

No. 33958-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

FRANCISCO RESENDEZ MIRANDA,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 14-1-01108-7

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The trial court did not err in admitting a single photo of a murder victim's term fetus as evidence to prove the aggravating factor that the defendant knew the murder victim was pregnant.
- B. The trial court did not err in denying the defendant's request for a lesser included instruction of Murder in the Second Degree because no evidence was presented that supported an inference that only the lesser offense was committed to the exclusion of the greater charged offense.
- C. The trial court did not err in instructing the jury on accomplice liability because evidence showed the defendant was a major participant in the crimes and an accomplice liability instruction was appropriate based on the facts of the case.

II. STATEMENT OF FACTS

A. Facts

Benton County Sheriff's Deputy Bradley Klippert was on duty on Saturday, August 9, 2014, at 05:49AM when he was dispatched to Easterday Farms for what would turn out to be the beginning of a triple homicide investigation into the deaths of David Perez Saucedo, Jr.,

Abigail Renteria Torres,¹ and Victoria Torres. (RP 395-97, 11/04/15). Easterday Farms, a 14,000-acre operation where a variety of crops are raised, is located in the southern part of Benton County near the Oregon border. (RP 421-22, 435, 11/04/15). Gravel roads cross the farm. (RP 422, 11/04/15; RP 2042, 11/18/15). For those not familiar with the farm, the roadways can be confusing to navigate, especially during the summer months when the fields are planted. (RP 422, 11/04/15). Employees would sometimes have to lead lost drivers off of the property who could not figure out how to drive out on their own. (RP 422, 11/04/15). The defendant had worked as a truck driver at Easterday Farms the previous year during harvest season. (RP 421, 423, 430, 432, 11/04/15; RP 1897, 11/17/15).

When Deputy Klippert arrived at Easterday Farms on August 9, 2014, an employee met him at the entrance to the farm and led him down various roads on the farm to the remote location of the crime scene. (RP 397-98, 11/04/15). In describing how far into the interior of the farm the crime scene was located, Deputy Klippert stated, “It was not at all a straight path. It was difficult for me to even describe how to get there by radio to other responding officers.” (RP 398, 11/04/15). The employee led

¹ Given the similarity between Abigail Renteria Torres’s last name and Victoria Torres’s last name, the State will refer to each by their first name only throughout this brief. This is for purposes of clarity only and not meant to be disrespectful.

Deputy Klippert to a 2001 GMC Yukon Denali parked on a gravel roadway near an irrigation circle. (RP 398, 438, 11/04/15). The back doors of the Yukon were open and the vehicle was empty. (RP 398, 403, 11/04/15). While still on the roadway by the Yukon, Deputy Klippert observed two bodies on the ground approximately forty yards away lying next to each other at the edge of a cornfield. (RP 398, 401, 439, 11/04/15). Deputy Klippert walked up to the bodies and confirmed the two people, later identified as Mr. Saucedo and Abigail, were dead. (RP 402-03, 447-48, 11/04/15).

Mr. Saucedo's and Abigail's bodies had been found by Easterday Farm employee Jose Barrera Mendoza. (RP 409, 412, 11/04/15). Mr. Barrera Mendoza worked from 6PM until 6AM at the farm, driving around verifying that the fifty to sixty irrigation circles assigned to him were operating correctly. (RP 410-11, 11/04/15). Mr. Barrera Mendoza was near the end of his shift when he came upon the Yukon with the doors open. (RP 412, 417, 11/04/15). When he looked to the left of the Yukon, he saw two bodies. (RP 412, 11/04/15). Mr. Barrera Mendoza had been by that location several hours earlier and the Yukon had not been there. (RP 416, 419, 11/04/15).

After Deputy Klippert determined that Mr. Saucedo and Abigail were deceased, Benton County Sheriff's detectives arrived on scene. (RP

404, 11/04/15). The Washington State Patrol Crime Lab also sent forensic scientists to the location to process the scene. (RP 507-08, 11/04/15). Mr. Saucedo and Abigail had both been shot in the head. (RP 770-01, 780, 11/06/15). Both of their bodies were face down. (Ex. 5).² When Abigail's body was rolled over, she appeared to be pregnant. (RP 452, 11/04/15). Mr. Saucedo's wallet was in his back pocket and contained cash and a bank card. (RP 449-51, 11/04/15). The keys to his Yukon were under his body. (RP 1724-25, 11/17/15). There was no evidence of a struggle around either of the two bodies; both appeared to have walked to the area where they were killed and made no purposeful movements after being shot. (RP 514, 517-18, 11/04/15).

While at Easterday Farms, detectives located a third body, later identified as Victoria, between the second and third rows of corn in a cornfield. (RP 453-54, 533, 11/04/15). Victoria was lying on her back. (RP 456, 11/04/15). She was not wearing any shoes, but a pair of shoes were located near Abigail's body. (RP 518-19, 521, 11/04/15). Part of a rosary was entangled in Victoria's hair; another portion of the same rosary was located on the ground outside the cornfield in addition to a lotion bottle and a carabiner. (RP 526, 528-31, 533, 11/04/15). While Victoria's body

² All exhibits cited to throughout this brief were designated by the Designation of Exhibits filed on May 15, 2017.

did not appear to have been dragged into the cornfield, there appeared to have been a struggle in the area where her body was found. (RP 532, 11/04/15). The crime scene was consistent with Victoria running away from the area where Mr. Saucedo and Abigail were killed. (RP 533, 11/04/15). Over a year after her death, Victoria's purse, which contained her photo identification, was located in a machine on Easterday Farms which separated potatoes. (RP 468-69, 11/04/15). The potatoes were harvested out of the same field where the three had been killed, but at that time the field had been planted with corn. (RP 470, 11/04/15).

No shell casings were recovered from the crime scene. (RP 2017, 11/18/15).

Autopsy results and forensic analysis of bullets

Dr. Daniel Selove, a forensic pathologist, performed autopsies of Mr. Saucedo, Abigail, and Victoria. (RP 764, 768, 11/06/15). He determined that Mr. Saucedo was shot twice in the head, with both bullets being recovered during the autopsy. (RP 770-71, 773, 11/06/15). Based on the presence of gunpowder soot on Mr. Saucedo's scalp, Dr. Selove testified that the firearm used to kill Mr. Saucedo was touching or nearly touching his scalp when both shots were fired. (RP 771, 778, 11/06/15). Dr. Selove indicated that it was not possible to determine which head wound occurred first, but Mr. Saucedo might have remained conscious if

the first shot fired was the one that caused the elongated entrance wound where the bullet only entered the surface of Mr. Saucedo's scalp. (RP 778, 11/06/15). The more posterior head wound would have killed Mr. Saucedo immediately. (RP 778, 11/06/15). This testimony is especially probative when considered with the defendant's statement to Cristian Hurtado, discussed further below, that the defendant shot Mr. Saucedo once but he didn't fall so he had to shoot him again. (RP 1283, 11/13/15).

A forensic scientist at the Washington State Patrol Crime Lab examined the two bullets recovered from Mr. Saucedo's head and determined they had been fired from the same firearm. (RP 816, 824, 826, 11/06/15). The bullets could have been fired from several different types of firearms, including a Smith and Wesson .38 Special revolver. (RP 826-27, 11/06/15). Unlike a pistol, revolvers keep the shell casing in the cylinder until the operator unloads it. (RP 820, 11/06/15).

Abigail suffered one gunshot wound to her head which entered her right cheek and exited at the left, back scalp behind her ear. (RP 780-81, 11/06/15). The bullet would have immediately killed Abigail. (RP 783, 11/06/15). In contrast to Mr. Saucedo's gunshot wounds, there was no discoloration to Abigail's head. (RP 784-85, 11/06/15). The lack of discoloration indicated that the firearm used to kill Abigail was one to two feet or more away from her when fired. (RP 783, 11/06/15). Abigail was

pregnant with a full-term, normally developed baby. (RP 786, 11/06/15). Dr. Selove testified that the physical indicia of Abigail's pregnancy was not subtle, even though the baby was three pounds six ounces. (RP 788, 11/06/15). The smaller size of the baby at term corresponded to Abigail's small size at 4'10" tall and 116 pounds. (RP 788, 11/06/15).

Dr. Selove determined Victoria, the victim found later in the cornfield, died from both a single gunshot wound and strangulation. (RP 801, 11/06/15). One injury caused her death, while the other would have contributed to it. (RP 801, 11/06/15). The bullet entered Victoria's right upper back and then entered behind her right neck. (RP 790-91, 11/06/15). The bullet passed through her neck and exited on the left side of her neck. (RP 791, 11/06/15). In order for the entrance and exit wounds to line up, Victoria would have been looking over her right shoulder when she was shot from behind. (RP 793-94, 11/06/15). The wound is consistent with Victoria running and looking over her shoulder when shot. (RP 795, 11/06/15). A lack of gunpowder around the wound indicated that the shot was fired from more than a foot or two away. (RP 793, 11/06/15). The bullet did not cause structural injury to Victoria's spine and would therefore not have caused paralysis. (RP 792, 794, 11/06/15). She could have continued running after being shot. (RP 794, 11/06/15). Left untreated, the wound to Victoria's neck would have caused death in a

matter of minutes or possibly longer. (RP 802, 11/06/15). She would have been conscious and able to move. (RP 802, 11/06/15).

Victoria suffered other injuries to her neck not caused by a gunshot. (RP 791, 11/06/15). At the beginning of the autopsy, Victoria still had a broken rosary partially draped around her neck. (RP 792, 796, 11/06/15). Her neck had some marks on it consistent with the rosary being grabbed from behind her as well as the rosary being pressed against her skin, perhaps under a belt. (RP 797, 800, 11/06/15). She also had two other red marks on her neck consistent with a belt being held tightly from behind her. (RP 796-97, 11/06/15). Dr. Selove stated that Victoria had a complex assortment of injuries to her neck. (RP 796, 11/06/15). "The total assortment is interpreted as strangulation, probably by more than one object, namely at least a rosary necklace is in place and some belt-like constriction is occurring." (RP 799, 11/06/15). The different areas of injury to Victoria's neck are consistent with her struggling to remove a ligature from her neck. (RP 803, 11/06/15). As described further below, the defendant had advised Cristian Hurtado that one of girls didn't die right away so his father had to finish her off with a belt. (RP 1283, 11/13/15).

