I can say is I'm sorry that ah it happened but I didn't do it. Ah, you know I'm sorry I didn't say something earlier. Um, I wish I would have said something earlier but I was scared to. I sure would of, but I didn't know what to do, I was scared. And I didn't know, I didn't know what he was gonna do to me. But I'm sorry. But I didn't do it.

DETECTIVE BRUMLEY: Do you have any further questions?

OFFICER MARTIN: I don't think so at this time. How about you Frank, anything else you want to add?

DETECTIVE BRUMLEY: Is there anything else we're gonna find out in the next week, the next couple of weeks that you didn't tell us tonight? This is the time to get it all out on the table. We're not done with this case, we're still working on it.

F. BRUGNONE: Not that I know of. I think it's all right there.

OFFICER MARTIN: If um...

F. BRUGNONE: If not I'll tell ya. I mean if I do remember something else, I'll tell ya.

OFFICER MARTIN: So you'd be willing to speak with us another time?

F. BRUGNONE: Ya.

OFFICER MARTIN: If we think of some other questions?

F. BRUGNONE: If I think of something else, I'll tell ya.

OFFICER MARTIN: And um, you'd been willing maybe in the day light we can go over to the apartment complex and you can kind a...

F. BRUGNONE: Ah huh.

OFFICER MARTIN: show us, would you be willing to do that?

F. BRUGNONE: Ya. Are you around her during the day?

DETECTIVE BRUMLEY: Ya.

F. BRUGNONE: Every day?

OFFICER MARTIN: Yep.

F. BRUGNONE: Let's see, what's tomorrow? Thursday?

DETECTIVE BRUMLEY: And are you still willing to take a polygraph test, Frank?

F. BRUGNONE: Ya. I don't know how good I'll do, but ya. I mean I got, I take medication and stuff for stuff so that's I'm sayin I don't know how that stuff works but...

OFFICER MARTIN: They take that into consideration.

F. BRUGNONE: Ok.

OFFICER MARTIN: Cause if....

F. BRUGNONE: In fact I need to get some, get my medication.

OFFICER MARTIN: K.

DETECTIVE BRUMLEY: Cause the polygraph with either confirm or deny the story you just gave.

F. BRUGNONE: Ya.

DETECTIVE BRUMLEY: So, if there's any, that's why I'm asking you to make perfectly clear there's not anything else because it will come out on the polygraph.

F. BRUGNONE: Right.

DETECTIVE BRUMLEY: Is there anything else that you feel you need to tell us?

F. BRUGNONE: No, not that I know of. Covered everything that he, he told me that he...

DETECTIVE BRUMLEY: Cause we may very well have a different set of questions when we ask that test.

F. BRUGNONE: Ya.

OFFICER MARTIN: And I'd like to go over too, you said that when you went down when she was down, when you went to, to check on her, she did grab you?

F. BRUGNONE: Ah huh.

DETECTIVE BRUMLEY: Did Mike ask you to go get a knife out of the kitchen?

F. BRUGNONE: No.

OFFICER MARTIN: Did Mike ask you to dispose of a knife?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Did I, did ah, did he ask you to grab a hammer?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Did you see him pick up a hammer?

F. BRUGNONE: No.

DETECTIVE BRUMLEY: Or any object to pound that knife into her?

F. BRUGNONE: No.

OFFICER MARTIN: How many times did you see her stab him, him stab her?

F. BRUGNONE: One, once.

DETECTIVE BRUMLEY: I think that's all the questions I have for right now.

OFFICER MARTIN: I think so too. Is the information given in this statement true at the best of your knowledge?

F. BRUGNONE: Yes.

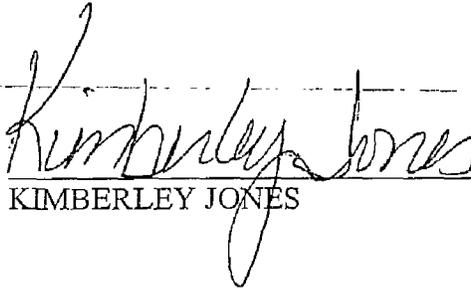
OFFICER MARTIN: And was there any force used or threats or promises made to make you give this statement?

F. BRUGNONE: No.

OFFICER MARTIN: Alright Frank, thank you very much. End of statement.
Time is 22:31

I, Kimberley Jones, one of the Official Court Transcribers of the State of Washington in and for the County of Yakima, do hereby certify that the foregoing interview was transcribed verbatim on July 19, 2011.

Dated this 19th day of July, 2011.


KIMBERLEY JONES

SELAH POLICE DEPARTMENT

VOLUNTARY STATEMENT FORM

The following statement concerns the Murder of Carolyn F. Cliff, on or about Aug 28, 1997. Selah Police Department Case # 450-97-15131 ⁹⁷⁻²⁷⁵⁹⁶ The date is July 13, 2011. The time is _____, in the Interview room at SPD. Present during the statement are:

Frank Eugene Brugnone, Of. Pauli Marten, Det Rich Brumley

1. What is your true name?
2. What is your address?
3. What is your age and date of birth?
4. Do you understand that you have the right to remain silent?
5. Do you understand that you have the right at this time to an attorney?
6. Do you understand that anything you say can and will be used against you in a court of law?
7. ~~Do you understand that if you are under the age of 18, anything you say can be used against you in a Juvenile Court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult?~~
8. Do you understand that you have the right to talk to an attorney before answering any questions?
9. Do you understand that you have the right to have an attorney present during the questioning?
10. Do you understand that if you cannot afford an attorney, one will be appointed for you without cost, before or during questioning, if you so desire?
11. Do you understand these rights?
13. Is this statement voluntary on your part?
14. Do you understand that this statement is being recorded?

BEGIN STATEMENT

CONCLUSION

Is there anything you would like to add to this statement at this time?

Is the information given in this statement true to the best of your knowledge?

Was there any force used or threats or promises made to make you give this statement?

END OF STATEMENT

TIME: _____

OFFICER: P. Marten

DECLARATION OF SERVICE

I, David B. Trefry, state that on December 31, 2015, by agreement of the parties, I emailed a copy of the Respondent's Brief to: Mrs. Susan Gasch at gaschlaw@msn.com to Maria Trombley at marietrombley@comcast.net

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 31st day of December, 2015 at Spokane, Washington.

s/ David B. Trefry
By: DAVID B. TREFRY WSBA# 16050
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