

NO. 83788-1

SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of

DEMAR RHOME,

Petitioner.

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STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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A. AUTHORITY FOR RESTRAINT OF PETITIONER

Demar Rhome is restrained pursuant to Judgment and Sentence in King County Superior Court No. 03-C-09947-0 SEA. Appendix A.

B. ISSUES PRESENTED

1. Whether Rhome is barred from obtaining relief in this collateral attack by way of his proposed new rule of criminal procedure based on Indiana v. Edwards, ___ U.S. ___, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008).

2. Whether the trial court acted within its discretion in finding that Rhome's waiver of the right to counsel was knowing, voluntary and intelligent.

C. STATEMENT OF THE CASE

Petitioner Demar Rhome was charged with Murder in the First Degree. The State alleged that, on November 20, 2003, Rhome intimidated 17-year-old Kialani Brown to the point where, at Rhome's direction, Brown fatally stabbed 17-year-old Lashonda

Flynn.¹ Appendix B (Information and Amended Information, Certification for Determination of Probable Cause).

Questions about Rhome's competency to stand trial arose early in the proceedings. Rhome was evaluated by Dr. Jason Dunham, a forensic psychologist, during a 12-day stay at Western State Hospital ("WSH") that included a clinical interview by Dr. Dunham and numerous detailed clinical observations by WSH staff; at the conclusion of this process, Dr. Dunham found Rhome competent to stand trial. Appendix D (March 25, 2005 Forensic Psychological Report) at 5-11, 13. Elaborating on Rhome's mental status, Dr. Dunham added: "In sum, it is quite clear that Mr. Rhome does not suffer from a mental illness. It is also quite clear that he has a dangerous combination of antisocial and narcissistic personality disorders." Appendix D at 12.²

Dr. David White, a clinical psychologist retained by the defense, was unable to conduct a psychological evaluation of Rhome at the King County Jail due to Rhome's refusal to

¹ The facts of the crime are more fully set out in the Statement of the Case from the Brief of Respondent, filed in the direct appeal. Appendix C.

² At Rhome's request, he was later sent back to WSH to be evaluated for a diminished capacity defense. Dr. Barry Ward found "ample data to suggest preserved capacity to form intent" to commit murder. Appendix E (December 20, 2005 Forensic Psychological Report) at 4, 6, 15.

cooperate. Rhome instead "spoke in an agitated manner for about one hour." Appendix F (Psychology Report, dated 5-1-2005) at 1. Based on this hour, and on a review of Rhome's mental health history, Dr. White found that Rhome's "paranoia severely interferes with his ability to work with his attorneys"; he concluded that Rhome lacked the "basic and fundamental capacity to rationally participate in his own defense." Appendix F at 15.

The trial court held a lengthy hearing on competency.³ RP (June 8, 2005). After hearing the testimony of Dr. Dunham and Dr. White, and the arguments of counsel, the court concluded that Rhome was competent to stand trial. RP (June 8, 2005) 149; Appendix H (Findings of Fact and Conclusions of Law Regarding Defendant's Competency).

Apparently dissatisfied with his original attorneys, Walter Peale and Raymond Ejarque, Rhome successfully moved to terminate their representation. Appendix I (Order on Criminal Motion dated June 9, 2005). Shortly thereafter, the court appointed attorney Michael Danko to represent Rhome. Appendix J (Order on Criminal Motion dated June 16, 2005).

³ The facts of the competency hearing are set out in detail in the Brief of Respondent filed in the direct appeal. Appendix G.

In a matter of weeks, Rhome was unhappy with Danko. RP (June 27, 2005) 3-5. At this point, Rhome made his first request to represent himself: "To be honest with you, I think it's best that I just go pro se because I'm going to tell you right now there's not one Public Defender that – or any attorney that can fight this case better than I can." Id. at 6.

The trial court engaged in an extended colloquy to determine whether Rhome's request should be granted. The court asked Rhome if he had ever studied law; Rhome responded that he had studied law for the last two years, both from jail and from the streets. Id. at 7. The court asked Rhome if he had previously represented himself in court; Rhome responded that he had never been given the chance to do so. Id. Rhome indicated a particular interest in personally interviewing Kialani Brown should he be allowed to go pro se. Id.

The court informed Rhome that the charge was first-degree murder and that the maximum penalty was life in prison; Rhome said he understood that. Id. at 8-9. Rhome understood that if he represented himself, he could not expect special breaks or assistance from the court – he was on his own. Id. at 9. Rhome admitted that he had never read the rules of evidence; after the

court explained that Rhome could be at a serious disadvantage when objections were called for, Rhome responded, "Yeah, I understand the risks that I'm taking." Id. at 9-10.

When asked if he was familiar with the rules of criminal procedure, Rhome responded that he understood how the courtroom operates. Id. at 10. Rhome volunteered his knowledge that, if he were to testify at his trial, he would be cross-examined by the prosecutor. Id. at 11. Rhome understood that he might be required to ask himself questions in presenting his own testimony. Id.

In spite of Rhome's assurances, the court felt compelled to warn him of the magnitude of the task he proposed to undertake: "I must advise you that in my opinion you would be better served by having a lawyer represent you. If I were charged with a crime, whether it was a minor crime like criminal trespass or murder, I would have a lawyer, and I am a lawyer." Id. at 11-12. Rhome responded, "Then I would recommend that you assign another counsel" Id. at 12. Rhome then indicated that he might be able to work with Danko "as long as we have a mutual understanding that it's not just his way." Id.

Based on Rhome's responses, the trial court concluded that Rhome's request to represent himself was equivocal. Id. at 15. The court denied the motion. Appendix K (order dated June 27, 2005).

Two months later, Rhome was back before the same judge on his motion to discharge Danko and represent himself. RP (August 30, 2005). Rhome complained that Danko had stopped accepting his collect calls, and would not "get a court order" for the mailroom people at the jail who were allegedly stealing Rhome's mail. Id. at 3-5. The court asked Rhome, "Is it your desire to represent yourself in this case?" Id. at 5. Rhome responded, "It is my most powerful desire." Id.

The trial court once again engaged in an extensive colloquy with Rhome. Rhome reiterated his claim that he had studied law, but acknowledged that he had never represented himself in court "all the way." Id. at 7. Rhome again confirmed that he understood the charge, and the maximum penalty. Id.

The court once again warned Rhome in some detail of the disadvantages of self-representation:

Do you realize that if you represent yourself, you will be on your own, that the court will not tell you how to try your case or advise you how to try your case, that

you will be treated as if you are an attorney? Do you understand that?

...

Do you understand that [the court] rules are what govern the way a criminal case will proceed and you will be required to follow those rules. The fact that you're representing yourself, the fact that you're not a lawyer will not result in anybody excusing your failure to follow those rules? Do you understand that?

...

If at any time in these proceedings the prosecutor were to offer evidence against you which would be objectionable for any reason and if you fail to object and state the grounds for your objection, that evidence would come in against you and you would not later be able to complain to a higher court that you didn't get a fair trial because this evidence came in and you didn't know you were supposed to object; do you understand that?

...

Do you understand then that once again that if you fail to object to evidence for any reason, including ignorance of the rules, that that evidence would come in against you and you would not later be able to appeal that issue?

...

Do you understand that if you testify in your case, the trial judge may require you to ask yourself questions and then answer them?

Id. at 8-11. While Rhome had some questions for the court, and while he did not demonstrate a trial lawyer's understanding of courtroom procedures, Rhome nevertheless indicated that he understood. Id.

The trial judge also repeated his warning that Rhome's decision to represent himself was ill-advised:

You probably already understand this, but I'm going to say it again. In my opinion, you're making a bad decision. If I were charged with a crime, whether it was a serious crime or not serious crime, I would have a lawyer, and I am a lawyer. So I'm telling you that in my opinion, while you have the right to make this decision, it's a bad decision.

Id. at 11-12. Rhome responded with his typical self-assurance, but nevertheless showed his awareness of the difficulties he faced:

Well, if I may elaborate. The only reasons why that I'm actually trying to go pro se without being concerned about a potential murder conviction coming to me, because there are significant witnesses on my behalf, and there's quite the mass amount of sophisticated evidence to show I would beat this case. So I have some good challenges, *but I know I got also witnesses and bad challenges to deal with from the prosecutor's behalf. So I know what I'm up against.*

Id. at 12 (italics added).

The trial court found that Rhome was knowingly, voluntarily and intelligently waiving his right to counsel, and granted his request to represent himself. Id.; Appendix L (Order to Discharge Defense Counsel, dated August 30, 2005). The court required Danko to remain as standby counsel. Id.

The issue of Rhome's pro se representation came up one more time, before a different judge, prior to the start of trial. After Rhome expressed some uncertainty about how witnesses would testify, the trial court carefully explored Rhome's intentions:

I am concerned when you say I have never been in trial, and I don't know how these things are done. You have made a choice to represent yourself, and I know that Judge Kessler has specifically given you permission to do that. And people do, under our system, have a right to represent themselves.

However, along with that right goes the responsibility, and the requirement that you abide by the rules of the Court and the rule of evidence. I am not going to and should not make any exceptions to that because you are representing yourself. You will be expected to follow the rules of evidence, and follow the rules of the Court. No special exceptions for you. No going around the rules. No special rules for you. As if you were a lawyer you are going to have to be responding to the Court and to the jury. People go to school for several years to learn this. It's not easy. But I am not in this case going to deviate from that rule.

So I want you to think we have from now until tomorrow and actually maybe even until Monday before we pick a jury. I want you to think long and hard about whether you really want to undertake representation of yourself in a trial of this importance, and not have an attorney representing you because I think it's a very serious mistake for you to be representing yourself.

RP (February 22, 2006) 6-7. Rhome reassured the court of his belief that "there is no one who can advocate for me better in this

murder trial than myself, and what I want to tell you is of course I realize and know very well what I'm up against." Id. at 7.

Following a trial at which Rhome represented himself, the jury found him guilty as charged. Appendix M (verdict forms).

At sentencing, the trial judge remarked upon Rhome's complete lack of concern for others and his considerable skill at manipulation. RP (April 14, 2006) 29-30. The judge described this as "a very lethal combination." Id. at 30. Finding that Rhome "deserves no leniency from this Court," the judge imposed a sentence of 371 months, the top of the standard range. Id.; Appendix A.

Rhome appealed his conviction. The Court of Appeals affirmed, and the Supreme Court denied review. The mandate issued on December 31, 2008. Appendix N.

D. ARGUMENT

In this personal restraint petition, Rhome seeks to take advantage of a recent decision of the United States Supreme Court that *permits* states to establish, if they so choose, a higher standard for competency to represent oneself at trial than for competency to stand trial with the assistance of counsel. See Indiana v. Edwards,

___ U.S. ___, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). Rhome asks this Court to extend the decision in Edwards and establish in Washington the higher standard that the Supreme Court found permissible.

In accordance with established principles of retroactivity, this Court will not announce and apply a new rule of criminal procedure such as the one Rhome seeks in a collateral attack. Moreover, the Washington Constitution's explicit protection of the right to self-representation at trial makes it unlikely that such a rule would ever be adopted in this state.

Rhome also claims that he did not knowingly, voluntarily and intelligently waive his right to counsel. In light of the trial court's careful and detailed colloquies with Rhome on this issue, Rhome cannot demonstrate that the court abused its discretion in granting his wish to represent himself at his trial.

1. STANDARD OF REVIEW FOR PERSONAL RESTRAINT PETITION.

To obtain relief through a personal restraint petition, a petitioner must show that he was actually and substantially prejudiced either by a violation of his constitutional rights or by a

fundamental error of law. In re Personal Restraint of Benn, 134 Wn.2d 868, 884-85, 952 P.2d 116 (1998). The petitioner must carry this burden by a preponderance of the evidence. In re Personal Restraint of Cook, 114 Wn.2d 802, 814, 792 P.2d 506 (1990).

A personal restraint petition is not a substitute for a direct appeal, and the availability of collateral relief is limited. In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 328-29, 823 P.2d 492 (1992). "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." In re Personal Restraint of Hagler, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982).

2. THE NEW RULE OF CRIMINAL PROCEDURE THAT RHOME SEEKS, EVEN IF IT COULD BE SUPPORTED BY WASHINGTON LAW, COULD NOT BE APPLIED IN THIS COLLATERAL ATTACK.

Rhome asks this Court to find that Washington law requires a separate inquiry into a defendant's competence to represent himself at trial, above and beyond the competence required to stand trial with the assistance of counsel, where there is some indication that a criminal defendant may suffer from a mental

illness. This Court should reject Rhome's request. First, Rhome's proposed new rule could not in any event be announced and applied in this collateral attack. Moreover, the Washington Constitution, which explicitly protects a defendant's right to represent himself at trial, would likely preclude Rhome's proposed limitation of that right. Finally, Rhome has failed to show actual prejudice from any violation of his constitutional rights.

a. New Rules Of Criminal Procedure May Not Be Applied For The First Time On Collateral Review.

In Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), the United States Supreme Court set forth limits on the application of new rules to existing cases: "Unless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." 489 U.S. at 310. The Court in Teague struggled with the very situation presented here – a collateral attack petitioner who asked the Court to announce a new rule in his case and apply it to him: "Were we to recognize the new rule urged by petitioner in this case, we would have to give petitioner the benefit of that new rule

even though it would not be applied retroactively to others similarly situated." Id. at 315. The Court ultimately decided to avoid both advisory opinions and the inequitable application of new rules:

We therefore hold that, implicit in the retroactivity approach we adopt today, is the principle that habeas corpus cannot be used as a vehicle to create new constitutional rules of criminal procedure unless those rules would be applied retroactively to *all* defendants on collateral review through one of the two exceptions we have articulated.

Id. at 316 (italics in original).⁴

The two exceptions referenced in Teague to which the restrictions on retroactivity do not apply are: 1) rules that place certain kinds of primary, private individual conduct beyond the power of the State to proscribe; and 2) rules that require the observance of procedures that are implicit in the concept of ordered liberty. Teague, 489 U.S. at 311; State v. Evans, 154 Wn.2d 438, 444, 114 P.3d 627, cert. denied, 546 U.S. 983 (2005). The first exception clearly does not apply here. The second exception is reserved for "watershed rules of criminal procedure" that implicate

⁴ Although the portions of Teague quoted in this paragraph commanded only a plurality of the Court, the Teague rule was affirmed and applied by a majority shortly thereafter. See Penry v. Lynaugh, 492 U.S. 302, 313, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989) ("Because Penry is before us on collateral review, we must determine, as a threshold matter, whether granting him the relief he seeks would create a 'new rule.' Under Teague, new rules will not be applied or announced in cases on collateral review unless they fall into one of two exceptions.") (citations omitted).

the fundamental fairness and accuracy of the criminal proceeding, altering our understanding of the "bedrock procedural elements" essential to the fairness of that proceeding. Teague, 489 U.S. at 311; Evans, 154 Wn.2d at 445. The Supreme Court has cautioned that this class of rules is extremely narrow, and has opined that "it is unlikely that any [such rule] has yet to emerge." Schriro v. Summerlin, 542 U.S. 348, 352, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004) (citations omitted).

The new rule that Rhome seeks, a higher standard of competence for a defendant who chooses to represent himself than for one who stands trial with the assistance of an attorney, is clearly procedural. It does not produce a class of persons convicted of conduct the law does not make criminal, but merely raises the possibility that someone convicted by use of the challenged procedure might otherwise have been acquitted. See Summerlin, 542 U.S. at 352.

Nor does Rhome's proposed rule fall within either of the exceptions to the non-retroactivity of new procedural rules. A higher standard for competency to represent oneself at trial would not place any conduct beyond the power of the State to proscribe, nor would it be a watershed rule that alters our

understanding of the bedrock procedural elements essential to the fairness of the trial. See Summerlin, 542 U.S. at 352 (noting that it is unlikely that there is any such watershed rule that has not already emerged).

While Rhome does not discuss retroactivity in his petition, he implies that the rule he seeks to take advantage of, a higher standard of competence to represent oneself at trial than to stand trial with the assistance of an attorney, has long been established in Washington. This is not correct.

Rhome relies primarily on language in State v. Kolocotronis, 73 Wn.2d 92, 436 P.2d 774 (1968). In that case, the trial court allowed a defendant with a history of serious mental illness to represent himself in part at trial, but required him to accept some assistance from counsel, and allowed counsel to put forth a defense of not guilty by reason of insanity over the defendant's objection. 73 Wn.2d at 95. The jury acquitted based on insanity at the time of the offense, but found the defendant not safe to be at large. Id. at 96. The defendant appealed, claiming that the trial court had improperly denied him the right to represent himself. Id. at 96-97.

In holding that the trial court had properly exercised its discretion, the Washington Supreme Court recognized that Kolocotronis was able to understand the nature of the proceedings against him, and to assist his counsel. Id. at 102. The court held, however, that "[t]hat condition is determinative only of his ability to stand trial, not of his ability to act as his own counsel, and to exercise the skill and judgment necessary to secure to himself a fair trial." Id.

Kolocotronis preceded the United States Supreme Court's landmark decision in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). In Faretta, the Court held that a state may not require a defendant to accept the assistance of counsel when that defendant wishes to represent himself. 422 U.S. at 807. The Court observed that, while the Sixth Amendment does not state the right to defend personally in a criminal action "in so many words," the right is "necessarily implied by the structure of the Amendment." Id. at 819.

The Court in Faretta cautioned that any waiver of the right to counsel must be knowing and intelligent: "Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he

should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" Id. at 835 (citation omitted). The Court explicitly recognized that a defendant's choice to represent himself may not always be a wise one: "And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Id. at 834 (citation omitted).

The Washington Supreme Court revisited this issue in a post-Faretta case, State v. Hahn, 106 Wn.2d 885, 726 P.2d 25 (1986). Hahn was diagnosed as a paranoid schizophrenic after his arrest. Id. at 886. After being found competent to stand trial, he waived a plea of not guilty by reason of insanity and chose to represent himself. Id. Hahn was convicted of second-degree murder, and he appealed. Id. The Court of Appeals reversed the conviction, finding that, while the standards for competency to stand trial and for waiver of an insanity plea were met, the standard for waiver of counsel was not. Id.

Explicitly recognizing that Faretta had proclaimed a criminal defendant's constitutional right to represent himself, the

Washington Supreme Court set out the specific question raised by

Hahn's situation:

The case before this court presents the difficult question of the standard for waiver of that right by a criminal defendant who is psychotic yet competent to stand trial. Hahn, a paranoid schizophrenic who was competent to stand trial, was granted his request to represent himself. We are asked to decide if Hahn's waiver of his right to counsel was valid.

Id. at 889.

The supreme court reversed the lower appellate court and reinstated Hahn's conviction. Id. at 901. The court held that "the Faretta standards must also be applied to waiver of counsel by a psychotic defendant." Id. at 894. The court then clarified the relevant standards:

The test for competency to stand trial is if the defendant has the capacity to understand the nature of the proceedings against him and to assist in his own defense. The standards for waiver of both an insanity plea and the right to counsel are (1) competency to stand trial and (2) a knowing and intelligent waiver with "eyes open", which includes an awareness of the dangers and disadvantages of the decision.

Id. at 895.

In reaching this conclusion, the court recognized that Faretta had limited the court's earlier holding in Kolocotronis:

While our holding in State v. Kolocotronis, 73 Wn.2d 92, 436 P.2d 774 (1968), that it is the responsibility of

the trial court to determine a defendant's competency intelligently to waive the services of counsel and act as his own counsel, remained valid in the wake of Faretta v. California, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), *any consideration of a defendant's ability to "exercise the skill and judgment necessary to secure himself a fair trial" was rendered inappropriate by Faretta.*

Hahn, 106 Wn.2d at 890 n.2 (internal citations omitted, italics added).

There can thus be no uncertainty as to what the state of the law was in Washington after Faretta – trial courts were to ensure that a defendant was competent to stand trial and that any waiver of the right to counsel was knowing and intelligent. Once these standards were met, even a psychotic defendant's wish to represent himself must be honored.

The Supreme Court's decision in Edwards did not alter this law. The Indiana trial court had found Edwards, a schizophrenic who was suffering from delusions, competent to stand trial if represented by counsel, but not competent to represent himself. Edwards, 128 S. Ct. at 2381-83. On appeal, Edwards argued that, by refusing to allow him to represent himself, the trial court had violated his constitutional right under the Sixth Amendment to do just that. Id. at 2383.

The Supreme Court framed the question as whether the Constitution "permits" a state to limit the self-representation right of a defendant who is competent to stand trial "by insisting upon representation by counsel at trial – on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented." *Id.* at 2385-86. The Court concluded that such a limitation was permissible:

We consequently conclude that the Constitution *permits* judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution *permits* States to insist upon representation by counsel for those competent enough to stand trial under *Dusky*⁵] but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

Id. at 2387-88 (italics added). Thus, *Edwards* did not *require* states to adopt the higher competency standard that Rhome now advocates, it simply *permitted* them to do so if they found such a standard appropriate under state law.

⁵ *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). This case defined the competency standard as including (1) whether the defendant has a rational as well as a factual understanding of the proceedings against him and (2) whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding. *See Edwards*, 128 S. Ct. at 2383.

There is presently no rule in Washington mandating this heightened competency standard for a defendant who wishes to represent himself at trial. Under the Teague retroactivity analysis, Rhome cannot benefit from any new rule that might someday evolve in Washington in the wake of Edwards. Washington courts have long followed Teague in determining retroactivity. See In re St. Pierre, 118 Wn.2d at 324 ("[W]e have attempted from the outset to stay in step with the federal retroactivity analysis."); Evans, 154 Wn.2d at 444 ("Generally, we have followed the lead of the United States Supreme Court when deciding whether to give retroactive application to newly articulated principles of law."). Applying these principles of retroactivity, this Court should decline Rhome's invitation to announce and apply a new rule of criminal procedure in this collateral attack.

- b. The New Rule That Rhome Seeks Would Run Afoul Of The High Level Of Protection For Personal Autonomy Found In Washington's Constitution.

Even if it were appropriate to announce a new rule of criminal procedure in this collateral attack, Washington law does not support the rule that Rhome advocates. The respect for

personal autonomy expressed in the Washington Constitution would likely prevent further limitation on the right to represent oneself at trial.

The Washington Constitution and the Federal Constitution differ in their approaches to the right of self-representation. The right to personally present one's defense at trial is not explicitly stated in the Sixth Amendment, but has been implied from the structure of the amendment.⁶ Faretta, 422 U.S. at 819. By contrast, the Washington Constitution expressly guarantees the right of self-representation: "In criminal prosecutions the accused shall have the right to appear and defend *in person, or by counsel* . . ." Const. art. 1, § 22 (italics added). See also State v. Silva, 107 Wn. App. 605, 27 P.3d 663 (2001) (undertaking Gunwall⁷ analysis and concluding that the Washington Constitution affords pro se defendants a greater right of access to the courts than does the Federal Constitution).

⁶ The Sixth Amendment provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

⁷ State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

Long before Faretta, Washington courts affirmed a criminal defendant's state constitutional right to represent himself at trial. See State v. Hardung, 161 Wash. 379, 383, 297 P. 167 (1931) ("In this state, a defendant may conduct his entire defense without counsel if he so chooses"); State v. Woodall, 5 Wn. App. 901, 903, 491 P.2d 680 (1971), review denied, 80 Wn.2d 1005 (1972) ("In this state, an accused has the right to appear and defend himself in person, or by counsel."). In addition, the Washington Supreme Court recently held, following a Gunwall analysis, that the Washington Constitution also guarantees a criminal defendant the right to represent himself on appeal. State v. Rafay, 167 Wn.2d 644, 222 P.3d 86 (2009).

Given the explicit protection of the right of self-representation in Washington's constitution, and the long history of recognition of this right by Washington's courts, it is unlikely that this state would countenance the limitation on this right that Rhome seeks.

c. Rhome Has Failed To Establish Prejudice From Any Violation Of His Constitutional Rights.

In any event, Rhome cannot carry his burden to show actual and substantial prejudice arising out of the failure of the trial court

to apply a heightened standard of competency in allowing him to represent himself. Thus, even if this Court were to reach the merits of this claim, the claim should be rejected and this petition should be dismissed.

