

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

EUGENE JUPP,

Appellant.

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

The Honorable Judge Clary

APPELLANT'S OPENING BRIEF

MARK D. MESTEL
Attorney for Appellant
Eugene Jupp

MARK D. MESTEL, INC., P.S.
2707 Colby Avenue, Suite 901
Everett, Washington 98201
(425) 339-2383

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I. ASSIGNMENTS OF ERROR

Assignment of Error No. 1:

Judge Clary erred when he denied the defendant's motion to dismiss the prosecution based on the failure of the State to introduce sufficient evidence to justify submitting the case to the jury for its consideration.

Issues Pertaining to Assignments of Error 1:

1. Where the State fails to introduce sufficient evidence of the identity of the person who committed the charged crime, it is error to allow the case to be submitted to the jury for its consideration? Can a criminal conviction be based on conjecture or speculation?

II. STATEMENT OF THE CASE

The Millers befriended Ms. Standen, a 79-year-old woman suffering from mental health issues. To help her, the Millers first allowed Ms. Standen to live with them at their residence. This worked for a while. In December 2017 the Millers invited Ms. Standen to stay in a room in their rental

property located at 118 West 15th Street in Spokane. In early December 2017 she moved in bringing her suitcase and her small dog. **RP 361-62.** Standen rarely left the residence, and for that matter her room. **RP 346-48.** She stored food in her room without refrigeration and had the dog use pet pads to relieve itself. Her room was dirty, smelly, and non-hygienic. **RP 474-75, 566.**

Gene Jupp, his wife, LeAnn, and their six-year-old daughter, Anika also moved into the Miller residence in December 2017, though after Standen. Rather than pay rent, Mr. Jupp would work on the Miller properties. This arrangement was intended to last until Standen moved out of the residence. **RP 366-68.** The thought was that Standen would soon move, most likely into some form of subsidized housing. From time to time Ms. Miller would pick Standen from the house and take her to appointments. **RP 348.** Other than those occasions Standen spent most of the time alone in her room.

She rarely interacted with the Jupps, but when she did those interactions were not particularly pleasant.

Months passed without Standen relocating. LeAnn and her daughter left Spokane in January returning to Montana where LeAnn enrolled Anika in school. Her plans originally had been to return to Spokane sometime during the winter, but the weather in Montana made travel dangerous. So other than visiting Gene in later March, she planned to stay in Montana until the end of the school year. **RP 901-03, 906.**

Gene's adult son, Caylan, and daughter, Bailey lived in Spokane and socialized with their dad frequently, though they only had minimal contact with Standen. **RP 868, 903.**

The last reported interaction with Standen occurred on April 3, 2018. Mr. Jupp allowed Mr. Anderberg, from Pathways, a sub-contractor to Adult Protective Services, into the house to discuss with Standen the possibility of relocating her to another residence. **RP 472.** Standen refused to cooperate

with Mr. Anderberg. When he was leaving the residence, Mr. Jupp called him an expletive. **RP 478.**

On April 5th employees at the Spokane Waste Management Center found the remains of a human that apparently had been run through the recycling machinery. **RP 532.** The remains were hardly identifiable as a female. Following a report of a missing woman the police began an investigation. With the help of the recycling employees they surmised that the body had been transported to the center in a recycling truck that serviced Roosevelt Elementary school, located adjacent to Mr. Jupp's home. **RP 535, 556.** The investigation allowed the police to identify the remains as those of Standen.