Discovery of Marco Garcia

When detectives notified Mr. Saucedo's mother that he had been killed, she verified that the Yukon found at the crime scene was the vehicle her son drove. (RP 387-88, 11/04/15). She had last seen him alive the previous afternoon. (RP 388-89, 11/04/15). Mr. Saucedo's mother indicated that Marco Garcia,³ a relative by marriage, had been with her son prior to his death. (RP 390, 11/04/15; RP 1389, 11/16/15).

Marco Garcia testified that he, Mr. Saucedo, Abigail, and Victoria had all driven to Umatilla together in Mr. Saucedo's vehicle on Friday, August 8, 2014, from Marco Garcia's residence in Pasco. (RP 1388, 1392-94, 11/16/15). Marco Garcia had previously met Victoria and Abigail through mutual friends. (RP 1389-90, 11/16/15). He stated that he had not talked to Abigail for a long period of time but recently started talking to her again. (RP 1437, 11/16/15). Marco Garcia stated he was not aware Abigail was pregnant and that she always wore baggy clothing. (RP 1437, 11/16/15). Marco Garcia stated that his understanding was the group was driving to Umatilla for Mr. Saucedo to talk with a friend from his work. (RP 1392, 11/16/15). Marco Garcia indicated that Mr. Saucedo had a cell phone with him on the trip. (RP 1444, 11/16/15). Marco Garcia stated that

³ Due to the similarity between witness names of Marco Garcia and Martin Garcia, as well as another witness with the first name of Marco, the State will refer to Marco Garcia and Martin Garcia by their full names for purposes of clarity.

the group first stopped at a gas station in Umatilla before going to an apartment complex where Mr. Saucedo exited the vehicle and walked away with an unknown male. (RP 1394-97, 1445, 11/16/15). Mr. Saucedo came back to the vehicle and then Abigail exited to use the restroom at Mr. Saucedo's friend's apartment. (RP 1398-1400, 11/16/15). Meanwhile, Mr. Saucedo drove Marco Garcia and Victoria to a nearby gas station, Pik-A-Pop. (RP 1400-01, 11/16/15). Marco Garcia stated that he assumed that after they went to the Pik-A-Pop, they would go back to get Abigail and then drive back to Pasco. (RP 1435, 11/16/15). Marco Garcia went inside the Pik-A-Pop, leaving Mr. Saucedo and Victoria in the Yukon. (RP 1402, 1404, 11/16/15). Marco Garcia saw the Yukon in motion while he was inside the gas station, but assumed Mr. Saucedo was just moving the Yukon for another customer to access the gas pumps. (RP 1404, 11/16/15). Marco Garcia went outside and didn't see the Yukon so he waited around for a while for Mr. Saucedo to come back. (RP 1404-05, 11/16/15).

Marco Garcia walked down the street from the Pik-A-Pop then walked back to it to use the pay phone. (RP 1406, 11/16/15). As Marco Garcia was calling for a ride, two males later identified as the defendant and his father, Fidel Miranda, drove up to the Pik-A-Pop. (RP 1407, 11/16/15; RP 1861-62, 1865, 11/17/15). One of the males had a knife. (RP

1407, 11/16/15). Marco Garcia took off running and the defendant and his father chased him. (RP 1407, 11/16/15). The events at Pik-A-Pop described by Marco Garcia were corroborated by security video from Pik-A-Pop, discussed below. (RP 2006, 11/18/15; Exs. 47-50). Marco Garcia attempted to flag down a passing vehicle to help him, but it didn't stop. (RP 1408, 11/16/15). Marco Garcia stated that one of the males continued to chase him on foot while the other attempted to hit him with their vehicle. (RP 1408-10, 11/16/15). Marco Garcia was able to grab onto a passing semi-truck and get away. (RP 1410, 11/16/15). The semi-truck dropped him off at the same gas station he had initially visited when he first got to Umatilla, which was identified as a Tesoro. (RP 733, 11/05/15; RP 1411, 11/16/15). Marco Garcia borrowed a cell phone from an employee inside the station and called his brother and his friend, Christina McMasters, for a ride home. (RP 1412, 11/16/15).

While Marco Garcia was waiting inside Tesoro for his ride to show up, he saw Mr. Saucedo's Yukon pull up to the entrance of the store. (RP 1413, 11/16/15). Mr. Saucedo was driving the Yukon and told Marco Garcia to get in. (RP 1414, 11/16/15). The front passenger seat was empty; Abigail and Victoria did not appear to be in the Yukon. (RP 1447-48, 11/16/15). Marco Garcia was going to get in the Yukon but then looked through a window and noticed someone was hiding in the backseat. (RP

1415, 11/16/15). Marco Garcia refused to get in the Yukon and walked back inside Tesoro. (RP 1415, 11/16/15). The Yukon stayed outside Tesoro for several more minutes before driving away. (RP 1416, 11/16/15). Ms. McMasters and Marco Garcia's brother picked him up at Tesoro and drove back to Pasco. (RP 1416, 11/16/15).

In addition to the Pik-A-Pop security video, detectives were able to corroborate Marco Garcia's statement through several witnesses. A mother and daughter described a male matching the description of Marco Garcia banging on the hood of their car and asking for help as they drove by around midnight. (RP 620-21, 629-30, 11/05/15). He was being chased by another male and there was also a dark, Jeep-like vehicle in the area that drove by at a high rate of speed. (RP 626, 630, 632-33, 11/05/15). A Tesoro employee recalled seeing a semi-truck let a male off who then ran to Tesoro and waited around for awhile. (RP 733, 11/05/15). Another Tesoro employee stated that a male consistent in appearance with Marco Garcia came inside the store asking if he could wait for a ride. (RP 1026, 11/09/15). The male seemed upset and waited in the closed Subway portion of the Tesoro behind a half wall for a couple hours. (RP 733, 736-37, 11/05/15; RP 1026, 1029, 11/09/15). Another employee let the male use her cell phone to call for a ride. (RP 1027, 11/09/15). An employee recalled a vehicle consistent in appearance with Mr. Saucedo's Yukon

pulling up next to the store in the no parking zone with only the driver visible while Marco Garcia stood near it but did not get in. (RP 735, 738-40, 11/05/15).

Ms. McMasters, who lives in Pasco, stated that she received a call from Marco Garcia in the middle of the night needing a ride home from Umatilla. (RP 704-06, 11/05/15). She drove to Umatilla with Marco Garcia's girlfriend and brother and picked up Marco Garcia at a gas station. (RP 707, 710, 11/05/15). When she arrived, he was hiding under a table in the gas station and then hid in the backseat on the way back to Pasco. (RP 712, 720, 11/05/15). Forensic analysis of Ms. McMaster's cell phone showed multiple phone calls between that phone and a Tesoro employee's cell phone on August 9, 2014, from 1:55AM to 3:32AM, consistent with Marco Garcia being at Tesoro in Umatilla and borrowing an employee's cell phone to secure a ride home. (RP 1688-90, 11/17/15).

The events at Tesoro were also captured on security video. (RP 1020-21, 11/09/15). A red truck consistent in appearance with the defendant's brother's truck can be seen in the background at Tesoro behind Mr. Saucedo's Yukon with a male in a white t-shirt standing next to it. (RP 2014-15, 11/18/15).

Prior to his murder trial, the defendant pleaded guilty in Oregon to one count of menacing, writing on his guilty plea that "On August 8, 2014,

I chased on foot and as a passenger Marco Garcia” (RP 1756-59, 11/17/15).

Pik-A-Pop video

Detectives became aware of the existence of security video related to this case recorded at Pik-A-Pop gas station in Umatilla on August 10, 2014. (RP 463-65, 491, 11/04/15). The gas station is located on the main street through Umatilla. (RP 463, 11/04/15). Pik-A-Pop is located less than a minute away from the defendant’s apartment. (RP 483-84, 11/04/15). Three clips of Pik-A-Pop surveillance video were admitted at trial, as well as still photos from the Pik-A-Pop security video. (RP 494, 504-05, 11/04/15; Exs. 42-45, 47-51). The time stamp on the security video was accurate. (RP 494-95, 11/04/15).

In the first video, dated August 8, 2014, Mr. Saucedo’s Yukon is parked in front of the Pik-A-Pop at 11:29PM. (RP 1241-42, 11/13/15; RP 2024-25, 11/18/15; Ex. 42). Marco Garcia is seen walking away from the passenger side of the vehicle toward the store. (Ex. 42). The defendant’s brother’s truck drives up and parks next to the gas pumps. (RP 592, 11/05/15; RP 1241-42, 11/13/15; RP 2026, 11/18/15; Ex. 43). Fernando Miranda gets out of it. (RP 1246, 11/13/15). The defendant’s Nitro is momentarily visible as it drives through the pumps and parks out of camera range. (RP 1241, 11/13/15; RP 2026-27, 11/18/15; Ex. 43). A

female gets out of the passenger side of the truck driven by Fernando Miranda and walks over to the Yukon; her clothing is consistent with what Abigail was wearing when she was killed. (Exs. 5, 44, 45). The defendant appears on camera and walks inside the Pik-A-Pop, but comes right back out. (RP 1246-47, 11/13/15; Ex. 44). Cristian Hurtado and Marco Rodriguez are visible standing in front of the Yukon. (RP 1243-44, 11/13/15; RP 2078, 11/18/15; Ex. 45). (A pickup belonging to Mr. Hurtado is present but out of camera view the entire time. (RP 1244, 11/13/15; RP 2028, 11/18/15).) Fernando Miranda and the defendant walk over to Mr. Saucedo's Yukon, appear to speak with him, and then Mr. Saucedo gets out of the vehicle. (RP 1246, 11/13/15; RP 2028, 2080-81, 11/18/15). Mr. Saucedo walks out of camera view with the defendant. (RP 2028, 2086, 11/18/15). Fernando Miranda then removes something from the Yukon, takes it back to the truck he drove, and drives away. (RP 2081, 11/18/15). The defendant comes back into camera view and walks back in the direction where his Nitro is parked. (RP 2081-82, 11/18/15). The vehicles all leave the Pik-A-Pop at 11:33PM, with Mr. Rodriguez driving the Yukon. (RP 579, 11/05/15; RP 2001, 11/18/15).

