SUPREME COURT NO. 92259-4
C.O.A. No. 45941-8-II
Cowlitz Co. Cause NO. 13-1-01135-0

SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRETT EVERETTE,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington, represented by Eric H. Bentson, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS DECISION

The Court of Appeals correctly decided this matter, holding that there was sufficient evidence for the jury to find Everette guilty of attempted kidnapping in the first degree and unlawful possession of a firearm in the first degree and that a unanimity instruction was not required for Everette's felony harassment conviction because Everette's multiple threats were a continuing course of conduct. The respondent respectfully requests this Court deny review of the August 11, 2015, Court of Appeals' opinion in *State v. Brett Everette*, No. 45941-8-II, affirming Everette's convictions.

III. STATEMENT OF THE CASE

Kendra Swanger was a 21-year-old woman who used heroin. RP 12/18/13 at 52. Joey Sanchez-Juarez and his brother, David Sanchez-Juarez, would provide heroin to Swanger. RP 12/18/13 at 55, 56. Swanger temporarily broke up with her boyfriend, Brad Martin, in late July and into August of 2013. RP 12/18/13 at 54-55. During this time,

Swanger had a relationship with Joey. RP 12/18/13 at 56. Swanger maintained a friendship with Martin. RP 12/18/13 at 56.

Martin's stepfather, Nate Hart, agreed to trade his car to Joey for methamphetamine. RP 12/18/13 at 56-57. Although he took possession of the car, Joey did not provide methamphetamine to Hart. RP 12/18/13 at 57. As a result, Hart asked Swanger to get the car back from Joey. RP 12/18/13 at 57. About five days before August 12, 2013, Swanger waited until Joey had "nodded out from doin' too much heroin" and returned the car to Hart at Maria Johnson's house at 2716 Colorado Street. RP 12/18/13 at 57-58. Hart left with the car, and Swanger hid at Johnson's house for five days, avoiding contact with Joey, who was angry with Swanger for taking the car. RP 12/18/13 at 58-59, RP 12/19/13 at 150. Martin eventually joined Swanger at Johnson's house. RP 12/18/13 at 60.

Around August 9, 2013, Joey, David, Marcus Cochran, and Brett Everette met to discuss what to do about Swanger. RP 12/19/13 at 150-51. During this conversation, Everette said he had people looking for Swanger. RP 12/19/13 at 151. Everette had a black semi-automatic handgun in his holster, and this gun had previously been in Joey's possession. RP 12/19/13 at 152-54. The group devised a plan to "do what it takes" to get Joey's car back, to include using violence against Swanger. RP 12/19/13 at 154-55.

At night on August 12, 2013, Joey, David, Cochran, and another man known as "Botto" were driving in a Nissan Pathfinder. RP 12/19/13 at 155-57. While in the Pathfinder, Joey received a call from Everette saying that he had located Swanger. RP 12/19/13 at 157. The men in the Pathfinder drove to Johnson's house. RP 12/19/13 at 157-58. Swanger and Martin were in the back bedroom of Johnson's house. RP 12/18/13 at 59-60. Everette came to the door of the house and spoke with Johnson, who had never seen him before. RP 12/18/13 at 142-43. Everette told Johnson he was a friend of her boyfriend, who was in jail, and had come to check up on her. RP 12/18/13 at 142-43. Johnson allowed Everette to enter the house. RP 12/18/13 at 144.

Once inside, Everette began asking Johnson about the whereabouts of Swanger and Martin. RP 12/18/13 at 144. Everette appeared to be angry and told Johnson he wanted to find "that effin' bitch Kendra" because Swanger had taken the car of a cousin. RP 12/18/13 at 144-45. During this conversation, Everette would talk to another person on the phone in a "hushed" voice; Johnson heard Everette tell someone to come to the house "ASAP." RP 12/18/13 at 147. After their conversation ended Johnson went to the bathroom, then to the kitchen. RP 12/18/13 at 148.