The police contacted Mr. Jupp and asked if they could search the house; he permitted them to do so. **RP 563.** After looking for Ms. Standen and not finding her they asked Mr. Jupp if he would accompany them to their office to be

interviewed. Mr. Jupp, who was not under arrest agreed. He answered some questions, but eventually asked for an attorney. Once he invoked his right to counsel, questioning ceased, and Mr. Jupp was permitted to leave. **RP 576.** Contemporaneous with contacting Mr. Jupp at his home, the police also applied for and were issued warrants to search him, the residence, and his cell phone. **RP 569.** They also photographed injuries to his face and arm. **RP 572.**

Mr. Jupp was the sole focus of the police investigation. After receiving and reviewing forensic evidence the police arrested Mr. Jupp. The State charged Mr. Jupp with second degree felony murder. **SN 1.** When he exercised his right to go to trial, the State amended the charge and added an enhancement: that Standen was a vulnerable victim. **SN 39.**

A. The Forensic Evidence

From the site at which Ms. Standen's body was discovered, the police collected her remains and items

associated with her, such as clothing. From her residence, the police collected trace evidence and the recycling bin suspected of having been the container in which she was delivered to the recycling center. The police also seized and examined Mr. Jupp's cell phone and took numerous photographs. Material was sent to various forensic experts. The Medical Examiner conducted the autopsy of Ms. Standen. The relevant results of the experts' work are as follows:

1. Prior to death Ms. Standen had suffered injuries to her head caused by blunt force trauma. This was the cause of death. She mostly likely died in the late evening hours of April 3 or early morning hours of April 4. **RP 629-31.**
2. A small amount of blood recovered from the recycling bin contained Ms. Standen's DNA. **RP 790.**
3. There were no fingerprints of value recovered from the recycling bin. **RP 813-14.**

4. Mr. Jupp's blood was found in the residence, though Ms. Standen's blood was not. **RP 776.**
5. Mr. Jupp's DNA did not appear on Ms. Standen, nor did her DNA appear on Mr. Jupp or his clothes. **RP 775, 779-81, 786-87.**

B. Other evidence

Through its investigation the police were able to establish the following:

1. Mr. Jupp's wife and daughter, who had been residing with him at 118 West 15th St. left and returned to Montana in January 2018. Ms. Standen's erratic behavior may have contributed to their decision to leave. **RP 371, 683.**
2. Mr. Jupp contacted Adult Protective Services in January 2018, shortly after his family moved back to Montana, and reported that Ms. Standen was living in filth and needed assistance. **RP 492.**

3. Mr. Jupp, in late January, 2018, following erratic behavior by Ms. Standen, contacted the Spokane Police and reported her behavior. **RP 518.**
4. There were frequent attempts by others to make different living arrangements for Ms. Standen, though she refused to cooperate. **RP 378-80.**
5. Mr. Anderberg visited the residence on April 3, 2018, once again intent on finding better living arrangements for Standen. She refused to open the door and did not cooperate with him. The lack of progress seemed to irritate Mr. Jupp. **RP 475-76.**
6. On April 4, 2018 Mr. Jupp placed an ad on Craigslist looking for a roommate. **RP 701.**
7. When the police contacted Mr. Jupp on April 6, 2018 there were scratches on his arm and an abrasion under his eye. **RP 572-74.**

8. Ms. Standen was not known to leave her residence and when she did, she would take her dog and her large purse. Both still were in her room when the police searched the home on April 6. **RP 705-06.**

C. The Proceedings Below

Other than a CrR 3.5 hearing, there were no substantial pretrial motions. Trial began on February 11, 2019 with Judge Clary presiding. The Court first ruled on the State's motions in limine. The defense did not file any motions in limine. Jury selection was uneventful. At the conclusion of the State's case, defense counsel moved for dismissal on the basis that the State failed to introduce sufficient evidence to justify submitting the case to the jury. **RP 849.** Judge Clary denied the motion. His oral ruling, discussed infra., set out the reasons why, drawing all inferences most favorable to the State, he believed that sufficient evidence had been introduced.¹

¹ Judge Clary requested on two occasions that the State prepare Findings of Fact and Conclusions of Law consistent with his

Judge Clary focused on the following facts to draw inferences to link Mr. Jupp to the crime:

