NO. 73440-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

ERICK N. WALKER,

Appellant.

BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

JANICE C. ALBERT
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. ISSUES

1. Forensic scientists from the Materials Analysis Division of the Washington State Patrol Crime Lab conducted ballistics testing that showed that all the bullets collected from the crime scenes and all the spent casings found in the defendant's room were fired from the defendant's Ruger Blackhawks. The trial court permitted general cross examination about mistakes made at the crime lab. Did the trial court err when it did not allow questioning regarding specific mistakes involving other areas of analysis such as DNA or mistakes made by other non-testifying scientists?

2. The State did not introduce a recreation of the crime. However, it did introduce evidence that illustrated the trajectory between a gun held out the window of a passenger car and the neck of a person M.C.'s size. Was that testimony properly admitted when any dissimilarities went to weight, not admissibility?

3. The court instructed the jury on first degree murder and the lesser crime of first degree manslaughter. The jury convicted the defendant of manslaughter. Was the evidence sufficient to support both instructions when it placed the defendant at the scene of M.C.'s killing?

4. Were the defendant's statements properly admitted when he never asked for a lawyer and was questioned only after he waived his *Miranda* rights?

5. The first search warrant authorized police to search the defendant's car and house based on an affidavit that outlined a chain of facts and circumstances that connected the defendant to a series of drive-by shootings. The second set of warrants authorized police to search the defendant's Verizon phone records, cell phone, and BECU records for evidence of the crimes including planning, execution, and concealment of the crime.

> a. Did the first affidavit establish probable cause when it recited facts and circumstances from which the most likely inference was that the defendant was probably the shooter?
>
> b. Did the second affidavit, which incorporated the first, establish probable cause to believe that evidence of the defendant's planning, execution, and concealment of the crimes would be found in his cell phone and cell phone records?

II. STATEMENT OF THE CASE

On the night of June 12, 2013, the defendant Erick Walker went on a shooting spree through Lake Stevens and Marysville. He shot into four houses and five cars and killed 16-year old M.C. CP 135-137, 138, 140-42, 144-147, 149-151, 153.

In June 2013, the defendant was 26 years old and lived alone at 58th Drive N.E., Marysville. Ex. 169. He worked at Boeing and drove a black Pontiac passenger car. He owned two Ruger Blackhawk firearms which used .30 carbine caliber ammunition. Only he drove his car and only he used his Blackhawks. Id.

After work on June 1, the defendant went to the Irishman in Everett. He paid his bill and left just after 10:00 and drove around Lake Stevens in his black Pontiac, twice passing the Tom Thumb near South Lake Stevens Road. Ex. 169; 8 RP 1132, 1138, 1198; 9 RP 1425, 1428. He drove past a group of six girls walking down the street. Ex. 169.

At around 11:40, the defendant dropped in unannounced on friends he had not seen in three years, the Pattersons. 8 RP 1194-197. Mrs. Patterson thought he stayed an hour or an hour and a half; Mr. Patterson said he left at 1 at the latest. 8 RP 1199, 1213, 1218.

The defendant then drove back to Lake Stevens and drove around, apparently lost, on back roads. Afterwards, he went home to Marysville. Ex. 169.

That same night, a series of drive-by shootings occurred in the areas where the defendant had been driving. Each of the locations is shown on Exhibits 11 and 12.

1. South Lake Stevens Road.

Seattle high school student M.C. and five classmates were celebrating M.C.'s 16th birthday at M.K.'s house in Lake Stevens. 2 RP 143. After dinner and birthday cake on June 1, the teenagers walked to a nearby park and then started back to M.K.'s sometime after 11 p.m. 2 RP 124, 148. They walked single file on S. Lake Stevens Road, a dark road with no sidewalks and only a white line separating the lane of travel from the shoulder. 2 RP 146, 148, 190, Ex. 254-55. E.Z was in front, followed by M.C., M.K., I.T., and two others. 2 RP 149.

The girls heard what they thought was a firecracker but was actually a single gunshot. 2 RP 191. E.Z., just in front of M.C., was sure it came from the road because both her ears were ringing but her right ear, the one nearest the road, went deaf for an hour. 3 RP 355, 357. M.K., right behind M.C., had no doubt the shot came from the passenger window of a small black car; she could almost feel the bang. 4 RP 549, 7 RP 996, 997-98, 1038. I.T., walking

almost next to M.K., saw the gunshot flash at the car's open passenger window. 7 RP 1062, 1069-70.

M.C. fell to her knees, blood on her face and shirt. 2 RP 191-92. M.K. called 911. 7 RP 1001. Several citizens stopped to help and police and aid arrived but it was too late. 2 RP 93, 103, 3 RP 306. M.C. was pronounced dead at the scene. 3 RP 387. The medical examiner determined the cause of death was a gunshot through her neck that entered on the right and exited on the left. 11 RP 842.

Police searched the area on their hands and knees for physical evidence such as bullets and shell casings but found none. 3 RP 407-08; 4 RP 526. In the days and months that followed, they searched on many more occasions, using scores of searchers, but never found a bullet or shell casing related to M.C.'s death.[1] 4 RP 551; 6 RP 946.

2. 790 East Lakeshore Drive, Lake Stevens.

At 1:08 a.m., 16-year old B.O. heard what he thought might be a shotgun. 4 RP 556. The next day, the Tageants, who lived nearby, realized that a bullet had entered their house through a wall

[1] In May 2014, using a metal detector, a detective found an old and tarnished .357 spent casing buried in the dirt below the spot from where M.C. was killed. 11 RP 1710.

that faced the road. 4 RP 559-60. A relative had been asleep in that room with the lights and TV on. 4 RP 562, 654-56. Police never found a casing at the scene but did recover a .30 carbine caliber bullet lodged in the opposite wall. 4 RP 572, 656, 672; 507.