In attempting to show prejudice, Rhome focuses on jury selection, quoting at some length from voir dire. He points out that his own questions of jurors were sometimes long and rambling, and he cites to responses indicating that some jurors were confused, or were concerned that he was representing himself. Yet he fails to identify a single juror who expressed actual bias against him and then sat on the jury that found him guilty.

Rhome also relies for prejudice on his own failure to obtain an expert to support his diminished capacity defense. But Rhome does not support this petition with any expert opinion that, due to a mental disorder, he could not form the intent necessary to commit first-degree murder at the time Lashonda Flynn was fatally stabbed. The only evidence, in fact, is to the contrary. See Appendix E (WSH report of December 20, 2005) at 15 ("In short, by any version of the offense, there is ample data to suggest preserved capacity to form intent."). Rhome has not shown prejudice from the lack of an expert.

Moreover, it is difficult to see how diminished capacity would have fit into Rhome's defense. In essence, Rhome's version of Flynn's murder was that he had walked into the room carrying drinks for the three of them, and came upon Kialani Brown in the act of stabbing Flynn. RP (March 9, 2006) 32-33, 38-39. While he spoke of the effects of alcohol, posttraumatic stress disorder and mental illness on his state of mind that night, he continued to deny any participation in the murder. Id. at 41-42. Jurors either believed that Rhome stood by helplessly as the murder unfolded, or credited the State's theory that Rhome had planned the murder and convinced Brown to carry it out. Expert testimony regarding diminished capacity, if it could have been obtained, would not have been relevant to the defense Rhome presented. Again, he has failed to show prejudice.

Rhome also relies on the lengthy report prepared by Dr. White following Dr. White's review of the trial transcript. In concluding that Rhome "lacked the capacity to represent himself in Court in 2006," Dr. White relies on such things as Rhome's belief that he could present his defense better than anyone else could; his belief that police, prosecutors, and his own attorneys conspired against him; his disorganized approach at trial; and his tendency to

interrupt the trial court. See Appendix A to Declaration of Michael Filipovic, at 21-33. This Court, in its experience, may well conclude that such observations are not unusual when reviewing a transcript where a defendant has represented himself at trial. See People v. Tatum, 389 Ill. App. 3d 656, 670-71, 906 N.E.2d 695, 709 (2009) (noting that pro se defendant's interruptions and paranoid comments more likely resulted from the frustrations of a nonlawyer defending himself than from mental illness). Again, there is no showing of actual prejudice.

3. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING THAT RHOME'S WAIVER OF HIS RIGHT TO COUNSEL WAS KNOWING, VOLUNTARY AND INTELLIGENT.

Rhome also contends that he did not knowingly, voluntarily and intelligently waive his right to be represented by an attorney. The record supports the conclusion that the trial court did not abuse its discretion in finding that he did.

A defendant who is competent to stand trial may waive the assistance of counsel if the waiver is made knowingly and intelligently. Hahn, 106 Wn.2d at 893. Whether there has been an intelligent waiver of counsel is an ad hoc determination that

depends on the facts and circumstances of the case, including the background, experience and conduct of the accused. Id. at 900. This determination is within the discretion of the trial court. Id. The defendant bears the burden to show that his right to counsel was not competently and intelligently waived. Id. at 901.

A colloquy on the record is the preferred method for determining whether a waiver of counsel is valid. State v. DeWeese, 117 Wn.2d 369, 378, 816 P.2d 1 (1991). At a minimum, the record must reflect that the defendant understood the seriousness of the charge, the possible maximum penalty involved, and the existence of technical procedural rules governing the presentation of the defense. Id.

As detailed above in § C., the trial court twice engaged in an appropriate and searching colloquy with Rhome. The court made sure that Rhome understood the serious charge that he faced – Murder in the First Degree, as well as the maximum penalty upon conviction – life in prison. The court informed Rhome that he could not expect help from the court, and that the trial would be conducted according to technical rules – the rules of evidence and the rules of criminal procedure. The court informed Rhome that he might have to testify, should he choose to do so, by asking

questions of himself. The court repeatedly and strongly advised Rhome that he would be better served by allowing an attorney to represent him at trial.

Knowing all this, Rhome nevertheless assured the court that he wished to represent himself. The trial court did not abuse its discretion in allowing him to do so.⁸ This claim should accordingly be rejected.

E. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to dismiss this personal restraint petition.

DATED this 17th day of February, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: Deborah A. Dwyer
DEBORAH A. DWYER, WSBA #18887
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

⁸ Indeed, had the court not allowed Rhome to exercise his constitutional right to represent himself under these circumstances, Rhome would have a colorable claim of reversible error. See State v. Breedlove, 79 Wn. App. 101, 110, 900 P.2d 586 (1995) (erroneous denial of defendant's motion to proceed pro se requires reversal without any showing of prejudice).

APPENDIX A

FILED

2006 APR 14 PM 2:54

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED COPY TO COUNTY JAIL APR 14 2006

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
	)	No. 03-C-09947-0 SEA
)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY
DEMAR S. RHOME)	
)	
)	
)	
	)	Defendant,

I. HEARING

I.1 The defendant, the defendant's lawyer, MICHAEL DANKO (STAND-BY COUNSEL), and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Pauline Ferber, Ola Pinder, Jacky Campbell, Stephanie Joyner, Shannon Coulter, Kim Green, Det. Rolf Norton

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:
2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 03/10/2006 by jury verdict of:

Count No.: I Crime: MURDER IN THE FIRST DEGREE
RCW 9A.32.030(1)(a) Crime Code: 00112
Date of Crime: 11/20/2003 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) I _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	3	XIV	271 TO 347	+24 DWE	295 TO 371 MONTHS	LIFE AND/OR \$50,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$0, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$0, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$0, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$0, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$0, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$0, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$0, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500.00 plus restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____, m.

347 months/days on count I; _____ months/days on count _____; _____ months/day on count _____
_____ months/days on count _____; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts _____ are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 24 months

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 371 months.

Credit is given for 869 days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of Life years, defendant shall have no contact with Wendy Brown & any member of her family. ~~and~~ Any member of Lasbonda Flynn's family.

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
 APPENDIX H for Community Custody conditions is attached and incorporated herein.
 APPENDIX J for sex offender registration is attached and incorporated herein.

- 4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.
- 4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

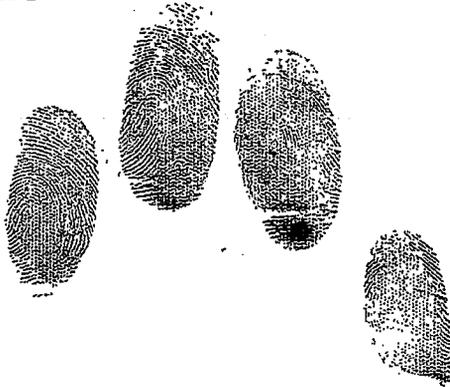
Date: 4/14/06

Nick MacInnes
 JUDGE
 Print Name: MacInnes

Presented by:
[Signature]
 Deputy Prosecuting Attorney, WSBA# 20420/91002
 Print Name: Hugh Barber

Approved as to form:
[Signature]
 Attorney for Defendant, WSBA# Pr 12
 Print Name: DeMar S. Rhone

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE

RIGHT HAND FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Demar S Rhome
DEFENDANT'S ADDRESS: 100

DEMAR S RHOME

DATED: 4-14-06

ATTESTED BY: Barbara Miner,
SUPERIOR COURT CLERK

Nicole MacInnes
JUDGE, KING COUNTY SUPERIOR COURT
NICOLE MacINNES

BY: [Signature]
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.
DOB: JULY 16, 1983
SEX: M
RACE: B

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DEMAR S. RHOME

Defendant,

No. 03-C-09947-0 SEA

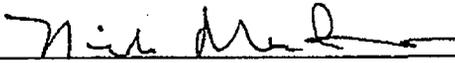
JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ATTEMPTED THEFT IN THE 1 ST DEGREE	08/16/2002	ADULT	021049164	KING CO.
ROBBERY IN THE 2 ND DEGREE	04/12/2002	ADULT	011095231	KING CO.

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: April 14, 2004



JUDGE, KING COUNTY SUPERIOR COURT

NICOLE MacINNES
MacInnes

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
) Plaintiff,)
)
 vs.)
)
 DEMAR S. RHOME)
)
) Defendant,)
)

No. 03-C-09947-0 SEA
APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

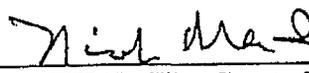
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: April 19, 2006



JUDGE, King County Superior Court
MacInnes NICOLE MacINNES

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 03-C-09947-0 SEA
)	
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
DEMAR S. RHOME	)	COMMUNITY PLACEMENT OR
	)	COMMUNITY CUSTODY
Defendant,)	

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: April 17, 2004

Nicole MacInnes
JUDGE **NICOLE MACINNES**
MacInnes

APPENDIX B

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FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)

Plaintiff,)

v.)

DEMAR S. RHOME, and)

KIALANI BROWN)

and each of them,)

Defendants.)

No. 03-C-09947-0 SEA ✓
03-C-09948-8 SEA

INFORMATION

WARRANT ISSUED
CHARGE COUNTY \$110.00

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse DEMAR S. RHOME and KIALANI BROWN, and each of them, of the crime of **Murder in the Second Degree**, committed as follows:

That the defendants DEMAR S. RHOME and KIALANI BROWN, and each of them, together with another, in King County, Washington on or about November 20, 2003, with intent to cause the death of another person did cause the death of Lashonda Flynn, a human being, who died on or about November 20, 2003;

Contrary to RCW 9A.32.050(1)(a), and against the peace and dignity of the State of Washington.

NORM MALENG
Prosecuting Attorney

By: 
Hugh J. Barber, WSBA #20420
Senior Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000



SEATTLE
POLICE
DEPARTMENT

CAUSE NO.

~~02-C-09947-OSEA~~
~~03-C-09948-8SEA~~

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	03-537470
UNIT FILE NUMBER	H-03-420

That Steve Kilburg is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 03-537470;

There is probable cause to believe that Demar S Rhome (DOB 7-16-83) and Kialani Brown (DOB 2-17-86) committed the crime(s) of Murder.

This belief is predicated on the following facts and circumstances:

On November 23rd, 2003 at 2136 hours, Seattle Police Communications received a phone call from Beverly Brown in Vancouver, WA. Brown stated that her daughter Kialani's boyfriend had just phoned her and reported that Kialani had stabbed his ex-girlfriend two days ago, further that he had the knife used and knows where the body is. The boyfriend was named possibly as Devante Carlson and a phone number was given. The phone number was run through police data systems and yielded the address of 2302 E Pine (lower unit). Patrol units responded and removed Kialani Brown and Demar Rhome from this address. Rhome indicated that his street name is Devante Carlson, that he was dating Kialani and that he had called her mother to report the homicide. After an advisement of his constitutional rights, Rhome told officers that Brown stabbed Lashonda Shantell Flynn (DOB 9-18-86). Rhome stated the murder had occurred at 2317 E Alder and led officers to that residence. He then led officers to where Flynn's body had been dumped in Discovery Park, and officers confirmed the presence of what appeared to be a dead female partially covered with what appeared to be a sheet, blanket and garbage bag.

Rhome was brought back to the homicide office and interviewed by detectives. Rhome explained how he, Brown, and Flynn were all involved personally and sexually. Rhome initially stated that one week ago the three went to the house at 2317 E Alder because the resident was supposedly in jail and they wanted a place to party. Rhome said that Brown and Flynn argued and struggled briefly. Rhome left the room for several minutes. When he returned the two women were undressed and were about to couple sexually. Flynn had her hands bound behind her back and her face covered. Brown suddenly pulled out a kitchen knife and stabbed Flynn in her back and possibly three other times. One of these stab wounds was to the front portion of Flynn's neck. Flynn begged for Rhome's assistance, but Rhome said that he just stood by. Rhome was inconsistent and contradictory in the exact stabbing scenario and how many knives were involved, and told detectives that after Flynn was stabbed, he couldn't handle the situation and left for two hours. When he returned he helped Brown clean up the blood and place Flynn in the closet. Rhome and Brown gathered up the bloody clothing, two knives and other evidence into two plastic bags, and took a bus back to his apartment at 2302 E Pine. Rhome said that detectives would find these two bags on the upper porch area of this duplex. Rhome lives in the lower unit and described his "crazy landlord" as living in the upper unit. At one point of the interview Rhome indicated it was likely that some of Flynn's blood had been transferred to the inside of his residence.

Rhome went on to explain that around noon the next day (he believed this was Sunday November 16th), Brown called a Yellow Cab to his residence. Two of Brown's friends drove up in a car and Flynn's body, wrapped in bedding, was transferred from the car to the cab's trunk. Rhome and Brown instructed the cabby to drive to the southern border of Discovery Park where the body was dumped. Rhome told detectives that although he was in the cab while the body was being driven to Discovery Park, Brown acted alone in disposing of it in the bushes. As



**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	03-537470
UNIT FILE NUMBER	H-03-420

mentioned earlier Rhome was inconsistent and contradictory at times. When confronted, Rhome admitted to trying to control the interview and that his hope was to be able to walk away from custody. Rhome admitted that he was guilty of cleaning up, disposing of evidence, and dumping the body in Discovery Park. Rhome was comfortable during the interview that all this would be forgiven since he was a witness to Brown murdering Flynn. Rhome brushed over how he and Brown dumped Flynn's body in the park, but did continue his non-stop inconsistent and contradictory diatribe regarding various scenarios, mostly sexual, regarding the murder of Flynn. Rhome mentioned conversations he had with Brown several days before the murder. In one of them, Brown was seeking advice from him on how to best commit a murder. Rhome was evasive as to what advice he gave Brown, but did indicate he had told her one scenario would be where the intended victim was asleep. Rhome lightly touched on a shopping trip they took to the "dollar store" on Broadway Avenue last week where they purchased a set of knives.

Detectives obtained a search warrant for the house where Rhome said the murder took place and for Rhome's apartment. At the same time detectives were also recovering Flynn's body from Discovery Park. Officers had been standing by at these three locations. It became apparent to the officers watching the Alder street house that an extended family with small children lived there. Officers investigated and found no links to the name of the resident that Rhome had given. Detectives by now were in the process of transporting Rhome and Brown to jail and the youth center. Rhome agreed to first go back to his residence with detectives and to point out the garbage bags of evidence that he had described. On the back porch Rhome pointed out two plastic garbage bags where they would find clothing, cleaning supplies, and other evidence. Rhome pointed to the bottom of one of the bags and said that the two "twin knives" were located there. Detectives confronted Rhome, telling him they believed the murder took place inside his apartment. On the way to jail Rhome first insisted that the murder had taken place at the Alder street house, but then finally admitted that it had, in fact, taken place at his Pine street apartment. He told detectives he had not mentioned this earlier because his landlord didn't want the police to come around. Rhome described the bedroom that the murder occurred in, but still maintained that Brown did all the stabbing. He also then told detectives that the murder had actually occurred not a week ago as earlier claimed, but just two or three days ago, on November 20th or 21st. Rhome did admit that he was wearing some of the same clothing that detectives had confiscated earlier, particularly his skullcap and fingerless gloves, when he disposed of Flynn's body. Detectives noticed what appeared to be blood on Rhome's hat. Detectives also noted that Brown had blood on her clothes when she was arrested.

Homicide unit personnel then served the search warrant on Rhome's apartment. Blood spatter evidence was visible on a wall in the room, and there was apparent blood evidence on the carpet in the bedroom that Rhome had described. This carpet was wet as if it had been recently washed down, and a vacuum cleaner stood nearby. Personal items belonging to Rhome, Brown, and Flynn were recovered from inside the apartment, including Brown's suitcase. Evidence from the garbage bags that Rhome had pointed out and described on the porch was also recovered, including the "twin knives". These knives were two large eight inch fixed blade heavy-duty steak knives, and one of them had what appeared to be blood on it. A third similar knife was recovered in the same bag and a fourth was recovered from the closet floor in Rhome's locked bedroom. Blood and body evidence was pervasive inside of these garbage bags. Women's clothing was found as well as several scarves and ties that could have been used to bind Flynn's hands. Empty bottles of cleaners were also found inside these bags.

Detectives contacted Yellow Cab dispatch and were informed that a "Kia" ordered a cab for 2302 E Pine on Friday, November 21st at 1008 hours. Detectives found and interviewed the



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	03-537470
UNIT FILE NUMBER	H-03-420

cab driver who responded to that call. The driver picked Rhome and Brown out of montages positively and immediately. The driver said that he went to the front door of 2302 E Pine and was met by Brown. It appeared to the driver that Rhome and Brown had been arguing. Rhome walked out carrying a large zippered duffel bag in his arms that appeared to be very heavy. Rhome instructed him to drive to Discovery Park. Brown's two-year-old child was also aboard. At the park they had trouble finding the south entrance. Rhome argued about this and the fare with the driver. The driver assisted Rhome with removing the large bag from the trunk and placed it on the ground. The driver thought that the bag contained garbage and that his passengers were preparing to camp in the park. The driver overheard Rhome and Brown discussing how they were going to be picked up by two people.

At autopsy it was confirmed that Flynn had been stabbed to death. There were four stab wounds similar to those that Rhome had described, and a defensive wound to the left hand. At the time of this writing the medical examiner staff had not yet confirmed Flynn's identity.

On November 25th, detectives went to the "dollar store" on Broadway Avenue and interviewed the clerk, who identified Rhome and Brown as having purchased a knife and other items from the store on Thursday, November 20th, around 1930 hours.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 26TH day of NOVEMBER, 2003, at Seattle, Washington.

Steve Kilbray
SPD HOMICIDE 4252

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7 CAUSE NO. 03-C-09947-0 SEA
8 CAUSE NO. 03-C-09948-8 SEA

9 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
10 CONDITIONS OF RELEASE

11 The facts are as outlined in the Certification for
12 Determination of Probable Cause dated 11/26/03 and prepared by
13 Seattle Police Homicide Detective Kilburg and incorporated herein
14 by reference.

15 REQUEST FOR BAIL

16 Defendant Rhome's criminal history includes convictions for
17 Robbery 2 (2002); Theft 1 (2002) and Attempted Theft 1 (2002). He
18 has numerous arrests for additional property crimes as well as
19 Assault, Malicious Mischief and Harassment. In addition, he is a
20 suspect in a number of pending robbery cases. Bail at First
21 Appearance was set at One Million Dollars. Based on the
22 defendant's criminal history, the sheer brutality of this crime
23 and his efforts to conceal it, the State requests bail remain set
24 in that amount. The State also requests an order prohibiting the
25 defendant from any contact with Kialani Brown, any member of the
26 family of Lashonda Flynn and any other witnesses.

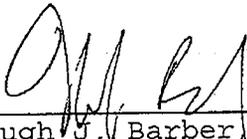
27 Defendant Brown is 17 years old and subject to adult
jurisdiction as this crime is a serious violent offense. The
State requests she be held in King County Jail.

Brown is a resident of Vancouver, Washington yet carries an
Oregon Identification card. She is believed to have been a
frequent runaway. While her complete criminal history is unknown
at this time, it appears she has a conviction for Forgery out of
Clark County in 2001. At first appearance bail was set in the
amount of One Million Dollars. Based on the apparent risk of
flight as well as the brutality of this crime and her efforts to

Prosecuting Attorney Case
Summary and Request for Bail
and/or Conditions of Release - 1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 conceal it, the State requests bail remain at that amount. In
2 addition, the State requests and order prohibiting Brown from any
3 contact with Demar Rhome, the family of Lashonda Flynn and any
4 other witnesses in this case.

5 
6 _____
7 Hugh J. Barber, WSBA #20420

FILED
KING COUNTY, WASHINGTON

FEB 27 2006

SUPERIOR COURT CLERK
BY JANIE SMOTER
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

1 THE STATE OF WASHINGTON,)
2)
3 Plaintiff,)
4 v.) No. 03-C-09947-0 SEA
5)
6 DEMAR S. RHOME,) SECOND AMENDED INFORMATION
7)
8)
9)
10)
11 Defendant.)

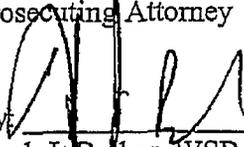
12 I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority
13 of the State of Washington, do accuse DEMAR S. RHOME of the crime of **Murder in the First
Degree**, committed as follows:

14 That the defendant DEMAR S. RHOME, together with another, in King County,
15 Washington on or about November 20, 2003, with premeditated intent to cause the death of
16 another person, did cause the death of Lashonda Flynn, a human being, who died on or about
17 November 20, 2003;

18 Contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of
19 Washington.

20 And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the
21 authority of the State of Washington further do accuse the defendant DEMAR S. RHOME, or an
22 accomplice, at said time of being armed with a deadly weapon, to-wit: a knife, under the
23 authority of RCW 9.94A.602 and 9.94A.510.

NORM MALENG
Prosecuting Attorney

By 
Hugh J. Barber, WSBA #20420
Senior Deputy Prosecuting Attorney

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516 Third Avenue
Seattle, Washington 98104
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FAX (206) 296-0955

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CAUSE NO. 03-C-09948-8 SEA

SUPPLEMENTAL PROSECUTING ATTORNEY CASE SUMMARY

The trial for Demar Rhome was set for January 17, 2006. Kialani Brown was transferred from the Department of Corrections to the King County Jail in anticipation of her testifying in that trial. On January 11, 2006, Prosecuting Attorney Hugh Barber met with Kialani Brown and her attorney, Catherine McDonald in the jail. On that date, Ms. Brown acknowledged for the first time that she had participated in the actual stabbing of Lashonda Flynn. In more detailed statement provided to the prosecutor through counsel on January 19, 2006, Kialani Brown recounted the following events:

At the time I met Demar Rhome (on a telephone chat line), my life was in chaos. I was only 17 and had a 2 year old child. I had undergone gall bladder surgery. I was working full time and caring for my child, and also was taking care of Alexander Dupree, my child's father, when he was very ill. I had lost my apartment. I was a victim of domestic violence by Mr. Dupree. Currently, there is a restraining order prohibiting him from having contact with me. I met Demar and he invited me to come to Seattle for a weekend. It seemed like it would be a vacation for me. He described his apartment and it sounded like a nice place in a nice neighborhood. I quickly learned that was not true. Demar introduced himself to me as Devante Carlson. Lashonda also called him Devante. I did not learn his true name until I got to jail.

I came to Seattle with my son. I told my mother I was going to Seattle to visit a girlfriend. The first few days were good. Demar was very nice and gave my son gifts. He introduced Lashonda as his foster sister, but told me she was a pathological liar. I did have sex willingly with Demar one time. Eventually, he started getting weird. He started telling me that he had to get rid of Lashonda and that the only way it would work was if she was killed. He told me Lashonda was lying when she accused him of raping and abusing her. He started scaring me, but I didn't know what to do. I had a ticket home in a few days and didn't know Seattle, so I was just trying to keep myself and my son safe until I could leave. One time Demar forced me to have sex with him when I did not want to.

Demar started making me feel crazy. He kept saying he had to get rid of Lashonda and was telling me how to do it. He kept telling me she was going to kill me, until I got to the point where I started to believe it. I felt set up because I was young and stupid. I felt like Demar was trying to take control of my life. Demar wanted to check my phone messages. Several times

1
2 when we were out in public, he tried to leave me. I did not know Seattle at all and got scared. It
3 made me more dependent on him. He kept telling me that something was wrong with my son
4 and that my son's father had abused my son.

5 We bought the knives after eating at a Mexican restaurant. I had gone into the bathroom
6 and when I came out, Demar told me he had been threatened by an employee of the restaurant
7 with a big knife. He even talked to the manager and tried to get the person fired. Demar said we
8 had to buy knives to protect ourselves and after we bought them, he told me to hide it down my
9 boot. I later realized there were 3 of us, but we only bought 2 knives. We also got mace.