The second video shows the inside of the Pik-A-Pop at 11:29PM. (Ex. 51). Marco Garcia is visible at the cash register. (RP 2079, 11/18/15;

Ex. 51). The defendant is also inside and is wearing a white t-shirt. (RP 2079, 11/18/15; Ex. 51).

A third video at 12:07AM on Saturday morning, shows Marco Garcia outside the Pik-A-Pop on the pay phone. (RP 2006, 11/18/15; Ex. 47). The defendant's Dodge Nitro comes into view at 12:10AM. (RP 2006, 11/18/15; Ex. 48). The defendant and his father are seen chasing Marco Garcia on foot then getting into the defendant's Nitro and driving after him at 12:11AM. (RP 2006, 11/18/15; Exs. 49-50).

Identification and interview of the defendant

A Umatilla police officer reviewed the Pik-A-Pop video and recognized the defendant and his blue Dodge Nitro in the video. (RP 1184-88, 11/10/15; RP 1786, 11/17/15). The defendant was arrested late in the afternoon on August 10, 2014, and agreed to a recorded interview with Det. Lee Cantu. (RP 495, 11/04/15; RP 1762, 1772-73, 11/17/15). The defendant stated that he knew Mr. Saucedo and described him as his best friend. (RP 1777, 11/17/15). The defendant stated that he was with his girlfriend, Elizabeth Cervantes, on Friday, August 8, 2014, when he received a phone call at approximately 10:30PM from a male named Raul Sandoval stating that the defendant's apartment had been burglarized. (RP 1782-84, 1790-93, 11/17/15). The defendant said he went back to his apartment and saw that his television and gaming system had been

disconnected and items were scattered on the floor. (RP 1800, 11/17/15). The defendant stated that nothing was missing so he did not call the police. (RP 1801, 11/17/15). The defendant stated that some little girls told him that a young guy had run out of the back of his apartment. (RP 1801-02, 11/17/15). The defendant stated that he then went to the Pik-A-Pop (which he refers to as a Texaco gas station, which is one and the same location) and was alone when he saw a male who he assumed was the person who broke into his apartment because he matched a description of the suspect he had been given. (RP 463, 11/04/15; RP 1801-02, 1818, 11/17/15). The defendant asked the male why he had burglarized the defendant's apartment. (RP 1801-02, 11/17/15). The male responded that he didn't know, then took off running. (RP 1801-02, 11/17/15). The defendant stated that he chased after the male but stopped when he saw a police car and assumed police would take care of it. (RP 1803, 11/17/15).

The defendant stated that he returned to the Pik-A-Pop (again referred to as a Texaco) and saw Mr. Saucedo, so he stopped and talked to him. (RP 1803-04, 11/17/15). Mr. Saucedo had two people in the back of his vehicle. (RP 1805, 11/17/15). Mr. Saucedo asked the defendant if he was going to work and the defendant told him no, that he was going to be with Ms. Cervantes. (RP 1805, 11/17/15). The defendant and Mr. Saucedo both worked at Wyckoff Farms, as did multiple other individuals

associated with this case, including the defendant's father, his brothers Eduardo and Fernando Miranda, Cristian Hurtado, Archivaldo Marquez, Omar Vargas, and Jose Zavala. (RP 635-40, 693-701, 11/05/15; RP 866-70, 874-75, 11/09/15; RP 1221-23, 11/13/15; RP 1455-58, 11/16/15). The defendant said he only talked to Mr. Saucedo for five minutes because he had to get to the county fair with Ms. Cervantes. (RP 1807, 11/17/15). The defendant said that he left the gas station at about 11:30PM and that was the last time he saw Mr. Saucedo. (RP 1813-14, 11/17/15). After that, the defendant said he met up with Ms. Cervantes. (RP 1813, 11/17/15). He stated that he was with her the rest of the evening at the county fair until 2AM and then with her at a friend's house until 4AM. (RP 1783-84, 11/17/15).

The defendant stated that he woke up Saturday at noon and went to Kennewick with Mr. Hurtado. (RP 1821-22, 11/17/15). They met up with Mr. Saucedo's friend, Martin Garcia, at a restaurant. (RP 1822, 11/17/15). The defendant asked them to call Mr. Saucedo to join them but Mr. Saucedo did not answer his cell phone. (RP 1823, 11/17/15). The defendant stated he learned that Mr. Saucedo was killed later that night at work. (RP 1824, 11/17/15).

When Det. Cantu questioned whether the defendant was giving him an entirely truthful statement, the defendant stated that Mr. Hurtado

had been at the Pik-A-Pop as well when he saw Mr. Saucedo. (RP 1826, 1840, 11/17/15). He said Mr. Saucedo left in Mr. Hurtado's pickup to go drinking and to a party. (RP 1853-54, 11/17/15). The defendant continued to maintain that after leaving Pik-A-Pop, he spent the rest of the evening with Ms. Cervantes. (RP 1847, 11/17/15). Det. Cantu asked the defendant to tell him the names of all the males present at the Pik-A-Pop when he and Mr. Saucedo were there. (RP 1859-60, 11/17/15). The defendant then stated that he also knew a male named Tony was present but didn't know his last name. (RP 1859-60, 11/17/15). The defendant maintained that he did not know any of the other males present at the Pik-A-Pop. (RP 1861, 11/17/15).

Det. Cantu asked the defendant who the male was who was with him when he chased Marco Garcia. (RP 1861, 11/17/15). At that point, the defendant admitted that his father, Fidel Miranda, had gone with him to the Pik-A-Pop and was present when the defendant chased after Marco Garcia. (RP 1861-62, 1865, 11/17/15). The defendant stated that his father was not present when he went back to the Pik-A-Pop and saw Mr. Saucedo and the others. (RP 1866, 11/17/15). The defendant stated that another male he knows as Archie (later identified as Archivaldo Marquez) drove by Pik-A-Pop while he and Mr. Saucedo were there. (RP 1871, 11/17/15).

The defendant stated that his brothers, Eduardo and Fernando Miranda, had just left for Mexico with his father that morning because his mother was ill. (RP 1969-71, 11/18/15). They had previously all been residing together at 1330 5th Street in apartment 17 in Umatilla. (RP 831-32, 834, 11/06/15; RP 1969, 11/18/15).

The defendant stated that he had not seen Mr. Hurtado since they had lunch with Martin Garcia in Kennewick on Saturday afternoon. (RP 1965, 11/18/15). The defendant attempted to blame Mr. Hurtado for Mr. Saucedo's death and indicated he believed a cocaine transaction was involved. (RP 1973-74, 11/18/15). He also indicated that Mr. Saucedo used methamphetamine. (RP 1992, 11/18/15). When asked a question about the amount of the drug transaction, the defendant stated that he didn't know because he was not into drugs. (RP 1975, 11/18/15).

Det. Cantu testified at trial that he attempted to locate Mr. Sandoval but to his knowledge such a person does not exist. (RP 1793, 11/17/15). The defendant's cell phone was examined and showed no record of the defendant receiving any phone calls from a Mr. Sandoval. (RP 1794-99, 11/17/15). The county fair the defendant stated he was at had closed at midnight; the defendant was still at the Pik-A-Pop at 12:11AM based on security video. (RP 1968-69, 11/17/15).

Elizabeth Cervantes does not corroborate the defendant's alibi

Elizabeth Cervantes stated that she knew the defendant and had developed a friendship with him that evolved into dating. (RP 1104-05, 11/10/15). Ms. Cervantes believed that the defendant did not have a relationship with the mother of his child, Margarita Coria, beyond co-parenting their child. (RP 1115-16, 11/10/15). Ms. Cervantes was unaware that Ms. Coria and the defendant had recently reconciled and were in a dating relationship again. (RP 1565, 11/16/15). She recalled that the weekend the homicides at Easterday Farms occurred was the same week as the Umatilla County Fair. (RP 1105, 11/10/15). Her seventeen-year-old brother was involved in the fair and she would pick him up when it closed each night. (RP 1106, 11/10/15).

On the Friday of fair week, August 8, 2014, the defendant called Ms. Cervantes when she was at home and said he had something to give her. (RP 1106-07, 11/10/15). They agreed to meet at the Short Stop gas station near Ms. Cervantes's family home in Hermiston. (RP 1107, 11/10/15). They met at the Short Stop as planned; the defendant was with another male and it was dark outside. (RP 1108-10, 1112, 11/10/15). The defendant gave Ms. Cervantes a rose and they talked for approximately an hour. (RP 1110, 11/10/15). The defendant and the male with him left to go

to work and Ms. Cervantes went home. (RP 1111, 11/10/15). Ms. Cervantes left her residence again at close to midnight, when the fair closed, to pick up her brother from the fair. (RP 1113, 11/10/15). The two then drove home. (RP 1112, 11/10/15). Ms. Cervantes did not see the defendant again that night. (RP 1112, 11/10/15).

Ms. Cervantes visited the defendant in jail after he was arrested. (RP 1119, 11/10/15). The defendant asked her to remember the time they were together the entire night and that he was only gone that night for half an hour. (RP 1122, 11/10/15). The defendant stated that Ms. Cervantes was the only person who could refute it and that his entire life, not just a couple years of it, was on the line. (RP 1124-26, 11/10/15). Ms. Cervantes stated that she did not ever advise anyone that she was with the defendant the entire night of Friday, August 8, 2014, because she was only with him at the Short Stop. (RP 1128, 11/10/15).