The bullet had been fired from the road from one of the defendant's Blackhawks. 4 RP 523; 12 RP 2012.

3. 318 North Nyden Farms Road, Lake Stevens.

At 1:17 a.m., Stacey McAllister called 911 to report that someone had shot into her house. 4 RP 487-93. The living room TV and lights were on and the shot came through the living room window. 4 RP 487, 489, 492. Police found no casing at the scene but did find a .30 carbine caliber bullet lodged in the opposite wall. 4 RP 490, 493; 507. The bullet had been fired from the road from one of the defendant's Blackhawks. 4 RP 523; 12 RP 2012.

4. 1818 114th Avenue N.E., Lake Stevens.

At 1:30 a.m., teenager E.B. was home babysitting, sitting in a downstairs room with the TV, laptop, and lights on. 4 RP 595, 596, 597, 601. She heard a sound she thought was a rock hitting the house and called her parents who immediately came home. 4 RP 602. They found no rock that night, but the next day, after hearing of M.C.'s killing, they discovered that a bullet had entered

their house through a wall 3 feet from where E.B. had been sitting. 4 RP 605-06. Police found no casing at the scene but recovered a .30 carbine caliber bullet form the opposite wall. 5 RP 687. The bullet, fired from the road, had been fired from one of the defendant's Blackhawks. 5 RP 685; 12 RP 2012.

5. 1498 E. Lakeshore Drive, Lake Stevens.

Sometime around 2 a.m., Brad Hurst was awakened by the sound of metal-on-metal. 4 RP 585-86. He thought it was his neighbors making noise but the next morning discovered a bullet hole in his car's back passenger window. 4 RP 589. Police found no casing but recovered a .30 carbine caliber bullet. 5 RP 653; 9 RP 1362. The bullet had been fired from one of the defendant's Blackhawks. 12 RP 2012.

6. 10523 56th Avenue N.E., Marysville.

At 1:55 a.m., several neighbors were awakened by the sound four to five gunshots, looked out their windows, and eventually went outside. 5 RP 709; 728; 750, 760, 767-68. The neighbor at 10523 discovered that someone had shot into a room where his toddlers were sleeping with the lights and TV on. 5 RP 728; 6 RP 811. Someone had also shot once at each of four parked cars. 5 RP 710; 6 RP 814. A fifth car, a gold Saturn

parked in the road, was rocking back and forth having just been hit by a fleeing car. 5 RP 711; 715, 723, 728. The collision left plastic debris from the accident on the road and black paint transfer on the Saturn. 5 RP 756, 794, 6 RP 814.

Police found no casings at the scene. 6 RP 855. The bullet shot into the children's room appeared to have exited through the roof and was never found. 6 RP 886. Police recovered one bullet from each of the cars. 6 RP 865, 980, 898, 900. Each had been fired from one of the defendant's Blackhawks. 12 RP 2012.

Later, Dr. Van Wyk, a forensic scientist, tested the accident debris. The black paint chips from the Saturn accident were "virtually identical" to paint from the defendant's Pontiac. 12 RP 2017. The broken headlight pieces "without question" matched a broken headlight assembly from the defendant's car. 12 RP 2028.

The defendant's home was less than half a mile from this shooting. 6 RP 950.

7. The Investigation.

Within a few days, detectives learned from Washington State Patrol Crime Lab scientist Brian Smelser that the recovered bullets were .30 carbine caliber bullets, typically fired from one of three types of guns: Ruger Blackhawk revolvers, M-1 carbines, and M-1

Enforcers. 6 RP 916, 918. The five bullets submitted to the lab, collected from two scenes in Lake Stevens and one Marysville, had been fired from two different weapons. 12 RP 2080-82. Detectives learned that Cabela's Sporting Goods had sold Blackhawks to only 12 people since 2012. 6 RP 918.

Crime Lab scientist Dr. Van Wyk informed detectives that the black paint transfer at the Marysville scene likely came from one of 31 types of cars which included Pontiacs. Detectives compiled a list of black cars registered to owners in Snohomish County. 6 RP 950.

Only one name was on both the Cabela's and the DOL list: a Boeing employee named Erick Walker. 6 RP 949-50.

Detectives located the defendant's Pontiac in a Boeing parking lot. 6 RP 953. It had a damaged right front quarter panel, damage behind the headlight assembly, and paint transfer consistent with the accident with the Saturn. 6 RP 954.

Kermit Walker, the defendant's father, learned on June 8 that his son's car had a broken headlight. 8 RP 280. He replaced the damaged headlight and put the broken parts into the replacement box. 8 P 281. He turned those parts over to police during their investigation. 8 RP 282. Dr. Van Wyk determined that

the debris found at the Marysville shooting had come "without question" from the defendant's broken assembly. 12 RP 2028.

Detectives collected any available surveillance footage of the roads around M.C.'s killing including surveillance from the nearby Tom Thumb. Home video surveillance from a citizen who lived in the area captured images of M.C. and her friends as they headed home toward M.K.'s house at 11:02. 9 RP 1532-33. Ten minutes later, a dark car came from their direction, made a U-turn, and headed back toward them. 9 RP 1535.