10 Demar started acting angry and when I asked why, he said Lashonda had told him I didn't
11 like it there. I had never said that. Demar started talking about taking me back to Vancouver
12 and getting a hotel. I didn't want any part of that. Demar kept telling me Lashonda was going to
13 kill me in my sleep and "dump my son." I was in a survival mode and freaking out. Demar told
14 my mom he was going to marry me.

15 Demar kept telling me I had to kill Lashonda before she killed me. I didn't know what to
16 do --I was so scared. Demar told me to pretend that I wanted to have sex with Lashonda to tie
17 her up. I was so messed up in the head that I did what he told me - I didn't know what else to do.
18 Demar gave me the rope and told me to tie her up and tell her he had a surprise for her. She kept
19 asking what the surprise was and complied with being tied up. Demar showed me how to stab
20 Lashonda and told me to use all my strength. I think I stabbed her 4 times. Lashonda said,
21 "Devante, why are you doing this to me?" I was in shock at this point. Demar took the knife
22 from me and threw a lighter at her, I guess to see if she was still alive. Demar kept repeating
23 Lashonda's last words over and over.

After Lashonda was killed, Demar told me he loved me. Then he started threatening me
and my family, threatening to kill us if I tried to leave or told anyone. I felt like a hostage.
Demar took the knives and ordered me to clean up the house. Demar said we had to put
Lashonda in a bag. I didn't want to do it, but he was threatening me, so I helped as he put her
body in the bag. Demar told me to use my cell phone and use the name "Kia" when I called for
the cab. Demar also made me call the police and make up some story to see if Lashonda's body
had been found.

I have not contacted Demar Rhome and have not been writing him letters. I am scared of
him.



Hugh J. Barber, WSBA #20420

20-120
91002

APPENDIX C

COPY

NO. 58072-8-1 DIVISION ONE
JUL - 9 2007

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DEMAR RHOME,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GREGORY P. CANOVA
THE HONORABLE RONALD KESSLER
THE HONORABLE NICOLE MACINNES

BRIEF OF RESPONDENT

NORM MALENG
King County Prosecuting Attorney
DANIEL T. SATTERBERG
Acting King County Prosecuting Attorney

DEBORAH A. DWYER
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

discretion to address this on a case-by-case basis based on facts in the record. Jail personnel told the trial court that Rhome had threatened jail staff and attempted to assault them. The record indicates that Rhome's leg brace, which was worn under his trousers, was not visible to the jury. Did the trial court properly exercise its discretion in requiring Rhome to wear the brace?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Demar Rhome was charged by amended information with Murder in the First Degree, with a deadly weapon allegation. The charge was based on the State's belief that Rhome had participated, along with Kialani Brown, in the November 2003 stabbing murder of Lashonda Flynn. CP 1-6, 37-39.

Both Rhome and Brown were initially charged with Murder in the Second Degree. CP 1-6. Brown pled guilty to Manslaughter in the First Degree, having told police that Rhome stabbed Flynn. 5RP¹ 18; 12RP 57-58. Brown withdrew this plea on the heels of her admission that it was she who wielded the knife, albeit at Rhome's urging and direction, and she

¹ The system for referring to the verbatim report of proceedings is set out in Appendix A.

ultimately pled guilty to Murder in the Second Degree with a deadly weapon. 5RP 18; 12RP 60.

Rhome's case took a long time to get to trial, due in part to his commitments to Western State Hospital ("WSH") for evaluations of his competency to proceed and his capacity to commit the charged crime, and to wrangling over his representation. Rhome's first motion to proceed pro se was denied, as the trial court found that his request was equivocal. CP 16. Rhome's motion to discharge his appointed counsel and represent himself was eventually granted, and Michael Danko was appointed to serve as standby counsel. CP 18, 19.

A jury found Rhome guilty as charged. CP 62-63. The trial court imposed a high-end sentence of 371 months. CP 65, 67.

2. SUBSTANTIVE FACTS

On November 17, 2003, 17-year-old Kialani Brown left her parents' home in Vancouver, Washington with her two-year-old son Kai in tow; Brown was headed for Seattle to visit Demar Rhome, a seemingly charming man whom she had met on a telephone chat line. 11RP 107-16. On November 23rd, a scant week later, Beverly Brown received a phone call from Rhome informing her that her daughter Kialani had been involved in a murder -- that Kialani was a "cold-blooded killer" who had stabbed another girl in the neck. 9RP 35-37. During the short time

intervening between Brown's arrival in Seattle and the murder of Lashonda Flynn, Rhome had managed to completely dominate Kialani Brown.

When Brown first arrived in Seattle, Rhome introduced her to Flynn, whom Rhome had described as his step-sister.² 11RP 112-13, 117-18. Over the next few days, Rhome saw to it that the three were always together, and the dynamic began to feel strange to Brown. 11RP 118-19; 12RP 32-33. Rhome started to foment distrust between Brown and Flynn. 11RP 120-21. He also began to suggest that the two women have sex together. 11RP 123-24. Once, Rhome forced Brown into anal sex over her protests. 11RP 125.

A few days into the week, Rhome escalated his threatening behavior. He told Brown that Flynn planned to kill her; he described how it would happen, and told Brown that two-year-old Kai would be abandoned on a doorstep. 11RP 126-28. Rhome urged Brown to kill Flynn first, and gave Brown tips on how best to accomplish the job. 11RP 129-30. Rhome never left Brown alone; she began to feel isolated from her family and guilty for having lied to them,³ and she was scared to the

² Flynn was actually a 17-year-old who had been kicked out of her grandmother's house; she had been living with Rhome since June 2003. 12RP 223-24.

³ Brown had told her parents that she was visiting a girlfriend in Seattle. 11RP 115.

point where she felt unable to make good decisions. 11RP 130-31;
12RP 34.

On the night of the murder, Rhome directed Brown to feign a desire for sex with Flynn, tie her up and blindfold her, and stab her. 12RP 39-40. He gave Brown a rope. 12RP 41. Fearing for her life and for her son, Brown did as Rhome directed. 12RP 41. She told Flynn that Rhome had a surprise for her, and Flynn complied. 12RP 42. Rhome gave Brown a knife, and showed her how to use all her force; he was right there with Brown when she stabbed Flynn. 12RP 43. As the women struggled, Rhome told Brown to stab Flynn again and kill her; Brown stabbed Flynn three or four times. 12RP 44-45. Flynn said, "Devante,⁴ why are you doing this to me?" 12RP 45.

Rhome told Brown to start cleaning up, and she did. 12RP 46-48. Brown then helped Rhome put Flynn's body in a trash bag. 12RP 49. Rhome decided to take the body to Discovery Park, and told Brown to call a cab. 12RP 49-50. When the cab arrived, they carried the body to the trunk. 10RP 114; 12RP 50. Once at the park, they dragged Flynn's body into the woods, and left. 12RP 52-53.

⁴ Rhome went by the name of Devante Carlton. 13RP 8-9.

Rhome told Brown that he did not intend to go to jail. He told her that if she ever revealed what had happened, he would kill her and her family. He said that if she tried to leave him, he would "put the whole thing on [her]." 12RP 51.

At the time of his arrest, Rhome described the murder as a lesbian encounter between Brown and Flynn that turned into a physical struggle fueled by drugs and alcohol,⁵ and ended with Brown stabbing Flynn. Ex. 2 at 3-7, 16, 29-30. Rhome said that he helped Brown clean up and dispose of the body because he felt threatened by her. Ex. 2 at 9-10, 13-15, 18-19, 21.

At trial, Rhome embellished his story. He claimed that Brown wanted him to kill Kai's father, Alex Dupre, who had allegedly mistreated Brown. 13RP 10-16. To convince Rhome to do this, Brown offered to kill Flynn, whose sexual jealousy had become a problem for Rhome. 13RP 33-36. Rhome again described large quantities of alcohol and drugs, and a lesbian encounter between the two women. 13RP 47-52. His description of Flynn's death was especially graphic. 13RP 53-55. In this version, however, Rhome experienced "mental problems" and symptoms of post-traumatic stress disorder when Brown stabbed Flynn. 13RP 49,

⁵ There was no indication of alcohol or any drugs in Flynn's blood or urine. 10RP 179.

52-54, 56, 65, 68, 79, 122-24. He urged the jury not to hold him accountable. 13RP 153.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING RHOME COMPETENT.

Rhome claims that the trial court abused its discretion in finding that he was competent to stand trial. To the contrary, the trial court held a hearing at which it heard testimony from an expert retained by Rhome, who opined that Rhome was not competent, as well as from a psychologist from WSH, who concluded that he was. Based on the number and quality of observations by the psychologist from WSH, the trial court accepted that expert's conclusion. This was not an abuse of discretion.

a. Relevant Facts.

On January 7, 2005, the trial court signed an Order of Commitment for Observation, directing that Rhome be committed to the Department of Social and Health Services for evaluation of his competency to stand trial, as well as his capacity to commit the crime charged. Rhome was transported to WSH for this purpose. CP 7-9.

In a Forensic Psychological Report dated March 25, 2005, Dr. Jason Dunham, a forensic psychologist at WSH, detailed interactions that he and the hospital staff had with Rhome over the course of the

APPENDIX D



STATE EXHIBIT 3

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
WESTERN STATE HOSPITAL

W27-19 • 9601 Steilacoom Blvd SW • Tacoma WA 98498-7213 • (253) 582-8900

MARCH 25, 2005

FORENSIC PSYCHOLOGICAL REPORT

RE: STATE OF WASHINGTON
vs.
DEMAR RHOME

CAUSE NO: 03-C-09947-0 SEA
WSH NO: 391852
DOB: 07/16/83

~~The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report was released only to the court, its officers and to others designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.~~

REASON FOR REFERRAL:

According to a King County Superior Court order dated 01/07/05, the above named defendant was committed to Western State Hospital for an evaluation to aid the Court in determining whether the defendant is competent to stand trial or in need of psychiatric treatment in order to restore his trial competency and to determine his mental state at the time of the alleged instant offense (i.e., Sanity/Diminished Capacity). As is mandated by RCW 10.77.060, this report will also address the defendant's mental condition, dangerousness to others, likelihood of committing further criminal acts, and any further need for evaluation under RCW 71.05.

Mr. Rhome is charged with Murder in the Second Degree, which allegedly occurred on or about 11/20/03. According to the Certification for Determination of Probable Cause, the alleged offense occurred as follows:

There is probable cause to believe that Demar S. Rhome (DOB 7-16-83) and Kialani Brown (DOB 2-17-86) committed the crime(s) of Murder.

This belief is predicated on the following facts and circumstances:

On November 23rd, 2003 at 2136 hours, Seattle Police Communications received a phone call from Beverly Brown in Vancouver, WA. Brown stated that her daughter Kialani's boyfriend had just phoned her and reported

FORENSIC PSYCHOLOGICAL REPORT
RE: RHOME, DEMAR**MARCH 25, 2005**
PAGE 2

that Kialani had stabbed his ex-girlfriend two days ago, further that he had the knife used and knows where the body is. The boyfriend was named possibly as Devante Carlson and a phone number was given. The phone number was run through police data systems and yielded the address of 2302 E. Pine (lower unit). Patrol units responded and removed Kialani Brown and Demar Rhome from this address. Rhome indicated that his street name is Devante Carlson, that he was dating Kialani and that he had called her mother to report the homicide. After an advisement of his constitutional rights, Rhome told officers that Brown stabbed LaShonda Shantell Flynn (DOB 9-18-86). Rhome stated the murder had occurred at 2317 E. Alder and led officers to that residence. He then led officers to where Flynn's body had been dumped in Discovery Park, and officers confirmed the presence of what appeared to be a dead female partially covered with what appeared to be a sheet, blanket and garbage bag.

Rhome was brought back to the homicide office and interviewed by detectives. Rhome explained how he, Brown, and Flynn were all involved personally and sexually. Rhome initially stated that one week ago the three went to the house at 2317 E. Alder because the resident was supposedly in jail and they wanted a place to party. Rhome said that Brown and Flynn argued and struggled briefly. Rhome left the room for several minutes. When he returned the two women were undressed and were about to couple sexually. Flynn had her hands bound behind her back and her face covered. Brown suddenly pulled out a kitchen knife and stabbed Flynn in her back and possibly three other times. One of these stab wounds was to the front portion of Flynn's neck. Flynn begged for Rhome's assistance, but Rhome said that he just stood by. Rhome was inconsistent and contradictory in the exact stabbing scenario and how many knives were involved, and told detectives that after Flynn was stabbed, he couldn't handle the situation and left for two hours. When he returned he helped Brown clean up the blood and place Flynn in the closet. Rhome and Brown gathered up the bloody clothing, two knives and other evidence into two plastic bags, and took a bus back to his apartment at 2302 E. Pine. Rhome said that detectives would find these two bags on the upper porch area of this duplex. Rhome lives in the lower unit and described his "crazy landlord" as living in the upper unit. At one

FORENSIC PSYCHOLOGICAL REPORT**RE: RHOME, DEMAR****MARCH 25, 2005****PAGE 3**

point of the interview Rhome indicated it was likely that some of Flynn's blood had been transferred to the inside of his residence.

Rhome went on to explain that around noon the next day (he believed this was Sunday November 16th), Brown called a Yellow Cab to his residence. Two of Brown's friends drove up in a car and Flynn's body, wrapped in bedding, was transferred from the car to the cab's trunk. Rhome and Brown instructed the cabby to drive to the southern border of Discovery Park where the body was dumped. Rhome told detectives that although he was in the cab while the body was being driven to Discovery park, Brown acted alone in disposing of it in the bushes. As mentioned earlier Rhome was inconsistent and contradictory at times. When confronted, Rhome admitted to trying to control the interview and that his hope was to be able to walk away from custody. Rhome admitted that he was guilty of cleaning up, disposing of evidence, and dumping the body in Discovery park. Rhome was comfortable during the interview that all this would be forgiven since he was a witness to Brown murdering Flynn. Rhome brushed over how he and Brown dumped Flynn's body in the park, but did continue his non-stop inconsistent and contradictory diatribe regarding various scenarios, mostly sexual, regarding the murder of Flynn. Rhome mentioned conversations he had with Brown several days before the murder. In one of them, Brown was seeking advice from him on how to best commit a murder. Rhome was evasive as to what advice he gave Brown, but did indicate he had told her one scenario would be where the intended victim was asleep. Rhome lightly touched on a shopping trip they took to the "dollar store" on Broadway Avenue last week where they purchased a set of knives.

Detectives obtained a search warrant for the house where Rhome said the murder took place and for Rhome's apartment. At the same time detectives were also recovering Flynn's body from Discovery Park. Officers had been standing by at these three locations. It became apparent to the officers watching the Alder street house that an extended family with small children lived there. Officers investigated and found no links to the name of the resident that Rhome had given. Detectives by now were in the process of transporting Rhome and Brown to jail and the youth center. Rhome agreed to first go back to his residence with detectives and to

FORENSIC PSYCHOLOGICAL REPORT
RE: RHOME, DEMAR**MARCH 25, 2005**
PAGE 4

point out the garbage bags of evidence that he had described. On the back porch Rhome pointed out two plastic garbage bags where they would find clothing, cleaning supplies, and other evidence. Rhome pointed to the bottom of one of the bags and said that the two "twin knives" were located there. Detectives confronted Rhome, telling him they believed the murder took place inside his apartment. On the way to jail Rhome first insisted that the murder had taken place at the Alder street house, but then finally admitted that it had, in fact, taken place at his Pine street apartment. He told detectives he had not mentioned this earlier because his landlord didn't want the police to come around. Rhome described the bedroom that the murder occurred in, but still maintained that Brown did all the stabbing. He also then told detectives that the murder had actually occurred not a week ago as earlier claimed, but just two or three days ago, on November 20th or 21st. Rhome did admit that he was wearing some of the same clothing that detectives had confiscated earlier, particularly his skullcap and fingerless gloves, when he disposed of Flynn's body. Detectives noticed what appeared to be blood on Rhome's hat. Detectives also noted that Brown had blood on her clothes when she was arrested.

Homicide unit personnel then served the search warrant on Rhome's apartment. Blood spatter evidence was visible on a wall in the room, and there was apparent blood evidence on the carpet in the bedroom that Rhome had described. This carpet was wet as if it had been recently washed down, and a vacuum cleaner stood nearby. Personal items belonging to Rhome, Brown, and Flynn were recovered from inside the apartment, including Brown's suitcase. Evidence from the garbage bags that Rhome had pointed out and described on the porch was also recovered, including the "twin knives." These knives were two large eight inch fixed blade heavy-duty steak knives, and one of them had what appeared to be blood on it. A third similar knife was recovered in the same bag and a fourth was recovered from the closet floor in Rhome's locked bedroom. Blood and body evidence was pervasive inside of these garbage bags. Women's clothing was found as well as several scarves and ties that could have been used to bind Flynn's hands. Empty bottles of cleaners were also found inside these bags.

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Detectives contacted Yellow Cab dispatch and were informed that a "Kia" ordered a cab for 2302 E. Pine on Friday, November 21st at 1008 hours. Detectives found and interviewed the cab driver who responded to that call. The driver picked Rhome and Brown out of montages positively and immediately. The driver said that he went to the front door of 2302 E. Pine and was met by Brown. It appeared to the driver that Rhome and Brown had been arguing. Rhome walked out carrying a large zippered duffel bag in his arms that appeared to be very heavy. Rhome instructed him to drive to Discovery Park. Brown's two-year-old child was also aboard. At the park they had trouble finding the south entrance. Rhome argued about this and the fare with the driver. The driver assisted Rhome with removing the large bag from the trunk and placed it on the ground. The driver thought that the bag contained garbage and that his passengers were preparing to camp in the park. The driver overheard Rhome and Brown discussing how they were going to be picked up by two people.

At autopsy it was confirmed that Flynn had been stabbed to death. There were four stab wounds similar to those that Rhome had described, and a defensive wound to the left hand. At the time of this writing the medical examiner staff had not yet confirmed Flynn's identity.

On November 25th, detectives went to the "dollar store" on Broadway Avenue and interviewed the clerk, who identified Rhome and Brown as having purchased a knife and other items from the store on Thursday, November 20th, around 1930 hours.

SOURCES OF INFORMATION:

Mr. Rhome was admitted to the Center for Forensic Services at Western State Hospital on 03/14/05. He was placed on ward F2 to undergo psychological, psychiatric, psychosocial, and physical examinations, including 24-hour clinical observations. Brian Waiblinger, M.D., Staff Psychiatrist, and Jason Dunham, Ph.D., Staff Psychologist, comprised the sanity commission. Information from the following sources was considered in preparing this report:

1. Clinical interview with Mr. Rhome on 03/14/05.

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2. Attempted clinical interviews with Mr. Rhome on 03/24/05 (two separate times).
3. Western State Hospital records.
4. Collateral contacts with ward F2 clinical staff.
5. Discovery documents provided by the State.
6. Washington State Patrol WATCH criminal history record.

NOTIFICATION OF RIGHTS:

Prior to the intake interview, Mr. Rhome was informed of the non-confidential nature of the evaluation, the purpose of the evaluation, and parties who would receive a copy of the forensic report. He was also informed that he had a right to have his attorney present and that he could decline to answer questions. Mr. Rhome indicated that he understood his rights and agreed to participate in the interview.

Mr. Rhome refused to participate in a second interview even though he was approached on two separate occasions. On the first occasion, he said he would only talk to me if I could get his TRC (Treatment and Resource Center) hold lifted for him. When informed that I could not and would not comply with his request, he said then he would not talk to me. However, later in the day at approximately 11:45 am, Dr. Waiblinger informed me that Mr. Rhome would now like to speak with me. I again approached him at approximately 1:30 pm and asked if he would like to speak with me. He stated, "I don't have a damn thing to talk to you about...I'm not going to talk to you about a damn thing."

CURRENT HOSPITALIZATION (WSH RECORDS & COLLATERAL INFO.):

Mr. Rhome has been a significant behavior problem during this evaluation period at WSH. He has denied, and there has been no evidence of, any signs of a psychotic, mood, or formal thought disorder, and he has not been prescribed any psychotropic medications. His hygiene has been good, and his sleep and appetite have been within normal limits. Literally every member of his treatment team and every staff person on ward F2 that I consulted with provided essentially the same information – that Mr. Rhome is an extremely antisocial person with no signs of a mental disorder. He has engaged in multiple counts of verbally abusive behavior and also physically aggressive behavior. The following represent relevant progress notes in chronological order regarding his antisocial behavior at WSH during this review period:

03/15/05 – "Talking non-stop with any staff that will listen to him. As long as patient has the 'spotlight' and everyone agrees with what he has to

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say, patient will remain calm. The moment staff question Mr. Rhome and his non-stop talking, he becomes defensive and unwilling to listen or accept positive feedback from staff."

03/17/05 – "Patient has been intrusive and disruptive on the ward. He has been visible a lot rambling about 'how good' he looks, how smart he is, and how 'mentally ill' he believes the staff are. He raps loudly, needing multiple redirection and refusing to comply. Peers have complained that he is irritating them. He has been bragging about how 'stupid the staff are' and that he can make anyone do 'whatever he wants.'"

03/17/05 – Mr. Rhome was placed on level hold secondary to an altercation with a peer. He had assaulted another patient. He said he was "defending myself." He blamed the other patient for being a "racist." Mr. Rhome later apologized to this patient.

03/19/05 – "Patient can talk to staff continuously, thinking he knows a lot concerning women."

03/19/05 – "Patient very visible in ward milieu. Patient has a big ego and is very vocal. Patient does a lot of posturing, shadowboxing, gangster-type arm and hand movements, etc. Patient seems to be trying to form some alliances with different peers, or anyone who will listen to his narcissistic ramble about what a bad-ass he is, brand name clothes he likes to wear, liquor he drinks, cars he drives, the type of women he sees, etc. He considers himself 'all that' locked up here with a bunch of retards and crazies. Feels he 'shouldn't be here,' and the only reason he's here is because his 'lawyer said it should go for diminished capacity.' Patient making requests for all 'blue' clothing, representing his Crips gang. Patient overheard talking about his crime matter-of-factly as if he was discussing the weather. Patient attempts to front or intimidate other patients on the ward with his posturing. Patient talks non-stop for hours to anyone willing to listen to him. Patient overheard telling another patient, 'Yeah, they trying to get me for murder of my ex-girlfriend. Actually, it was my current girlfriend that did my ex and they're trying to say I was an accomplice.' Patient sits in day area talking about staff loud enough for staff to hear,

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making assessments of each staff in very negative comments. 'She thinks she's all that, and she just a ugly female who can't get no one. She obviously doesn't have a life, look at her.' Patient presents himself as someone who has absolutely no mental illness, maybe some anti-social personality disorder. He is very organized in his thinking and speech, articulate (although he uses words some improperly – makes up words). Patient watches and listens to staff, taking it all in."

03/20/05 – Mr. Rhome was "berating staff" because of his long wait to go to the yard. "Patient would not be calm in spite of attempts by staff to intervene and redirect." Mr. Rhome was assaulted by a peer "because Mr. Rhome talks too much that it irritated other peers. That's what caused the fight in the ward." Afterward, Mr. Rhome continued to be agitated and was warned that he needed to calm down and "to stop berating staff and involving peers."

03/20/05 – "It gets annoying hearing that he is 21 years, handsome, and smart. Patient seems to say that Western State is not for him, he doesn't belong with these people. He feels that they need help more than him."

03/20/05 – "While in the yard, staff had patients line up to return to ward, due to foul weather patients requested to go back, nobody objected. Mr. Rhome approached this writer and stated, 'Cause I'm talkin' to a female C.O. (Corrections Officer), now we gotta go back? I know you don't like seein' a Black man talking to a White woman, you better check your paranoia dude!'"

03/21/05 – "Patient still gets irritating with staff about his knowledge."

03/21/05 – "Mr. Rhome is quite talkative, and his speech sometimes includes verbal abuse to staff and peers."

03/22/05 – Mr. Rhome did not think he needed to attend competency restoration classes because "he knows all that stuff." While at the TRC, he perseverated about a female peer who is 'obviously interested in me.' "Patient appears to put on an act when it serves his purpose to do so."