Multiple other witnesses contradict the defendant's statements to Det. Cantu

At trial, Ms. Coria, Mr. Hurtado, Mr. Marquez, Marco Rodriguez, Mr. Vargas, and Mr. Zavala outlined a completely different version of events than the one the defendant told Det. Cantu regarding the burglary of the defendant's residence and the events at Pik-A-Pop. Four of those witnesses—Mr. Hurtado, Mr. Marquez, Mr. Vargas, and Mr. Zavala—also

testified that the defendant confessed to them his participation in the murders of Mr. Saucedo, Abigail, and Victoria. (RP 668, 11/05/15; RP 898, 901-03, 919, 11/09/15; RP 1278, 1283, 11/13/15; RP 1511, 11/16/15).

On Friday, August 8, 2014, Mr. Saucedo and Martin Garcia drove from Pasco to Wyckoff Farms for Mr. Saucedo to pick up his check. (RP 1089-91, 11/10/15). They also stopped at the defendant's apartment in Umatilla, which he shared with his father and brothers. (RP 598, 11/05/15; RP 1090, 11/10/15; RP 1227-28, 11/13/15). The defendant was present, as were his two brothers, Mr. Hurtado, and Mr. Marquez. (RP 1090, 11/10/15; RP 1227-28, 11/13/15). There were drugs in the home that day, as well as on multiple prior occasions. (RP 1228-29, 11/13/15). The defendant had sold drugs to others on multiple prior occasions, but his father and brothers were not known to sell drugs. (RP 884, 11/09/15; RP 1228-30, 11/13/15). The defendant sold drugs to Mr. Saucedo that day. (RP 1230, 11/13/15). Martin Garcia then drove Mr. Saucedo back to Pasco, dropped him off at his residence, and never saw his friend alive again. (RP 1091-92, 11/10/15).

Later the same day, Mr. Marquez drove the defendant to the Quick Stop in Hermiston to meet with Ms. Cervantes. (RP 1463, 1465, 1519, 11/16/15). They stayed at the gas station for approximately an hour and

eventually left to go pick up Mr. Hurtado so they could all three go to work together. (RP 1455, 1464, 11/16/15). Mr. Hurtado was drinking at his friend Marco “Tony” Rodriguez’s house in McNary, an area of Umatilla. (RP 565-66, 11/05/15; RP 1234, 11/13/15; RP 1465, 11/16/15). Mr. Saucedo had been texting and calling Mr. Hurtado that evening, asking if he and the Miranda family were planning on going to work that night. (RP 1233-34, 11/13/15). Mr. Hurtado advised Mr. Saucedo that they would all be going to work. (RP 1233-34, 11/13/15).

Mr. Marquez and the defendant drove to Mr. Rodriguez’s house to pick Mr. Hurtado up for work, but they ended up staying there drinking beer instead. (RP 566, 11/05/15; RP 1235, 11/13/15; RP 1465, 11/16/15). While at Mr. Rodriguez’s house, the defendant received a phone call from his brother that someone was breaking into his apartment. (RP 567, 11/05/15; RP 1235, 11/13/15; RP 1466, 11/16/15). The defendant asked Mr. Marquez to drive him home, which Mr. Marquez did at high speeds. (RP 1236, 11/13/15; RP 1466, 11/16/15). On the way to his apartment, the defendant asked to borrow Mr. Marquez’s Smith and Wesson .38 Special five-shot revolver, which was in his car. (RP 1460-61, 1476-77, 11/16/15). Mr. Marquez had recently purchased the firearm from Omar Vargas, his supervisor at Wyckoff Farms. (RP 1460-61, 11/16/15). The gun was loaded with five rounds of ammunition when Mr. Marquez gave it to the

defendant. (RP 1476-77, 11/16/15). Mr. Hurtado and Mr. Rodriguez finished their beers at Mr. Rodriguez's house and then drove over to the Mirandas' apartment as well. (RP 567, 11/05/15; RP 1236, 11/13/15).

Meanwhile, Wyckoff Farms supervisors Omar Vargas and Jose Zavala had left Wyckoff Farms during their night shift with the defendant's brother, Fernando Miranda, in Mr. Zavala's work truck between 9PM and 10PM. (RP 635-36, 641-42, 644, 11/05/15; RP 866-67, 876-77, 11/09/15). The farm is located near Paterson, Washington. (RP 481, 11/04/15). Mr. Vargas, Mr. Zavala, and Fernando Miranda had planned to drop some watermelons off at the Mirandas' apartment in Umatilla and then purchase food before heading back to work. (RP 641-42, 645, 11/05/15; RP 876-78, 11/09/15).

When the three arrived at the apartment complex, they observed both the defendant's blue Dodge Nitro parked in the parking lot as well as Mr. Saucedo's Yukon. (RP 646-48, 11/05/15; RP 879-80, 11/09/15). Both vehicles were empty. (RP 648, 11/05/15; RP 880, 11/09/15). Mr. Vargas and Mr. Zavala figured that the defendant and Mr. Saucedo were inside the ground floor apartment partying instead of going to work. (RP 648-49, 11/05/15; RP 880, 882, 11/09/15). The front door was slightly ajar. (RP 648-49, 11/05/15; RP 880-81, 11/09/15). Mr. Vargas and Fernando Miranda approached the door to the Mirandas' apartment while Mr.

Zavala parked his truck. (RP 648-49, 11/05/15; RP 880-82, 911, 11/09/15). Guest parking at the apartment complex is out of view of the Mirandas' apartment. (RP 1337, 11/13/15). Someone inside the apartment closed the door, but Fernando Miranda was able to open it with a key. (RP 648-49, 11/05/15; RP 880-82, 911, 11/09/15). Inside, the apartment was a mess, with items scattered on the floor and a window in one of the rooms open. (RP 649-50, 11/05/15; RP 883-85, 11/09/15). No one was found inside the apartment. (RP 883, 11/09/15). Fernando Miranda called 911, but Mr. Vargas, seeing controlled substances inside the apartment, told him that if he called the police they were going to have a problem. (RP 883-84, 11/09/15). Detectives later confirmed a 911 call from a cell phone associated with Fernando Miranda was made on August 8, 2014, at 11:11PM. (RP 1703-05, 11/17/15). The caller spoke briefly in Spanish before hanging up. (RP 1705, 11/17/15). The caller stated, "Call the police, dude. It's fucked up that they break into my house to steal from me." (RP 1706, 11/17/15).

Mr. Vargas and Mr. Zavala saw a short girl outside of the Mirandas' apartment; she was asking where her friends were and stated that she needed to go back to Pasco. (RP 650-51, 675, 11/05/15; RP 884-85, 11/09/15; RP 1238, 11/13/15).

Mr. Marquez and the defendant arrived at the Mirandas' apartment, while Fernando Miranda, Mr. Vargas, and Mr. Zavala were still present there. (RP 652, 11/05/15; RP 885-86, 11/09/15). The defendant was armed with the revolver, holding it in his hand and pointing it downward. (RP 653-54, 11/05/15; RP 886-87, 11/09/15). Mr. Vargas (not knowing that Mr. Marquez had loaned the defendant his firearm) believed it could be the same .38 Special revolver he had previously owned but sold to Mr. Marquez. (RP 887-88, 11/09/15). The defendant was angry, demanding to know who had stolen from him. (RP 654-55, 11/05/15; RP 887, 914, 11/09/15). As Mr. Vargas and Mr. Zavala were leaving to go back to work, Mr. Hurtado and Mr. Rodriguez showed up at the apartment in Mr. Hurtado's truck. (RP 567, 653, 11/05/15; RP 888-90, 11/09/15; RP 1468, 11/16/15).

As they were driving away, Mr. Vargas and Mr. Zavala saw the same girl they had seen earlier, but she was now by the road talking to the defendant. (RP 655, 11/05/15; RP 890, 11/09/15; RP 1257, 11/13/15). They also observed that sometime after they had arrived at the apartment, Mr. Saucedo's Yukon had left the parking lot, though they did not see it drive away and never saw anyone inside it. (RP 673-74, 11/05/15; RP 890-91, 11/09/15). Mr. Vargas and Mr. Zavala drove directly back to Wyckoff Farms, arriving between 10PM and 11PM. (RP 656, 659, 11/05/15; RP

890-91, 914, 11/09/15). Fernando Miranda stayed behind at the apartment. (RP 655, 11/05/15; RP 890-91, 11/09/15).