1. Mr. Jupp wanted Ms. Stanton out of the apartment or house. He had endured three months or more of erratic and psychological behavior. He had endured three months or more of squalor and smell. He had to have his wife and daughter move back to Montana. He had conflicts with Ms. Standen. He wanted his family back in the apartment. That wasn't going to happen until she was gone. He had lost hope in having Adult Protective Services or others successfully move her, i.e., the statement "have a nice day asshole" or something to that effect. **RP 862.**

oral rulings. Counsel's review of the Court file did not reveal any such Findings. He also contacted trial counsel who reviewed his file and could not find any Findings. Counsel assumes that the State did not prepare any Findings regarding the Court's ruling on the defense motion to dismiss. Appellant has set out the relevant portions of his ruling in accordance with RAP 10.4(c). For the reasons set out infra., the appellant takes exception to what he has numbered as Findings 1-4 and 6.

2. The jury could find “that Ms. Standen and Mr. Jupp had a conflict unseen by others. In the conflict that Mr. Jupp sustained scratches on his face that did not leave DNA. Forensics were unable to obtain DNA from his fingernails due to the shortness and due to other DNA limitations, such as water and degradation. **Ibid.**
3. Ms. Standen died, by the medical opinion of Dr. Sally Aiken, the medical examiner, by blunt force trauma. Ms. Standen had defensive wounds on her indicating she attempted to defend her frail self, and these could be interpreted by the jurors as an indication of why Mr. Jupp had the scratches on her face. **RP 863.**
4. Ms. Standen was described as never leaving her dog or being separated and there were cleaning supplies suggesting a cleanup. **Ibid.**
5. There was also a Craigslist ad in close proximity to Ms. Standen’s death. The Craigslist ad was listed as Gene’s

phone number or gave Gene's phone number as a return call number, which Gene is Mr. Jupp's informal first name. The cell phone forensics showed that Craigslist renters had made calls to Mr. Jupp. **Ibid.**

6. There was blood in the recycling bin. Mr. Jupp moved the recycle bin to the curb. The recycle bin was heavier than what the driver expected. Something heavier than usual hit the floor of the recycle truck. **Ibid.**
7. Physical trauma resulted in fracture of the nasal bone and defensive wounds and those wounds make out second-degree assault.

During the defense's case, members of Mr. Jupp's family and Mr. Jupp were called as witnesses testifying to Mr. Jupp's movements on April 3 and 4 and small injuries that he incurred while doing yard work. **RP 869. 871-72, 884-86.** At the conclusion of the trial the defense renewed its motion to dismiss. Judge Clary, relying on his earlier ruling again denied

the motion. **RP 1015**. The case went to the jury. It returned a Guilty verdict and also found that the State had proved the enhancement. On March 29, 2019 Judge Clary sentenced Mr. Jupp to 300 months in confinement followed by 36 months of community custody. **SN 62, pages 114-127**. The defense filed a timely Notice of Appeal and obtained an Order of Indigency which allows Mr. Jupp to proceed in forma pauperis. **SN 65, pages 128-29, SN 68, pages 130-31**.

III. ARGUMENT

A. Introduction

The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368. In *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89, 61 L. Ed. 2d 560 (1979) the Supreme Court decided the scope of appellate review when the defendant contends that the prosecution failed to prove its case. It wrote:

After *Winship* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.” *Woodby v. INS*, 385 U.S., at 282, 87 S.Ct., at 486 (emphasis added). Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *Johnson v. Louisiana*, 406 U.S., at 362, 92 S.Ct., at 1624–1625. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon “jury” discretion only to the extent necessary to guarantee the fundamental protection of due process of law. (footnotes omitted).

Washington has adopted the *Jackson v. Virginia* standard. Sufficient evidence supports a conviction when any

rational fact finder could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Thomas*, 150 Wash.2d 821, 874, 83 P.3d 970 (2004), *aff'd*, 166 Wash.2d 380, 208 P.3d 1107 (2009). An insufficiency of the evidence claim admits the truth of the State's evidence and all reasonable inferences drawn from it. *Thomas*, 150 Wash.2d at 874, 83 P.3d 970.