An expert later examined the video surveillance. 10 RP 1572. He compared footage of the dark car to images of the defendant's car under similar circumstances. He found no unexplainable differences between them. 10 RP 1572-73, 1682, 1694. He looked at dozens of different car similar in body style to the defendant's Pontiac. He testified that the others were not on the video. The only one he believed was shown on the video was the defendant's. 10 RP 1596, 1599.

Detectives arrested the defendant on June 28. Although he denied having been involved in the shooting, he said that if his guns were used, he was the only one who used them; if his car had been in an accident, he had been driving because no one else had used

his car in a year. Ex. 169. The defendant admitted to taking a long drive around Lake Stevens that night, to being lost on side roads there, and to perhaps seeing the six girls on the road. Asked why he was unwilling to admit he had shot M.C., he said he did not want people to think he was like George Zimmerman. Id.

While detectives were questioning the defendant, other detectives were serving a warrant on his home and car. 9 RP 1433. In his car they found the Cabela's receipt for the Blackhawk, a loaded firearm, an unloaded firearm, clips, and ammunition. 8 RP 1305, 1309. In his bedroom they found various receipts including the Irishman receipt dated June 1 at 10:10, holsters, gun belts, and a box that held 36 (out of a possible 50) .30 carbine caliber bullets. Ex. 181; 9 RP 1487-42. There were 36 spent .30 carbine caliber casings, one of which was standing upright on the defendant's nightstand like a memento. 9 RP 1442, 1462, 1478. They found his two Blackhawks. RP 1438-466.

Smelser tested the spent casings and determined that all of the casings had been fired from the defendant's Blackhawks, 24 from one, 12 from the other. 12 RP 2090. He determined that each of the bullets found at the various crime scenes had been

fired from one or the other of the defendant's Blackhawks. 12 RP 2012.

Det. Wells wanted to see if a gun fired from a passenger car could have caused the wound that killed M.C. and also wanted to try to find the missing bullet. 11 RP 1732-349. He collected information from witnesses, the medical examiner, and other reports that included M.C.'s height, the height of the entrance and exit wounds, and the dimensions of the defendant's car. He calculated the angles involved, had collision officers check his math, and used a tripod, trajectory rods, and an inclinometer to represent them. He used six women to represent the girls as they walked down South Lake Stevens Road and a detective to drive the defendant's car while pointing a weapon out the passenger window. The demonstration showed that it was, in fact, possible for a bullet fired from a passenger car to have killed M.C. Unfortunately, it did not help him find the bullet. Id.

Det. Pince drove between the crime scenes, the Irishman, the Pattersons' house in Arlington, and the defendant's house. 11 RP 1813-1820. He determined that the defendant had ample time to drive from the Irishman to South Lake Stevens Road to the Pattersons' between 10:15 and 11:40 p.m. He determined that

there was ample time after the defendant left the Pattersons for him to have visited each of the subsequent crime scenes. Id.

Police served a warrant on the defendant's cell phone, cell phone records, and bank records. On the night of June 1, the defendant had done a map search for a housing development in Lake Stevens on the night of M.C.'s killing. 9 RP 1515. He also used his phone that night until 10:31 for calls and texts, sent and received a single text at 11:38, and then did not use it again until after 2 a.m. on June 2. 9 RP 1512-13. In the following weeks, he searched the internet for stories about M.C.'s killing. 9 RP 1496.

Det. Wells compared the defendant's bank records to statements the defendant made about his whereabouts on the night of June 1-2. 11 RP 1720-731. They confirmed that the defendant had been at the Irishman and paid his bill after 10 p.m. Id.

8. Procedurally.

The defendant was charged with ten felonies: first degree murder, four counts of first degree assault (based on occupants in the four houses), five counts of drive-by shooting (four houses and Hurst's car). CP 296-298

A motion to suppress his custodial statements was denied. 11/14/13 RP 64-67; Supp. CP __ (sub.no 59, Findings of Fact and

Conclusions of Law Following CrR 3.5 Hearing). A motion to suppress all evidence seized pursuant to warrants was denied. 10/31/14 RP 33-34, 39-41. A motion to exclude Det. Wells's testimony and photographs regarding trajectory at the scene of M.C.'s killing was denied provided the State could lay a sufficient foundation. 3/4/15 RP 11-12.

The State moved to limit testimony regarding prior problems with the Crime Lab in two ways: to mistakes made by testifying scientists and to mistakes made with the types of forensics testing at issue with each scientist. Supp. CP __ (sub.no. 99, State's Motions in Limine). The court granted the motion subject to reconsideration should a door be opened. Supp. CP __ (sub.no. 109); 11/17/14 RP 29.

Following a two-week trial, the jury was unable to reach a verdict on first degree murder. CP 134. The jury found the defendant guilty of first degree manslaughter, all four assaults, all firearm enhancements, and the drive-by shootings. CP 135-137, 138, 140-42, 144-147, 149-151, 153.

III. ARGUMENT

A. THE TRIAL COURT PROPERLY PERMITTED DEFENSE TO QUESTION STATE'S EXPERTS ABOUT PROBLEMS WITH THE CRIME LAB GENERALLY AND SPECIFICALLY REGARDING TESTIFYING EXPERTS.

The right to confront and to conduct a meaningful cross-examination of witnesses is guaranteed by both the federal and state constitutions. State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). The purpose of cross examination is to test a witness's perception, memory, and credibility. The right to cross is not absolute. Id. The basic rules of evidence still apply to determine if the right was violated. Id. at 624.

A trial court's decision on the scope of cross examination is reviewed for a manifest abuse of discretion. Id. at 619; State v. McDaniel, 83 Wn. App. 179, 184, 920 P.2d 1218 (1996). A court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. Limitations on the scope of cross examination will not be disturbed absent a manifest abuse of discretion. Id.