Everette entered the room Swanger and Martin were in. RP at 12/18/13 at 64. Everette spoke with Martin about knowing Hart. RP

12/19/13 at 16. Everette then asked Martin, "Is this your bitch, Kendra?" RP 12/18/13 at 65. Everette became "real threatening and aggressive." RP at 12/19/13 at 16. He asked Swanger, "So, what's up with my homey's car?" RP 12/18/13 at 65. Swanger told Everette that she did not know, that she was not afraid of him, and attempted to leave the room. RP 12/18/13 at 65. Everette responded by grabbing Swanger by her hair and neck, throwing her down onto a bed, and holding her down. RP 12/18/13 at 65-67. Everette said "nobody was leaving." RP 12/18/13 at 65. Everette told Swanger he was not afraid to go back to prison, to smash her face in, or to kill her. RP 12/18/13 at 66. Swanger feared she would die. RP 12/18/13 at 96-97. Everette repeatedly told Martin, "You need to get your bitch to tell me where Joey's car is at." RP 12/18/13 at 69. Swanger looked at Martin, who appeared frightened, was looking in the opposite direction, and was avoiding eye contact with her and Everette. RP 12/18/13 at 67-68.

Everette told Swanger he was "gonna put some new holes" in her head and also said that his "homies" had a "Mossberg" in the car.[1] RP 12/19/13 at 17. Due to observing Everette gesturing and reaching for the beltline of his pants under his loose shirt, Martin believed Everette had a gun on his person. RP 12/19/13 at 20, 28, 30-31. However, Martin who

[1] "Mossberg" was a reference to a shotgun. RP 12/19/13 at 17.

chose to use heroin while this was occurring, did not personally observe the gun. RP at 12/19/13 at 31, 44, 48. Everette "flashed" a black 9-millimeter handgun at Swanger. RP 12/18/13 at 68. Swanger was familiar with this gun, as it looked like the black handgun she had previously seen Joey with. RP 12/18/13 at 68.

While in the bedroom, Everette used a cell phone to call his girlfriend "Sarah" to come over and beat up Swanger. RP 12/18/13 at 69; RP 12/19/13 at 20-21. Everette also called Dillon Payne and instructed him to "go find David and Joey and get them over to where [Swanger] was at" and provided the location, saying: "Hurry up, I have 'em, I know where they're at. We're on Colorado Street." RP 12/18/13 at 70; RP 12/19/13 at 21. Everette continued to intimidate Swanger by stating: "This isn't a game bitch" and told her she was "fucking his homies" and that "he wasn't gonna fall for her little game that she was playing." RP 12/19/13 at 22. Everette held Swanger and Martin in the room for approximately 30 minutes. RP 12/19/13 at 25. Because Swanger was aware that Everette, David, and Joey all carried guns, she became extremely afraid and began to cry and hyperventilate. RP 12/18/13 at 70-71. Johnson entered the room and Swanger exited the bedroom with her. RP 12/18/13 at 71. Everette followed them. RP 12/18/13 at 71. Everette

continued to ask where Joey's vehicle was and told Swanger that money, drugs, and jewelry were inside the vehicle. RP 12/18/13 at 71.

Everette took Swanger back into the bedroom, and left her there with Martin. RP 12/18/13 at 71. Martin turned a skateboard upside down and shoved it underneath the door to the bedroom to prevent it from opening. RP 12/18/13 at 71. Martin then removed the screen from the bedroom window, and he and Swanger exited the house onto a garbage can under the window. RP 12/18/13 at 71. Swanger and Martin ran through a gate in Johnson's backyard onto gravel. RP 12/18/13 at 75-76. Swanger tripped and fell; Martin continued to run. RP 12/18/13 at 76. As Martin ran, he heard the sound of Swanger screaming. RP 12/19/13 at 26.

As the men in the Pathfinder approached Johnson's house, Joey received another phone call from Everette, which he placed on speaker. RP 12/19/13 at 158. Everette said, "She got out of the house. Get her before she gets to the cops." RP 12/19/13 at 158. Everette then instructed the men in the car on where to take Swanger, saying, "Finish up with the plans and get her to Rainier Beach." RP 12/19/13 at 158. The men sought to take Swanger to a "secluded" location, so they would not be seen with her in a location that was in the "open." RP 12/19/13 at 165.