1. But what about when the entire prosecution case is based on circumstantial evidence?

Judge Clary advised the jury “Evidence may be direct or circumstantial.... The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.” **RP 1025**. While circumstantial evidence may carry the same weight as direct evidence when considered by the jury, our Courts have treated such evidence somewhat differently in the context of a sufficiency of the

evidence challenge. When reliance is placed on circumstantial evidence, there must be reasonable inferences to establish the fact to be proved. *Arnold v. Sanstol*, 43 Wn.2d 94, 99, 260 P.2d 327 (1953). “The facts relied on to establish a theory by circumstantial evidence must be of such a nature and so related to each other that it is the only conclusion that fairly or reasonably can be drawn from them.” *Arnold*, 43 Wn.2d at 99. “[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation.” *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013). A “‘modicum’ ” of evidence does not meet this standard. Jackson, 443 U.S. at 320. The existence of a fact cannot rest upon guess, speculation, or conjecture. *State v. Hutton*, 7 Wash.App. 726, 728, 502 P.2d 1037 (1972). It must attain that character which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed. *State v. Zamora*, 6 Wash.App. 130, 491 P.2d 1342 (1971). For this Court to

engage in a meaningful review it is beneficial to examine cases which distinguish between “inferences” and “speculation.”

State v. Vasquez, 178 Wash. 2d 1, 16, 309 P.3d 318, 325 (2013) is a case that discusses the distinction. In *Vasquez* the State charged the defendant with two counts of forgery based on his possession of a forged social security card and a forged permanent resident card, both of which were in his name. Mr. Vasquez told an investigator that he had purchased the cards from a friend in California. Other than establishing that Mr. Vasquez had not been issued either card by the proper authorities, this was the extent of the evidence offered by the State. At the conclusion of the State’s case defense counsel moved to dismiss based on the failure of the State to introduce sufficient evidence to establish each of the elements of the crime beyond a reasonable doubt. The Judge denied the motion and the jury convicted. The Court of Appeals affirmed finding that possession alone was sufficient to infer an intent to injure or defraud, an essential element of the crime charged. The

Supreme Court accepted review, reversed the Court of Appeals and dismissed the criminal charge. It found that the Court of Appeals erred when it inferred “intent” from mere possession, holding that such an inference relieved the State of its burden of proof. It went on to discuss how to prove intent through circumstantial evidence. Noting that while intent frequently is established through circumstantial evidence, in this case the State failed to introduce competent evidence from which such an inference might be drawn. It wrote:

However, inferences based on circumstantial evidence must be reasonable and cannot be based on speculation. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (holding that triers of fact may draw only reasonable inferences); *Bailey v. Alabama*, 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 191 (1911) (“To justify conviction, it was necessary that this intent [to injure or defraud] should be established by competent evidence, aided only by such inferences as might logically be derived from the facts proved, and should not be the subject of mere surmise or arbitrary assumption.”). We hold that there was insufficient evidence to demonstrate Vasquez's intent to injure or defraud a third party because the record discloses no evidence that Vasquez had worked in the United States or that

he had used the forged cards in connection with employment.

178 Wash. 2d at 16.

It next wrote:

The evidence that the State presented to demonstrate intent to injure or defraud, an essential element of the crime charged, was not sufficient because it was either patently equivocal or based on rank speculation. Thus, even when viewing the evidence in this case in the light most favorable to the State, we conclude that no rational juror could have found an intent to injure or defraud beyond a reasonable doubt. Accordingly, we reverse the Court of Appeals and remand with instructions to vacate Vasquez's convictions for forgery.