1. The Court Properly Permitted Only Relevant Cross Examination, Allowing Questioning Regarding Mistakes At The Crime Lab In General And Disallowing Specific Questioning About Other Types Of Testing Or Non-Testifying Technicians.

Brian Smelser tested the bullets, casings, and Blackhawks. 12 and 13 RP 2054-2114. Smelser testified about his training and experience, prior assignments at the crime lab which included DNA work until 2008, his current assignment in Materials Analysis, and procedures and protocols at the lab. Id. He tested the eight bullets recovered at the crime scenes, the 36 casings, and the two Blackhawks. To a reasonable degree of scientific certainty, each of the bullets from the crime scenes and each of the casings from the defendant's home had been fired from one of the defendant's two Blackhawks. 12 RP 2073-76; 2012, 2091-94; 13 RP 2112-114.

Defense cross-examined Smelser extensively about his work on the present case and his previous work on DNA, his mentors, and procedures at the lab. 13 RP 2016-2162. Over the State's objection, the court permitted defense to question Smelser about peer review in general and DNA and fingerprinting in this case. 13 RP 2124-2125. There was no DNA or fingerprint testing requested. 12 RP 2127-129. Defense suggested DNA was the "gold standard", a characterization with which Smelser did not agree. 13

RP 2130-31. Defense was not permitted to question Smelser about a DNA cross-contamination incident from 2001. 13 RP 2156-58, Ex. 426.[2]

The court properly exercised its discretion and disallowed the questioning. 13 RP 2162-63. While the defense could ask generally about DNA, it could not question Smelser about a single DNA contamination had occurred more than a decade earlier when the ease at which cross-contamination occurred was not fully appreciated. DNA practice and procedure in 2001 was "ancient history" in terms of DNA analysis today. The two disciplines, firearms and DNA testing, were very different. A 2001 DNA contamination was of little relevance to a 2013 analysis of the defendant's guns and bullets. Id.

The court's ruling was well within the trial court's discretion and is supported by case law. In Darden, the trial court erred when it did not permit the defendant to ask where an officer had been when he saw the defendant engage in a drug deal. 145 Wn.2d at 612-16-18. The officer's exact location was relevant to that particular case and its omission prejudicial because Darden could

[2] Although defense claimed to have three specific instances of Smelser's mistakes with DNA, his offer of proof contained only one from 2004.

not otherwise question the witness's ability to observe. Id. The more essential the witness, the more leeway the defendant should have been given to explore motive, bias, credibility, or foundation. Id.

The present case is entirely different. The information defense sought to introduce was not relevant to Smelser's motive, bias, credibility, or to foundation. The excluded testimony, about a mistake that occurred a decade earlier and involved a different discipline, had nothing to do with the results of these 2013 ballistics tests. Nor did it reflect on Smelser's motive, bias, or credibility. A 2001 incident of DNA cross-contamination did not make the likelihood of a mistake with 2013 ballistics mistake more or less probable.

Nor was the court's decision prejudicial. If the jury had drawn an inference, it could only have been that Smelser was a fine scientist, indeed, if his only mistake was over ten years old and in a different discipline back in the day when cross-contamination was not fully understood. The testimony would not have cast any doubt on the accuracy of his numerous tests on the eight bullets, 36 casings, and two firearms here.

Even if the evidence were relevant, the trial court recognized that its minimal relevance was outweighed by the danger of confusion of ideas, misleading the jury, and a waste of time. The court reasoned that the DNA mistake was old, occurred when cross-contamination was little understood, and had no bearing on ballistics testing. ER 401. That "ancient history" was properly excluded as it would have been confusing, a distraction, and a waste of time. See ER 403; see also Darden, 145 Wn.2d at 624.

2. The Defendant Was Not Denied His Right To Cross Examine Dr. Northrup.

Dr. Northrup testified that he had worked for 23 years at the Crime Lab, in 2013 as Smelser's supervisor in Materials Analysis. 9 RP 1391-92. Dr. Northrup outlined the procedures used to keep track of evidence submitted, testing available for bullets, gunpowder residue and guns, and to his peer review of Dr. Van Wyk's work on the defendant's car parts. 9 RP 1393, 1402-403.

Defense cross-examined Dr. Northrup exhaustively about DNA and the peer review process, asking how mistakes were made despite safeguards. 9 RP 1403-1424. The State's objection to questions about DNA issues was overruled. 9 RP 1413-14, 1416-417. Defense was permitted to continue to question Dr. Northrup

about general problems and mistakes in the lab and the peer review process. The court only disallowed questions about other specific cases. 9 RP 1416, 1417, 1418. Defense asked Dr. Northrup a series of questions about his knowledge regarding mistakes made at the crime lab which Dr. Northrup answered. 1419-1423.

The defendant was not denied his right to cross examine. In fact, defense was permitted to inquire about mistakes at the crime lab and prohibited only from inquiring about specific cases. The defense was simply dissatisfied with Dr. Northrup's answers.

B. THE COURT PROPERLY ALLOWED DETECTIVE WELLS TO USE PHOTOGRAPHS TO DEMONSTRATE HIS TESTIMONY.

Use of illustrative evidence is favored and trial courts have wide discretion on whether to admit it. State v. Lord, 117 Wn.2d 829, 855, 822 P.2d 177 (1991). Use of demonstrative evidence is encouraged when it "accurately illustrates facts sought to be proved." State v. Finch, 137 Wn.2d 72, 816, 975 P.2d 984-85 (1999). It is admissible if produced under substantially similar conditions to the events at issue. The trial court has the discretion to decide whether the similarity is sufficient. Any lack of similarity then goes to weight, not admissibility. Id.; State v. Stockmyer, 83

Wn. App. 77, 85, 920 P.2d 1201 (1996); State v. Rogers, 70 Wn. App. 626, 633, 855 P.2d 294 (1993). The standard of review is manifest abuse of discretion. Finch, 137 Wn.2d at 816.