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Writer gets the feeling patient is 'playing' staff and manipulates to get what he wants. Underlying is his smarminess and self-righteous and egotistical ways. Patient always denies wrong-doing and claims it's always someone else's fault or his perception that he is so misunderstood. Patient was brought back from the TRC for a reason writer does not know. Patient already denying wrong-doing. 'She blew it all out of proportion.'"

03/23/05 – Mr. Rhome was placed on TRC hold for 72 hours secondary to his hostile response regarding redirection to stay away from female peers. He was then placed on gym hold for similar reasons.

03/23/05 – "What? Are you racist or something? It's because you don't want a Black man talkin' to a White woman, huh?' Patient's response to redirection during group not to keep on side conversations since it was disruptive to the group."

03/23/05 – "Patient has just started to attend competency restoration groups in the TRC. Patient consistently states, 'I don't need to be here. I know this stuff already. These people are retarded and it's good that I keep myself away from these retarded folk.' Patient presents himself as arrogant and narcissistic."

03/23/05 – "Demar was assigned to participate in a 1pm to 3pm movie group...His interaction during the movie was loud. TRC staff had to redirect him 5 times. Once about sitting on the floor. Four times about talking loud to a female patient. During the break time, Demar and the female patient went outside the room and (he) continued to talk to the female."

03/24/05 – "Patient in Day Room this a.m. talking to peers re: 'This is how ya do it. This is the game, man. To get the ladies to spread their legs when you walk in the door, you just be cool and say we gonna fuck, man. That's the way you do it.' Patient speaking in loud voice with 3 peers. Patient agitated and continuing to use sexually related profanity. Redirected that speech is inappropriate in public setting. States, 'These white ho's around here always fuckin' telling us what they think we're

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supposed to do. Fuck them, too.' Peer complained that patient Rhome was telling other peers last weekend that he (the other peer) is a 'Baby raper and raped my own baby, and that is not true!' Patient continues to require frequent redirection for aggressive verbally abusive behavior and glaring and stalking staff who do so in attempts to involve and instigate his peers to act out against staff."

03/24/05 – "Demar continues to present as difficult to redirect, and as a result is currently on TRC/gym hold. On both occasions, he was intent upon talking with female patients rather than attend the activity." ...Mr. Rhome discussed his ability to work with attorneys, saying, 'I had one attorney, Anne K., who used to influence me to play crazy in front of a certain judge so I wouldn't get felony charges. So, she did support and work with me.' ..."Two times today, he declined meeting with his Ph.D. – and informed staff that should King County come to get him, he will fight...Grooming/hygiene excellent. Good eye contact. Able to stay on topic but dislikes redirection, as he likens it to being treated as a child and not a man. At no time did patient appear sad or express remorse about victim during course of multiple interactions over the last 10 days."

03/25/05 – "Earlier this a.m. on dayshift, again told staff if 'King County comes, there's gonna be a fight.' Officers arrived on ward. Patient on phone and refused to hang up – deputy hung up phone and placed him in King County (attire)...Told deputies, 'If you try to get (me) nude, I'll sue you.'"

In addition to the above progress notes, F2 staff were personally interviewed and reported much of the same regarding Mr. Rhome – that he presents with no symptoms of mental illness and that he is extremely antisocial.

The ward LPN stated, "He says he's a fine, good-looking man with a great voice. He thinks all the women like him. He raps in the day area and gets other patients agitated. He raps about derogatory information about women. He's demeaning and uses very sexually abusive words to females." She added that he uses a lot of profanity and "looks the woman up and down" in a sexual manner.

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One of the ward RN's stated, "He was using F-words so much I made him go back to his room. He's trying to teach other patients how to be a pimp." She also said Mr. Rhome discusses with other patients who he thought amongst the female staff "would spread their legs."

One of the floor staff reported that Mr. Rhome has been quite derogatory toward women. He has also made statements including, 'Some Black women think they're all that' and 'I only date White women because Black women can't handle me' and 'I don't need to be around all these mentally retarded people.' She said he has been very difficult to redirect, and she described him as not showing any signs of mental illness. "He's just a thug. A gang member."

Another of the floor staff stated, "He thinks he's the only sane person here. He thinks all the staff are ugly and that he's the only good-looking person here, and that's why staff pick on him. He's so stuck on himself. I've been here 20 years, and he's the most stuck on himself as I've ever seen...He thinks he's the absolute best-looking guy around." He said that Mr. Rhome follows patients around and was even recently hit by a peer because he would not stop talking to him. When asked whether he has observed any psychotic symptoms within Mr. Rhome, he replied, "I've never seen anything with him. He just tries to draw attention to himself."

Dr. Waiblinger, the ward psychiatrist, reported that Mr. Rhome is "self-serving, antisocial, and unpleasant" and that he is "inappropriate with authority." Dr. Waiblinger has seen no symptoms of mental illness in Mr. Rhome, and his working diagnosis for him includes only the personality disorders of Narcissistic Personality Disorder and Antisocial Personality Disorder.

MENTAL STATUS EXAMINATION:

Mr. Rhome presented as a normally-developed young man who appeared about his chronological age of 21. His grooming and hygiene were good, he evidenced no movement abnormalities, and his eye contact was within normal limits. Although he refused to meet with me for a second interview, during the first interview, he was fairly cooperative, although he tended to try and dominate the conversations. His speech was fluent, coherent, and easily understood. He was hypervocal and spoke a bit rapidly, but he was able to be interrupted, and the volume and rhythm of his speech were

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normal. His thoughts were goal-directed, and there was no indication of a formal thought disorder. His mood and affect appeared euthymic (normal), and he denied any suicidal or homicidal ideation. There was no indication of a formal mood disorder. His appetite, sleep, and libido all appear within normal limits, and he demonstrated no symptoms of mental illness other than a severe personality disorder (see below).

Mr. Rhome was oriented to person, place, time, and situation. His memory appeared intact, his attention and concentration abilities were adequate, and his overall level of intelligence appeared to be in about the low average range given his vocabulary, fund of information, and understanding of complex terminology. Mr. Rhome denied, and there was no evidence of hallucinations, delusions, or any other gross psychotic experiences. Mr. Rhome seemed adamant in trying to convince the treatment team that he is not mentally ill. In fact, immediately after being informed of his rights, he stated, "There was no paranoia or psychosis during the crime."

It is my opinion that Mr. Rhome does not suffer from a mental illness. However, he does have a severe personality disorder in the form of Narcissistic Personality Disorder and Antisocial Personality Disorder, which is a dangerous combination. He meets nearly every criteria needed to diagnose these two personality disorders, which is evident when one reads the preceding section of this report. In addition, it is possible that Mr. Rhome has a psychopathic personality disorder. I did not formally assess for this disorder since it is beyond the scope of this evaluation. In sum, it is quite clear that Mr. Rhome does not suffer from a mental illness. It is also quite clear that he has a dangerous combination of antisocial and narcissistic personality disorders. In fact, of all the people I have evaluated at WSH, I would say his personality disorder is the most extreme that I have seen.

DIAGNOSTIC IMPRESSIONS:

Based upon clinical interview data, record review, and consultation with ward F2 clinical staff, I offer the following diagnostic impression of Mr. Rhome at this time:

- Axis I: No Diagnosis
- Axis II: Antisocial Personality Disorder (Rule-Out Psychopathy)
Narcissistic Personality Disorder

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Axis III: Deferred to Medical Practitioner

FORENSIC OPINIONS:**Competency to Stand Trial:**

Although he was unwilling to speak with me regarding a formal competency assessment, it is my opinion that Mr. Rhome is competent to stand trial. He does not suffer from any mental disorder that would inhibit his trial competency. I recognize that his attorneys will most likely have difficulty working with him. However, his uncooperative and argumentative attitude is based upon his severe personality disorder rather than on any mental illness, and a personality disorder alone is not a basis for incompetency.

It is important to mention that one of the RN's on the ward reported that on 03/25/05, the day Mr. Rhome was transported back to jail, he told her that he would make sure he came back to Western State Hospital. This nurse reported to me that she believes Mr. Rhome was threatening to sabotage things behaviorally in order to return to the hospital.

Mental State at the Time of the Alleged Offense:

Mr. Rhome does not suffer from a mental disease or defect. Although he was unwilling to speak with me regarding his version of the alleged offense, there is nothing to indicate in the discovery records that his mind was affected by any mental disease or defect at that time. Therefore, I cannot support any mental state defense (i.e., Insanity or Diminished Capacity).

Dangerousness:

This opinion regarding dangerousness was court-ordered and conducted within the scope of RCW 10.77.060 regarding pre-trial mental health evaluations. An opinion is to be made as to whether the defendant presents a substantial danger to others or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control of the court or other persons or institutions. An additional opinion is required as to whether the defendant should receive a RCW 71.05 civil commitment evaluation by a CDMHP. This opinion is based

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solely upon the above evaluation under RCW 10.77.060. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

Mr. Rhome's WATCH criminal history record lists the following adult felony convictions: Robbery 2 (04/12/02) and Attempted Theft 1 (08/16/02).

Current practice in violence risk assessment involves the consideration of factors frequently associated with future violence. The HCR-20 is an instrument that organizes such known risk factors, dividing them into three categories: Historical, Clinical, and Risk Management. Historical risk factors (also known as static factors) are relatively stable elements of the individual's life and are unlikely to change. In Mr. Rhome's case, the following Historical risk factors were present: Previous Violence (per his self-report); Relationship Instability; Employment Problems; Possible Psychopathy; Antisocial and Narcissistic Personality Disorder; Young Age; and Early Maladjustment.

A Historical risk factor that may have been present, or was present to a lesser degree, includes: Young Age at First Violent Incident.

Clinical risk factors describe the individual's current mental state and are considered to be more changeable or amenable to treatment. Mr. Rhome demonstrated evidence of the following Clinical risk factors: Negative Attitudes and Impulsivity.

Finally, Risk Management factors are those that are likely to influence the individual in the future, and are also considered to be changeable. Mr. Rhome possessed the following Risk Management factor: Stress.

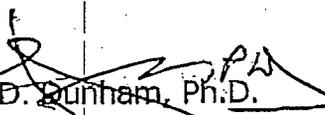
Risk Management factors that may have been present, or were present to a lesser degree, include: Lack of Personal Support and Noncompliance with Remediation Attempts.

Factors that currently mitigate against Mr. Rhome's risk of future dangerousness or criminal behavior include: Apparent absence of substance use problems and Absence of major mental illness.

Based upon Mr. Rhome's documented criminal history, information obtained through interviews and treatment, and a review of risk factors, it is my professional opinion that he is currently a high risk for future serious dangerous behavior (i.e., murder, assault with weapons, etc.) and a high risk for other forms of dangerous behavior (i.e., assault

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without weapons, property destruction, etc.). I also believe that he is currently at very high risk for committing future criminal acts jeopardizing public safety and security due to his past illicit behaviors, young age, gang affiliation; and severe personality disorder. Despite his elevated risks, I do not recommend a CDMHP evaluation under RCW 71.05 prior to any release from custody because he does not manifest symptoms of a major mental illness and is not an imminent threat of harm to himself or others. His elevated risks of dangerousness and future re-offense are not likely to be mitigated through inpatient psychiatric treatment.


Jason D. Dunham, Ph.D.
Licensed Psychologist
Center for Forensic Services
Western State Hospital
(253) 756-2514

JDD:kf

Cc: Presiding Judge, King County Superior Court
Hugh Barber, King County DPA
Defense Attorney
David Phillip, King County CDMHP
David Kersey, King County Jail

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APPENDIX E

ORIGINAL



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
WESTERN STATE HOSPITAL
W27-19 • 9601 Steilacoom Blvd SW • Tacoma WA 98498-7213 • (253) 582-8900

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DEC 28 2005

JUDGE RONALD KESSLER
K.C. SUPERIOR COURT DEPT. 44

DECEMBER 20, 2005

FILED
KING COUNTY, WASHINGTON

APR 28 2006

FORENSIC PSYCHOLOGICAL REPORT

CRIMINAL PRESIDING

RE: STATE OF WASHINGTON
vs.
DEMAR RHOME

CAUSE NO: 03-C-09947-0 SEA
WSH NO: 391852
DOB: 07/16/83

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report was released only to the court, its officers and to others designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

REASON FOR REFERRAL:

According to a King County Superior Court order dated 01/07/05, the above named defendant was committed to Western State Hospital for an evaluation to aid the Court in determining whether the defendant is competent to stand trial or in need of psychiatric treatment in order to restore his trial competency and to determine his mental state at the time of the alleged instant offense (i.e., Sanity/Diminished Capacity). As is mandated by RCW 10.77.060, this report will also address the defendant's mental condition, dangerousness to others, likelihood of committing further criminal acts, and any further need for evaluation under RCW 71.05.

By report dated 03/25/05, Jason Dunham, Ph.D., staff psychologist for the Center for Forensic Services, offered the following opinion:

Although he was unwilling to speak with me regarding a formal competency assessment, it is my opinion that Mr. Rhome is competent to stand trial. He does not suffer from any mental disorder that would inhibit his trial competency. I recognize that his attorneys will most likely have difficulty working with him. However, his uncooperative and argumentative attitude is based upon his severe personality disorder rather than on any mental illness, and a personality disorder alone is not a basis for incompetency.



Dr. Dunham was also ordered to report on Mr. Rhome's mental state at the time of the offense. Mr. Rhome declined to participate in an interview. Notwithstanding Mr. Rhome's declining to participate, Dr. Dunham offered the following opinion:

Mr. Rhome does not suffer from a mental disease or defect. Although he was unwilling to speak with me regarding his version of the alleged offense, there is nothing to indicate in the discovery records that his mind was affected by any mental disease or defect at that time. Therefore, I cannot support any mental state defense (i.e., Insanity or Diminished Capacity).

The Court found Mr. Rhome competent, and ordered him committed to Western State Hospital for additional evaluation of his mental state at the time of the offense.

Mr. Rhome is charged with Murder in the Second Degree, which allegedly occurred on or about 11/20/03. The State's allegations are detailed below in the section entitled *official version of the offense*.

SOURCES OF INFORMATION:

Mr. Rhome was admitted to the Center for Forensic Services at Western State Hospital on 03/14/05. He was placed on ward F2 to undergo psychological, psychiatric, psychosocial, and physical examinations, including 24-hour clinical observations. Sandra Karlsvik, M.D., Staff Psychiatrist, and Barry Ward, Psy.D., Staff Psychologist, comprised the sanity commission. Information from the following sources was considered in preparing this report:

1. Three independent interviews of Demar Rhome;
2. Psychological Report authored by David White, Ph.D., dated 05/25/05
3. Forensic Mental Health Reports authored by Jason Dunham, Ph.D. (03/25/05);
4. Forensic Mental Health Report authored by Janet Schaeffer, Ph.D. (01/22/02);
5. Forensic Mental Health Report authored by Gregory Leong, M.D. (11/26/01);
6. Psychological Evaluation signed by Debra Vilhauer, Ph.D. (10/10/00);
7. Psychological Evaluation signed by Kenneth Asher, Ph.D. (undated 1999);
8. Forensic Psychological Evaluation signed by Thomas Danner, Ph.D. (08/03/99);
9. Western State Hospital records.
10. Discovery documents provided by the State.

11. Washington State Patrol WATCH criminal history record.

NOTIFICATION OF RIGHTS:

Prior to each interview, Mr. Rhome was informed of the non-confidential nature of the evaluation, the purpose of the evaluation, and parties who would receive a copy of the forensic report. He was also informed that he had a right to have his attorney present and that he could decline to answer questions. Mr. Rhome indicated that he understood his rights and agreed to participate in the interview.

CLINICAL HISTORY:

Mr. Rhome is a 22-year-old man who was an enrolled consumer with the Department of Developmental Disabilities. He has a history of developmental trauma, an unstable chaotic upbringing, and reported physical and sexual abuse. He denies recalling any abuse, but records suggest that this was investigated as early as age three. According to Dr. Danner's report, Mr. Rhome became a dependant child after his family's parental rights were terminated in 1986. He has been through a series of foster-homes and group homes.

Mr. Rhome has a history of minimally independent function in the community. He reports having graduated from Ballard High School, and he has had jobs including temporary labor and fast-food. He reports having lost his last two jobs, at Pizza Hut and Safeco Field, for giving away merchandise or keeping proceeds from sales. He has never been married, and states he has no children.

Mr. Rhome has had several psychiatric admissions, receiving treatment at Children's Hospital and Seattle Mental Health Institute during his early elementary years. At age seven, he was admitted to Child Study and Treatment Center (CSTC). He presented with a variety of conduct problems, including stealing, lying, aggressiveness, and sexual acting out. Mr. Rhome was a resident of CSTC for approximately two years. He was readmitted to CSTC in 1998, and his discharge diagnoses included: Psychosis NOS; Rule out Schizophrenia; Rule out Bipolar Disorder; and Mild Mental Retardation. Mr. Rhome has subsequently been hospitalized at Fairfax Hospital (05/06/98 – 05/20/98; 06/08/99 – 06/17/99; 06/22/00 – 07/15/00; 07/28/00 – 08/11/00; and 05/08/01 – 05/25/01); and Puget Sound Hospital(12/18/98 – 01/05/99) He was hospitalized at Western State Hospital in 02/02 for competency restoration after having been found incompetent to stand trial on Robbery Charges.

Mr. Rhome reportedly has a family history significant for a mother with Bipolar Disorder, and a sister with Schizophrenia.

Mr. Rhome has two felony convictions as an adult, for Robbery and Theft. He wears a tattoo stating "Crips" on his forearm, suggesting gang affiliation. As a juvenile, he was charged with a variety of offenses, but was never adjudicated.

MENTAL STATUS EXAMINATION:

Mr. Rhome presented as a normally-developed young man who appeared about his chronological age of 22. His grooming and hygiene were within normal limits. There were no visible disturbances in his gait or gross motor function. His speech was fluent and spontaneous, and his eye contact was within normal limits. He was generally pleasant and cooperative with the interview process, but he made several attempts to place conditions on the interview and to influence the parameters of the interview. For example, he stressed that since he had requested the interview, I was working for him, and not the prosecutor. After I re-admonished him of the purpose of the evaluation and of my role, he stated he understood and continued participating. Mr. Rhome has sufficient experience participating in a mental status exam, that he often lead the examiner, correctly anticipating the series of questions that followed inquiries regarding mood and thought.

Mr. Rhome stated that his mood was stable, and he was not experiencing any depression or anxiety. His mood appeared mildly expansive. His speech was rapid, but not pressured. His affect was broad and congruent. He stated that he slept well, and had good appetite and energy. He denied somatic complaints or vegetative symptoms. He denied thoughts of harming himself or others.

Mr. Rhome's thought, as evidenced by his speech, was goal directed and logical. He denied any history of hearing voices, and stated that previous reports of his hearing voices were due to the doctors misinterpreting his statements. He also indicated that there have been times when he had little incentive to correct these misinterpretations, as he was receiving social security benefits. Mr. Rhome denied belief in themes commonly associated with delusions. He was preoccupied with several topics, including his attractiveness, sex, entitlement, and the incompetence/malice of others.

Mr. Rhome was oriented to person, place, time, and situation. His memory appeared intact. His attention and concentration abilities were adequate. While Mr. Rhome has repeatedly tested in the range of intellectual function associated with Mental Retardation or Borderline Intellectual Function, his test scores appear to grossly underestimate his true level of function. His ability to think abstractly, integrate relevant information, and appropriately use words, suggests intellectual function in the

Low-Average to Borderline range. Judgment and insight both appeared impaired, though it was not apparent that this was the result of a psychotic thought process.

DIAGNOSTIC IMPRESSIONS:

Mr. Rhome first came to the attention of Mental Health Professionals for a combination of conduct problems and developmental delay. He was noted to be deceitful, inattentive, suspicious, and physically and sexually aggressive. The etiology of his problems was uncertain, as his mother was reportedly abusive and neglectful, and she reportedly had either mental illness, substance abuse, or some combination of the two. From childhood through adolescence, Mr. Rhome repeatedly tested in the mild to moderate range of mental retardation. His current level of function appears much higher, and it is probable that poor attention, poor motivation, and emotional distress depressed the scores he obtained on intellectual testing.

Mr. Rhome currently presents with mild grandiosity, persecutory ideas, sexual preoccupation, impulsivity, assaultiveness, impaired judgment, impaired insight, impaired attention, sense of entitlement, and mildly digressive speech. He lacks prominent mood symptoms, he has normal sleep and appetite, he lacks negative symptoms of psychosis, and he denies any history of hallucinating in any modality. This symptom cluster is non-specific, and can occur in a variety of disorders, including psychopathy, profound personality disorders, or psychotic disorders. Unfortunately, there is not a bright line separating the continuum of beliefs ranging from impaired judgment to psychotic, or from suspicious to paranoid. While past evaluators have provided consistent behavioral observations, and have documented similar reported symptoms, their diagnostic impressions have differed according to whether they saw Mr. Rhome's behaviors as motivated by maladaptive coping or psychotic thought processes.

Data tending to suggest that Mr. Rhome primarily suffers from a personality disorder include that he has relatively intact function except when faced with situations in which there is potential for others to exercise control, interpersonal stress, or secondary gain. Additionally, many of the impulsive behaviors and "lapses in judgment" can be linked to an instrumental purpose, such as controlling others. There is also an absence of features such as flat affect, prominent disorganization, or sleep disturbance, that are commonly associated with major mental illness. Mr. Rhome has great interest in interpersonal relationships, and has had some success attracting partners, and these interpersonal patterns are less common among men suffering from a primary psychotic disorder.

Data tending to suggest psychosis include persecutory ideas that are distressing to him, have little basis in reality, and serve no adaptive purpose. Additionally, his adamancy that he is not mentally ill, suggests the possibility that he is minimizing symptoms. Finally, having two first-degree relatives with major mental illness suggests the possibility of biological loading for major mental illness.

On balance, Mr. Rhome currently appears to suffer primarily from a personality disorder rather than a major mental illness. However, it is entirely possible that his symptoms have been more prominent during past evaluations, and I cannot discount the possibility that he has in the past met criteria for a primary psychotic disorder.

Axis I: Psychosis Not Otherwise Specified, By History

Axis II: Antisocial Personality Disorder (Rule-Out Psychopathy)
Narcissistic Personality Disorder
Rule out Borderline Intellectual Functioning

Axis III: Deferred to Medical Practitioner

FORENSIC OPINIONS:

The order directing this evaluation specifically lined out a request for a competency evaluation. The order stated that the defendant is in need of psychiatric examination to determine whether he suffered from a mental disease or defect excluding responsibility at the time of the alleged crime. Mr. Rhome, acting as his own attorney, stated that he is not entering an insanity plea, and only wished to be evaluated for diminished capacity.

Capacity to Form the Requisite Mental State:

Official Version of the Offense:

According to the charging documents:

There is probable cause to believe that Demar S. Rhome (DOB 7-16-83) and Kialani Brown (DOB 2-17-86) committed the crime(s) of Murder.

This belief is predicated on the following facts and circumstances:

On November 23rd, 2003 at 2136 hours, Seattle Police Communications received a phone call from Beverly Brown in Vancouver, WA. Brown stated that her daughter Kialani's boyfriend had just phoned her and reported

that Kialani had stabbed his ex-girlfriend two days ago, further that he had the knife used and knows where the body is. The boyfriend was named possibly as Devante Carlson and a phone number was given. The phone number was run through police data systems and yielded the address of 2302 E. Pine (lower unit). Patrol units responded and removed Kialani Brown and Demar Rhome from this address. Rhome indicated that his street name is Devante Carlson, that he was dating Kialani and that he had called her mother to report the homicide. After an advisement of his constitutional rights, Rhome told officers that Brown stabbed LaShonda Shantell Flynn (DOB 9-18-86). Rhome stated the murder had occurred at 2317 E. Alder and led officers to that residence. He then led officers to where Flynn's body had been dumped in Discovery Park, and officers confirmed the presence of what appeared to be a dead female partially covered with what appeared to be a sheet, blanket and garbage bag.