178 Wash. at 17–18. See also, *United States v. Truong*, 425 F.3d 1282, 1288 (10th Cir.2005)(But it is a bedrock promise of our criminal justice system that the evidence supporting a conviction “must raise more than the mere suspicion of guilt, and the jury's inferences must be more than speculation and conjecture in order to be reasonable.”); *United States v. Lovern*, 590 F.3d 1095, 1107 (C.A.10.2009) (Even viewing the message in the light most favorable to the jury's verdict, it gives

us no way to distinguish among several plausible and competing inferences about its meaning. And where, as here, “the evidence ... gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, we must reverse the conviction, as under these circumstances a reasonable jury *must necessarily entertain* a reasonable doubt.” *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir.2005) (emphasis in original); *see also Ingram v. United States*, 360 U.S. 672, 680, 79 S.Ct. 1314, 3 L.Ed.2d 1503 (1959); *United States v. Dunmire*, 403 F.3d 722, 724 (10th Cir.2005) (“While the jury may draw reasonable inferences from direct or circumstantial evidence, an inference must be more than speculation and conjecture to be reasonable.”. Put differently, the jury simply had no non-speculative reason to favor any one of these explanations over the others.)

2. Mr. Jupp maintains that the State failed to introduce sufficient evidence to prove that he committed the crime.

In this case the evidence, viewed in a light most favorable to the prosecution, established that the cause of Ms. Standen's death was blunt force trauma and that she had defensive wounds on her arms. The evidence was sufficient to establish a homicide. However, the issue being raised by appellant isn't the cause of death, but rather, who caused her death. Accordingly, it is instructive to examine cases in which the Court found the proof of identity insufficient to sustain the conviction.

In *O'Laughlin v. O'Brien*, 568 F.3d 287, 300–09 (1st Cir. 2009) the petitioner in habeas proceeding challenged the sufficiency of the evidence that identified him as the assailant. The Federal Court of Appeals reviewed the record and agreed. Relying on the standard announced in *Jackson v. Virginia*, supra., the Court first noted the difficulty in applying the standard noting that its application is even more difficult when Identity of the perpetrator of the crime is at issue. "This is particularly the case where we have no eyewitness to identify

the perpetrator. In cases based on circumstantial evidence such as the instant case, “we face head-on the disturbing truth that guilty verdicts rest on judgments about probabilities and those judgments are usually intuitive rather than scientific.” *Stewart v. Coalter*, 48 F.3d 610, 614 (1st Cir.1995).” The Court then discussed establishing identity through circumstantial evidence.

It wrote:

We note that although the circumstantial evidence is permissible to discern the identity of the perpetrator, there are some limits to its probative value. “[A] reviewing court should not give credence to ‘evidentiary interpretations and illations that are unreasonable, insupportable, or overly speculative.’ ” *Leftwich*, 532 F.3d at 23 (quoting *United States v. Spinney*, 65 F.3d 231, 234 (1st Cir.1995)); see also *United States v. Valerio*, 48 F.3d 58, 64 (1st Cir.1995) (“we are loath to stack inference upon inference in order to uphold the jury's verdict”). Further,

[i]f the evidence viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, this court must reverse the conviction. This is so because ... where an equal or nearly equal theory of guilt and a theory of innocence is supported by the evidence viewed in the light most favorable to

the prosecution, a reasonable jury *must necessarily entertain* a reasonable doubt. *United States v. Flores–Rivera*, 56 F.3d 319, 323 (1st Cir.1995) (alterations, ellipses, and emphasis in original) (internal quotation marks omitted).

The Court then addressed the proof that the prosecution relied upon to establish the identity of the assailant. It noted that evidence of a financial motive was weak at best. While O’Laughlin had the opportunity to commit the crime, so did others. The weapon used to commit the attack apparently was a solid cylindrical item, like a bat. An aluminum bat, bearing Mr. O’Laughlin’s name was found in the woods nearby to where the assault occurred. However, the Court noted that there was little evidence that linked the bat to the crime scene, and it pointed out that any long, aluminum or wooden implement, could have been used in the assault. A carpenter awakened by the sounds of the assault opined that he heard the sound of wood hitting wood rather than the hollow sound produced when an aluminum bat strikes a hard object. The victim’s estranged husband had a number of wooden bats in his garage.

Finally, the Court did not find that Mr. O'Laughlin's reluctance to cooperate with the police or his agitation while being interviewed elevated the circumstantial evidence to that required to sustain a conviction.