The men in the Pathfinder drove down an alley and observed Swanger picking herself up off the ground. RP 12/19/13 at 159. Joey told

Botto and Cochran to get up so he could grab a shotgun from under the backseat. RP 12/19/13 at 159. Joey pointed the shotgun out the window at Swanger and yelled, "Where the fuck's my car?" RP 12/19/13 at 161. David accelerated in the Pathfinder to catch up to Swanger. RP 12/19/13 at 161-62. Joey, Botto, and Cochran exited the Pathfinder. RP 12/19/13 at 162. Joey pulled Swanger by the shoulder backwards onto the ground. RP 12/18/13 at 77-78. Joey began kicking Swanger on the ground. RP 12/19/13 at 162. Because the alley was visible to others, it was not feasible to beat Swanger further in the alley. RP 12/19/13 at 165. Rather, "they tried to get her into the truck to take her to a secluded area, a place." RP 12/19/13 at 165. Joey and Cochran took hold of Swanger and dragged her between 10 and 20 feet toward the Pathfinder. RP 12/18/13 at 78; RP 12/19/13 at 163. Swanger was terrified for her life; she screamed for them to stop. RP 12/18/13 at 78-79; RP 12/19/13 at 163. As they approached the Pathfinder, Swanger observed the shotgun having fallen from the front passenger side of the vehicle. RP 12/18/13 at 79.

Robert Ross lived in a house nearby Johnson's. RP at 12/18/13 at 43-44. He heard the sound of the Pathfinder skidding to a stop and Swanger screaming. RP at 12/18/13 at 44-46. His wife called 911. RP at 12/18/13 at 45. Cochran told Joey, "Let's go, the cops are coming." RP at 12/19/13 at 163-64. Joey and Cochran released Swanger, then the men

returned to the Pathfinder. RP at 12/18/13 at 79. Ross saw at least three men enter the Pathfinder and speed off. RP at 12/18/13 at 45-46. Ross observed Swanger to be "very frightened, scared, [and] shaken up." RP at 12/18/13 at 47.

Police arrived and contacted Swanger, who was trembling and crying. RP at 12/18/13 at 80; RP 12/19/13 at 59. When police questioned Swanger about whether she believed Everette was going to kill her she responded, "I truly believed this was it for me." RP at 12/19/13 at 84. Police located the Pathfinder backed into a parking stall in the alley between Dorothy Street and 33rd Avenue. RP at 12/19/13 at 87. After permission was granted, a police search of the Pathfinder revealed a white powdery substance, needles, a scale, multiple electronic items, tools, two baseball bats, three cell phones, a blue tarp, and a 12-gauge shotgun.[2] RP at 12/19/13 at 88-90. 96, 100.

Everette was eventually located on September 5, 2013; after a struggle with police, he was taken into custody. RP at 12/19/13 at 133-36. Everette was charged with attempted kidnapping in the first degree, felony harassment, and unlawful possession of a firearm. CP at 31-33. The case proceeded to trial, and the jury found Everette guilty of all three charges. RP 12/20/13 at 132. These convictions were affirmed.

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[2] The shotgun recovered was an Ithaca Model 37. RP 12/19/13 at 90.

IV. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION

Because Everette's petition fails to raise a significant question of law under the Constitution of the State of Washington or the United States, it should be denied. Under RAP 13.4(b) a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Everette's sole claim under RAP 13.4(b) is that his petition raises a significant question of law under the Constitution of the State of Washington or the United States. Everette's argument fails. The Court of Appeals correctly found that (1) there was sufficient evidence for the jury to find Everette guilty of attempted kidnapping in the first degree; (2) there was sufficient evidence for the jury to find Everette guilty of unlawful possession of a firearm in the first degree; and, (3) no unanimity instruction was required for Everette's felony harassment conviction because the threats represented a continuing course of conduct. For these reasons, Everette's petition fails to raise a significant question of law

under the Constitution of the State of Washington or the United States, and does not meet the criteria required for review under RAP 13.4(b).

A. There was sufficient evidence for the jury to find Everette guilty of attempted kidnapping in the first degree.

There was sufficient evidence for the jury to find Everette guilty of attempted kidnapping in the first degree. The Washington Supreme Court has stated:

> When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). When determining the sufficiency of evidence the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt." *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

The crime of kidnapping in the first degree, as is applicable in this case, is defined as follows: "A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent...(c) [t]o inflict bodily injury on him or her; or (d) [t]o inflict extreme mental distress on [her]." RCW 9A.40.020(1)(c)(d). According to RCW 9A.40.010(1): "'Abduct' means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force." "A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime." RCW 9A.28.020(1). Thus, in convicting Everette of attempted kidnapping in the first degree, the jury found that Everette took a substantial step toward intentionally abducting Swanger with intent to inflict bodily injury upon her or to inflict extreme mental distress.