Rhome was brought back to the homicide office and interviewed by detectives. Rhome explained how he, Brown, and Flynn were all involved personally and sexually. Rhome initially stated that one week ago the three went to the house at 2317 E. Alder because the resident was supposedly in jail and they wanted a place to party. Rhome said that Brown and Flynn argued and struggled briefly. Rhome left the room for several minutes. When he returned the two women were undressed and were about to couple sexually. Flynn had her hands bound behind her back and her face covered. Brown suddenly pulled out a kitchen knife and stabbed Flynn in her back and possibly three other times. One of these stab wounds was to the front portion of Flynn's neck. Flynn begged for Rhome's assistance, but Rhome said that he just stood by. Rhome was inconsistent and contradictory in the exact stabbing scenario and how many knives were involved, and told detectives that after Flynn was stabbed, he couldn't handle the situation and left for two hours. When he returned he helped Brown clean up the blood and place Flynn in the closet. Rhome and Brown gathered up the bloody clothing, two knives and other evidence into two plastic bags, and took a bus back to his apartment at 2302 E. Pine. Rhome said that detectives would find these two bags on the upper porch area of this duplex. Rhome lives in the lower unit and described his "crazy landlord" as living in the upper unit. At one

point of the interview Rhome indicated it was likely that some of Flynn's blood had been transferred to the inside of his residence.

Rhome went on to explain that around noon the next day (he believed this was Sunday November 16th), Brown called a Yellow Cab to his residence. Two of Brown's friends drove up in a car and Flynn's body, wrapped in bedding, was transferred from the car to the cab's trunk. Rhome and Brown instructed the cabby to drive to the southern border of Discovery Park where the body was dumped. Rhome told detectives that although he was in the cab while the body was being driven to Discovery park, Brown acted alone in disposing of it in the bushes. As mentioned earlier Rhome was inconsistent and contradictory at times. When confronted, Rhome admitted to trying to control the interview and that his hope was to be able to walk away from custody. Rhome admitted that he was guilty of cleaning up, disposing of evidence, and dumping the body in Discovery park. Rhome was comfortable during the interview that all this would be forgiven since he was a witness to Brown murdering Flynn. Rhome brushed over how he and Brown dumped Flynn's body in the park, but did continue his non-stop inconsistent and contradictory diatribe regarding various scenarios, mostly sexual, regarding the murder of Flynn. Rhome mentioned conversations he had with Brown several days before the murder. In one of them, Brown was seeking advice from him on how to best commit a murder. Rhome was evasive as to what advice he gave Brown, but did indicate he had told her one scenario would be where the intended victim was asleep. Rhome lightly touched on a shopping trip they took to the "dollar store" on Broadway Avenue last week where they purchased a set of knives.

Detectives obtained a search warrant for the house where Rhome said the murder took place and for Rhome's apartment. At the same time detectives were also recovering Flynn's body from Discovery Park. Officers had been standing by at these three locations. It became apparent to the officers watching the Alder street house that an extended family with small children lived there. Officers investigated and found no links to the name of the resident that Rhome had given. Detectives by now were in the process of transporting Rhome and Brown to jail and the youth center. Rhome agreed to first go back to his residence with detectives and to

point out the garbage bags of evidence that he had described. On the back porch Rhome pointed out two plastic garbage bags where they would find clothing, cleaning supplies, and other evidence. Rhome pointed to the bottom of one of the bags and said that the two "twin knives" were located there. Detectives confronted Rhome, telling him they believed the murder took place inside his apartment. On the way to jail Rhome first insisted that the murder had taken place at the Alder street house, but then finally admitted that it had, in fact, taken place at his Pine street apartment. He told detectives he had not mentioned this earlier because his landlord didn't want the police to come around. Rhome described the bedroom that the murder occurred in, but still maintained that Brown did all the stabbing. He also then told detectives that the murder had actually occurred not a week ago as earlier claimed, but just two or three days ago, on November 20th or 21st. Rhome did admit that he was wearing some of the same clothing that detectives had confiscated earlier, particularly his skullcap and fingerless gloves, when he disposed of Flynn's body. Detectives noticed what appeared to be blood on Rhome's hat. Detectives also noted that Brown had blood on her clothes when she was arrested.

Homicide unit personnel then served the search warrant on Rhome's apartment. Blood spatter evidence was visible on a wall in the room, and there was apparent blood evidence on the carpet in the bedroom that Rhome had described. This carpet was wet as if it had been recently washed down, and a vacuum cleaner stood nearby. Personal items belonging to Rhome, Brown, and Flynn were recovered from inside the apartment, including Brown's suitcase. Evidence from the garbage bags that Rhome had pointed out and described on the porch was also recovered, including the "twin knives." These knives were two large eight inch fixed blade heavy-duty steak knives, and one of them had what appeared to be blood on it. A third similar knife was recovered in the same bag and a fourth was recovered from the closet floor in Rhome's locked bedroom. Blood and body evidence was pervasive inside of these garbage bags. Women's clothing was found as well as several scarves and ties that could have been used to bind Flynn's hands. Empty bottles of cleaners were also found inside these bags.

Detectives contacted Yellow Cab dispatch and were informed that a "Kia" ordered a cab for 2302 E. Pine on Friday, November 21st at 1008 hours. Detectives found and interviewed the cab driver who responded to that call. The driver picked Rhome and Brown out of montages positively and immediately. The driver said that he went to the front door of 2302 E. Pine and was met by Brown. It appeared to the driver that Rhome and Brown had been arguing. Rhome walked out carrying a large zippered duffel bag in his arms that appeared to be very heavy. Rhome instructed him to drive to Discovery Park. Brown's two-year-old child was also aboard. At the park they had trouble finding the south entrance. Rhome argued about this and the fare with the driver. The driver assisted Rhome with removing the large bag from the trunk and placed it on the ground. The driver thought that the bag contained garbage and that his passengers were preparing to camp in the park. The driver overheard Rhome and Brown discussing how they were going to be picked up by two people.

At autopsy it was confirmed that Flynn had been stabbed to death. There were four stab wounds similar to those that Rhome had described, and a defensive wound to the left hand. At the time of this writing the medical examiner staff had not yet confirmed Flynn's identity.

On November 25th, detectives went to the "dollar store" on Broadway Avenue and interviewed the clerk, who identified Rhome and Brown as having purchased a knife and other items from the store on Thursday, November 20th, around 1930 hours.

Mr. Rhome's Version of the Offense:

Mr. Rhome stated that he had offered LaShonda Flynn a place to stay. The reasons for his offer were not specified, but suggested that Ms. Flynn was not his girlfriend. Mr. Rhome stated further that Ms. Flynn's family had at one point accused him of holding Ms. Flynn against her will, but that there was no truth to the family's allegations.

In October of 2003, Mr. Rhome started talking to Kialani Brown on a "party line." Ms. Brown lived in Vancouver with her family and her baby. Mr. Rhome stated that he and Ms. Brown had long phone conversations, including talking about physical and sexual abuse Ms. Brown had endured. After about three weeks of speaking regularly on the phone, Mr. Rhome offered to let Ms. Brown stay with him at his house. Ms. Brown and

Ms. Flynn had never met, but Mr. Rhome told Ms. Brown that there was another young woman who lived with him. Ms. Brown agreed to come up and stay with Mr. Rhome.

For about three days prior to Ms. Brown's arrival, Ms. Flynn was exhibiting "jealous behaviors." Mr. Rhome told Ms. Flynn that he "didn't want to be with her." Mr. Rhome stated that in spite of the initial tension, things went well when Ms. Brown arrived. He stated that Ms. Brown and Ms. Flynn got along pretty well, and bonded when speaking about their histories of having been abused.

Mr. Rhome stated that he and Ms. Flynn and Ms. Brown regularly ate together and went out together. He stated that on the night of the killing, the three had gone out to the Broadway area. After being out for a while, they purchased some alcohol and returned to the house. Mr. Rhome stated that the three started drinking in the kitchen, and he was starting to feel intoxicated. Ms. Flynn and Ms. Brown left the kitchen, and he remained there continuing to drink. He stated "my thinking was disorganized." He elaborated that when he said "disorganized" he meant that he had trouble concentrating, keeping his thoughts "stable," and participating in activities such as reading. Mr. Rhome estimated that he drank half a bottle of Hennessy (Cognac), and half a bottle of Tanqueray (Gin).

Mr. Rhome stated that he was so intoxicated he could barely stand, and he walked into the other room to get some "purple weed" marijuana. When he walked past the bedroom, he stated that he saw Ms. Flynn and Ms. Brown engaged sexually. Mr. Rhome stated that Ms. Brown had bound Ms. Flynn's hands, and had her shirt pulled over her head. Mr. Rhome stated that as he stopped to watch, he saw Ms. Brown pull out two knives. He stated that he screamed out a warning to Ms. Flynn to get up, and asked Kialani what she was doing. He stated that Ms. Brown stabbed Ms. Flynn, and that he tried to run over to help Ms. Flynn. However, he stated that Ms. Brown was waving the knife and keeping him at bay.

Mr. Rhome stated that he was still trying to help, but he was so drunk he could not figure out what was going on. He stated that when he went to the phone, Ms. Brown waved the knife at him again. He stated that Ms. Brown threatened him in a variety of ways, stating that if anyone went down for the crime, it would be him. He stated that she warned him that there were Ku Klux Klan members in her family, and her baby's dad had gang friends. She stated further that the court believes women over men, and that black men in particular are disbelieved in the justice system.

Mr. Rhome stated that Ms. Brown grabbed the phone from him and called her "baby's dad." He stated that she told her baby's dad that Mr. Rhome was threatening to "snitch." Mr. Rhome stated that the man on the phone threatened to have the Crips gang get Mr. Rhome if Mr. Rhome snitched.

After hanging up the phone, Ms. Brown directed Mr. Rhome to clean up. He helped clean up the blood, and continued to help dispose of the body because of his fear.

In a previous statement to police, Mr. Rhome stated that prior to the stabbing, Ms. Brown and Ms. Flynn had each been brandishing knives and were in a mutual combat situation. He also described Ms. Flynn as fighting back and reaching for the knife. Finally, he described not being able to do anything, and he just watched.

After producing the narrative, which lacked any specific reference to psychiatric symptoms, Mr. Rhome was prompted to explain what was going on with his mind at the time of the offense. He stated that: "To be perfectly honest, I don't think I am psychotic, but I have some disorganization." He stated that it "effects [his] ability to think straight." Prompted again, he generally stated, I think there was a mental illness involved... My mom had drug problems and I had learning problems. He then went on to elaborate his understanding of how his mental illness might lead to a reduction in charge or an acquittal by the jury.

Prompted to return to the original question about his mental state at the time of the offense, he stated: "I wasn't just intoxicated, I honestly believe I had some disorganized thinking... I wouldn't say psychotic." Mr. Rhome was again queried specifically about symptoms. He referred to Post Traumatic Stress Disorder, and stated "memories come back... I feel a tendency to want to make someone else feel the suffering I felt... I get physical with them." He clarified that this was a general symptom, and not one that he experienced on the night of the murder. Prompted again for symptoms, he stated that he generally gets anxious, and gets bad memories "to the point where I want to harm." He again clarified that he was not referring to the night of the offense. He then spontaneously stated, If I get really lucky and beat this charge, I am not going to rush into any relationships with women who had rough experiences with men.

Mr. Rhome was again asked about any specific experiences he may have been having at the time of the murder. He replied that he was "just out of it" and that he had some memories about abuse by his mom. He stated he was feeling "disorganized in his thinking."

Mr. Rhome was asked if there was any additional information I should have. He produced an elaborate narrative about Ms. Brown being untruthful. He completed the interview stating:

They are trying to give me twenty-four years. I don't want to go down for a female I never really went out with, and never really had good sex with. There is more to this.

Analysis of Diminished Capacity

In any evaluation, the quality of the available data sets an upper limit on the confidence we can have in our analysis. In the present case, there are widely divergent versions of the offense from the two participants involved. Moreover, Mr. Rhome's self-report was internally inconsistent, and changed over time. Should additional data come available, or should Mr. Rhome recalled more details about the alleged offense, we will add to this report as necessary.

Mr. Rhome is charged with Murder in the Second Degree. According to the *Information* the mental element of the crime is intent.

According to RCW 9A.08.010: (1) (a) INTENT. A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

To maintain a diminished capacity defense, a defendant must produce expert testimony demonstrating that a mental disorder, not amounting to insanity, impaired the defendant's ability to form the culpable mental state to commit the crime charged. In an effort to be clear for the court, we have divided our analysis into four prongs: 1) the presence of a mental illness; 2) analysis of what symptoms were likely present at the time of the offense; 3) identification of the mental abilities impaired by the symptoms. 4) analysis of the probability and degree to which these impairments may have interfered with the ability to form the requisite mental state.

In the first prong of our analysis, Mr. Crane does not currently present as having a major mental illness. However, he has historically been diagnosed with a psychotic disorder, and he continues to display poor judgment, persecutory ideas, and a number of symptoms that in an exacerbated state might suggest psychosis. It is our opinion, with reasonable psychological certainty, that Mr. Rhome's historical diagnosis with a mild psychotic disorder is supported by the data. At a minimum, Mr. Rhome suffers

from a severe personality disorder with antisocial and narcissistic features. The Courts have sometimes considered diminished capacity when the primary diagnosis for the defendant was a personality disorder.

Looking to the second prong, we will examine the symptoms that were likely present at the time of the offense. He self-reports disorganization and intoxication. He described the intrusion of some memories regarding his past abuse. He reports no other symptoms. We note that at his baseline, Mr. Rhome has impaired judgment, impaired insight, persecutory ideas, and mild grandiosity. It is reasonable to infer that these symptoms would have been present at the time of the alleged offense.

If Mr. Rhome's statements are taken at face value, he was intoxicated and had difficulty getting his thoughts together. Furthermore, his judgment would have been impaired, and he would have been more likely to misinterpret people's actions as the result of his persecutory ideas. There is however a factual issue the jury will have to resolve, as Kialani Brown stated in her 08/11/04 interview that there was no evidence of Mr. Rhome drinking or doing drugs. It should also be noted that the version of the events Mr. Rhome related during his interview differs in many significant ways from the version he gave to the police. For example, in the statement given to police, he described a mutual combat situation between Flynn and Brown prior to Flynn being stabbed, he described the killing as occurring at a different place, he described leaving the scene for two hours after the killing, and he added information about Ms. Brown immediately threatening him if he were to call the police. As we are dependant on Mr. Rhome's self-report for symptoms that may have differed from his baseline level of function, and as there are several widely discrepant reports of the events, we can not make any affirmative statements about what symptoms were actually present. There is no data to suggest frank psychosis, and Mr. Rhome's self report suggests his baseline level of symptoms with the addition of intoxication and perhaps some intrusive memories.

As is clear from the proceeding paragraph, limitations in our database make it difficult to assess the likely level of impairment Mr. Rhome actually experienced. Some of Mr. Rhome's symptoms are so pervasive, that even with no data, it would be reasonable to infer that these deficits were present. These would include poor judgment, persecutory ideas, entitlement, impulsivity, and sexual preoccupation. While all of these symptoms could be risk factors for violent criminal conduct, none bears directly on his capacity to form intent. If Mr. Rhome's version of events is taken at face value, extreme intoxication *can* impact a person's ability to form intent, but the jury will have to determine whether there is evidence tending to suggest such intoxication was present. We note that whether or not intoxication was present, neither the State's version of the

events, nor Mr. Rhome's version of events tends to suggest that there were sufficient symptoms of mental illness or intoxication to interfere with his capacity to form intent, as by every account, there was a sequence of purposeful and goal-directed behaviors. Mr. Rhome described entering the room for the purpose of finding his marijuana. He described shouting out warnings to Ms. Flynn, attempting to come to her aid, and then backing away after being threatened by the knife wielding Ms. Brown. His description of events suggests intentional but ineffectual efforts to thwart the crime, which would be a factual rather than a mental state defense. He stated that he then assisted in cleaning up the scene and assisted in disposing of the body as the result of Ms. Brown's threats. Again, he describes purposeful conduct, motivated by the desire to avoid a bad outcome, but does not describe how psychiatric symptoms may have contributed to his behavior. On their face, the behaviors appear rationally related to the purpose as explained by Mr. Rhome. In short, even if Mr. Rhome's version of events is believed, he describes a sequence of purposeful acts, spanning hours, before, during, and after the alleged offense, that suggest intact capacity to form intent. If the State's version of events is believed by the jury, there is even more data suggesting preserved capacity to form intent, as the State also alleges many additional acts suggestive of pre-planning and participation with the murder. **In short, by any version of the offense, there is ample data to suggest preserved capacity to form intent.**

Dangerousness:

This opinion regarding dangerousness was court-ordered and conducted within the scope of RCW 10.77.060 regarding pre-trial mental health evaluations. An opinion is to be made as to whether the defendant presents a substantial danger to others or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control of the court or other persons or institutions. An additional opinion is required as to whether the defendant should receive a RCW 71.05 civil commitment evaluation by a CDMHP. This opinion is based solely upon the above evaluation under RCW 10.77.060. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

I concur with the risk assessment as conducted by Dr. Dunham in his report of 03/25/05, which provides as follows:

Mr. Rhome's WATCH criminal history record lists the following adult felony convictions: Robbery 2 (04/12/02) and Attempted Theft 1 (08/16/02).

Current practice in violence risk assessment involves the consideration of factors frequently associated with future violence. The HCR-20 is an instrument that organizes such known risk factors, dividing them into three categories: Historical, Clinical, and Risk Management. Historical risk factors (also known as static factors) are relatively stable elements of the individual's life and are unlikely to change. In Mr. Rhome's case, the following Historical risk factors were present: Previous Violence (per his self-report); Relationship Instability; Employment Problems; Possible Psychopathy; Antisocial and Narcissistic Personality Disorder; Young Age; and Early Maladjustment.

A Historical risk factor that may have been present, or was present to a lesser degree, includes: Young Age at First Violent Incident.

Clinical risk factors describe the individual's current mental state and are considered to be more changeable or amenable to treatment. Mr. Rhome demonstrated evidence of the following Clinical risk factors: Negative Attitudes and Impulsivity.

Finally, Risk Management factors are those that are likely to influence the individual in the future, and are also considered to be changeable. Mr. Rhome possessed the following Risk Management factor: Stress.

Risk Management factors that may have been present, or were present to a lesser degree, include: Lack of Personal Support and Noncompliance with Remediation Attempts.

Factors that currently mitigate against Mr. Rhome's risk of future dangerousness or criminal behavior include: Apparent absence of substance use problems and Absence of [acute] major mental illness.

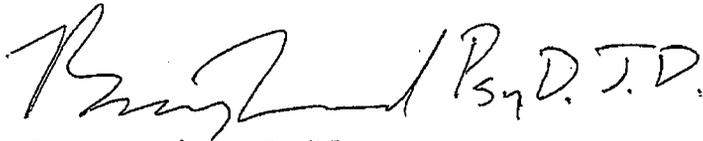
Based upon Mr. Rhome's documented criminal history, information obtained through interviews and treatment, and a review of risk factors, it is my professional opinion that he is currently a high risk for future serious dangerous behavior (i.e., murder, assault with weapons, etc.) and a high risk for other forms of dangerous behavior (i.e., assault without weapons, property destruction, etc.). I also believe that he is currently at very high risk for committing future criminal acts jeopardizing public safety and security due to his past illicit behaviors, young age, gang affiliation; and severe personality disorder.

With regard to the need for evaluation by a Designated Mental Health Professional, I differ from the recommendations offered by Dr. Dunham, and I do recommend a CDMHP evaluation under RCW 71.05 prior to any release from custody. Mr. Rhome has

FORENSIC PSYCHOLOGICAL REPORT
RE: RHOME, DEMAR

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a history of recent violence, a history of having been diagnosed with major mental illness, and a history of recent threats. While he does not currently exhibit signs or symptoms diagnostic for major mental illness, his personality disorder, substance abuse, and antisocial attitudes combine to greatly elevate his risk to others. As Mr. Rhome is low functioning at his baseline, even minor decompensation into psychosis would likely grossly elevate his risk.



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Licensed Psychologist
Center for Forensic Services
Western State Hospital
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BW:kf

Cc: Presiding Judge, King County Superior Court
Hugh Barber, King County DPA
Michael Danko, Defense Attorney
David Phillip, King County CDMHP
David Kersey, King County Jail

APPENDIX F

David M. White, Ph.D.
Clinical Psychology/Neuropsychology
150 Nickerson, Suite 104
Seattle, WA 99109-1634
Phone: (206) 282-2065; Fax: (206) 282-2449

Psychology Report

Client's name: Demar Rhome

Date of birth: 7-16-1983

Referred by: Raymond Ejarque and Walter Peale, Attorneys at Law

Procedures: Review of records, face-to-face meeting with Mr. Rhome

Date of meeting with Mr. Rhome: 5-1-2005

Date of report: 5-25-2005

Nature of evaluation

Demar Rhome is a twenty-one year old man referred for psychological evaluation by his attorneys, Raymond Ejarque and Walter Peale. On 5-1-2005, I went to the King County Jail for a face-to-face interview with Mr. Rhome. At that time, Mr. Rhome insisted that he would not undergo a psychological evaluation (please see attached letter to Mr. Ejarque, dated 5-3-2005). In spite of this, he sat with me in a face-to-face interview room and spoke in an agitated manner for about one hour. As I listened to him, he observed that I had a folder containing copies of his psychiatric records. He looked through these records and told me that he had not signed a release that would allow me nor anyone else to review these materials. Mr. Ejarque and Mr. Peale told the Court about my experience with Mr. Rhome and that, while he refused to allow me to interview him, I thought his behavior and the content of his speech during our meeting did provide valuable diagnostic information. The Court ordered me to write an evaluation of Mr. Rhome based on my interaction with him and the psychiatric materials provided to me (please see attachment).

Review of records

Certification for Determination of Probable Cause

Steve Kilburg, Detective with the Seattle Police Department, completed a Certification for Determination of Probable Cause on 11-23-2003 in which he stated there is probable cause to believe that Demar Rhome and Kialini Brown committed the crime of murder. Detective Kilburg wrote that Seattle Police were contacted by Beverly Brown, and Ms. Brown told them that Devante Carlson (Mr. Rhome's street name) had called her. According to Ms. Brown, Mr. Rhome told her that Brown's daughter, Kialini Brown, had "stabbed his ex-girlfriend two days" earlier and that he knew where the knife and body were located. Police responded and interviewed Mr. Rhome, who reportedly provided "inconsistent and contradictory" statements. The Certification of Probable Cause indicates that Mr. Rhome was consistent in telling police that Ms. Brown stabbed the victim, Lashonda Shantell Flynn. Mr. Rhome also reportedly told police that he was a witness to the murder and helped dispose of the victim's body in Discovery Park.

Demar Rhome

2

Psychiatric records

Fairfax Hospital, Discharge Summary, 5-20-1998: Tom Newlyn, M.D., wrote a discharge summary describing the client's psychiatric hospitalization at this institution between 5-6 and 5-20-1998. At the time of discharge, Dr. Newlyn gave Mr. Rhome, then 14 years old, the following diagnoses:

“Axis I:	298.9	Psychotic disorder Not Otherwise Specified
Axis II:	317	Mild Mental Retardation
Axis III:		No physical diagnosis
Axis IV:		Dysfunctional parent, out of home placement, neglect, academic problems, discord with school peers.
		Involuntary treatment: Danger to others
Axis V:		Global Assessment of Functioning: 45”

Included in Dr. Newlyn's summary was the following information:

1. *Reason for hospitalization.* He was transferred from Pearl Street Center to Fairfax “as he has been decompensating and more aggressive.” He was “admitted to Pearl Street from Kitsap County ATU on Dec 18, 1997. He has multiple problems with impulsivity and anger, with assaults and property destruction. In the Pearl Street environment, Demar was noted to report that others talked about him, and appeared to respond to internal stimuli, although he denied internal voices. He was interpersonally sensitive, appeared to believe that he was persecuted by peers.”
2. *Past treatment.* Prior treatment included foster care, Children's Hospital psychiatric unit, McGraw Day Treatment, Child Study and Treatment Center, and multiple medication trials.
3. *Family of origin.* The client's father reportedly “abandoned” Demar. His mother “has been described as having psychotic symptoms.” Demar's older half-sister, Cassandra Carney was “reported to have schizophrenia, and is often homeless.”
4. *Developmental history.* Demar was the mother's “eighth pregnancy, third live birth. No medication, cigarette, alcohol or street drugs used by mother during pregnancy.” Gestation was full-term and delivery was vaginal by forceps. In terms of developmental milestones, “motor delay reported,” “speech delay documented,” and “fine motor skill delay.”
5. *Early behavior.* “Demar has been described as having behavioral problems since toddlerhood, with destructive impulsivity being the dominant problem. Assaults on others date from toddlerhood.” Preschool behavior was described as “aggressive and impulsive.”
6. *Education.* At the time of the hospitalization, Demar “has not been able to be enrolled in school due to aggression.”
7. *Medications.* During the hospitalization, “risperidone, olanzapine, and thioridazine (were) withdrawn (these medications often are prescribed as

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antipsychotics" and he was prescribed perhpenazine 8 mg qhs (commonly used for treating agitation) and benzotropine 2 mg qhs (often used for treatment of drug-induced extrapyramidal effects).