The Court in *O'Laughlin* examined cases from other circuits that found the prosecution's evidence of the identity of who committed the crime insufficient to submit to the jury. A discussion of these cases again will help to illustrate situations in which a jury convicted only to have the appellate court reverse and dismiss based on the lack of sufficient evidence to prove that the defendant committed the crime charged.

In *Newman v. Metrish* 543 F.3d 793 (6th Cir. 2008) the issue was whether there was sufficient evidence to establish that Mr. Newman killed a known drug dealer. The evidence introduced by the prosecution included the following: (1) that the petitioner planned to rob drug dealers for drugs or money; (2) that the victim was a known drug dealer who kept drugs in his freezer; (3) that the petitioner and the victim were known to

engage in drug transactions in the past; (4) that the victim's freezer was "open and empty" after he was killed; (5) that the petitioner had a motive for the killing because he had seen the victim "make a pass" at the petitioner's girlfriend; (6) evidence supporting an inference that Newman had possessed and once purchased the murder weapon, including forensic evidence and the fact that the petitioner's friend saw a gun similar to the murder weapon in the petitioner's home a few weeks prior to the murder.

The Court of Appeals found this evidence insufficient. It held that the evidence only allowed the following reasonable inferences: to "infer only that the petitioner intended to rob a drug dealer and knew that the victim was a drug dealer, that a gun previously owned by the petitioner was used to kill the victim, and that a similar looking gun was seen in the petitioner's home approximately two weeks before the murder." What were not reasonable inferences included: (1) that the Petitioner possessed the gun at the time of the shooting as its

location during the two weeks between that observation and the murder was not known; (2) that the petitioner had been present at the scene of the murder. Without sufficient evidence to place the petitioner at the scene the Court concluded: “where the evidence taken in the light most favorable to the prosecution creates only a reasonable speculation that a defendant was present at the crime, there is insufficient evidence to satisfy the *Jackson* standard.”

In *Juan H. v. Allen*, 408 F.3d 1262 (9th Cir. 2008) the Ninth Circuit held that the state court decision was objectively unreasonable because there was insufficient evidence to conclude that a juvenile petitioner aided and abetted a principal in committing first-degree murder and first-degree attempted murder. 408 F.3d at 1278–79. The evidence that linked the petitioner to the crime was his supposed “consciousness of guilt.” This included his flight from the crime scene and his family home; a false alibi given to the police, and his prior confrontation with the victim. Addressing these issues, the

Ninth Circuit held that “[n]o reasonable trier of fact could find evidence of criminal culpability in the decision of a teenager to run home from the scene of a shooting, regardless of whether the home was in the same general direction as the car of a fleeing suspect.” *Id.* The *Juan H.* court added that “[l]ikewise, any rational factfinder would find little or no evidence of guilt in the fact that [the petitioner] attempted, along with the rest of his family, to leave his home as it was being surrounded by an angry mob of neighbors.” *Id.* With reference to the false alibi the Court found that there might be any of a number of reasons and that it was “bare conjecture” to regard the petitioner's untrue statements to the police as reflective of consciousness of guilt. And it found the so-called motive evidence mere conjecture. In granting the petition the Court stated: “Although we must draw all reasonable inferences in favor of the prosecution, a ‘reasonable’ inference is one that is supported by a chain of logic, rather than, as in this case, mere speculation dressed up in the guise of evidence.” *Id.* It ruled that “only

speculation ... supports a conclusion” that the petitioner was guilty of aiding and abetting the first-degree murders.

3. Which of Judge Clary’s points is a based on a reasonable inference from the admitted evidence and which is based on speculation or conjecture?