In his appellate brief, Everette conceded that when he held Swanger in the room, he restrained her. *Appellant's Court of Appeals Brief* at 18. However, Everette argues that there was insufficient evidence of restraint to show that Swanger was held in a place she was not likely to be found, by claiming the restraint was "incidental." Everette's argument is without merit. First, incidental restraint does not create a due process claim of sufficiency of the evidence with regard to kidnapping, and "this

argument ignores the fact that RCW 9A.40.010(1) allows the State to prove abduction by establishing that the defendant restrained a person [by] using or threatening to use deadly force." Court of Appeals' opinion in *State v. Brett Everette*, No. 45941-8-II at 5. Second, Everette fails to consider the evidence of his complicity in the attempt to secret Swanger in a place she was unlikely to be found.

1. Sufficient evidence was presented for the jury to find that Everette took a substantial step toward restraining Swanger by threatening deadly force.

Because Everette restrained Swanger by threatening the use of deadly force, sufficient evidence was presented for the jury to convict him of attempted kidnapping in the first degree. With regard to attempted kidnapping, "[t]he abduction element of the crime may be established by proving the defendant restrained a person by 'using or threating to use deadly force.'" *State v. Majors*, 82 Wn.App. 843, 846, 919 P.2d 1258 (1996). Although Everette concedes he restrained Swanger and does not argue that he failed to do so by threatening deadly force, he maintains that this was "incidental restraint" that was insufficient evidence of attempted kidnapping. Everette's argument is flawed. Incidental restraint does not apply to due process claims of sufficiency of the evidence as Everette argues it should here. Further, there was sufficient evidence presented that

Everette took a substantial step toward restraining Swanger by threatening to use deadly force.

The Supreme Court recently addressed confusion regarding the application of "incidental restraint" to kidnapping. *State v. Berg*, 181 Wn.2d 857, 337 P.3d 310 (2014). In *Berg*, the defendants held the victim on the ground at gunpoint for approximately 30 minutes and repeatedly threatened to kill him if he moved. *Id.* at 872-73. The defendants argued that the evidence of kidnapping was insufficient because it was merely incidental to a robbery. *Id.* at 862. The Supreme Court stated: "This court has never held that evidence of kidnapping is insufficient where the kidnapping conduct is incidental to another crime as a matter of due process." *Id.* at 872. The Court clarified that a prior ruling in *Green*, "did not create a new requirement that due process is not satisfied when kidnapping conduct is incidental to the commission of another crime." *Id.* at 873. The Court held that by restraining the victim's movements through the threat of deadly force, sufficient evidence was presented for the jury to find an abduction occurred. *Id.*

Here, Everette argues that due process was not satisfied as to the sufficiency of the evidence by claiming restraint was "incidental" under *Green*. This is precisely the analysis rejected by the Supreme Court in *Berg*. If evidence of restraint is sufficient, it does not become insufficient

simply because it is incidental to another crime. Further, there was ample evidence of restraint by threat of deadly force. After forcing Swanger onto the bed, holding her down, and saying nobody could leave, Everette told Swanger he was not afraid to go back to prison, smash her face in, or kill her. Everette said that his "homies" had a "Mossberg" down in the car, referring to the shotgun. He threatened to shoot Swanger, saying that he was "gonna put some new holes" in her head. Finally, he produced a black 9-millimeter handgun as she stood over Swanger. He threatened the use of deadly force while restraining Swanger in the room for 30 minutes. Swanger was so afraid that she attempted to escape by exiting the house through a window. Everette then made further attempts to restrain her by instructing the men in the Pathfinder to "[g]et her before she gets to the cops[,]" and to take her to "Rainier Beach." Thus, there was sufficient evidence for the jury to find Everette took a substantial step toward abducting Swanger when he restrained her by threatening deadly force.

2. Sufficient evidence was presented for the jury to find that Everette was an accomplice to attempting to secret or hold Swanger in a place she was unlikely to be found.