8. *Outlook.* Dr. Newlyn believed that Demar had "a severe disturbance, needing long-term care, and eventually tenant support through DDD (Division of Developmental Disabilities)."

Fairfax Hospital, Discharge Summary, 6-17-1999: Tom Newlyn, M.D., wrote a discharge summary describing the client's psychiatric hospitalization at this institution between 6-8-1999 and 6-17-1999. At the time of discharge, Dr. Newlyn gave Demar, then 15 years old, the following diagnoses:

"Axis I:	313.81	Oppositional defiant disorder
	297.1	Delusional disorder
Axis II:	317	Mild mental retardation
Axis III:		No physical diagnosis
Axis IV:		Dysfunctional parent, out of home placement, neglect, sexual and physical abuse, academic problems, discord with school peers and teachers.
Axis V:		Global Assessment of Functioning: 30"

Included in Dr. Newlyn's discharge summary was the following information:

1. *Reason for hospitalization.* The client had a court order authorizing treatment at Fairfax. Prior to his hospitalization at Fairfax, he was in the King County Juvenile Detention Center for assault charges at Renton House. "Demar was recently suspended from school for threatening to kill a teacher... He is concerned that people will cut off his genitals and has talked of killing his sister."
2. *Past treatment.* Added to the treatments described in the 1998 discharge summary was a psychiatric hospitalization at Stevens Hospital as well as at "Verdi in intensive care situations."
3. *Abuse and trauma.* Demar reportedly was "sexually molested by his sister at four years. Homosexual rape at a group home. Witness to abuse and sexual behavior."
4. *Education.* He had "poor school performance at Tahoma High School" and was in "some special education classes."
5. *Cognitive.* He was considered to have "mild mental retardation"
6. *Substance usage.* He reported no history of use of alcohol or recreational drugs.
7. *Psychiatric functioning.* The client did not report hallucinations or delusions, phobias, dissociation, obsessions, or mood problems. Affect was described as "anxious." He was considered to have problems with anger management, and reportedly "threatened a staff member (i.e., at Renton House) that he would cut off her breast." He was deemed to have "a severe disturbance, needing inpatient care until June 17, 1999."

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8. *Medications.* He was discharged on Divalproex 250 mg tablets 250 mg qam 500 mg qhs, and Guanfacine 0.5 tid. (Divalproex often is prescribed for mood stabilization and Guanfacine often is prescribed for hyperactivity, impulsivity and aggression)."

Fairfax Hospital, Discharge Summary, 10-4-1999: Tom Newlyn, M.D., wrote a discharge summary describing the client's psychiatric hospitalization at this institution between 6-21-1999 and 10-4-1999. Apparently, he was readmitted to Fairfax four days after his previous discharge from this hospital. Dr. Newlyn gave Demar the following diagnoses:

"Axis I:	313.81	Oppositional defiant disorder
	297.1	Delusional disorder, persecutory type
Axis II	317	Mild mental retardation
Axis III		No physical diagnosis
Axis IV		Dysfunctional parent, out of home placement, neglect, and sexual and physical abuse, academic problems, discord with school peers and teachers.
Axis V		Global Assessment of Functioning: 30."

In addition to the information included in the prior discharge summary, Dr. Newlyn's 10-4-1999 discharge contained the following:

1. *Behavior during hospitalization.* "Variable adjustment to treatment unit improved by September 1999 with few threats to others. He remains suspicious of the motives of others. On July 14, he claimed sexualized contact with two female peers. Both girls denied the contact." Also, "developmental regression noted. Demar is prone to factitious statements."
2. *Diagnostic issues.* "Demar does not have symptoms of schizophrenia but he is very suspicious and had perseverative problems which are possibly related to his mild mental retardation."
3. *Treatment.* "Psychopharmacology trial is indicated by presenting symptoms of aggression and paranoid statements. At the request of Dr. Hale, quetiapine was substituted for risperidone in the summer of 1999 (both medications can be prescribed as anti-psychotics as well as for other severe psychiatric difficulties). Divalproex and guanfacine discontinued from June 1999 without significant changes in behavior."
4. *Health.* At the time of admission to Fairfax, Demar was considerably overweight. At "69 inches" in height, he weighed "263 pounds."

Fairfax Hospital, Discharge Summary, 7-15-2000: Tom Newlyn, M.D., wrote a discharge summary describing the client's psychiatric hospitalization at this institution between 6-28-2000 and 7-15-2000. Dr. Newlyn gave Demar, who would turn 17 the day after discharge, the following diagnoses:

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“Axis I:	297.1	Delusional disorder
Axis II:	317	Mild mental retardation
Axis III:		No physical diagnosis
Axis IV:		Dysfunctional parent, out of home placement, neglect, sexual and physical abuse, academic problems, discord with school peers and teachers.
Axis V:		Global Assessment of Functioning: 30”

Included in Dr. Newlyn’s summary was the following information:

1. *Reason for hospitalization.* “Demar was admitted at the request of his therapist in view of Demar’s increased paranoia and homicidal ideas.” Also, “Demar has been intimidating toward members of his foster family and has had two recent incarcerations at the King County Juvenile Detention.”
2. *Medication.* He was being treated with quetiapine 400 mg bid.

Fairfax Hospital, Discharge Summary, 8-11-2000: Tom Newlyn, M.D., wrote a discharge summary describing the client’s psychiatric hospitalization at this institution between 7-28-2000 and 8-11-2000. He had been readmitted to Fairfax 13 days after his previous discharge. Dr. Newlyn gave Demar the following diagnoses:

“Axis I:	313.81	Oppositional Defiant Disorder
	297.1	Delusional Disorder
Axis II:	317	Mild mental retardation
		Obsessive compulsive personality traits.
Axis III:		No physical diagnosis
Axis IV		Dysfunctional parent, out of home placement, neglect, sexual and physical abuse, academic problems, discord with school peers and teachers.
Axis V		Global Assessment of Functioning: 50.”

Attached to this discharge summary was an admission history by Donald Rice, M.D., who was providing coverage while Dr. Newlyn was on vacation. Dr. Rice wrote that the client was readmitted “for further stabilization.”

Fairfax Hospital, Discharge Summary, 5-25-2001: Charles Wang, M.D., wrote a discharge summary describing the client’s psychiatric hospitalization at this institution between 5-8-2001 and 5-25-2000. Dr. Wang gave Demar, then 17, the following diagnoses:

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"Axis I: Oppositional defiant disorder.
 Axis II: Pervasive developmental disorder (Asperger's disorder).
 Axis III: None.
 Axis IV: History of physical and sexual abuse. Current change of foster placement.
 Stressors as related to psychiatric illness.
 Axis V: GAF 40."

Included in Dr. Wang's admission and discharge summaries was the following information:

1. *Reason for hospitalization.* "Patient was referred for hospitalization at this time due to concerns about worsening delusional state as well as the possibility of him threatening others in his environment."
2. *Probable delusional thinking.* Dr. Wang wrote that Demar "said, 'They say my delusions have increased.' Patient relates that he has said, 'I screwed and fucked Jesus, and I drew devil signs, and I drew six-point stars, and the people at the house said that I don't know what I'm doing.' Patient also says, 'I was doing some devil sound effects.'" He also "says, 'Everybody gets a little paranoid.' He then explained that if an individual lived in a situation where he has 'adversaries in the streets,' then he would predict that one would be paranoid as a result. He says that he is involved in gang activity..." Dr. Wang also wrote, "He says that 'I used to talk about CIA and how people were doing experiments on other people.' Patient asked repeatedly in today's session about whether or not he is going to get a CT scan of his head or if he is going to get surgery for his problems."
3. *Interactions with staff.* Dr. Wang wrote that Demar repeatedly talked with the staff about his ITA and whether it would be extended to 180 days. Dr. Wang wrote that Demar would approach staff "multiple times through the day" and "be very obsessive and ruminative about why the 180 days of the ITA may be filed against him. He asked for explanations even though when it is explained to him he continues to ruminate about it in a circular fashion that seemingly has no end, and oftentimes conversations with him about these topics had to be ended abruptly or else such conversations could go on to only agitate him further and further." Dr. Wang wrote that these conversations with staff were "near interrogation" by the client. He added, "Patient frequently shows a degree of irritability and agitation when he seemingly cannot get answer he wants. However, it seems that this is related to his inability to really organize the information that he receives to make sense of the conversation."
4. *Diagnostic issues.* Dr. Wang wrote, "In many ways, this patient presents as an individual who may be suffering from pervasive developmental disorder, or Asperger's disorder. It seems that many of his difficulties in everyday life can be explained with the symptom presentation of Asperger's disorder. The diagnostic consideration was discussed with the

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patient's outpatient psychiatrist, Dr. Norman Hale, who feels that this may be applicable with further consideration. Dr. Wang also wrote, "There was no history consistent with mania, no history consistent with obsessive-compulsive symptoms. Patient denies any drug use but admits that he has experimented with drugs. He says, 'My body rejects alcohol, and I don't crave drugs.'"

5. *Mental status.* At the time of admission, Dr. Wang noted, "Speech was not pressured, with good elaboration although he was very disorganized in thinking and went into extended, tangential discussions about his thoughts and ideas, present and past. He talked about it in terms of what people have reportedly said he has talked about... Patient denied any auditory or visual hallucinations." Demar was considered to be "slightly flighty in his ideas," to have "intact" recent and remote memory, to have "poor" judgment and insight.
6. *Medications.* He was being discharged on seroquel 400 mg. one p.o. b.i.d. and Risperdal 2 mg. one p.o. b.i.d. (antipsychotic medications often used to treat agitation).

Western State Hospital, 11-26-2001: Gregory Leong, M.D., Staff Psychiatrist, conducted an outpatient forensic evaluation of Mr. Rhome, then 18, while the client was incarcerated at the King County Jail. At the time, Mr. Rhome was charged with Robbery in the Second Degree, and the Court ordered an evaluation of the client to assess his mental condition, competency to stand trial, and dangerousness. Dr. Leong gave Mr. Rhome the following diagnoses:

"Axis I: Psychotic disorder NOS
Attention deficit/hyperactivity disorder by history
Axis II: Antisocial personality disorder
Rule out mild mental retardation
Rule out borderline intellectual functioning
Axis III: No diagnosis"

Included in Dr. Leong's report was the following information:

1. *Client's perception of his mental health.* Dr. Leong wrote, "Despite Mr. Rhome's talkativeness, he provided minimal information. He denied having any type of mental illness, and specifically denied having paranoid schizophrenia, depression, posttraumatic stress disorder, and mental retardation. He remarked that he may have a personality disorder. He said others have reported that he has experienced hallucinations, but he denied having experienced them. He acknowledged having been prescribed quetiapine at 800 mg per day (antipsychotic medication prescribed in the in the high range of the standard dosage), but has not taken any since being jailed."
2. *Recent refusal of psychiatric treatment.* "The defendant's former case manager (while he was a juvenile) indicated that his case has been referred to

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Community Psychiatric Clinic (CPC) and that the defendant had been refusing services since reaching age 18. Since turning 18, the Division of Developmental Disabilities has referred the defendant's case to CPC for further care. He has been difficult to engage in treatment there. He had developed the paranoid delusion that CPC was impeding his SSI. His prospective case manager met him in jail last week. His case manager has also known the defendant when she had been employed at Fair Hospital and indicates that he is paranoid and appears higher functioning than he actually is."

3. *Diagnostic considerations.* Dr. Leong wrote, "Despite the defendant's minimization or denial of his psychiatric symptoms, he presents with substantial paranoia and digressive thinking that would be consistent with a psychotic process (such as schizophrenia). His presentation during the instant interview does not fit with an individual with moderate mental retardation. His vocabulary and ability to manipulate information suggests a higher capacity, somewhere between the high mild mental retardation to the borderline intellectual functioning ranges."
4. *Competency to stand trial.* Dr. Leong assessed the client's understanding of the legal system. He wrote, "Despite his psychosis and low intellectual functioning, he has sufficient capacity to understand the nature of the proceedings against him."

However, Dr. Leong was concerned about the client's ability to assist in his defense. He wrote, "Of concern is the defendant's inability to remain focused on the topic at hand due to digressive thinking. This digressiveness is believed to emanate from his psychosis, which at the time of the instant interview was most likely to be caused by his recent discontinuation of recommended antipsychotic medication. His digressive thinking became more paranoid and illogical as he continued to speak." Dr. Leong believed that, in the case of a "brief, uncomplicated court proceeding, like entering a plea," the defendant's mental/psychiatric problems would likely not prohibit him from assisting in his own defense. In the case of a complex court proceeding, it was believed that the client's mental/psychiatric problems would prevent him from having the capacity to assist in his own defense (e.g., to "testify relevantly"). Dr. Leong concluded, "Should the court find the defendant is not competent to stand trial, inpatient psychiatric treatment is recommended to assist in improving the defendant's mental condition so competency can be restored."

Western State Hospital, 1-9-2002: Janet Schaeffer, Ph.D., Staff Psychologist, completed a forensic psychological evaluation of Mr. Rhome during a court-ordered inpatient hospitalization aimed at assessing the client's mental condition and restoring his legal competency. Dr. Schaeffer gave Mr. Rhome the following diagnoses:

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“Axis I: Psychotic Disorder, Not Otherwise Specified
 Attention Deficit/Hyperactivity Disorder, by History
 Axis II: Personality Disorder, Not Otherwise Specified with Antisocial,
 Narcissistic, and Paranoid Features.
 Rule Out Mild Mental Retardation
 Rule Out Borderline Intellectual Functioning.”

Included in Dr. Schaeffer's report was the following information:

1. *Prior neurological evaluation.* Before the client was admitted to the “Child Study and Treatment Center in 1991, he had received a full neurological work-up which included an EEG, a CT scan and an evaluation for fragile x-syndrome. All were negative.”
2. *Cognitive evaluations.* “Mr. Rhome has been assessed for his intellectual and social functioning on various occasions. Intellectual assessments have varied from the moderate range of mental retardation (IQ 49) to the borderline range of intellectual functioning (IQ 73).”
3. *Client's cognitive/psychiatric/social history.* “Mr. Rhome has a very long history of developmental delays including social as well as intellectual deficits, assault behavior, paranoia which has been assessed as ranging from hypervigilant to psychotic/delusional, sexually inappropriate behavior, multiple placements in foster homes and adolescent treatment programs, and contact with the criminal justice system.”
4. *Hospital course.* When Mr. Rhome was admitted to Western State, he was sent to one ward and “then immediately sent back to the admission ward. Despite attempts to explain the reason for the rapid change, Mr. Rhome did not seem reassured or satisfied with the explanations and so continued to ask the same questions over and over again. Feeling anxious, worrying, and having suspicions about staff's intentions prompted many questions on the part of Mr. Rhome throughout his hospitalization.”
 When the client met with a psychiatrist, Dr. Wailbinger, “on December 19, 2001, he was mildly paranoid, wondering if we would keep him in the hospital ‘forever.’ He told Dr. Waiblinger, ‘I was trying to play crazy to get out of trial,’ referring to his behavior in the jail. Mr. Rhome denied all first rank psychotic symptoms throughout his hospitalization, as well as thoughts of harming himself or others. He did not appear to be responding to internal stimuli but he was clearly very suspicious of the staff and their intentions towards him. He refused lab work because he believed the hospital was testing for the presence of a sexually transmitted disease. He expressed worry about what the staff had written in his hospital chart. He believed the staff were ‘picking’ on him. He did not voice any organized delusional system, but the frequency and extent of his paranoia were assessed as pathological.”
5. *Attempt to assess client's intelligence.* Dr. Schaeffer wrote that she met with Mr. Rhome to discuss cognitive testing after the client reported to staff members that he was not really trying during previous IQ testing. When she

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discussed the value of testing, Mr. Rhome expressed his belief that testing was "being conducted as a way of denying him services..." Dr. Schaeffer met with Mr. Rhome while accompanied by a male staff member. She wrote, "When Mr. Rhome left the room, the undersigned and the other male staff member remained in the room, talking. When we came out, Mr. Rhome accused us of talking about him and seemed extremely angry. Later that day, Mr. Rhome made extremely violent threats to one staff member in particular, stating he would harm his family members and mutilate their bodies. He apparently made these threats to other staff as well, over a two-hour period on the afternoon of January 8, 2002."

6. *Diagnostic considerations.* Dr. Schaeffer wrote, "The only psychotic symptom that was observed by the staff was paranoid ideation in the form of hypervigilance and suspiciousness. Mr. Rhome does not trust what others tell him and constantly seeks reassurance that the information that he has received is correct and that no malevolent intentions are present. He did not appear, however, to have disturbances of perception as in auditory or visual hallucinations or ideas of reference. He did clearly have behavioral disturbance in the form of intimidating, provocative and assaultive behavior, especially with peers. He was also very verbally threatening to staff members on the day before his release from the hospital. At that time, his verbal aggressiveness became extremely violent in content... In the past, Mr. Rhome has voiced persecutory delusional thought content, believing that others would try to castrate him or perform a lobotomy. He did not voice any delusional thought content during this hospitalization."
7. *Competency.* Dr. Schaeffer wrote, "My opinion regarding Mr. Rhome's competency to stand trial is that, in his present medicated mental state, he does possess the basic and fundamental capacity to understand the nature of the charges against him and he does possess the basic and fundamental capacity to rationally participate in his own defense." In addition to writing about Mr. Rhome's understanding of the legal system, Dr. Schaeffer offered recommendations to assist counsel in working more easily with Mr. Rhome. These included: "Information needs to be provided to Mr. Rhome in a calm and clear manner. He needs to know the reality of the situation. He is very sensitive to any hint that someone is offering him either dishonest or incomplete information. He is also very sensitive to how others talk to each other about him and whether others are in fact talking behind his back. Simple language is helpful in working with Mr. Rhome as well as conveying a sense of respect for his abilities. Lastly, the undersigned found it useful to speak to Mr. Rhome slowly."

Western State Hospital, 3-25-2005: Jason Dunham, Ph.D., Staff Psychologist, completed a forensic psychological evaluation of Mr. Rhome during a court-ordered inpatient hospitalization aimed at assessing the client's mental condition and restoring his legal competency. At the time, the client was charged with Murder in the Second Degree. Dr. Schaeffer gave Mr. Rhome the following diagnoses:

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“Axis I: No Diagnosis
Axis II: Antisocial Personality Disorder (Rule-Out Psychopathy)
Narcissistic Personality Disorder.”

Included in Dr. Dunham's report was the following information:

1. *Client's attitude towards the evaluation.* Dr. Dunham wrote that Mr. Rhome participated in only one clinical interview with him. He said that the client refused to participate in a second interview on two separate occasions. The first time that Dr. Dunham approached the client about a second interview, “he said he would only talk to me if I would get his TRC (Treatment and Resource Center) hold lifted for him.” When Dr. Dunham said he could not and would not do this, the client refused to talk to him. Dr. Dunham approached the client a second time regarding a second interview after a staff psychiatrist told him that Mr. Rhome now wanted to speak with him. However, when he approached the client, Mr. Rhome allegedly stated, “I don't have a damn thing to talk to you about...”
2. *Client's behavior at Western State.* Dr. Dunham provided many examples of the client's behavior at Western State Hospital that were obtained from the client's medical records and from collateral interviews with staff members. Dr. Dunham concluded, “Mr. Rhome has been a significant behavior problem during this evaluation period at WSH. He has denied, and there has been no evidence of, any signs of a psychotic, mood, or formal thought disorder, and he has not been prescribed any psychotropic medications. His hygiene has been good, and his sleep and appetite have been within normal limits. Literally every member of his treatment team and every staff person on ward F2 that I consulted with provided essentially the same information – that Mr. Rhome is an extremely antisocial person with no signs of a mental disorder. He has engaged in multiple counts of verbally abusive behavior and also physically aggressive behavior.” Among the behaviors that Dr. Dunham described were the following:
 - A. There are several reports of the client engaging in “non-stop talking” with any staff or patients that would listen to him. “As long as patient has the ‘spotlight’ and everyone agrees with what he has to say, patient will remain calm. The moment staff question Mr. Rhome and his non-stop talking, he becomes defensive and unwilling to listen or accept positive feedback from staff.”
 - B. Mr. Rhome engaged in “posturing,” “shadowboxing,” “gangster-type arm and hand movements,” and other behaviors to “intimidate” patients.
 - C. Mr. Rhome was involved in an altercation with another patient.
 - D. Mr. Rhome frequently accused other patients and staff members of being “racist.”
 - E. He made derogatory remarks about women, both in general and to specific staff members.
 - F. He was loud and disruptive.

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- G. He often made remarks about how "handsome" he was and had misperceptions that a number of women at WSH were sexually attracted to him.
- H. He made remarks about how he was the only one that was "sane."
3. *Competency.* Dr. Dunham believed that Mr. Rhome was competent to stand trial.

Face-to-Face Meeting with Mr. Rhome

On 5-1-2005, I attempted to interview Mr. Rhome at the King County Jail, where he was incarcerated in a unit for inmates with significant psychiatric/behavioral problems. His attorney, Mr. Ejarque had forewarned me, that there was a strong possibility that he would refuse to be evaluated. Mr. Rhome was escorted by officers to the face-to-face interview room with handcuff bracelets on. When we met in the hallway, he appeared angry and immediately said, "I won't do the evaluation." In spite of saying this, he entered the interview room and proceeded to speak to me for about one hour. During most of this meeting, he was angry, agitated, and tangential. I did not attempt to engage in a typical clinical interview. Instead, I listened to him talk about his legal situation, his refusal to undergo a psychological evaluation, his beliefs about his attorneys, and a number of opinions regarding Ms. Kialini Brown. I took few notes during this meeting. I occasionally asked him questions so that he would clarify statements that he was making, however, I stayed away from conducting a formal interview. At the end of the meeting, he seemed to become slightly calmer and told me that, when he heard I had come to evaluate him, he originally had wanted to "cuss (me) out" and beat me up. However, he had decided instead to "be a man" and meet with me so that he could clearly inform me that he had no intention of being evaluated and to make sure that I would communicate this to his attorneys.

During my meeting with Mr. Rhome, I had the following observations and impressions:

1. He has an intense distrust of his attorneys which, I believe, reflects paranoid thinking on his part. Mr. Rhome expressed the following beliefs about his attorneys: (A) that Raymond Ejarque has "paranoid issues;" (B) that his attorneys were "very devious;" (C) that his attorneys "lied" to him and that he had "evidence" of this; (D) and that "these attorneys both help the prosecutor."
2. Mr. Rhome has intense anger toward his attorneys. My impression was that, in his interactions with his attorneys, he is likely to focus on interacting with them in an adversarial role. He stated: (A) he wanted to be "an enemy of both public defenders;" (B) he wanted to "make things more difficult for them;" and (C) because he believed that they had caused problems for him, "I'm going to cause them a lot of problems."
3. Mr. Rhome said he cannot work with any public defender in the Seattle area except one that works for "ACA" named "Jim Koenig."