In the present case, pretrial, defense tried to exclude Det. Wells's demonstration of bullet trajectory at M.C.'s shooting by calling it a "reenactment." CP 122-191. State explained that the evidence was not a reenactment but a demonstration with which Det. Wells could illustrate his testimony. Supp. CP __ (sub.no.118, State's Memorandum). The court ruled that the demonstration and photos were admissible for illustrative purpose, subject to a limiting instruction, all subject to the State establishing foundation. 1 RP 10-11.

After Det. Wells described how he conducted the demonstration, the court found sufficient foundation and admitted six photographs. 11 RP CP 1739-742. It gave a limiting instruction:

> Members of the jury, Exhibits 254-255, and 257 through 262 are admitted to illustrate the testimony of Detective Wells and other evidence provided in this case. These exhibits may properly be used by the attorneys in the courtroom during the course of this trial and during closing arguments.
>
> Exhibits 254, 255, and 257 through 262 do not depict the actual events of persons present on the evening

> of June 1, 2013. They will not go to the jury room during deliberations at the end of the trial with other substantive evidence.
>
> I will again provide you with this instruction at the end of the case.

11 RP 1742. Det. Wells used the photographs to illustrate his testimony. 11 RP 1743-749. The defendant cross-examined Detective Wells extensively, challenging not only the information on which his demonstration was based but also on the results he received. 11 RP 1749-86.

The trial court's decision was correct. This was proper demonstrative evidence, properly admitted with a limiting instruction.

The Supreme Court addressed a similar issue in State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999). Finch was inside his house when he first shot his ex-wife and then shot and killed an officer standing outside. Almost a year later, officers videotaped the view from inside the house to see what Finch could have seen from his vantage point in the house. The trial court admitted the video because it was taken under substantially similar conditions, would assist the jury, and was not unfairly prejudicial. Any

differences, which went to weight and not admissibility, could be addressed on cross examination. Id. at 814-15.

The Supreme Court agreed and affirmed. Id. at 817. Since the video was not a reenactment, the fact that there were some dissimilarities did not preclude admission. The purpose was not to depict what actually happened but to see whether the slain officer was visible from the shooter's location. Id. at 816-17. What could be seen from inside the house was relevant to intent and premeditation. Id. The demonstration was not overly prejudicial. Id. at 819.

That is precisely what occurred in the present case. The photographs were not part of a reenactment so any differences did not preclude their admissibility. They were not taken to depict the actual shooting but rather to show whether the shooting could have occurred from the passenger window of the defendant's car. They were relevant to both intent and premeditation as they showed the car's proximity to M.C. when she was shot. They were not overly prejudicial because they did not show any expressions or movements that were unnecessarily emotional. Defense was able to cross examine Det. Wells extensively about the photographs and

any dissimilarities and the court gave an appropriate limiting instruction.

The defendant argues that the demonstrative evidence was not based on known facts, such as type of weapon or caliber of bullet that killed M.C. The demonstration did not purport to answer any of those questions. It simply helped determine and explain trajectory. The same is true of the equipment and laser line that were not there on the night of the shooting because this was not a reenactment.

A very different situation was addressed in Stockmyer, 83 Wn. App. 77. There, the defendant fought with two men, killing one. He sought to introduce a 30-minute video that purported to recreate the actual event. The video was the edited result of two hours of tape made of three different portrayals of events. The trial court excluded the evidence because the video contained factual inaccuracies, including the speed of the film and the manner in which it was produced. Id. at 82-83.

The reviewing court affirmed because of the valid concerns about factual inaccuracies, potential prejudicial effect, and the danger of branding jurors "with television images of actors, not testimony." It distinguished this evidence, an inadmissible

reenactment, from evidence that was demonstrative, did not purport to show the actual crime, but showed, for example, what could be seen could be seen from inside a car travelling at various speeds prior to an accident. Id. at 84-85.

That reasoning controls in present case. Here, there were no television images to "brand" the jury. There was only demonstrative evidence used to illustrate Det. Wells's testimony. The twofold purpose of the exercise was to determine where the bullet might have landed and to determine if a shot out of the passenger window could have inflicted the fatal wound on M.C. The demonstrative evidence did just that and was properly admitted.

Nor was anything in the photographs unfairly prejudicial. Evidence is unfairly prejudicial if it elicits an emotional response rather than a rational decision. ER 403; State v. Rice, 48 Wn. App. 7, 12-13, 747 P.2d 726 (1987). Nothing in the photographs was designed to elicit an emotional response. On the contrary, the photographs showed the position of the defendant's car and of six women with no expression in their faces heading down South Lake Stevens Road.

The defendant relies on several out-of-state cases that neither control nor support his position. See Dunkle v. State, 139 P.3d 228, 260-51 (Ok. 2006) (computer-generated reenactments were misleading and inadmissible); Eiland v. State, 130 Ga. App. 428, 429, 203 S.E. 2d 619 (1973) (movies substantially different from facts of the case, where differences may mislead jurors, inadmissible); Lopez v. State, 651 S. W.2d 413, 414-15 (Tex. App. 2 Dist. 1983) (videotape reenactment that portrays dissimilar events inadmissible). In the present case, there was no video-taped recreation and no prejudice.