When all reasonable inferences are drawn in favor of the State and against Everette, there was sufficient evidence for the jury to find Everette guilty as an accomplice to attempted kidnapping in first degree. The law

regarding accomplice liability is well-established: "The complicity rule in Washington is that any person who participates in the commission of the crime is guilty of the crime and is charged as a principal." *State v. Silva-Baltazar*, 125 Wn.2d 472, 480, 886 P.2d 138 (1994). "Accomplice liability represents a legislative decision that one who participates in a crime is guilty as a principal, regardless of the degree of the participation." *State v. Hoffman*, 116 Wn.2d 51, 804 P.2d 577 (1991) (citing *State v. Randle*, 47 Wn.App. 232, 237, 734 P.2d 51 (1987), *review denied*, 110 Wn.2d 1008 (1988)). As the a plain reading of the statute reveals, complicity is broadly defined and represents a legislative attempt to deter any person from participating in a crime. *See* RCW 9A.08.020. Accomplice liability attaches when the defendant has knowledge that his actions will promote or facilitate the commission of the particular crime at issue. *State v. Bauer*, 180 Wn.2d 929, 943, 329 P.3d 67 (2014) (citing *State v. Stein*, 144 Wn.2d 236, 245, 27 P.3d 184 (2001)).

Here, there was sufficient evidence to find that an attempt was made to secret Swanger in a place where she was unlikely to be found, and that Everette was an accomplice to this attempt. During the trial, the jury heard testimony that a few days prior to August 12, 2013, David, Joey, Cochran, and Everette met to discuss Swanger and devised a plan to "do what it takes" to get Joey's car back, to include using violence against

Swanger. Everette called Joey when he had found Swanger and provided her location. Everette's comment that his "homies," had a "Mossberg" down in the car was corroborated when the shotgun was located in the Pathfinder. After Everette threatened Swanger and she escaped, he called the men in the Pathfinder and informed them that Swanger had fled, saying, "She got out of the house. Get her before she gets to the cops." Everette instructed them to "[f]inish up with the plans and get her to Rainier Beach." Upon receiving this call, the men in the Pathfinder drove to Swanger's location, pulled her to the ground, assaulted her, and dragged her 10-20 feet toward the Pathfinder. The purpose of getting her into the Pathfinder was to take her to a secluded location. This demonstrated that with knowledge it would promote or facilitate the crime of attempted kidnapping, Everette solicited, commanded, encouraged, or requested another to commit the crime or aided or agreed to aid another in planning or committing the crime. Thus, there was sufficient evidence for the jury to find Everette was an accomplice to attempting to restrain Swanger by secreting or holding her in a place she was not likely to be found.

B. There was sufficient evidence for the jury to find Everette guilty of unlawful possession of a firearm in the first degree.

When considered in the light most favorable to the State and interpreted most strongly against Everette, there was sufficient evidence

for the jury to find Everette unlawfully possessed a firearm in the first degree.[3] "A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. The jury heard testimony from Cochran that a few days prior to the August 12, 2013, he observed Everette with a black .45 caliber or 9-millimeter handgun that had previously belonged to Joey. Everette possessed this gun when he discussed looking for Swanger. Swanger observed Everette display a 9-millimeter handgun that she had previously seen in Joey's possession. Further, at the time Swanger observed the gun, Everette was threatening to kill her and put holes in her head. If the jury found Swanger and Cochran's testimony regarding direct observation of Everette in possession of the handgun to be credible, this evidence was sufficient to find Everette guilty.

C. Because the threats were a continuing course of conduct, Everette's felony harassment conviction did not require a unanimity instruction.

Because Everette's threats to Swanger were a continuing course of conduct, a unanimity instruction as not required. "A multiple acts unanimity instruction is not required when the State presents evidence of multiple acts that indicate a 'continuing course of conduct.'" *State v. Locke*, 175, Wn.App. 779, 803, 307 P.3d 771 (2013) (citing *State v.*

[3] Everette was not permitted to possess a firearm by virtue of having been convicted of a serious offense on October 10, 2002. RP 12/19/13 at 206; CP at 34.