Back at the Mirandas' apartment, the defendant and others saw Mr. Saucedo's Yukon drive by on the highway visible from the apartment. (RP 570, 11/05/15; RP 1238, 1325, 11/13/15). Everyone got into various vehicles and followed the Yukon, which parked at the nearby Pik-A-Pop gas station, about a minute from the Mirandas' apartment. (RP 568-70, 575, 11/05/15; RP 1238-39, 11/13/15). Mr. Rodriguez rode with the defendant in the defendant's Dodge Nitro. (RP 568-69, 572, 11/05/15; RP 1245, 11/13/15). The defendant parked on the side of the Pik-A-Pop. (RP 573, 11/05/15). The defendant angrily told Mr. Rodriguez he couldn't believe his own friend would try to steal from him. (RP 570-71, 11/05/15). Mr. Rodriguez told the defendant he should let the police handle the matter. (RP 601, 11/05/15). Fernando Miranda arrived at the Pik-A-Pop in a red pickup and walked over to the Yukon. (RP 1246, 11/13/15; RP 2028, 2080-81, 11/18/15). Mr. Rodriguez separated from the defendant when the defendant went inside the Pik-A-Pop store. (RP 576, 11/05/15; RP 1246-47, 11/13/15). Mr. Rodriguez walked over to the Yukon with Mr. Hurtado, who had arrived in his own truck. (RP 576, 11/05/15; RP 1244, 11/13/15; RP 2028, 11/18/15). The defendant came out of the Pik-A-Pop store and walked over to the Yukon with Fernando Miranda. (RP 1246-47,

11/13/15; RP 2028, 2080-81, 11/18/15). The defendant asked Mr. Saucedo why he would break into the defendant's apartment. (RP 1247-48, 11/13/15). Mr. Saucedo got out of his vehicle and walked behind it with the defendant while the defendant continued arguing with him. (RP 1248, 11/13/15). Mr. Hurtado and Mr. Rodriguez talked to the two girls who were in the back seat of the Yukon. (RP 1249-50, 11/13/15). The defendant told Mr. Rodriguez to drive the Yukon back to the Mirandas' apartment so they could drink there. (RP 577, 11/05/15; RP 1250-53, 11/13/15). The defendant told Mr. Saucedo to get in Mr. Hurtado's truck and for Mr. Hurtado to drive Mr. Saucedo back to the defendant's apartment. (RP 1250-53, 11/13/15). The defendant walked Mr. Saucedo toward where the defendant's Nitro was parked. (RP 578-79, 11/05/15). Mr. Rodriguez got into the driver's seat of the Yukon, with the two females still in the back seat. (RP 577-78, 11/05/15). Mr. Rodriguez drove the Yukon back to the Mirandas' apartment. (RP 579, 11/05/15). Mr. Hurtado drove Mr. Saucedo back to the apartment. (RP 1254-55, 11/13/15). Once they arrived at the apartment, the defendant told the two females and Mr. Saucedo to go into the apartment in an aggressive tone. (RP 580-81, 11/05/15; RP 1259, 11/13/15). The defendant and Fernando Miranda went into the apartment as well. (RP 581, 11/05/15; RP 1259, 11/13/15).

Mr. Hurtado, Mr. Marquez, and Mr. Rodriguez were all standing outside the apartment. (RP 581, 11/05/15, RP 1259, 11/13/15). The defendant came out of the apartment and put Mr. Marquez's revolver in a toolbox in the bed of the defendant's brother's truck. (RP 1476-77, 11/16/15). Mr. Marquez was smoking marijuana and intended to grab the firearm when he was done smoking but forgot it. (RP 1477-78, 11/16/15). Mr. Hurtado got a bad feeling about the situation inside the apartment and stated, "This ain't a place for us to be," so he, Mr. Marquez, and Mr. Rodriguez left in one vehicle. (RP 581-82, 11/05/15; RP 1259-60, 11/13/15; RP 1479-80, 11/16/15). The three went back to Mr. Rodriguez's house, where they attended a neighbor's pool party. (RP 582-83, 586, 11/05/15; RP 1260-62, 11/13/15; RP 1479, 11/16/15). Mr. Rodriguez went home earlier than Mr. Hurtado and Mr. Marquez, who stayed for several hours. (RP 584-85, 608, 11/05/15; RP 1261-62, 11/13/15; RP 1481, 11/16/15). The host and a guest later verified that all three had in fact attended the pool party that night. (RP 603-06, 608, 611-12, 11/05/15).

Just after midnight on Saturday, August 9, 2014, Margarita Coria completed her shift as a machine operator in Hermiston and attempted to reach the defendant twice by phone. (RP 1562, 1567-68, 11/16/15). Ms. Coria and the defendant had previously been in a dating relationship and had a son together, but had broken up in July of 2014. (RP 1562-64,

11/16/15). They had recently gotten back together even though Ms. Coria was aware that the defendant had been dating her cousin, Ms. Cervantes. (RP 1565-66, 11/16/15). Ms. Coria decided to stop by the defendant's apartment, where she found him outside. (RP 1568-69, 11/16/15). The defendant stated that someone had tried to break into his apartment; Ms. Coria described him as mad and upset. (RP 1569, 11/16/15). While still outside the apartment, the defendant asked Ms. Coria to leave her car for him and for her to take his Nitro. (RP 1569-70, 11/16/15). He did not tell her why. (RP 1570, 11/16/15).

Ms. Coria left her car with the defendant and took his Nitro to pick up her two young children, who were at a relative's house in Umatilla while Ms. Coria was at work. (RP 1569-70, 11/16/15). Ms. Coria texted the defendant at 12:38AM when she got to her relative's house, telling him not to do anything dumb because he had just recovered his family. (RP 1571, 1601, 11/16/15). The defendant did not text her back. (RP 1571, 11/16/15). Ms. Coria stayed at her relative's house for about 20 minutes before she drove her children home to her apartment in McNary. (RP 1573-74, 11/16/15). She had already put her children to bed when she got a call from the defendant that she needed to bring his Nitro back to him. (RP 1573, 11/16/15). Ms. Coria put her sleeping children in the Nitro and drove back to the defendant's apartment. (RP 1573, 11/16/15). She parked

the Nitro, moved her children back into her car, and left the Nitro keys in the gas tank. (RP 1574, 1603-04, 11/16/15). She did not see anyone in the parking lot and did not knock on the apartment door because she was tired and her children were cranky. (RP 1574-75, 11/16/15). Before leaving, Ms. Coria sent the defendant a text at 1:25AM telling him where the Nitro keys were and to never look for her again. (RP 1603-04, 11/16/15). Ms. Coria drove back home, put her children to bed again, and went to bed herself. (RP 1575, 11/16/15). At some point, the defendant came over to her apartment when it was still dark outside, but she could not say exactly when. (RP 1575-76, 11/16/15). She estimated it was between 3AM and 5AM. (RP 1576, 11/16/15).

After Ms. Coria received a subpoena to testify at the defendant's trial, she spoke with him on the phone at the jail. (RP 1587, 11/16/15). The defendant told her to remember how he was with her that night. (RP 1587, 11/16/15).

Back at the pool party in McNary, the police had arrived regarding a noise complaint; soon after, Mr. Hurtado and Mr. Marquez left to go to work. (RP 606, 11/05/15; RP 1263-65, 11/13/15; RP 1482-83, 11/16/15). They stopped at the parking lot in the defendant's apartment complex to pick up Mr. Hurtado's vehicle and leave Mr. Marquez's, but did not go inside the defendant's apartment. (RP 1264-65, 11/13/15). Mr. Hurtado

drove the two in his truck to the Crossroads truck stop in Umatilla, where Mr. Marquez purchased some ice for their beer. (RP 1011, 11/09/15; RP 1265, 1267-68, 1272, 11/13/15; RP 1482-83, 11/16/15). The sale to Mr. Marquez as well as Mr. Hurtado's truck were visible on store surveillance video. (RP 1014-15, 1017, 11/09/15).

From Crossroads, Mr. Hurtado and Mr. Marquez drove to Wyckoff Farms. (RP 1269, 11/13/15). Once there, the two continued drinking beer and looked for their supervisor, Mr. Vargas. (RP 1272-73, 11/13/15). Mr. Vargas was not initially at the farm entrance, but when Mr. Hurtado and Mr. Marquez circled back there, they found him with Mr. Zavala, along with the defendant's father and two brothers. (RP 663, 685, 11/05/15; RP 893, 11/09/15; RP 1273-74, 11/13/15). The employee in charge of timekeeping noted that the defendant's father and brothers were not at Wyckoff Farms at midnight. (RP 693, 697, 701, 11/05/15). The supervisors had not seen Eduardo Miranda and his father, Fidel Miranda, leave Wyckoff Farms that night, but at approximately 3AM Eduardo and Fidel Miranda came back to work in one vehicle along with Fernando Miranda and completed their shifts. (RP 660-63, 685, 11/05/15; RP 891-93, 11/09/15). The timekeeper noted seeing the defendant's father and brothers back at Wyckoff Farms at 3:30AM. (RP 697, 701, 11/05/15). The defendant was not present and never came to work that shift. (RP 659-60,

695, 698, 11/05/15; RP 1273-74, 11/13/15). Mr. Vargas advised Mr. Marquez, who was vomiting, that he was too intoxicated to work. (RP 664-65, 11/06/15; RP 893, 11/09/15; RP 1275, 11/13/15; RP 1485, 11/16/15). Mr. Hurtado left along with Fernando Miranda to drive Mr. Marquez home. (RP 894, 11/09/15; RP 1275, 11/13/15; RP 1485, 11/16/15).

Mr. Hurtado dropped Mr. Marquez off at his car at the Mirandas' apartment complex and then Mr. Marquez drove home and went to bed. (RP 1276, 11/13/15; RP 1487, 11/16/15). Mr. Hurtado and Fernando Miranda next went to get a large order of tacos in Hermiston to take back to work. (RP 1276, 11/13/15). This transaction was recorded on Jack-in-the-Box security video as well as time-stamped on a receipt at 4:04AM on August 9, 2014, showing the purchase of thirty tacos. (RP 1616-20, 1624-25, 1627-28, 11/16/15). After that, the two returned to work. (RP 894, 11/09/15; RP 1276, 11/13/15). Mr. Hurtado worked until 6AM and then went home to bed. (RP 1276-77, 11/13/15).

The next morning, the defendant showed up at Mr. Hurtado's residence and wanted to go out to breakfast in Pasco. (RP 1276-78, 11/13/15). The defendant had Mr. Saucedo's phone with him. (RP 1278, 11/13/15). The defendant told Mr. Hurtado that Mr. Saucedo would not be needing it anymore. (RP 1278, 11/13/15). As the two drove over a bridge

crossing the Columbia River, the defendant threw Mr. Saucedo's phone into the river. (RP 1278-80, 11/13/15). They arrived in Pasco and picked up Mr. Saucedo's friend, Martin Garcia. (RP 1087, 1093-94, 11/10/15; RP 1281, 11/13/15). The three then went out to breakfast. (RP 1093-94, 11/10/15; RP 1281, 11/13/15). The defendant asked Martin Garcia to call Mr. Saucedo to invite him to join them. (RP 1093, 1095, 11/10/15; RP 1282, 11/13/15). Martin Garcia called Mr. Saucedo six or seven times at the defendant's request, but there was no answer. (RP 1093, 1095, 11/10/15). The defendant and Mr. Hurtado dropped Martin Garcia off at his residence after breakfast. (RP 1096, 11/10/15; RP 1282, 11/13/15). Martin Garcia found out later that night that Mr. Saucedo had been killed. (RP 1096, 11/10/15).