Nor is there any support for the defendant's position in In re Glasman, 175 Wn.2d 696, 286 P.3d 673 (2012). There, in closing, the prosecutor used the defendant's previously admitted booking photo on which he had superimposed the words "guilty, guilty, guilty." Id. at 699. The court found error because the prosecutor had deliberately altered the photograph to add his personal opinion on guilt, a move designed to influence the jury's deliberations. Id. at 706. The use of improperly modified exhibits and personal opinions of guilt was error that required a new trial. Id. at 710.

Nothing of the sort occurred here. No one expressed his personal opinion on the defendant's guilt. No one altered an exhibit

after it was admitted into evidence. No one sought improperly to influence deliberations. This was a straightforward, unemotional, factual illustration.

The use of demonstrative evidence is not just permitted but encouraged. The trial court did not abuse its discretion when it admitted demonstrative evidence.

C. THE JURY WAS PROPERLY PERMITTED TO CONSIDER THE CRIME OF FIRST DEGREE MURDER WHICH WAS SUPPORTED BY THE EVIDENCE.

At the close of the State's case, the defendant moved to have the murder count dismissed. 13 RP 2168. The court denied the motion, as it had denied a Knapstad motion prior to trial. 13 RP 2175-76. It found that State had presented all of the evidence it said it would admit at the Knapstad hearing and additional circumstantial evidence of other shootings, ballistics evidence, the defendant's statement, and video of the defendant's car near the scene. Id. Defense now argues that there was insufficient evidence presented for the court to allow the jury to consider first degree murder.

1. The Defendant Waived A Challenge To The Denial Of His Motion To Dismiss By Putting On A Case.

Insofar as the defendant is challenging the court's denial of his motion to dismiss, that issue is waived. A defendant waives a

challenge to sufficiency if he thereafter introduces evidence. An exception exists when the evidence he introduces has no bearing on the merits of the case. State v. Young, 50 Wn. App. 107, 111, 747 P.2d 486 (1987).

Here, after his motion to dismiss, the defendant called witnesses to testify on the merits of the case, including alibi witnesses. When he did so, he waived this issue on appeal.

2. The Jury Was Properly Instructed Because There Was Sufficient Evidence To Support The First Degree Murder Instruction.

A court must instruct the jury on a party's theory of the case if there is sufficient evidence to support the theory. State v. Williams, 132 Wn.2d 248, 259, 937 P.2d 1062 (1997). Evidence is sufficient if, viewed in the light most favorable to the State and with all reasonable inferences in the State's favor, a reasonable trier of fact could find guilt beyond a reasonable doubt. State v. DeVries, 149 Wn.2d 842, 859, 72 P.3d 748 (2003); State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

The jury was instructed on first degree murder. CP 58. The defendant argues that the instruction should not have been given because there was no evidence he was present or fired the fatal shot at M.C. His argument only succeeds if the majority of the

evidence is ignored. Looked at in the light most favorable to the State, the evidence was more than sufficient to support the charges because it established that the defendant was in the area and shot M.C.

The eyewitnesses walking closest to M.C. established that the single gunshot that killed M.C. came from the passenger window of a passing dark car. The medical examiner, Smelser, and Det. Wells's demonstration supported that testimony. A surveillance tape showed a car with no discernible differences from the defendant's drive past the girls, make a U-turn, and return toward them. The defendant admitted not only he was in his black Pontiac in the area when M.C. was shot but also that he may have seen her and her friends walking on the road.

Evidence from the other shootings supports the logical conclusion that the defendant was in the area and shot M.C. There were five other drive-by shootings that night that targeted apparently innocent and unrelated victims. Each shot came from the road. Each shot was a single shot at a single target. Each bullet came from one of the defendant's firearms. No casings were found at any scene, indicating either that the weapon used did not

eject a casing or that the casings were still in the car. And the defendant's car was placed definitively at the Marysville shooting.

The facts of the other shootings are eerily similar to the facts of M.C.'s death: an innocent victim, a single gunshot from the road, no casing, a black car fleeing the scene. There was more than sufficient evidence from which a reasonable juror could have found that the defendant was present at the scene and thus guilty of first degree murder.

3. Any Error That Occurred Was Harmless Because The Jury Did Not Convict On First Degree Murder.

A reviewing court will presume that instructional error is prejudicial unless the State can affirmatively show that the error was harmless. State v. Stein, 94 Wn. App. 616, 24-26, 972 P.2d 505, 829 P.2d 241 (1992), aff'd on other grounds, 144 Wn.2d 236, 27 P.3d 184 (2001). In the present case, the jury did not convict the defendant of first degree murder. Therefore, any error in so instructing the jury was harmless beyond a reasonable doubt.

4. The Evidence Was Sufficient To Sustain The Manslaughter Conviction.

The defendant also appears to be arguing that the evidence was insufficient to sustain the manslaughter conviction. As discussed, supra, the record shows otherwise because the

reasonable inference drawn from the direct and circumstantial evidence puts the defendant at the scene of Molly's killing.

Federal courts have defined "reasonable inference" as "one that is supported by a chain of logic rather than ... mere speculation dressed up in the guise of evidence." Juan H. v. Allen, 408 F.3d 1262, 1277 (9th Cir. 2005); United States v. Navarette-Aguilar, 14-30056, 2015 WL 9453075, at 6-7 (9th Cir. Dec. 28, 2015). The evidence need not rule out every hypothesis. United States v. Nevils, 598 F.3d 1158, 1163-65 (9th Cir. 2010). The court must reverse only if all rational triers of fact would have to conclude that there was not sufficient evidence of guilt. Id.