Crane, 116 Wn.2d 315, 326, 804 P.2d 10 (1991); *State v. Love*, 80 Wn.App. 357, 361, 908 P.2d 395 (1996)). The unanimity requirement announced in *Petrich* was never intended to require a unanimity instruction where "a continuing course of conduct may form the basis of one charge in an information." *State v. Petrich*, 101 Wn.2d 566, 570, 571, 683 P.2d 173 (1984). As an example of a continuing offense, the *Petrich* Court cited *People v. Mota*, 115 Cal.App.3d 227, 171 Cal.Rptr. 212 (1981), where a repeated gang rape of a victim over a several hour period was held to be a continuing offense as to each defendant. *Id.* When the State presents evidence of multiple acts that indicate a continuing course of conduct, a unanimity instruction is not required. *Id.* at 803 (citing *Crane*, 116 Wn.2d at 326; *Love*, 80 Wn.App. at 361). The jury must simply agree that the conduct occurred. *State v. Marko*, 107 Wn.App. 215, 220, 27 P.3d 228 (2001). "'A continuing course of conduct requires an ongoing enterprise with a single objective.'" *Locke*, 175 Wn.App. at 803 (quoting *Love*, 80 Wn.App. at 361). "The defendant's actions must be evaluated in a 'commonsense manner' to determine whether it forms one continuing offense." *Marko*, 107 Wn.App. at 220 (citing *Petrich*, 101 Wn.2d at 571). Courts must distinguish whether the evidence was of one continuous offense or several distinct acts. *Locke*, 175 Wn.App. at 802-03 (citing *Love*, 80 Wn.App. at 361).

"Washington courts have found a continuing course of conduct in cases where multiple acts of the charged crime were committed with a single purpose against one victim in a short period of time." *Id.* at 803-04. The Court of Appeals has explained:

> The continuing course of conduct exception has been applied to multiple acts of assault over a two-hour time period resulting in a fatal injury, *Crane*, 116 Wn.2d at 330; to acts of assault occurring in one place, during a short period of time, by the same aggressor upon a single victim, in an attempt to secure sexual relations, *State v. Handran*, 113 Wn.2d 11, 17, 77e P.2d 453 (1989); to acts taken collectively to promote prostitution *State v. Gooden*, 51 Wn.App. 615, 620, 754 P.2d 1000, *review denied*, 111 Wn.2d 1012 (1988) and to acts of assault for the purposes of intimidating a witness, *United States v. Berardi*, 675 F.2d 894 (7th Cir.1982).

Love, 80 Wn.App. at 361. This analysis demonstrates that when acts are close in time and place and involve a single victim, courts generally find a continuing course of conduct.

Here, the threatening conduct occurred within a short period of time, at the same location, involved a single victim, and was part of an ongoing enterprise with a single objective. Accordingly, evidence of the threats to kill Swanger constituted a continuing course of conduct. When Everette was in the room, he told Swanger he was not afraid to kill her, flashed a handgun at her, and told her he would put holes in her head. He also told her his "homies" had a "Mossberg" down in the car, referencing

the shotgun. All of this threatening conduct occurred within a period of approximately 30 minutes, in the same bedroom, and Swanger was the lone victim. With regard to Joey pointing the shotgun at Swanger there was no evidence presented at trial that Swanger was aware of this. RP 12/18/13 at 77-79. And, Everette himself connected the shotgun with the other threats when he said his "homies" had a "Mossberg" down in the car. As in *Mota*, acts of multiple defendants connected in time and place against the same victim with the singular objective constitute a continuing course of conduct. These threats were all directed toward the singular objective of forcing Swanger to provide information about the vehicle. As such, they constituted a continuing course of conduct.

V. CONCLUSION

Because Everette's petition does not meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

Respectfully submitted this 9th day October, 2015.

Ryan P. Jurvakainen
Prosecuting Attorney

By: _____
Eric H. Bentson, WSBA #38471
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Michelle Sasser, certifies the Response to Petitioner for Review was served electronically via e-mail to the following:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on October 9th, 2015.

Michelle Sasser
Michelle Sasser

OFFICE RECEPTIONIST, CLERK

To: Sasser, Michelle; ptiller@tillerlaw.com
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Attached, please find the Response to Petition for Review regarding the above-named Petitioner.

If you have any questions, please contact this office.

Thank you, Michelle Sasser

From: pacopier_donotreply@co.cowlitz.wa.us [mailto:pacopier_donotreply@co.cowlitz.wa.us]
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