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4. Mr. Rhome spoke extensively about Ms. Kialini Brown. Much of the time, it was difficult to understand the points that he was making about Ms. Brown. My impression was that he believed that his attorneys were telling him "lies" about Ms. Brown and that he believed Ms. Brown was telling "lies" about him to others. Mr. Rhome also spoke extensively about how he believed that Ms. Brown was having sexual relations with guards at the King County Jail. He believed that Ms. Brown, other female inmates, and guards were involved in group sexual activities and were engaging in "unprotected sex." He reported that Ms. Brown had written a number of letters to him while she was in jail and said these had been delivered to him by other inmates and "trustees." Asked what had become of these letters, he said that he had given them to "trustees (it was unclear as to why he might have done so)" and they had either lost or disposed of them. My impression was that he believed that Ms. Brown had "told lies" about her involvement in the death of Ms. Flynn and his involvement in the victim's death.
5. Mr. Rhome discussed his recent evaluation and hospitalization at Western State Hospital. He said the staff believed he was "competent." He also said that he had "refused" their evaluation.
6. Mr. Rhome expressed his desire to return to Western State Hospital for another evaluation. My impression was that a primary reason he wanted to go to Western State was so that he could get out of the King County Jail, which he described as "very intense." I pointed out that he had refused to be evaluated during his last hospitalization at Western State, and asked why he would be more cooperative this time. He said he wanted to "explain to the doctors what's going on." He continued that he wanted to go to Western State so that he could demonstrate that his attorneys had lied about him. Mr. Rhome also expressed anger about previous forensic evaluations at Western State, asking how they could find him "competent" at one time and "incompetent" at another time.
7. He said he was not taking any medications at the time of our meeting, and said there was "No need."
8. He indicated that he was "desperate to want to go to trial" and believes that he is fully competent to do so. My impression was that he did not grasp the risks that he is facing in going to trial, believes that he has done nothing wrong, and believes that he will not face any punishments. Also, as he discussed going to trial, he launched into an angry speech about his attorneys and his intention "to cause them a lot of problems" in the courtroom.
9. Mr. Rhome reported that he has "never trusted anyone."

Summary and conclusions

Demar Rhome was referred for psychological evaluation by his attorneys to aid in assessing competency to stand trial. He refused to allow me to evaluate him, however, he spoke with me for about an hour and this provided considerable information about his current state of mind. The Court has ordered me to provide an evaluation of Mr. Rhome based on my meeting with him and a review of his records.

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Diagnostic considerations: A review of Mr. Rhome's records indicates that he has shown significant problems in terms of emotional, behavioral, and cognitive functioning since he was a toddler. Records indicate that he was delayed in terms of fine and gross motor skills and language development. Also, since early childhood, he has shown problems with impulse control and aggression. He might be at greater risk of having psychiatric problems due to genetic vulnerability; his mother reportedly has shown "psychotic" symptoms and his older half-sister reported has been diagnosed with "schizophrenia." Mr. Rhome also experienced physical, emotional, and sexual abuse while growing up, was separated from his family (his mother lost custody of him), and went through multiple housing placements while growing up.

During adolescence, Mr. Rhome was hospitalized a number of times for his psychiatric problems, received many years of outpatient psychiatric care and counseling, and was placed in special programs for youth with significant emotional/behavioral problems. Records from Fairfax indicate that the client showed significant behavioral problems, and he was routinely diagnosed as having an oppositional defiant disorder. In addition, psychiatrists at Fairfax diagnosed him as having a delusional disorder and he wrote that he showed paranoid ideation. During his adolescence, he was treated with a number of antipsychotic medications. Records indicate that, during his adolescence, he was diagnosed with mild mental retardation. Psychiatrists were concerned that his cognitive deficits contributed to his problems with trusting others and his having difficulty grasping reasons for the decisions and behaviors of others. One psychiatrist thought he might have Asperger's disorder, a neurological condition that affects cognition, behavior, and emotional functioning.

Paranoia. As an adult, Mr. Rhome has shown significant problems with paranoia. Clinicians are in agreement that Mr. Rhome experiences paranoia, but there has been disagreement about whether his paranoia reflects psychotic thought processes or is reflective of a non-psychotic paranoid personality disorder. Reviewing his records, there are some references to his possibly responding to internal stimuli but, in general, clinicians have not seen evidence of his experiencing visual or auditory hallucinations during inpatient hospitalizations. However, the content of his paranoid ideation has been considered highly pathological (i.e., worrying that people will castrate or perform a lobotomy on him) and he has been diagnosed as having a psychotic disorder not otherwise specified or a delusional disorder. In addition, some clinicians wrote that Mr. Rhome's cognitive problems are likely to contribute to his paranoia; he is more likely to distrust others or be suspicious because of difficulties with judgment and reasoning.

Grandiosity. Mr. Rhome has been diagnosed as having a narcissistic personality disorder or a personality disorder NOS with narcissistic features. According to the DSM-IV-TR, "the essential feature of Narcissistic Personality Disorder is a pervasive pattern of grandiosity, need for admiration, and lack of empathy that begins by early adulthood and is present in a variety of contexts (page 714)." Although records indicate that Mr. Rhome can be extremely egocentric and grandiose, I think it is possible that some of his symptoms (e.g., belief that he is extremely handsome and that women are highly attracted

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to him, that he is the only "sane" person in his environment) are better explained by grandiosity associated with paranoia than simple narcissism.

Antisocial behavior. During Mr. Rhome's adolescence and his young adult years, there has been consensus that he shows antisocial behavior. As an adolescent, he typically was diagnosed with oppositional defiant disorder and, as an adult, he typically has been diagnosed as having an antisocial personality disorder or a personality disorder NOS with antisocial features.

Cognitive functioning. Dr. Schaeffer noted that Mr. Rhome has received IQ scores ranging between the moderate mental retardation and borderline intellectual ranges. Mr. Rhome has told clinicians that the reason he scored poorly on some of these efforts was due to lack of effort. While this might be the case, it is possible that his "lack of effort" actually was caused by disorganized thinking and inability to focus associated with his psychiatric problems. My sense is that, if Mr. Rhome were relatively stable psychiatrically, he likely would be functioning in the borderline range of intelligence.

In addition, I think it is quite possible that Mr. Rhome has neurocognitive deficits that are not common among people with borderline intelligence. I think it is possible that problems with executive functioning contribute to his paranoia, impulsivity, tangential thought processes, and inability to inhibit aggression. Also, he was diagnosed with attention-deficit/hyperactivity disorder when he was a child and adolescent.

Competency: As I reviewed the forensic evaluations conducted by psychiatrists and psychologists at Western State Hospital, there was considerable evidence that Mr. Rhome has a basic understanding of the legal system and the charges that he is facing. Over the years, clinicians have questioned whether he was competent to assist his defense because of his psychiatric problems. In 2002, after an outpatient evaluation at the King County Jail, Mr. Rhome was hospitalized at Western State for further assessment and to restore his competency. During that stay, Dr. Schaeffer wrote, "My opinion regarding Mr. Rhome's competency to stand trial is that, in his present medicated mental state, he does possess the basic and fundamental capacity to understand the nature of the charges against him and he does possess the basic and fundamental capacity to rationally participate in his own defense." Dr. Schaeffer also provided specific recommendations about ways to assist Mr. Rhome in participating in his defense (e.g., talking slowly, ways of increasing trust). In Dr. Schaeffer's report, she wrote that he was "medicated" with risperidone at WSH and, to "ensure compliance, his medications were crushed."

At the present time, I do not believe that Mr. Rhome has the basic and fundamental capacity to rationally participate in his own defense. I believe that his paranoia severely interferes with his ability to work with his attorneys, and that an ability to assist his attorneys will be critical to any chance that he has at a successful defense. Reading over the Certification for Determination of Probable Cause and charges filed against Mr. Rhome, it was my impression that it will be essential for him to appreciate the gravity of the charges that he is facing (he did not seem to do so when I met with him) and to assist his attorneys in distinguishing between his actions and those of Ms. Kialini

Demar Rhome

16

Brown with respect to their alleged roles in the murder of Ms. Flynn. At this time, Mr. Rhome believes that his attorneys have lied to him and are working with the prosecuting attorney against him. Rather than cooperating with his attorneys, my sense is that he will interact with them in a hostile manner and, in a courtroom, might use this as a forum to argue with and condemn his attorneys. Such actions will prevent him from assisting in his defense.

Mr. Rhome wants to go back to Western State Hospital and said he would be willing to cooperate with staff there. At the same time, he admits that the primary reason he wants to go to WSH is to get away from the King County Jail, not to receive help for his mental health or restore his competency. I do not believe that Mr. Rhome is "faking" his paranoia in an attempt to be sent to WSH. Also, I think that treatment at WSH provides the best chance of restoring his competency (regardless of whether his promises to cooperate are simply being offered at this time so that he might be sent to this hospital). To increase the chances that Mr. Rhome would participate in a meaningful way at WSH, it might be wise to have him sign a contract beforehand that spells out the kinds of treatment that WSH could offer him and his obligations as a patient. If WSH professionals were of the opinion that Mr. Rhome would benefit from taking medication to help him with his mental health problems, they might coordinate efforts with King County Jail psychiatrists to start Mr. Rhome on a medication before being transferred to WSH. In that way, he would be demonstrating his willingness to cooperate with treatment before going to WSH.

Should Mr. Rhome be treated at WSH, it is unclear to what extent his competency could be restored. Based on a review of his records, it is likely that he will still have problems with some degree of paranoia. Hopefully, the level of paranoia would be decreased and he would be able to think more clearly. Still, it is unclear whether he would be able to trust and work with his current attorneys at that time. There is a good chance that he will not be able to do so and other attorneys will need to assist him.

At the present time, I would recommend against consideration of replacing Mr. Ejarque and Mr. Peale as the client's attorneys to find out if he could work with a new defense attorney. I believe that he is so paranoid and agitated at this time, he will not be able to work with another attorney, even with Mr. Koenig. Rather than contaminate his relationship with a new attorney (i.e., due to his current level of paranoia), I think it would be better to wait until after restoration efforts at WSH to (A) find out if he could work with Mr. Ejarque or Mr. Peale or (B) have a fresh start with a new attorney that he does not currently mistrust.

DSM-IV Diagnoses

Axis I	298.9	Psychotic disorder not otherwise specified
		Attention-deficit/hyperactivity disorder by history
		Rule out cognitive disorder not otherwise specified

Demar Rhome

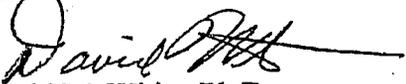
Axis II 301.9 Personality disorder not otherwise specified with paranoid and antisocial features.

V62.89 Borderline intellectual functioning

Axis III Defer to medical

Axis IV Stressors: Legal problems, incarceration, coping with chronic mental illness

Axis V GAF = 30


David M. White, Ph.D.
Licensed Psychologist

APPENDIX G

COPY

NO. 58072-8-1 DIVISION ONE

JUL - 9 2007

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DEMAR RHOME,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GREGORY P. CANOVA
THE HONORABLE RONALD KESSLER
THE HONORABLE NICOLE MACINNES

BRIEF OF RESPONDENT

NORM MALENG
King County Prosecuting Attorney
DANIEL T. SATTERBERG
Acting King County Prosecuting Attorney

DEBORAH A. DWYER
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

52-54, 56, 65, 68, 79, 122-24. He urged the jury not to hold him accountable. 13RP 153.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING RHOME COMPETENT.

Rhome claims that the trial court abused its discretion in finding that he was competent to stand trial. To the contrary, the trial court held a hearing at which it heard testimony from an expert retained by Rhome, who opined that Rhome was not competent, as well as from a psychologist from WSH, who concluded that he was. Based on the number and quality of observations by the psychologist from WSH, the trial court accepted that expert's conclusion. This was not an abuse of discretion.

a. Relevant Facts.

On January 7, 2005, the trial court signed an Order of Commitment for Observation, directing that Rhome be committed to the Department of Social and Health Services for evaluation of his competency to stand trial, as well as his capacity to commit the crime charged. Rhome was transported to WSH for this purpose. CP 7-9.

In a Forensic Psychological Report dated March 25, 2005, Dr. Jason Dunham, a forensic psychologist at WSH, detailed interactions that he and the hospital staff had with Rhome over the course of the

12-day stay. Ex. 3. Dr. Dunham conducted a clinical interview with Rhome at the beginning of the evaluation. Ex. 3 at 5, 6, 11-12. While Rhome refused to participate in any additional clinical interviews, he was under 24-hour clinical observation by WSH staff, and extensive notes from these observations were included in the report. Ex. 3 at 5, 6, 6-11. Staff particularly noted that Rhome was manipulative, disruptive, defensive and narcissistic. Ex. 3 at 6-11.

Dr. Waiblinger, the ward psychiatrist, described Rhome as "self-serving, antisocial and unpleasant," and "inappropriate with authority," but saw no symptoms of mental illness. Ex. 3 at 11.

Dr. Dunham added that "[I]terally every member of [Rhome's] treatment team and every staff person on ward F2 that I consulted with provided essentially the same information – that Mr. Rhome is an extremely antisocial person with no signs of a mental disorder." Ex. 3 at 6.

Dr. Dunham concluded that Rhome did not suffer from a mental illness, but rather "a dangerous combination of antisocial and narcissistic personality disorders." Ex. 3 at 12. Dr. Dunham found no basis to conclude that Rhome was not competent to stand trial:

He does not suffer from any mental disorder that would inhibit his trial competency. I recognize that his attorneys will most likely have difficulty working with him. However, his uncooperative and argumentative attitude is based upon his severe personality disorder rather than on

any mental illness, and a personality disorder alone is not a basis for incompetency.

Ex. 3 at 13.

Rhome's attorneys obtained an independent evaluation from Dr. David White, a clinical psychologist and neuropsychologist. Dr. White submitted a report on May 25, 2005, in which he described the meeting he had with Rhome at the King County Jail. Ex. 1. Dr. White reported that Rhome "would not undergo a psychological evaluation," but "spoke in an agitated manner for about one hour." Ex. 1 at 1. Dr. White "did not attempt to engage in a typical clinical interview," but essentially listened to Rhome talk. Ex. 1 at 12. Dr. White noted Rhome's intense distrust of and anger toward his attorneys. Ex. 1 at 12. Dr. White also detailed Rhome's psychiatric records, dating from 1998. Ex. 1 at 2-12. Dr. White agreed with several previous evaluators that Rhome suffered from a "[p]sychotic disorder not otherwise specified." Ex. 1 at 2, 7, 9, 16.

Dr. White concluded that Rhome was not competent to stand trial.

He focused on Rhome's ability to assist counsel:

At the present time, I do not believe that Mr. Rhome has the basic and fundamental capacity to rationally participate in his own defense. I believe that his paranoia severely interferes with his ability to work with his attorneys, and that an ability to assist his attorneys will be critical to any chance that he has at a successful defense. . . . Rather than cooperating with his attorneys, my sense is that he will interact with them in a hostile manner and, in a courtroom,

might use this as a forum to argue with and condemn his attorneys. Such actions will prevent him from assisting in his defense.^{6]}

Ex. 1 at 15-16.

The trial court held a hearing to determine competency on June 8, 2005. Dr. White emphasized Rhome's distrust of his attorneys, and Rhome's expressed desire to somehow counteract their courtroom strategy. 1RP 29-30. Dr. White expressed the opinion that Rhome was not capable of rationally assisting his attorneys in his defense, and thus was not competent to stand trial. 1RP 16.

Dr. Dunham, whose training in forensic psychology was far more extensive and specific than Dr. White's, did not agree with Dr. White's conclusion. 1RP 44-45, 68-69, 112. Dr. Dunham said that a person could have a severe personality disorder, or even a severe mental illness, yet still be competent to stand trial. 1RP 83. He stressed the importance of looking at "functional behavior" in assessing whether a person has the *ability* to work with his attorney and assist in his own defense. 1RP 83-84. The time to observe genuine behavior is when a person does not know he is being observed, and Rhome's time at WSH afforded an opportunity for this type of observation. 1RP 106-07. Dr. Dunham concluded that, while

⁶ Rhome ultimately represented himself at trial, thus obviating any need to get along with his attorneys.

Rhome would undoubtedly prove difficult to work with, he was capable of assisting his attorneys. 1RP 89-90. Dr. Dunham saw no reason to doubt Rhome's competency to stand trial. 1RP 90.

The court heard argument from the parties. Defense counsel argued that, because Rhome thought so highly of himself, he was simply unable to receive information or advice from his attorneys, evaluate it rationally, and react accordingly. 1RP 130-31. Rhome did not seem to appreciate how counsel could be of benefit to him, given his situation. 1RP 132. Rhome believed that any suggestion that was inconsistent with his own innocence was a result of defense counsel colluding with the prosecutor. 1RP 135. Counsel urged the court to find that mental illness prevented Rhome from assisting in his own defense, and to return Rhome to WSH for medication to restore competency.⁷ 1RP 133, 137-38.

The State urged the court to place greater weight on Dr. Dunham's opinion, because his training and education were more focused on the evaluation of a criminal defendant's competency, and because Dr. Dunham had the advantage of more time to observe Rhome, as well as the input of staff. 1RP 140-41, 143. The State recognized that Rhome's determination to control his situation would likely make it difficult for his attorneys to

⁷ Dr. Dunham testified that Rhome was not medicated during his stay at WSH because "[h]e didn't need any." 1RP 74.

work with him. 1RP 141-42. The State nevertheless urged the court to accept Dr. Dunham's unequivocal conclusion that Rhome was competent to stand trial. 1RP 143.

The trial court clearly articulated the issue:

So the question does come down to an analysis of the available evidence to establish whether or not the defense has met its burden of establishing by a preponderance that the defendant is not able to effectively assist counsel in the preparation and presentation of his own defense.

1RP 145. In carrying out its analysis, the court found a "distinct difference in the quality of data that was available and utilized." 1RP 147-48. Dr. White based his conclusion on a one-hour meeting with Rhome during which Rhome "basically ranted," and on a review of prior reports. 1RP 148. Dr. Dunham, on the other hand, had the advantage of a one-hour intake interview attended by three other mental health professionals that went very well. 1RP 148. In addition, Dr. Dunham had a series of observations by mental health staff over a period of 12 days. 1RP 148-49.

Pointing out that "[h]is ability to assist counsel is different than his willingness to assist counsel," the trial court found that Rhome had not established by a preponderance of the evidence that he was incompetent to stand trial. 1RP 149. The court signed a written order finding Rhome competent to stand trial. CP 14-15.

b. Rhome Was Properly Found Competent.

A defendant is competent to stand trial if he is able to understand the nature of the proceedings against him and to assist in his own defense. State v. Benn, 120 Wn.2d 631, 662, 845 P.2d 289 (1993); RCW 10.77.010(14). A defendant claiming to be incompetent must convince the court by a preponderance of the evidence that this is so. RCW 10.77.090(3); see State v. Harris, 114 Wn.2d 419, 431, 789 P.2d 60 (1990) (defendant claiming incompetency to be executed has burden of proof on that issue). A trial court has wide discretion in determining the competency of a defendant to stand trial, and the court's decision will not be reversed on appeal absent an abuse of that discretion. State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985).

The trial court carefully exercised its discretion in this case. The court held a hearing, at which it heard the testimony of both experts and the argument of counsel. In reaching its decision that Rhome was able (if not necessarily willing) to assist counsel in his defense, the court took into account the data available to both experts. Based on the facts set out above, the court concluded that Dr. Dunham had data that were superior in both quality and quantity to the data available to Dr. White. Based on a preponderance of the evidence standard, the court did not abuse its

discretion in assigning more weight to Dr. Dunham's conclusions, and finding Rhome competent.

Rhome nevertheless contends that the trial court gave insufficient weight to the opinion of one of his attorneys, who believed that Rhome was unable to assist in his own defense. In making the competency determination, a trial court must give considerable weight to a lawyer's opinion as to his client's competency. State v. Hicks, 41 Wn. App. 303, 307, 704 P.2d 1206 (1985). However, there is no reason to think that the trial court did not do so in this case. Rhome's attorney expressed his frustration in dealing with his client. While Rhome's attorney believed that Rhome *could not* rationally assist him, the evidence showed more likely than not that Rhome simply *would not* assist counsel. Simple recalcitrance does not support a finding of incompetence.

2. THE TRIAL COURT PROPERLY MITIGATED THE PREJUDICIAL EFFECT OF TESTIMONY ABOUT RHOME'S VIOLENT BEHAVIOR TOWARD HIS FORMER GIRLFRIEND.

Rhome contends that the trial court failed to mitigate the prejudice when a detective related an allegation made by a prior girlfriend that Rhome had raped and assaulted her. He argues that nothing short of an instruction to disregard the testimony was sufficient. This is not correct. Rhome failed to timely object to the testimony, and instead cross-

APPENDIX H

FILED

2005 JUN 13 AM 11:30

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-C-09947-0 Jca

vs.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING DEFENDANT'S
COMPETENCY

Demar Rhove

Defendant,

June 8, 2005

THIS MATTER having come on regularly for hearing on ~~April 25, 2005~~ on

motion of the State of Washington for a determination of defendant's competency; the State being represented by Prosecuting Attorney Norm Maleng, by and through his deputy,

Hygh Barber

; the defendant appearing in person and being

represented by *Walker Peale & Ray E. Jorgensen*; the State, the defendant and defense

counsel all speaking in support of a determination of competency; the Court having questioned

the ~~defendant and~~ defense counsel, and having read and considered the attached report of

Western State Hospital dated *March 25, 2005*, ~~2005~~ the Court now makes

and enters the following

*and having heard testimony
from Dr. Durham for the state
of Dr. White for the defense.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING DEFENDANT'S COMPETENCY - 1

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955



FINDINGS OF FACT

I.

The defendant understands the nature of the proceedings against him/her and is able to effectively assist counsel in the defense of his/her case.

II.

The defendant has the ability to understand the nature and consequences of a change of plea.

CONCLUSIONS OF LAW

I.

The defendant is competent to stand trial.

II.

The defendant is competent to enter a plea to the charges.

DONE IN OPEN COURT this 8th day of June, 2005

Sydney P. Cannon
JUDGE

Presented by:

[Signature]
Deputy Prosecuting Attorney, WSBA # 20420
91002

Copy received; approved as to form:

[Signature] 2827
Attorney for Defendant, WSBA #

[Signature]
Ray E. [unclear] 23729

APPENDIX I

FILED

2005 JUN 10 PM 12:37

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 03-C-09947-05em

vs.

Demar Aboue

ORDER ON CRIMINAL
MOTION
(ORCM)

Defendant.

The above-entitled Court, having heard a
motion from Defendant to fire Counsel

IT IS HEREBY ORDERED that
Walter Peale & Ray Bjarque are
terminated pending appointment of new
counsel.
confirmation date is 6/16/05 @ 8:30 AM

DATED: 6-9-05

[Signature]

Deputy Prosecuting Attorney

Walter Peale 7885

Attorney for the Defendant

Order on Criminal Motion (ORCM)

[Signature]
JUDGE

05/02

ORIGINAL

APPENDIX J

FILED
KING COUNTY, WASHINGTON

JUN 16 2005

SUPERIOR COURT CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

STATE OF WASHINGTON

Plaintiff,

NO. 03-C-09941-0 SEA

vs.

**ORDER ON CRIMINAL
MOTION
(ORCM)**

Deman Shamate Rhone

Defendant.

The above-entitled Court, having heard a motion to substitute counsel, prior counsel Wilton Perle and Mr. Romanus having been discharged, and OPD having appointed Michael Danko to represent the defendant

IT IS HEREBY ORDERED that Michael Danko shall be attorney of record

DATED: 6.16.05

[Signature]
Deputy Prosecuting Attorney

Michael Danko
Attorney for the Defendant 14312

Order on Criminal Motion (ORCM)

[Signature]
JUDGE

05/02

APPENDIX K

FILED
KING COUNTY, WASHINGTON

JUN 27 2005

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Demos Rhone,

Defendant.