As they were driving back to Umatilla after breakfast, the defendant pointed out an exit in Washington to Mr. Hurtado, stating that was where it happened. (RP 1283, 11/13/15). The defendant proceeded to tell Mr. Hurtado that he shot Mr. Saucedo once but he didn't fall, so the defendant had to shoot him again. (RP 1283, 11/13/15). The defendant also stated that one of girls didn't die either, so his dad had to finish her off with a belt. (RP 1283, 11/13/15). The defendant said he could still smell blood on his fingers. (RP 1283, 11/13/15).

Mr. Marquez also saw the defendant on August 9, 2014. (RP 1488-89, 11/16/15). The defendant asked Mr. Marquez to drop by his apartment that afternoon, at which point the defendant gave Mr. Marquez back his revolver, which was tucked into a work glove. (RP 1488-89, 11/16/15). Later that night, Mr. Marquez took the revolver out of the glove for the first time and saw blood splatter and white matter on the barrel of the gun that he had never seen before. (RP 1489-90, 11/16/15). There was no longer any ammunition in the revolver. (RP 1489, 11/16/15). Mr. Marquez stated that he freaked out and decided to dispose of the revolver. (RP 1490, 11/16/15). He drove to Biggs Junction, Oregon, with two of his friends and threw the revolver off a bridge. (RP 1490, 11/16/15). On the way back from disposing of the gun, Mr. Marquez stopped at a Pilot Truck Center in Biggs Junction, which was confirmed via Pilot surveillance video. (RP 1171-73, 11/10/15; RP 1491, 11/16/15).

Mr. Marquez also wanted to dispose of all the ammunition for his revolver. (RP 1495, 11/16/15). He contacted his friend, Derek Marks, and asked him to hold some items for him. (RP 1177-78, 11/10/15; RP 1495, 11/16/15). Mr. Marquez put all of his ammunition for the revolver as well as speed loaders and a gun case in a backpack and took the items to Mr. Marks's house in Umatilla. (RP 1179, 11/10/15; RP 1496-1505, 11/16/15).

Mr. Marks decided to turn the backpack over to the Umatilla Police Department a couple of days later. (RP 1180-81, 11/10/15).

Mr. Marquez later talked to the defendant about what happened with Mr. Saucedo. (RP 1511, 11/16/15). Mr. Marquez told the defendant he didn't have to take it that far. (RP 1511, 11/16/15). The defendant responded that he had been disrespected and he just couldn't let that go. (RP 1511, 11/16/15). The defendant stated that they couldn't treat him and his family like that and think they could get away with it. (RP 1511, 11/16/15).

Employees at Wyckoff Farms found out that Mr. Saucedo had been murdered Saturday evening. (RP 665, 11/05/15; RP 895-96; 11/09/15). The defendant was not at work but his brothers and father were. (RP 665, 11/05/15; RP 896, 11/09/15). The shift ended early, at approximately 11PM, but workers were supposed to return to work Sunday morning at 8AM. (RP 666, 11/05/15; RP 896, 11/09/15). The defendant's father and brothers never returned to Wyckoff Farms again. (RP 666, 11/05/15; RP 897, 11/09/15).

The defendant repeatedly contacted Mr. Hurtado Saturday evening. (RP 1284, 1286, 11/13/15). Mr. Hurtado did not want to talk to the defendant but also did not want to contact the police because he was afraid. (RP 1286-87, 11/13/15). The defendant eventually called Mr.

Rodriguez's phone looking for Mr. Hurtado; Mr. Hurtado was with Mr. Rodriguez. (RP 1286-87, 11/13/15). The defendant told him to come over to Ms. Coria's apartment. (RP 1287-88, 11/13/15). Mr. Hurtado went to Ms. Coria's apartment, where the defendant was present along with his father and two brothers. (RP 1288, 11/13/15). Ms. Coria was also present, having just gotten off of work after again working until midnight. (RP 1578-79, 11/16/15). The defendant told Mr. Hurtado that the murders were all being blamed on him and that he needed to turn himself in to the police. (RP 1288-89, 11/13/15). The defendant also stated that his father and brothers were leaving for Mexico. (RP 1289, 11/13/15).

Back at Wyckoff Farms on Sunday morning, the defendant showed up but did not appear to be there to work. (RP 667, 11/05/15; RP 897, 11/09/15). He contacted his supervisors, Mr. Vargas and Mr. Zavala, who were sitting in a work truck, with Mr. Vargas sitting in the driver's seat and Mr. Zavala in the passenger seat. (RP 667, 11/05/15; RP 898, 11/09/15). Mr. Zavala asked the defendant what happened and the defendant responded that he had killed the guy and two girls. (RP 668, 11/05/15; RP 898, 11/09/15). The defendant stated that he shot Mr. Saucedo in the head twice and that his brothers were also there. (RP 901-02, 919, 11/09/15). The defendant stated that he did it because no one was going to steal from him. (RP 903, 11/09/15). The defendant then asked

Mr. Vargas and Mr. Zavala what they were going to do about the work hours and indicated that he had a gun in his car. (RP 668-69, 11/05/15; RP 903, 11/09/15). They took the defendant's statement as a request to add hours the defendant had not worked to his paycheck. (RP 669, 11/05/15).

On Sunday morning, August 10, 2014, the defendant continued contacting Mr. Hurtado. (RP 1290, 11/13/15). When Mr. Hurtado finally answered, the defendant asked him to meet at Ms. Coria's apartment again. (RP 1292, 11/13/15). The defendant asked Ms. Coria to pick Mr. Hurtado up and bring him back to her apartment, which she did. (RP 1581-82, 11/16/15). When Mr. Hurtado and Ms. Coria arrived back at her apartment, the defendant told Mr. Hurtado that his father and brothers had already gone to Mexico. (RP 1292, 11/13/15). The defendant stated that he was waiting to watch an afternoon press conference about the crimes to see if he was listed as a suspect; if so, the defendant planned to flee to Mexico as well. (RP 1292-93, 11/13/15).

Mr. Hurtado drove to Kennewick to see his mom and get her advice on what to do. (RP 1290, 11/13/15). After talking with his mom, Mr. Hurtado decided to call the Benton County Sheriff's Office to speak with a detective. (RP 1290-91, 11/13/15). He Googled the phone number and called several times but did not get an answer. (RP 1291, 11/13/15). Forensic analysis of Mr. Hurtado's phone later showed that he had

attempted to call the Benton County Sheriff's Office three times on August 10, 2014, at a phone number that was listed online but no longer valid. (RP 1713-14, 11/17/15).

Throughout their testimony, witnesses at trial discussed driving between various locations in Benton County, Washington, and Umatilla County, Oregon. Multiple maps of these areas were admitted into evidence. (RP 479-80, 11/04/15). Detectives testified to distance and the drive times between these various locations. The crime scene at Easterday Farms is 16 miles from Wyckoff Farms, approximately 20 minutes away. (RP 2013, 11/18/15). The crime scene at Easterday Farms is 15 to 16 miles from Umatilla, approximately a 27-minute drive. (RP 2013, 11/18/15). Umatilla is 16 to 17 miles from Wyckoff Farms, approximately 20 to 25 minutes away. (RP 2013, 11/18/15).

Clothing with Victoria Torres's blood on it located in the Mirandas' apartment

Forensic scientists from the Oregon State Patrol Crime Lab processed the Mirandas' apartment for evidence. (RP 830-32, 11/06/15). A forensic scientist located a gray striped tank top inside a small cardboard box in the coat closet of the apartment. (RP 834-36, 11/06/15). The shirt tested positive for blood. (RP 966, 972-73, 11/09/15). DNA analysis of the blood showed it originated from two people, with the major contributor

matching Victoria's DNA profile. (RP 969-70, 972, 974-77, 11/09/15).

The probability of randomly selecting an unrelated individual having a matching profile with Victoria's would be 1 in 4.7 quintillion. (RP 974-77, 11/09/15).

Video from a road trip to California taken in a vehicle in early August 2014 showed Mr. Vargas, Eduardo Miranda, and Fernando Miranda. (RP 870-71, 873-74, 11/09/15). Fernando Miranda is seen wearing an identical tank top to the one collected from the Mirandas' apartment. (RP 2060-61, 11/18/15).

Cell phone analysis

Detective Larry Smith analyzed multiple cell phones as part of the investigation in this case, including a phone seized from the defendant when he was arrested and phones used by Eduardo Miranda, Ms. Coria, Mr. Hurtado, and Mr. Rodriguez, and a tablet used by Mr. Marquez. (RP 1688, 1692, 1708-09, 1711, 1714-17, 11/17/15). Det. Smith created a chart that shows data from phone extractions during the timeframe of August 8, 2014, at 10PM through August 9, 2014, at 6AM where approximately 170 exchanges between devices he analyzed occurred. (RP 1718-19, 11/17/15).

Defendant's statement to fellow inmate

After the defendant was arrested in Oregon, he was initially held in the Umatilla County Jail. (RP 999-1000, 11/09/15). David Gomez was an inmate at the Umatilla County Jail during the same time period. (RP 998-99, 11/09/15). Mr. Gomez overheard a conversation in Spanish in the jail where the defendant was speaking about why his brothers left town. (RP at 1000-02, 11/09/15). The defendant stated during that conversation that one of the females had not died right away, so they took a belt and stepped on her throat. (RP at 1000-02, 11/09/15). Mr. Gomez reported the conversation to his community corrections officer when he was released from jail. (RP 1004, 11/09/15).

