

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

EUGENE JUPP,

Appellant.

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

The Honorable Judge Clary

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APPELLANT'S REPLY BRIEF

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## I. ARGUMENT

### A. Inferences or Conjecture and Speculation?

The State sets out the relevant facts introduced at trial and from those facts argues what it calls “reasonable inferences.” Mr. Jupp maintains that simply because a fact has been established at trial, not every extension of that “fact” is reasonable. At some point it is important for this Court to determine whether the position urged by the State is a “reasonable inference” that should be considered in determining the sufficiency of the evidence, or “conjecture and speculation” which should not. An “inference” is a logical deduction or conclusion from an established fact. *Fannin v. Roe*, 62 Wash.2d 239, 242, 382 P.2d 264 (1963). *State v. Aten*, 130 Wash.2d 640, 658, 927 P.2d 210 (1996). See also, 5 *West’s Encyclopedia of American Law* 396 (2d ed. 2005) which partly defines “inference” as: “Inferences are deductions or conclusions that with reason and common sense lead the jury to draw from facts which have been established by the evidence in

the case.” However, when evidence is equally consistent with two hypotheses, the evidence tends to prove neither. *Stambaugh v. Hayes*, 44 N.M. 443, 451, 103 P.2d at 640 (1940). Thus the “possibility” that a circumstance occurred is insufficient to support an inference. *Gardner v. Seymour*, 27 Wash.2d 802, 810-11, 180 P.2d 564 (1947)(We are not justified in inferring, from mere possibilities, the existence of facts.). *State v. Hanna*, 123 Wash.2d 704, 710, 871 P.2d 135 (1994)(When an inference supports an element of the crime, due process requires the presumed fact to flow more likely than not from proof of the basic fact.)

With these principles in mind one must reject the State’s argument that it introduced sufficient evidence to prove that Mr. Jupp murdered Ms. Stanton. Appellant acknowledges that the following facts, relevant to the death of Ms. Stanton, were established at trial.

1. Ms. Stanton’s presence at the residence negatively impacted Mr. Jupp’s ability to live with his family.

2. Ms. Stanton rarely left the residence.
3. Ms. Stanton was elderly, frail, and suffered from psychological problems.
4. Mr. Jupp had injuries to his face and hands.
5. Mr. Jupp was seen on the stoop of the house smoking a cigarette when the recycling was picked up.
6. According to the medical examiner Ms. Stanton died sometime between the evening of April 3<sup>rd</sup> and the morning of April 4<sup>th</sup>.
7. The last persons who observed Ms. Stanton in the house were Mr. Miller and Mr. Anderberg who spoke with her, albeit, through the door, on April 3<sup>rd</sup>.
8. Mr. Jupp placed an ad on Craigslist on April 4<sup>th</sup> to rent a room in the house.
9. Ms. Stanton's body was transported to the recycling center in a recycling truck.
10. Ms. Stanton's death was the result of blunt trauma to the head.
11. There was no trace evidence found in the residence that showed that Ms. Stanton had been injured in the house.
12. There was DNA trace evidence recovered from Ms. Stanton's body, but it did not originate from Mr. Jupp.

**1. Was Ms. Stanton Assaulted in Her Room or House?**

If one accepts the foregoing as “established facts,” the Court next must decide whether they support a reasonable inference that Mr. Jupp assaulted Ms. Stanton in their house as argued by the State.

The first shortcoming in the State’s argument concerns its assertion that Ms. Stanton was assaulted in her house. From which “established fact” may one infer this? Contrary to the State’s position there are no established facts to show that Ms. Stanton was assaulted in her room. The State contends that Ms. Stanton must have been assaulted in her house because the evidence showed that she never left the house. This simply isn’t supported by the record. Ms. Stanton would leave her bedroom. **RP 364, 404, 718**. She was also known to leave the house. **RP 349, 358, 445**. From the time that LeAnne Hughes and her daughter moved back to Montana in early January 2018

through April 3<sup>rd</sup>, the only one living at the house, other than Ms. Stanton, was Mr. Jupp. He would be out of the house working during the day and had no way of knowing whether, during his absences, Ms. Stanton left her room or the house. The Millers were the only other ones who commented on Ms. Stanton's movements or lack of movements. However, their firsthand knowledge was limited to those occasions on which they visited the house. They could only testify that Ms. Stanton was in her room when they would visit.