03-C-09947-0 SEA
No. SEA

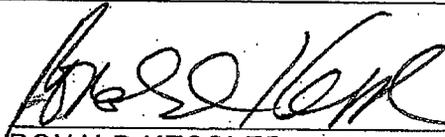
ORDER Permitting Defendant
to proceed Pro Se

Plaintiff Defendant moves the court for an order to proceed pro se

; now, therefore, it is hereby

ORDERED motion denied as Defendant was
equivocal

DATED this 27 day of June, 2005.


RONALD KESSLER, Judge

Rebecca Allen
Michael Bonds
Michael Bonds 14312
[Signature] 91002
Hugh Barber 20420

King County Superior Court
King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9113

APPENDIX L

AUG 30 2005

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
Demars Rhome
Defendant.

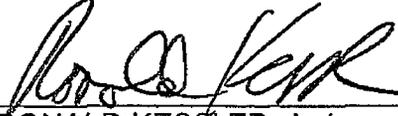
No. *03-C-09947-0* SEA

ORDER to Discharge
Defense Counsel

Plaintiff Defendant moves the court for an order to discharge
current defense attorney Michael Danko and proceed pro se
; now, therefore, it is hereby

ORDERED that the motion to discharge defense
counsel is granted and Mr Rhoma shall be allowed
to represent himself. Michael Danko is appointed
to serve as stand by counsel

DATED this *30th* day of *August*, 2005.


RONALD KESSLER, Judge

King County Superior Court
King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9113

APPENDIX M

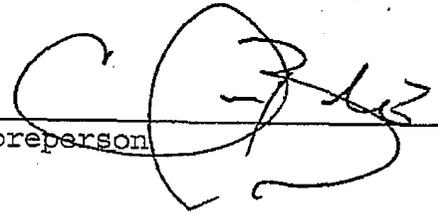
FILED
KING COUNTY, WASHINGTON
MAR 10 2006
SUPERIOR COURT CLERK
BY JANIE SMOTER
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

ORIGINAL

STATE OF WASHINGTON)
)
 Plaintiff,) No. 03-C-09947-0 SEA
)
 vs.) VERDICT FORM A
)
 DEMAR RHOME)
)
 Defendant.)

We, the jury, find the defendant DEMAR RHOME
GUILTY (write in not guilty or guilty) of the crime
of MURDER IN THE FIRST DEGREE as charged.


Foreperson

FILED
KING COUNTY, WASHINGTON

MAR 10 2006

SUPERIOR COURT CLERK
BY JANIE SMOTER
DEPUTY

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

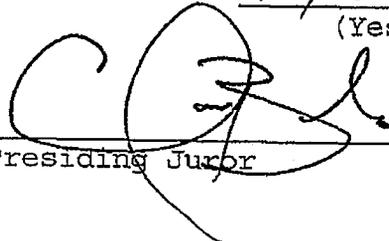
STATE OF WASHINGTON)
)
 Plaintiff,)
)
 vs.)
)
 DEMAR RHOME)
)
 Defendant.)

No. 03-C-09947-0 SEA
SPECIAL VERDICT FORM

We, the jury, return a special verdict by answering as follows:

Was the defendant or an accomplice armed with a deadly weapon at the time of the commission of the crime ?

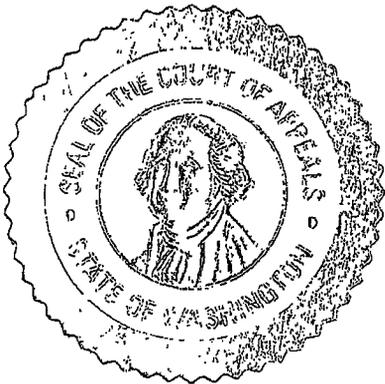
ANSWER: Yes
(Yes or No)



Presiding Juror

APPENDIX N

c: Gregory Link
Deborah Dwyer
Hon. Nicole Macinnes
Indeterminate Sentencing Review Board



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 31st day of December, 2008.

A handwritten signature in black ink, appearing to read "Richard D. Johnson", is written over a horizontal line.

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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 58072-8-I
)	
Respondent,)	
)	
v.)	
)	
DEMAR S. RHOME,	)	UNPUBLISHED OPINION
)	
Appellant.	)	FILED: February 25, 2008

ELLINGTON, J. — A jury found Demar Rhome guilty of first degree murder as an accomplice in the stabbing of Lashonda Flynn. Because the court did not abuse its discretion in finding Rhome competent to stand trial and committed no reversible error, we affirm.

BACKGROUND

Kialani Brown, a 17 year old from Vancouver, met 20 year old Demar Rhome through a telephone chat line. Within a few weeks, Brown agreed to visit Rhome in Seattle, where he lived with Lashonda Flynn. Brown arrived with her infant son on a Monday, and planned to stay until Friday. Rhome falsely introduced Flynn as his stepsister. As the week progressed, Rhome fomented distrust between the women, including repeatedly telling Brown that Flynn wanted to kill her. He advised Brown she should kill Flynn first. When Friday came, Brown did not leave as planned. On

Saturday, Brown and Rhome went to a local discount store and purchased large kitchen knives. When they returned to Rhome's house, Rhome urged Brown to kill Flynn that night. He instructed her to pretend she wanted to have sex with Flynn, tie her up, blindfold her, and then stab her.

Brown was afraid Flynn's supposed threats against her life were true, and she feared for her son as well. She followed Rhome's instructions and restrained Flynn in a bedroom. She returned to the kitchen, where Rhome showed her how to stab Flynn with a knife. She and Rhome went back to the bedroom, and Brown began stabbing Flynn. Flynn struggled, and Rhome told Brown to stab her again. Brown stabbed Flynn at least four times, once in the throat.

Rhome and Brown cleaned up the room, put the debris into two trash bags, and put Flynn's body in another trash bag. They then took a cab to Discovery Park, where they dumped the body. Rhome threatened to kill Brown if she said anything about the murder.

Police arrested both Brown and Rhome the next day. Brown told police that Rhome stabbed Flynn. She pleaded guilty to second degree manslaughter. Later, Brown admitted she was the one who stabbed Flynn and amended her plea to second degree murder. She later testified against Rhome.

Rhome has a history of mental health problems, but was found competent to stand trial. At his request, he was allowed to proceed pro se. According to Rhome, Brown instigated the crime by offering to kill Flynn in exchange for Rhome's promise to kill the father of her child. When Rhome said he wanted no part of any murders, Brown purchased the knives on her own. The night of the stabbing, Rhome walked in on the

two women having sex. Brown came after him with a knife, and Rhome was afraid to interfere when Brown attacked Flynn. He helped Brown clean up because he was scared and confused. Rhome claimed he was experiencing mental stress and posttraumatic stress disorder that clouded his thinking at the time.

The jury decided Rhome had acted as an accomplice and found him guilty of first degree murder.

DISCUSSION

Rhome first contends the court abused its discretion by finding him competent. The Fourteenth Amendment to the United States Constitution and Washington law both prohibit the conviction of persons incompetent to stand trial. In re Pers. Restraint of Fleming, 142 Wn.2d 853, 861, 16 P.3d 610 (2001); RCW 10.77.050.

To be competent, a defendant must understand the charges and have the ability to assist counsel. State v. Marshall, 144 Wn.2d 266, 277, 27 P.3d 192 (2001). Under RCW 10.77.010, incompetency means, "a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." Rhome argues only that he was incapable of assisting his attorney, not that he failed to understand the charges against him.

When determining competency, the court considers the "defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel." Fleming, 142 Wn.2d at 863 (quoting State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)). Defense counsel's opinion is not determinative, but carries considerable weight. State v. Harris, 122 Wn. App. 498, 505, 94 P.3d 379 (2004). We review a finding of competency for abuse of

discretion. Id. A court abuses its discretion when its decision or order is manifestly unreasonable, or discretion is based on untenable grounds or untenable reasons. State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997).

Rhome argues that deeply paranoid thinking led him to believe his counsel was assisting the State and made him incapable of the communication necessary to assist in his own defense. At the competency hearing, the State presented the report and testimony of Dr. James Dunham, a forensic psychologist at Western State Hospital (Western State) who had completed between 150 and 200 competency evaluations. Dr. Dunham conducted a personal interview with Rhome, reviewed Rhome's other Western State medical records, and reviewed staff reports based on 12 days of continuous observation. Dr. Dunham observed no signs of psychosis or bizarre delusions, nor did he prescribe any medication. According to Dr. Dunham, Rhome's deep-seated fears that his attorney and the justice system were conspiring against him did not rise to the level of paranoia. He diagnosed Rhome with a severe personality disorder, but not a mental illness:

Mr. Rhome was oriented to person, place, time, and situation. His memory appeared intact, his attention and concentration abilities were adequate, and his overall level of intelligence appeared to be in about the low average range given his vocabulary, fund of information, and understanding of complex terminology. Mr. Rhome denied, and there was no evidence of[,] hallucinations, delusions, or any other gross psychotic experiences.

....

Mr. Rhome does not suffer from a mental illness. . . . However, he does have a severe personality disorder in the form of Narcissistic Personality Disorder and Antisocial Personality Disorder, which is a dangerous combination. . . . In fact, of all the people I have evaluated at [Western State], I would say his personality disorder is the most extreme that I have seen.

Exhibit 3 at 769. Dr. Dunham admitted that Rhome's attorneys would find their client extraordinarily difficult, but he did not think Rhome was incapable of assisting his attorneys.

Rhome presented testimony and a report by clinical psychologist Dr. David White, who is on the clinical faculty at the University of Washington and who had completed between 1,500 and 2,000 mental health evaluations, of which about 200 were for forensic purposes. Dr. White conducted a one hour interview with Rhome at the King County Jail and reviewed Rhome's medical records. He concluded Rhome's intense distrust of his attorneys reflected paranoid thinking. He diagnosed Rhome with a psychotic disorder not otherwise specified and a personality disorder not otherwise specified. He did not believe Rhome could assist his attorneys and therefore concluded Rhome was incompetent to stand trial.

Rhome's attorney told the court that Rhome could not rationally receive, process and react to information.¹ After working with Rhome for almost a year, the attorney observed that Rhome "has not been able to demonstrate to me that he recognizes anything about what he's facing in a way that allows him to make a rational decision and discuss with me rationally what's occurring." Report of Proceedings (RP) (June 8, 2005) at 131. The attorney had defended Rhome previously in an unrelated case, during which Rhome was medicated to restore competency. This time, he said, Rhome was doing nothing to help him:

He is so locked and fixed into an ideation that he believes that anything I would suggest to him inconsistent with an absolute finding of innocence is

¹ Apparently Rhome's attorney submitted a declaration to this effect, but it is not in the record. We rely on the verbatim report of proceedings.

the result of my colluding with the prosecutor, operating with the interest of the State and the system as opposed to him, whether it be racially motivated or motivated because I'm an evil person who's personally in opposition to him, it is that expression that has been made frequently and consistently for the past almost year.

Id. at 135.

Rhome emphasizes the weight to be accorded to counsel's opinion of competency and contends the court failed to give any consideration to his attorney's statements, particularly pointing out that no reference is made to them in either the written findings or oral ruling.

The record shows otherwise. The report of proceedings and oral ruling make clear that the court considered the attorney's opinion. The court expressly articulated the issue at hand:

[T]he question does come down to an analysis of the available evidence to establish whether or not the defense has met its burden of establishing by a preponderance [of the evidence] that the defendant is not able to effectively assist counsel in the preparation and presentation of his own defense.

Id. at 145. The court noted that both Rhome's expert and his attorney were unequivocal in their conclusions that Rhome was incapable of assisting in his defense. Nonetheless, after thoroughly reviewing the testimony of both experts, the court found a "distinct difference in the quality of data that was available and utilized" by Dr. Dunham compared to Dr. White and found Dr. Dunham's opinion more persuasive. Id. at 148.

The court understood the issue before it and considered the attorney's opinion and the testimony of both experts. The court was not obligated to defer to the opinion of counsel, only to consider it. The finding of competency was not manifestly unreasonable.

Rhome next contends the court abused its discretion when it mitigated the prejudicial impact of inadmissible testimony through redirect questioning instead of a curative instruction.

We review evidentiary rulings for an abuse of discretion. State v. Williams, 137 Wn. App. 736, 743, 154 P.3d 322 (2007). The trial court is in the best position to assess the impact of improper arguments and how to address them. State v. Borg, 145 Wn.2d 329, 336, 36 P.3d 546 (2001).

During his cross-examination of Detective Rolf Norton, Rhome raised the topic of a previous girlfriend, Audrey Rose Anderson. Numerous questions about Anderson continued during redirect and recross. Norton testified he spoke with Anderson once for about 15 minutes and that Anderson seemed angry with Rhome. The State asked whether Anderson told him "anything that the defendant had done to her that may have explained her anger towards him?" RP (Mar. 1, 2006) at 85. The detective replied, "She said that Demar Rhome had choked her, hit her with a frying pan, and raped her." Id. at 86. The State, not expecting this answer, asked Norton if there was anything else. The detective replied that Anderson also alleged Rhome "had tried to make her work as a prostitute." Id. Rhome did not object to either statement. Instead, during his second recross-examination, Rhome asked numerous questions that attempted to undermine both the detective's and Anderson's credibility, including whether Anderson had ever reported Rhome's alleged violent behavior to police.

Out of the jury's presence, the State conceded Norton's first statement about the assaults and rape was inadmissible. The court agreed and weighed its options for remedying the prejudice. It considered ignoring the statement and moving on,

instructing the jury to ignore the testimony, or requiring the State to affirm on redirect that no independent corroboration of Anderson's statements existed. The court thought an instruction to ignore the statement would serve only to emphasize the testimony, while an instruction to ignore all of the detective's testimony would sweep too broadly. Silence was discounted as disingenuous. The court chose the third alternative, ordering the prosecutor to discredit the statement through questioning on redirect. Rhome said he "had no problem" with that solution. Id. at 103. When the jury returned, Norton testified that he had had only one telephone conversation with Anderson, that he was not aware of anything corroborating Anderson's "allegation of violence," and that he did not follow up with Anderson because he did not feel it was necessary. Id. at 106.

Rhome now argues the court's remedy was inadequate because even after Norton's answers on redirect, the jury may have believed that criminal charges had been filed, and was never told to disregard the evidence or limit its consideration to a proper purpose.

Rhome waived this issue by failing to object. He told the court he had no problem with the proposed solution. In any event, the court's chosen remedy was not an abuse of discretion. The court considered the prejudicial impact of Norton's statement, considered three reasonable alternatives, and chose one. The court's approach—avoid repeating the statement and order the prosecution to lessen the statement's persuasive value through questioning—was not unreasonable.

Rhome also contends he was denied a fair trial because the State was allowed to present expert testimony during its case-in-chief that Rhome did not suffer from diminished capacity at the time of the murder. Such testimony would ordinarily be

offered in rebuttal, because a diminished capacity defense requires the defendant to produce expert testimony demonstrating that a mental disorder not amounting to insanity impaired the defendant's ability to form the culpable mental state required by the crime charged. State v. Atsbeha, 142 Wn.2d 904, 914, 16 P.3d 626 (2001).

Admissibility of expert testimony regarding diminished capacity is determined under ER 401, ER 402 and ER 702. Id. at 916. Decisions to admit evidence and the order in which parties will adduce proof lie within the sound discretion of the trial court. State v. Bourgeois, 133 Wn.2d 389, 399, 945 P.2d 1120 (1997) (admission of evidence); Geders v. United States, 425 U.S. 80, 86, 96 S. Ct. 1330, 47 L. Ed. 2d 592 (1976) (order of proof). Erroneously admitted evidence is not prejudicial unless "within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." State v. Thomas, 150 Wn.2d 821, 871, 83 P.3d 970 (2004) (quoting State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981)).

The facts here are highly unusual. Before trial, the court granted Rhome's motion for an evaluation at Western State to determine his capacity to form intent at the time of the murder. Dr. Barry Ward concluded that Rhome's capacity was not diminished. At a pretrial hearing, Rhome told the court he intended to "use both diminished capacity and regular defense. RP (Feb. 23, 2006) at 153-54. The court explained to Rhome that he needed to present evidence of diminished capacity other than his own testimony, but Rhome did not offer an expert to testify on his behalf. Instead, Rhome wanted to present Dr. Ward's testimony and discredit his conclusion, and to present medical records showing Rhome's history of mental health problems.

The State planned to call Dr. Ward to testify on an unrelated matter, and asked whether diminished capacity should be addressed during the State's case-in-chief, or whether the State should wait for Rhome to call Dr. Ward. The court concluded, "[W]e would want to incorporate any defense examination of Dr. Ward while he is here. I don't want Dr. Ward to have to come back twice." RP (Feb. 28, 2006) at 9. Rhome did not object.

Dr. Ward testified, also without objection, that, even taking Rhome's version of events as true, Rhome had the capacity to form intent the night of the murder. Rhome cross-examined and attempted to undermine Dr. Ward's conclusion, and encouraged the jury to make its own finding of diminished capacity based on Rhome's history of mental illness. In a colloquy after Dr. Ward's testimony, Rhome told the court, "I'm using diminished capacity. There is no question about it." RP (Mar. 7, 2006) at 171.

Because Rhome never presented an expert to testify, he was not entitled to a diminished capacity instruction. The court initially did not propose one, but thought the jury would expect one based on the references to Rhome's mental state during testimony. In addition, the court anticipated that any attempt to restrict Rhome from arguing about his mental health during closing would be unsuccessful. Consequently, the court instructed the jury that "[e]vidence of mental illness or disorder may be taken into consideration in determining whether the defendant had the capacity to form the mental states of premeditation, intent and knowledge." Clerk's Papers at 55. In closing argument, Rhome told the jury he should "not be held accountable" because "I really was suffering from mental illness" and "being drunk." RP (Mar. 9, 2006) at 41.

Rhome now contends he never raised a diminished capacity defense because he never produced an expert, so allowing the State to present evidence rebutting diminished capacity was prejudicial error.

Rhome waived this issue by failing to object. In any case, Rhome insisted repeatedly that he was raising a diminished capacity defense through the State's expert. The order in which the parties adduce their proof is a matter of discretion, and no conceivable prejudice arose from the procedure here. Rhome was permitted to attempt to discredit Dr. Ward and to argue the issue of his mental health, and he received a favorable instruction to which he was not entitled. Rhome has identified no reasons why the testimony would have been different had it occurred later in the trial. There is no reasonable probability the outcome of the trial would have changed.

Rhome next contends the court abused its discretion by allowing Brown to testify that Rhome forced himself on her a few days before the murder without first determining by a preponderance of the evidence that the act occurred.

ER 404(b) provides that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith, but it is admissible for other purposes. Before the court admits evidence under ER 404(b), it must "(1) find by a preponderance of the evidence that the uncharged acts probably occurred . . . (2) identify the purpose for which the evidence will be admitted, (3) find the evidence materially relevant to that purpose, and (4) balance the probative value of the evidence against any unfair prejudicial effect." State v. Kilgore, 147 Wn.2d 288, 292, 53 P.3d 974 (2002) (quoting State v. Pirtle, 127 Wn.2d 628, 649, 904 P.2d 245 (1995)).

The State informed the court that Brown would testify Rhome raped her once before the day of the murder. Rhome denied the allegation and argued it was another example of Brown lying and changing her story. As proof, he offered a transcript of an interview with Rhome's former attorney during which Brown said Rhome did not rape her. The court declined to look at the transcript, focusing instead on the relevancy of the testimony:

Well, whether or not it happened, whether or not she said it did or it didn't on different occasions is somewhat a different issue than whether the State would be allowed to bring it out in direct examination.

I'm going to . . . allow the State to elicit that information from Ms. Brown, given the very short time frame in which there was a relationship or at least in-person contact between the Defendant and Ms. Brown, and given the State's theory in this case, which is that Ms. Brown committed the murder or actually did the stabbing, but that it was because of the control and power exerted over her by the Defendant.

Id. at 18. To reduce the prejudicial effect of the testimony, the court instructed Brown not to use the word "rape." Brown testified that she and Rhome were sexually intimate a few times while she was at his home, and that one time Rhome wanted to have anal sex, but she did not, and Rhome "forced himself" on her. Id. at 125.

The State correctly asserts that under Kilgore, ER 404(b) decisions do not require a separate evidentiary hearing. But Kilgore does not mean the court can ignore proffered evidence. The court disregarded Rhome's evidence and failed to find by a preponderance of the evidence that the uncharged act occurred. Where the court fails to consider the evidence offered, any finding (or absence of finding) is manifestly unreasonable.

The erroneous admission of ER 404(b) evidence will lead to reversal only if there is a reasonable probability that the error materially affected the trial outcome. State v.

Pogue, 104 Wn. App. 981, 988, 17 P.3d 1272 (2001). Here, there is no such probability, because the untainted evidence against Rhome was overwhelming. It included the physical evidence, a multitude of statements Rhome made to police and mental health evaluators, Brown's other testimony, and police testimony.

Rhome last argues that the court abused its discretion by requiring him to wear a restrictive leg brace under his clothes during trial.

Absent extraordinary circumstances, a criminal defendant has a constitutional right to appear at trial free from all restraints because they may reverse the presumption of innocence in the minds of jurors. State v. Finch, 137 Wn.2d 792, 842-44, 975 P.2d 967 (1999). Before requiring a defendant to wear a restraint during trial, the court must consider on the record a number of factor such as the seriousness of the charges, the defendant's physical characteristics, previous escape attempts, the physical security of the courtroom, and the availability of alternatives. State v. Damon, 144 Wn.2d 686, 691, 25 P.3d 418 (2001). We review the determination for abuse of discretion. Id. at 692. Error is harmless unless the defendant demonstrates that the restraint had a "substantial or injurious effect or influence on the jury's verdict." State v. Hutchinson, 135 Wn.2d 863, 888, 959 P.2d 1061 (1998).

Before trial, the State raised the issue of whether Rhome should be wearing a leg brace. Rhome asked to have it removed. He claimed that he was not going to attempt escape and that the jury would notice the brace because it affected his walk. The judge, after looking at Rhome's legs and watching him walk across the court room and sit down, determined the brace's effect was minimal:

Well, I mean, of course it's not going to occur to the jurors that that has something to do with his custody status. . . . So it's not visible from

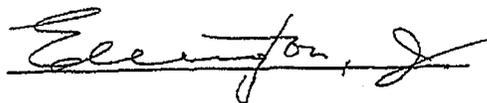
where I am. Even if it were I'm assuming that people would think it had something to do with Mr. Rhome's physical condition. Never—I mean, I work in the system, and it wouldn't even occur to me that it was a security issue.

Id. at 17–18.

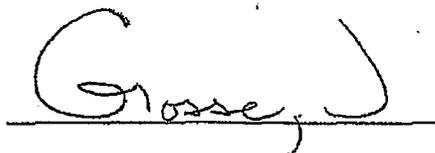
Where a restraint is visible to the jury, the court must consider the required factors on the record. However, according to the court, the brace was not visible and barely affected Rhome's movement, and if noticed by the jury, would not be linked to security. Rhome has presented no evidence to the contrary. Even if the court should have considered the factors, this case is like Hutchinson, where the court's failure to consider the effect of shackles on the record was harmless error when the jury never saw the shackles.

Rhome submitted a statement of additional grounds, but failed to present any legal or coherent factual argument. Essentially, he asks us to overturn the verdict for lack of his fingerprints on the murder weapon or to reduce his sentence. He makes no argument upon which relief can be granted.

Affirmed.



WE CONCUR:

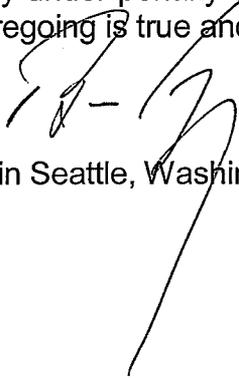


Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Michael Filipovic**, the attorney for the petitioner, at the following address: **Federal Public Defender, 1601 Fifth Avenue, Suite 700, Seattle, WA 98101**, containing a copy of the **STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION**, in IN RE PERSONAL RESTRAINT OF DEMAR **RHOME**, Cause No. **83788-1**, in the Supreme Court of the State of Washington.

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

Name



Date

02/17/2010

Done in Seattle, Washington