B. Relevant Procedural History

Photograph of fetus admissible

At trial, the defendant objected to the admission of Exhibit 88, an autopsy photograph of Abigail's fetus, which had been removed from her womb. (RP 749-50, 11/06/15). Dr. Daniel Selove, the forensic pathologist who performed the autopsies, testified that he selected a number of photographs from the autopsies, including Exhibit 88, because those photos were helpful in explaining his conclusions from the autopsies to the jury. (RP 752, 11/06/15). Dr. Selove testified that he selected that photo to show the jury that Abigail was pregnant with a full-term, normally

developed child and that her pregnancy was not subtle to the outside observer looking at her. (RP 753, 11/06/15).

The court asked the defendant if he was willing to stipulate that Abigail was pregnant. (RP 758, 11/06/15). The defendant responded that he would stipulate that Abigail was pregnant, but not to knowing that she was pregnant, as is required for the aggravating circumstance allegation regarding a pregnant victim. (RP 758, 11/06/15; CP 60; RCW 9.94A.535(3)(c)). At the court's request, the State outlined how it planned to use the photo to argue that the defendant knew Abigail was pregnant. (RP 761, 11/06/15). The court also inquired as to whether the State had any photographs other than those already admitted into evidence that would show that Abigail was pregnant. (RP 759, 11/06/15). The State indicated that it did not have any other such photos and that the photos already admitted were not that helpful in showing Abigail's pregnancy because she was not standing up. (RP 759-60, 11/06/15). The court looked at the photographs of Abigail already admitted into evidence, including two that the defendant indicated showed that Abigail was pregnant. (RP 759-60, 11/06/15). The court noted that ". . . when I look at 57 and 58 it isn't - - you know, if I knew nothing else, it would not be apparent to me that she was pregnant." (RP 761, 11/06/15). The court ruled that even though Exhibit 88 was "a grim photograph" and "extremely prejudicial," it

was also an “extremely probative” photograph as to the size of the unborn child and whether the defendant would have knowledge that Abigail was pregnant. (RP 762, 11/06/15). The court held that “the probative value does outweigh the prejudicial [effect].” (RP 762, 11/06/15).

Request for lesser included instruction denied

At the conclusion of testimony, the defendant requested a lesser included instruction of Murder in the Second Degree for each count. (RP 2119-20, 11/18/15). The State agreed that the legal prong for the court instructing on a lesser included offense was met, but not the factual prong. (RP 2128, 11/18/15). After extensive argument by the parties the following day, the court declined to instruct on the lesser included offense of Murder in the Second Degree. (RP 2134-49, 11/19/17). The court stated that:

Well, ever since the defendant tendered the proposed instructions on the lesser included, I’ve been trying - - I’ve been listening carefully and struggling to come up with evidence as opposed to speculation as to what might have occurred out there at Easter Day Farms to support such an instruction.

. . . I have been just unable to postulate or put together any line of reasoning that’s supported by the evidence that would justify instructions on the lesser included.

(RP 2147, 11/19/15). The court noted after reviewing the evidence presented in the case, “I still don’t think there’s any facts that would

support anything other than premeditated and first degree murder with respect to all three victims.” (RP 2149, 11/19/15).

Inclusion of accomplice liability instruction

The defendant objected to the inclusion of a jury instruction on accomplice liability because the defendant was not charged as an accomplice in the information. (RP 2116, 11/18/15; CP 5-6, 43). The defendant conceded there was no legal authority for that position but that it would be “more fair” for the State to have to prove their case without a theory of accomplice liability. (RP 2117, 2123, 11/18/15). The defendant also argued that there was insufficient evidence to show that he was a major participant in the crimes. (RP 2123, 11/18/15). The court held, based on the multiple witnesses’ testimonies that the defendant had confessed to the crimes, there was sufficient evidence he was a major participant. (RP 2125, 11/18/15). Further, the court indicated that the forensic evidence in the case, the Pik-A-Pop video, testimony that the defendant was in possession of the revolver and returned it to the owner, motive, and the facts of the case suggesting multiple perpetrators all weighed in favor of instructing the jury on accomplice liability. (RP 2126, 11/18/15). Additionally, the court held that the defendant did not need to be charged as an accomplice for the jury to be so instructed. (RP 2126-27, 11/18/15).

Verdict

The jury found the defendant guilty of three counts of Murder in the First Degree. (CP 70-72). Additionally, the jury answered in the affirmative that for each count there was more than one person murdered and the murders were part of a common scheme or plan or the result of a single act of the person. (CP 73-75). The jury indicated “no” in response to the question, “Did the defendant know that the victim, Abigail Renteria Torres, of the crime of Murder in the First Degree was pregnant?” (CP 76).

III. ARGUMENT

A. The trial court did not abuse its discretion in admitting a single photograph of a murder victim’s fetus.

The admissibility of photographs is within the sound discretion of the trial court, and the trial court’s ruling will not be disturbed on appeal absent the showing of abuse of discretion. *State v. Adler*, 16 Wn. App. 459, 558 P.2d 817 (1976); *State v. Griffith*, 52 Wn.2d 721, 328 P.2d 897 (1958). “Competent evidence is not inadmissible merely because it is gruesome, and pictures that are accurate representations are admissible if they are probative of some element of the crime.” *Adler* at 465. “Autopsy photographs are admissible if they are ‘[a]ccurate,’ and ‘if their probative value outweighs their prejudicial effect.’” *State v. Yates*, 161 Wn.2d 714,

768, 168 P.3d 359 (2007) (citing *State v. Crenshaw*, 98 Wn.2d 789, 806, 659 P.2d 488 (1983)); ER 403. “Unless it is clear from the record that the primary reason to admit gruesome photographs is to inflame the jury’s passion, appellate courts will uphold the decision of the trial court.” *State v. Whitaker*, 133 Wn. App. 199, 227, 135 P.3d 923 (2006).

Even when testimony has demonstrated the existence of a fact, autopsy photographs have been found to be probative, noncumulative evidence in further support of the fact. In *Yates*, a photograph showing the medical examiner’s incisions in the arm of a victim was found to be relevant and not cumulative. *Yates*, 161 Wn.2d at 768. The incision revealed puncture marks demonstrating the victim had been an intravenous drug user. *Id.* The State’s theory of the defendant’s overarching plan was that he selected women with serious drug addictions. *Id.* Testimony from one witness had established that the victim had an issue with street drugs and another witness testified the victim was “hooked on crack cocaine.” *Id.* While there had been previous testimony, the Supreme Court concurred with the trial court that the admission of the autopsy photograph was relevant and not cumulative. *Id.*; *see also Whitaker*, 133 Wn. App. at 227 (holding that “The law requires an exercise of restraint, not a preclusion simply because other less inflammatory testimonial evidence is available.”).

“A medical examiner’s testimony that the photographs will be helpful is a factor supporting admissibility.” *Id.* at 229; *see also State v. Elmore*, 139 Wn.2d 250, 285, 985 P.2d 289 (1999) (holding that “it cannot be said the trial court abused its discretion in admitting the autopsy photographs given the medical examiner’s testimony that such slides would aid the jury in understanding his testimony”). In the instant case, Exhibit 88 was one of numerous autopsy photographs used by Dr. Selove to explain his testimony. (RP 768-69, 11/06/15). Prior to the court ruling that the photo was admissible, Dr. Selove testified that he selected all of the autopsy photographs the State planned on introducing, including Exhibit 88, because they would aid in explaining his testimony to the jury. (RP 752-53, 11/06/15).

Here, the trial court did not abuse its discretion when admitting Exhibit 88 as probative evidence of the allegation the defendant knew Abigail was pregnant. To prove the aggravating factor, the State had to prove beyond a reasonable doubt that Abigail was pregnant and that the defendant knew she was pregnant. (CP 60). While the defendant did not necessarily contest that Abigail was pregnant, the defendant refused to stipulate that he knew she was pregnant. (RP 758, 11/06/15). The jury was instructed on the definition of knowledge, specifically that if a person “has information that would lead a reasonable person in the same situation to

believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.” (CP 49). The type of information that would lead a reasonable person to believe a woman is pregnant includes the size of the child, the proportion of the child’s size to the mother, and how developed the child was. Here, the photograph conveyed those sizes and proportion to the jury better than any of the other available evidence. The trial court even engaged in a review of the other admitted evidence, and when reviewing two other photographs, noted that Abigail did not appear pregnant in them. (RP 761, 11/06/15). This is the exact type of balancing envisioned under ER 403 that is left up to the sound discretion of the trial court as it receives evidence in a lengthy trial. Furthermore, this record shows a non-inflammatory purpose for the admission of the photograph—proving that the defendant knew Abigail was pregnant. *See Whitaker*, 133 Wn. App. at 227. Accordingly, the trial court did not abuse its discretion when it reached the conclusion that the probative value of the photograph outweighed any prejudice. (RP 762, 11/06/15).

Finally, the jury’s own verdict undercuts any speculation that the photograph was overly prejudicial or inflammatory, as they returned a verdict of “No” when asked whether the defendant knew that Abigail was pregnant. (CP 76).

B. The trial court did not abuse its discretion in denying the defendant's request for a lesser included instruction for Murder in the Second Degree.

Under RCW 10.61.006, a defendant “may be found guilty of an offense the commission of which is necessarily included within that with which he or she is charged in the indictment or information.” Either the prosecutor or the defense can request a lesser included offense instruction. *State v. Tamalini*, 134 Wn.2d 725, 728, 953 P.2d 450 (1998). A party is entitled to a jury instruction on a lesser offense if (1) the elements of the lesser included offense are a necessary element of the charged offense and (2) the evidence supports an inference that the lesser offense was committed. *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978).

Here, the legal prong of the *Workman* test is met. The elements of second degree intentional murder are a necessary element of aggravated (premeditated) first degree murder. *State v. Condon*, 182 Wn.2d 307, 317-18, 343 P.3d 357 (2015).

