

08661-5

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No. 68661-5-1

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

STATE OF WASHINGTON,

Respondent,

v.

PARAMJIT SINGH BASRA,

Appellant.

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

The Honorable Brian Gain

FILED
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE
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REPLY BRIEF OF APPELLANT

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A. ARGUMENT

THE STATE'S EVIDENCE ARGUBALY ESTABLISHED INTENT TO KILL BUT FAILED TO PROVE BEYOND A REASONABLE DOUBT THE ELEMENT OF PREMEDITATION

In its reply, the State describes events that it argues establishes premeditation. As stated in the opening brief, the State conflates intent and premeditation. Arguably this evidence establishes intent, and may establish *time* to reflect, but does not establish that, in fact, Mr. Basra did reflect and deliberate. As a result, the State failed to prove the element of premeditation and Mr. Basra's first degree murder conviction must be reversed.

The State contends that Mr. Basra's statement that his wife had a problem with men and so he killed her established he premeditated. Again, this proved nothing more than he intended to kill her when he strangled her. Mr. Basra's statement only admits the killing, again establishing his intent, not deliberation. The State failed to show what about Mr. Basra's statement that his wife had a problem with men established he premeditated the murder or that he planned to kill her because of her "problem with men." Even if, as the State contends, that Harjinder's problem with men was a problem with *him*, the State fails

to show how this establishes deliberation. Again it does nothing more than show Mr. Basra intended to kill his wife.

The State also contends Mr. Basra initially struck his wife, then strangled her, establishing the element of premeditation. But this establishes nothing more than sustained violence, which has been held to be insufficient to prove premeditation. *See Austin v. United States*, 382 F.2d 129, 139 (D.C.Cir.1967) *overruled on other grounds by United States v. Foster*, 783 F.2d 1082, 1085 (D.C.Cir.1986) (where, standing alone, multiple stab wounds and sustained violence do not support an inference of premeditation).

Finally, moving from one method of strangulation to another once again establishes intent kill but not premeditation. This is nothing more than a sustained strangulation, which again fails to establish Mr. Basra in fact deliberated, thus proving premeditation. *See State v. Bingham*, 105 Wn.2d 820, 826, 719 P.2d 109 (1986) (the mere passage of time for the killing to occur, in that case the approximately 3 to 5 minutes it took for killing by manual strangulation, shows only an *opportunity* to deliberate and by itself is insufficient to sustain the premeditation element absent evidence that the defendant did *in fact* deliberate).

But more importantly, in this case the evidence established the act of strangulation only took 30-60 seconds. RP 399. Again, this establishes Mr. Basra arguably intended to kill his wife but does nothing to establish he either planned her death or deliberated prior to or during the act of strangling her.

The State's argument conflates intent and premeditation. The evidence the State points to only reinforces this argument. The State failed to prove premeditation, and as a result, Mr. Basra's conviction must be reversed.

B. CONCLUSION

For the reasons stated, Mr. Basra requests this Court reverse his conviction for first degree murder.

DATED this 1st day of May 2013.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 68661-5-I
v.)	
)	
PARAMJIT BASRA,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF MAY, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 1ST DAY OF MAY, 2013.

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