In the present case, the conclusion that the defendant was present and shot M.C. is not speculation but is supported by a chain of logic. While there may be another explanation for this peculiar constellation of evidence, a reasonable trier of fact could and would have made the inferences this reasonable jury made.

D. THE DEFENDANT'S CUSTODIAL STATEMENTS, MADE AFTER A WAIVER OF RIGHTS AND ABSENT A REQUEST FOR A LAWYER, WERE PROPERLY ADMITTED.

A person who undergoes custodial questioning has the right not to incriminate himself. State v. Radcliffe, 164 Wn.2d 900, 905, 194 P.3d 250 (2008). The State bears the burden of showing a

defendant has waived the right to a lawyer by a preponderance that any waiver was knowing and voluntary. Id. at 905-06. Because the defendant did not assign error to findings of fact, they are verities on appeal. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). The trial court's decision on matters of law is reviewed *de novo*. State v. Miller, 156 Wn.2d 23, 27, 123 P.3d 827 (2005).

The trial court found that after Detective Pince read the *Miranda* warnings the defendant asked if there was an attorney present. CP 401-03, Finding of Fact (FOF) 7. The detective said there was not, that he could get one, and that it would "take a little while" for one to arrive. Id., FOF 8. When the defendant asked "what this was about," Det. Pince would not speak to him until he had determined if the defendant was, in fact, waiving his rights. Id. The defendant then said he understood his *Miranda* rights, waived them, and spoke to detectives. Id., FOF 9.

The trial court concluded that the defendant did not make an unequivocal request for counsel, that the police did not improperly interfere with his decision regarding waiver of his rights, and that they properly refused to speak to him until he made that decision. regarding his rights. Id., Conclusions of Law 2 and 3.

1. The Defendant Made No Unequivocal Request For A Lawyer.

If a suspect makes an unequivocal request for an attorney, all questioning must cease. Davis v. United States, 512 U.S. 462, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994); Radcliffe, 164 Wn.2d at 906. The invocation of the right to counsel is no different from the invocation of any other *Miranda* right. The request must be sufficiently clear so that a reasonable officer would understand it to be just that, an invocation of a *Miranda* right. State v. Piatnitsky, 180 Wn.2d 407, 413, 325 P.3d 167 (2014).

Police are not required to cease questioning or ask clarifying questions when a suspect makes an equivocal request. Piatnitsky at 415. "Maybe I should contact an attorney," is an equivocal request. Radcliffe, 164 Wn.2d at 907. "I guess I'll just have to talk to a lawyer about it," is equivocal. State v. Gasteazoro-Paniagua, 173 Wn. App. 751, 756, 294 P.3d 857, review denied, 178 Wn.2d 1019 (2013). On the other hand, "I gotta talk to my lawyer" is unequivocal. State v. Nysta, 168 Wn. App. 30, 41-42, 276 P.3d 1162 (2012).

In the present case, the defendant made no unequivocal request for a lawyer. His question, whether one was present,

would not have signaled to a reasonable officer that the defendant was invoking his right to counsel.

2. Police Properly Refused To Begin The Interrogation Until The Defendant Made A Decision About Waiving His *Miranda* Rights.

A trial court's decision on a *Miranda* waiver will not be disturbed if the totality of circumstances shows that the confession was not coerced. Broadaway, 133 Wn.2d at 132; State v. Burkins, 94 Wn. App. 677, 694, 973 P.2d 15, review denied, 138 Wn.2d 1014 (1997). The totality of the circumstances includes the defendant's condition and mental abilities and any promises made by police. Broadway, at Id. There must be a promise that has a causal relationship to the confession. Id.

When a detective tells a suspect that he will try to get his wife in to see him, the detective has not made a promise. Such an offer is not a promise because it does not compel a suspect to confess by overcoming his will. Id. at 133-34.

In the present case, the court made a factual finding that Det. Pince made no promises. CP 403, Finding of Fact 3. Any attempt to interpret it otherwise should fail. The question is not whether a defendant understands the precise nature of the danger

of speaking, but rather whether he knows he can remain silent. State v. McDonald, 89 Wn.2d 256, 265, 571 P.2d 930 (1977).

The trial court rightly concluded that Det. Pince made no promise but merely clarified the defendant's position on his rights. There is no evidence that anything Det. Pince did overbore the defendant's free will. Therefore, the defendant's statement was properly admitted.

E. WITH THE EXCEPTION OF BECU, THE WARRANTS WERE SUPPORTED BY PROBABLE CAUSE AND NOT OVERBROAD.

A judge may issue a search warrant upon a determination of probable cause. State v. Jackson, 150 Wn.2d 261, 264, 76 P.3d 265 (2003). Probable cause means the facts and circumstances in the affidavit establish a reasonable inference that the defendant is involved in criminal activity and that evidence of that activity will be found at the place to be searched. Id. at 265; State v. Atchley, 142 Wn. App. 147, 161, 173 P.3d 232 (2007). Probable cause means the probability of criminal activity, not a prima facie showing. State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

Courts must interpret affidavits in a common sense manner, not hypertechnically. Jackson, 160 Wn.2d at 265. Courts should draw reasonable inferences from the facts and circumstances

described. Id.; Maddox, 152 Wn.2d at 505. Facts that standing alone would not alone be sufficient may support probable cause when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992).