However, the factual prong was not met. This Court reviews the trial court's decision regarding the factual prong of the *Workman* rule for abuse of discretion. *State v. Henderson*, 182 Wn.2d 734, 743, 344 P.3d 1207 (2015). Under the factual prong, “the court asks whether the evidence presented in the case supports an inference that *only* the lesser

offense was committed, to the exclusion of the greater, charged offense.” *Condon*, 182 Wn.2d at 316. The evidence must “affirmatively establish” the commission of the lesser offense; “it is not enough that the jury might disbelieve the evidence pointing to guilt.” *State v. Fernandez-Medina*, 141 Wn.2d 448, 456, 6 P.3d 1150 (2000). “If a jury could rationally find a defendant guilty of the lesser offense and not the greater offense, the jury must be instructed on the lesser offense.” *Henderson*, 182 Wn.2d at 736. In determining whether the evidence supports an inference that the lesser crime was committed, this Court reviews the evidence in the light most favorable to the party requesting the instruction. *Fernandez-Medina*, 141 Wn.2d at 455-56.

To prove the element of premeditation, the State must show that the defendant decided to cause the victim’s death after deliberating or reflecting for some period. *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006). There is no fixed or definite length of time between the formation of the intention to kill and the killing necessary to establish premeditation. *State v. Duncan*, 101 Wn. 542, 544, 172 P. 915 (1918). Because intent is rarely provable by direct evidence, evidence of premeditation may be inferred from all the circumstances surrounding the event. *State v. Giffing*, 45 Wn. App. 369, 374-75, 725 P.2d 445 (1986) (citing *State v. Gallo*, 20 Wn. App. 717, 729, 582 P.2d 558 (1978)).

The facts in *Condon* and the instant case are very different. *Condon* involved a home invasion drug robbery by two men into what turned out to be the wrong residence where a family was present. 182 Wn.2d at 311. A struggle ensued when the father attempted to take a firearm away from one of the two perpetrators. *Id.* A family friend suddenly arrived on scene, potentially startling the perpetrators, and the father was shot and killed. *Id.* at 311-12. One of the two perpetrators indicated that the father had him in a choke hold and just as he was about to lose consciousness, the other perpetrator shot the father. *Id.* at 312. The court in *Condon* held that the trial court erred by refusing to instruct the jury on second degree murder as requested by the defendant because the evidence supported an inference that the lesser offense was committed to the exclusion of aggravated first degree premeditated murder. *Id.* at 321.

Here, the trial court did not abuse its discretion by not instructing the jury on the lesser included offense of second degree murder. The facts in the instant case establish that premeditation was necessarily involved. The victims were driven to a remote location and walked to the edge of a cornfield. (RP 421-22, 439, 11/04/15). There were no signs of a struggle around Mr. Saucedo's and Abigail's bodies. (RP 518, 11/04/15). Mr. Saucedo was shot two times in the head, with the firearm touching or nearly touching his head. (RP 770-71, 778, 11/06/15). Raising a firearm,

placing it against or next to a victim's head, and firing two shots demonstrates premeditation. Abigail, standing next to Mr. Saucedo, was shot one time in the head. (RP 780, 11/06/15). Victoria's gunshot wound and the location of her body were consistent with running from the location where Mr. Saucedo and Abigail were killed and turning her head to look back as she was shot. (RP 533, 11/04/15; RP 793, 795, 11/06/15). The evidence suggests she was then chased down and strangled in the cornfield as she attempted to pull a ligature away from her neck. (RP 802-03, 11/06/15). Some of the ligature marks on her neck were consistent with a belt, which someone would have had to remove from their pants. (RP 800, 11/06/15). The firearm used to shoot the three victims did not belong to the defendant and was last seen in a toolbox in the bed of a truck. (RP 1476, 11/16/15). The weapon would have had to be procured from the toolbox prior to the shooting. The defendant had a motive to kill all three victims: he was angry because he believed they had attempted to burglarize his apartment where his drugs were kept. (RP 570-71, 11/05/15; RP 883-84, 11/09/15). Even viewed in the light most favorable to the defendant, there was no evidence presented at trial to suggest these murders were anything other than premeditated.

C. The jury was properly instructed on accomplice liability for aggravated first degree murder.

The defendant challenges the sufficiency of the evidence for giving the accomplice liability instruction, maintaining that there was insufficient proof he was a major participant in the crimes. A trial court's decision to give a jury instruction is reviewed de novo if based upon a matter of law or for abuse of discretion if based upon a matter of fact. *See State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998). Under Washington's accomplice liability statute, a person is guilty of a crime committed by another's conduct if he or she is an "accomplice of such other person in the commission of the crime." RCW 9A.08.020(2)(c). The statute defines "accomplice" as follows:

- (3) A person is an accomplice of another person in the commission of a crime if:
 - (a) With knowledge that it will promote or facilitate the commission of the crime, he or she:
 - (i) Solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) Aids or agrees to aid such other person in planning or committing it; or
 - (b) His or her conduct is expressly declared by law to establish his or her complicity.

RCW 9A.08.020(3). This definition indicates that the legislature "intended the culpability of an accomplice not extend beyond the crimes of which the accomplice actually has 'knowledge,' the mens rea of RCW 9A.08.020." *State v. Roberts*, 142 Wn.2d 471, 511, 14 P.3d 713 (2000).

Though an accomplice must act with knowledge that he is promoting or facilitating the charged crime, he “need not have knowledge of each element of the principal’s crime in order to be convicted under RCW 9A.08.020.” *Roberts*, 142 Wn.2d at 513. “General knowledge of ‘the crime’ is sufficient.” *Roberts*, 142 Wn.2d at 513.

A defendant may be convicted of first degree aggravated murder based solely on an accomplice theory, *State v. Mak*, 105 Wn.2d 692, 718 P.2d 407 (1986) (overruled in part on other grounds in *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994)), but only when the State can prove “major participation by [the] defendant in the acts giving rise to the homicide” *Roberts*, 142 Wn.2d at 505; *Whitaker*, 133 Wn. App at 234.

Here, the defendant was provided the same accomplice liability instruction approved of in *Whitaker*. Compare *Whitaker*, 133 Wn. App. at 229, with CP 43. For each of the aggravated circumstance instructions, the jury was instructed that they must be convinced beyond a reasonable doubt that “the defendant must have been a major participant.” (CP 54-59). The jury answered “yes” to each aggravating circumstance instruction as to whether more than one person was murdered and the murders were part of a common scheme or plan or a result of the single act of the person. (CP 73-75).

The court did not abuse its discretion by instructing on accomplice liability. While the defendant maintains there were insufficient facts that the defendant was a major participant, not only did the jury disagree, but the record shows why the trial court correctly instructed the jury on accomplice liability. The facts of the case strongly suggested the involvement of accomplices. The Pik-A-Pop video shows Abigail getting out of a truck driven by Fernando Miranda. (Exs. 44, 45). The defendant and his brother, Fernando Miranda, are both visible on the Pik-A-Pop video talking to Mr. Saucedo when he exited his Yukon. (RP 1246, 11/13/15; RP 2028, 2080-81, 11/18/15). The whereabouts of the defendant, his two brothers, and his father could not be accounted for during the timeframe the murders occurred. (RP 660-63, 685, 11/05/15; RP 891-93, 11/09/15). Given that there were three victims, it would have been difficult for a single person to simultaneously control all three victims and transport them from Umatilla to the crime scene. Given the remote location of the crime scene and that Mr. Saucedo's Yukon was left with the bodies, it is apparent that another vehicle would have had to be driven to the crime scene for the defendant and any accomplices to drive away in. Victoria's blood was found on a shirt that was worn by Fernando Miranda in a recent video. (RP 966, 972-75, 11/09/15; RP 2060-61, 11/18/15). The defendant advised others that his father and brothers were

present and participated in the murders. (RP 901-02, 919, 11/09/15; RP 1283, 11/13/15). The defendant's father and two brothers fled to Mexico after the murders occurred. (RP 1292, 11/13/15).

The State presented sufficient evidence to show that the defendant was a major participant in the murders. The defendant told Mr. Vargas and Mr. Zavala he himself had killed all three victims. (RP 668, 11/05/15). The defendant stated that he shot Mr. Saucedo in the head two times, consistent with the autopsy results. (RP 901-02, 11/09/15; RP 1283, 11/13/15). The defendant indicated that he literally had blood on his hands from the murders. (RP 1283, 11/13/15). The defendant knew that Victoria had been strangled, consistent with autopsy results. (RP 1000-02, 11/09/15; RP 1283, 11/13/15). The defendant returned the bloody murder weapon to Mr. Marquez. (RP 1489-90, 11/16/15). When Mr. Marquez asked the defendant why he killed the victims, the defendant stated that he had been disrespected and they couldn't get away with treating him and his family like that. (RP 1511, 11/16/15). The defendant's anger at the victims was on display the night they were killed. He had motive to kill them. He did not have an alibi for his whereabouts during the timeframe the victims were killed, so he attempted to manufacture one. The State presented sufficient evidence to show the defendant was guilty of the three

murders as both a principal and as an accomplice who was a major participant in the crimes.

Accordingly, the trial court did not abuse its discretion by providing an instruction on accomplice liability.

IV. CONCLUSION

The trial court did not abuse its discretion in admitting a photograph of Abigail's fetus. The trial court properly denied the defendant's request for a lesser included jury instruction for second degree murder. The trial court properly instructed the jury on accomplice liability. The defendant's three convictions for aggravated Murder in the First Degree should therefore be affirmed.

RESPECTFULLY SUBMITTED this 15th day of May, 2017.

ANDY MILLER
Prosecutor



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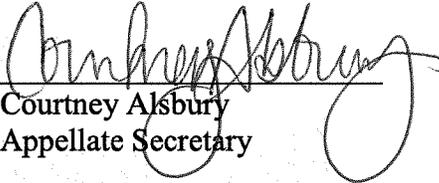
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on May 15, 2017.


Courtney Alsbury
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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