The State's arguments belie its contention that Ms. Stanton was assaulted in her room or the house and ignore the facts introduced at trial. The State contends that the injuries sustained by Ms. Stanton caused so much bleeding that it seeped through a plastic garbage bag into the bottom of the recycling bin. If such is true should there not have been blood in her bedroom or the house? Yet none of her blood was found in her bedroom or the house. Ms. Stanton's room, when entered by Mr. Miller on the 4<sup>th</sup>, appeared as it always did, though a

blanket was said to be missing<sup>1</sup>. When processed by the police no trace evidence, especially blood which the State suggests would have been substantial, was recovered to suggest that Ms. Stanton had been assaulted in her room or in the house. The record does not support a conclusion that it is reasonable to infer that she was assaulted in her room or in the house.

**B. What links Mr. Jupp to the assault of Ms. Stanton?**

The State's explanations for Mr. Jupp's behavior supposedly linking him to Ms. Stanton's death are based on conjecture and speculation.

**1. The Craigslist Ad**

If it is not reasonable to infer that she was assaulted in the house, then it there is no basis to infer that Mr. Jupp

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<sup>1</sup> The State's explanation for the missing blanket is that it was used to transport Ms. Stanton from the house to the recycling bin. Her blood then seeped through the blanket and leaked from the garbage bag leaving a trace amount in the base of the recycling bin. If this was correct one would expect there to be some trace evidence from the blanket found on Ms. Stanton and her clothes. None was found.

assaulted her. But the State argues that by placing the ad for a house mate on Craigslist, Mr. Jupp knew that Ms. Stanton was dead and that he knew this because he killed her. This is not a reasonable inference from the evidence.

The evidence established that Mr. Jupp did place an ad for a house mate on Craigslist on April 4<sup>th</sup> at 12:59 PM. **RP 702**. But Mr. Jupp did not place the ad until after Mr. Miller returned to the house on April 4<sup>th</sup> at 10:00 AM, entered Ms. Stanton's room and found her missing. **RP 438**. This occurred three hours before Mr. Jupp placed the ad on Craigslist. The ad was not placed until it was known by the Millers that Ms. Stanton was missing. Combined with plans to have Ms. Stanton move from the house, Mr. Jupp had every reason to believe that Ms. Stanton would be leaving, his rent would be increased, and there would be a spare bedroom that could be subleased thereby reducing his financial obligation. Inferring that the

placing of the ad was evidence that Mr. Jupp killed Ms. Stanton was not reasonable.

## **2. Mr. Jupp's presence on the stoop of his house**

The State argues that it is reasonable to infer that Mr. Jupp's presence on the stoop of his house on the morning of April 3rd was to assure that the recycling truck picked up the contents of the bin that contained Ms. Stanton's remains. However, the neighbor who provided this testimony also testified that it was common to see Mr. Jupp, first thing in the morning, sitting on the stoop smoking cigarettes. **RP 459**. His presence on the stoop in the morning of April 4<sup>th</sup>, a fairly common occurrence, does not lead to the reasonable inference that he had killed Ms. Stanton and knew that her body was in the recycling bin.

## **3. The injuries to Mr. Jupp's face and hands.**

Nor do the injuries that the police observed on Mr. Jupp's face and arms support an inference that Mr. Jupp

assaulted Ms. Stanton. Described as elderly and frail weighing about 90 pounds, **RP 628**, Ms. Stanton was unlikely to have effectively resisted an attack by the much younger and stronger Mr. Jupp. More significantly Ms. Stanton did not have any trace evidence on her hands that suggested that she had caused the injuries observed on Mr. Jupp. The uncontroverted evidence admitted at trial was that Mr. Jupp sustained those injuries while working in the yard.

#### **4. Motive to Kill Ms. Stanton**

By all accounts having Ms. Stanton as a housemate was less than ideal. It is reasonable to infer that her behavior contributed to the separation between Mr. Jupp and his wife and daughter. His prior behavior in contacting the police and Adult Protective Services concerning Ms. Stanton's situation was appropriate; her living conditions were deplorable. And one can also infer that he hoped that his complaints would lead to her removal from the house. However, it is a huge leap in

logic, may one safely say, guess work, to conclude that because it was unpleasant to share the house with Ms. Stanton that Mr. Jupp became so outraged that he assaulted Ms. Stanton causing her death.

**II. CONCLUSION**

The evidence introduced at trial was insufficient to establish that Mr. Jupp murdered Ms. Stanton. This Court should vacate his conviction and dismiss the prosecution.

DATED THIS 30<sup>th</sup> DAY OF MARCH, 2020.

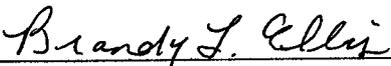
  
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### **III. CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Appellant's Reply Brief was served upon the following via the online portal and/or US Mail, addressed to:

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DATED this 30<sup>TH</sup> day of MARCH, 2020.

  
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Brandy L. Ellis, Legal Assistant

**MARK D. MESTEL, INC., P.S.**

**March 30, 2020 - 2:38 PM**

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