A. It is reasonable to infer that Mr. Jupp wanted Ms. Standen out of the house. The remainder of this finding is not supported by the record. There is no evidence that Mr. Jupp had conflicts with Ms. Standen. Nor is there any evidence that his family would not move back to Spokane so long as Ms. Standen remained in the home. In fact, LeAnne and her daughter returned to Spokane in late March to visit. Even though Mr. Jupp’s son and daughter each lived in their own residences in Spokane, LeAnne and Anika stayed with Mr. Jupp at the 15th Street home. **RP 906.**

B. The record does not support that Mr. Jupp had conflict with Ms. Standen and there was no evidence introduced

at trial that he did. This woman clearly needed professional help. It was appropriate for Mr. Jupp to contact APS and the police to get her help. It is conjecture that any marks on Mr. Jupp's face were inflicted by Ms. Standen. The only testimony regarding these scratches came from Mr. Jupp and his family members, each of whom testified that he was scratched while doing yard work prior to the disappearance of Ms. Standen. It is not a reasonable inference to conclude that the lack of DNA somehow supported Ms. Standen injuring Mr. Jupp. The reasonable inference to be drawn from the testimony is that there was no evidence of physical contact between Mr. Jupp and Ms. Standen. While Judge Clary's reference to the shortness of Mr. Jupp's fingernails might explain why no DNA was found under his nails, it does not explain why Mr. Jupp's DNA was not found under Ms. Standen's fingernails, if, as argued, she scratched Mr. Jupp's face and arm.

- C. The Medical Examiner did testify that there were defensive wounds on Ms. Standen's arm. However, the defensive wounds are simply that, attempts to defend oneself from being struck. It is mere speculation to infer that while attempting to block blows, she left scratches on her assailant's face. This is especially so here where blood was found under Ms. Standen's fingernail but based on the DNA analysis that blood originated with a female rather than Mr. Jupp. **RP 780.**
- D. Ms. Standen was not described as never leaving her dog. While the testimony was that when she moved or went on outings that she took her dog with her, this does not mean that she never went out to the trash or the yard without taking her dog. Yes, there were cleaning supplies in the house. Is there a house that does not have cleaning supplies? There is nothing in the record that supports that they had been used recently. Rather, the

testimony supports the opposite inference as the investigators found Mr. Jupp's blood in the residence.

E. There was blood in the recycling bin. The blood was identified as originating with Ms. Standen. Mr. Jupp did put the bin out to the curb. It is reasonable to infer that when the recycling truck picked up the bin that Ms. Standen was in a black plastic bag inside of the bin. However, there is no evidence that her body was in the bin when it was moved to the curb. There is no evidence as to when her body was placed in the bin.

F. It is reasonable to infer that physical trauma caused the fracture to the nasal bone and there was sufficient evidence to satisfy the elements of second-degree assault.

IV. CONCLUSION

While the evidence presented by the State supports the reasonable inference that Ms. Standen died as a result of blunt force trauma inflicted by another, the State failed to prove that

Mr. Jupp committed the assault the caused her death. Assuming Ms. Standen was assaulted prior to being placed in the recycling bin, there is no evidence where that assault occurred. There is no trace evidence that links Mr. Jupp to Ms. Standen or her to him. The alleged motive, a desire to have his family move back into the 15th Street residence does not reasonably support an inference that he killed her to achieve that goal. As with the cases discussed supra., Judge Clary's inferences were neither reasonable, nor should they be considered inferences. The evidence he relied upon was speculative. He erred when he denied the defense motion to dismiss and allowed the case to go to the jury. This Court should vacate the conviction and dismiss the charge with prejudice.

DATED THIS 25 DAY OF NOVEMBER, 2019.



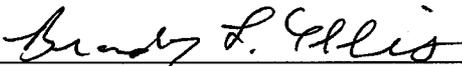
MARK D. MESTEL, WSBA# 8350
Attorney for Appellant

V. **CERTIFICATE OF SERVICE**

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

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500 North Cedar Street
Spokane, WA 99201
2. Spokane County Prosecutor
1100 W. Mallon Avenue
Spokane, WA 99260
scpaappeals@spokanecounty.org
3. Eugene A. Jupp, DOC#909724
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

DATED this 25 day of November, 2019.



Brandy L. Ellis, Legal Assistant

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

November 25, 2019 - 2:15 PM

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