The issuing judge's determination on probable cause is given great deference with doubts generally resolved in favor of validity. State v. Chenoweth, 160 Wn.2d 454, 477, 158 P.3d 595 (2007). All doubts are resolved in favor of validity. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). The trial court's assessment on a motion to suppress is a legal conclusion, reviewed *de novo.* State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008).

1. The Warrant For The Defendant's Home Was Supported By Probable Cause That The Defendant Was Involved In The Hit And Run And In All Of The Shootings.

The June 28 warrant permitted detectives to search the defendant's home for evidence of the crimes of murder, drive-by shooting, assault, and hit and run. CP 309-11. The evidence sought related to all of the shootings, including the one that ended in M.C.'s death. Id. Defense has conceded to probable cause for the hit and run. BOA at 35.

Det. Wells's affidavit described facts and circumstances sufficient to conclude that the defendant was likely the driver and the shooter in each of the described crimes. CP 312-345. The affidavit included descriptions of M.C.'s shooting, statements from the girls who saw and heard a shot come from the passenger window of a dark car; a video that appeared to show M.C.'s group heading from the lake, a dark car coming from the same direction, making a U-turn, and heading back toward M.C.'s group.

The affidavit also described the five other shooting that occurred that night in and around Lake Stevens. One shot was fired at each target, the shots apparently came from the road, and no casings were found. Bullets collected at four of the scenes were .30 carbine caliber full-metal jacketed bullets fired from two different .30 carbine caliber firearms. Only a limited number of firearms use that ammunition. Two of those are the M-1 carbine rifle and the Ruger Blackhawk handgun. The defendant's facebook page showed him with a M-1 carbine rifle and a Ruger Blackhawk which he had purchased at Cabela's. Id.

The affidavit also described additional information collected at the Marysville crime scene and through subsequent investigation: witness statements about the shots coming from a

fleeing car; a collision between the fleeing car and the gold Saturn that left black paint transfer and pieces of what appeared to be a broken headlight; information that the black paint could have come from a Pontiac. Police found paint transfer and body damage on the defendant's 1996 Pontiac that was consistent with the damage to the gold Saturn.

The crime scenes were within minutes of driving-time of each other. The defendant's house was less than half a mile away from the Marysville scene.

Those facts and circumstances, read together, lead to only one commonsense conclusion: that the person who owned and was driving the black Pontiac and who owned at least one Ruger Blackhawk was responsible for all of these random but similar shootings.

If the affidavit established probable cause to believe that the defendant committed the Marysville hit and run, as defense concedes, it stands to reason that he committed the committed the Marysville drive-by shooting and assault which occurred simultaneously and that he committed the other random and eerily similar shootings that occurred close in time and location.

The affidavit also established that evidence of those crimes would likely be found in the defendant's house and car. See State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 528 (1999). In Thein, detectives sought to search the defendant's house for evidence of drug dealing. The only information tying the house to drug dealing was were generalizations about the habits of drug dealers. The search warrant failed because there were no facts that specifically tied the defendant's illegal drug dealing to his house. Id. at 148.

The June 28 warrant was supported by specific facts that tied the defendant's house to his crimes. The defendant owned the house and weapons. It was reasonable to infer that he would keep evidence, such as firearms, ammunition, auto parts and purchase information, documents and receipts that showed his location during the time of the crime, in his home or car.

The facts and information contained in the June 28 affidavit led to only one reasonable inference: that the defendant was probably the shooter at each crime scene and that evidence of his crimes would be found in his home and his car.

2. The Warrants For Verizon Records And The Defendant's Cell Phone Were Not Overbroad When They Were Limited In Scope And Duration.

A warrant is overbroad when it does not describe with particularity items for which probable cause exists, or when it describes with particularity items for which probable cause does not exist. State v. Maddox, 116 Wn. App. 796, 805, 67 P.3d 1135 (2003), affirmed, 152 Wn.3d (2004). The warrant must be read in a commonsense manner "keeping in mind the circumstances of the case." Id. quoting, Stenson, 132 Wn.2d at 693.

Admitting evidence obtained through an overbroad warrant is an error of constitutional magnitude. State v. Keodara, 191 Wn. App. 305, 317, 364 P.3d 777 (2015). It may be harmless error if any reasonable jury would have reached the same result absent the error. The State bears the burden of proving the error was harmless and must show beyond a reasonable doubt that the error did not contribute to the verdict. Id. at 317-18.

The warrants issued on July 2 were based on probable cause already established in the June 28 affidavit and additional information gathered in the subsequent investigation. CP 352-72. Specifically regarding electronics, detectives had learned that the defendant had an HTC cellphone with Verizon as carrier. CP 352-

72. The defendant said he used his phone for all communication and internet searches. Ex. 169. He gave them four different versions of where he had been at the times of the shootings, most of which put him in the Lake Stevens/Marysville area. Id.

a. The Verizon warrant was limited in scope and particularity.

The warrant for Verizon records was limited by the dates of May 25 through June 28, six days before the shootings through the day of the defendant's arrest. CP 374-76. The affidavit explained in detail the information sought and how that would be helpful in determining the defendant's movements, locations, and communications prior to, during, and after the crime. CP 352-72. The warrant was not overbroad and the evidence was properly admitted.

b. The warrant for the defendant's phone was for the most part limited in scope and particularity.

The defendant challenges for overbreadth and lack of particularity sections of the phone warrant not limited to specific dates or searches for car-related items. BOA 41.

Det. Quick testified about what his full examination and what he recovered. There was no internet history before June 18. 9 RP 1496. Then, there were five visits to websites covering the M.C. killing. Id. 1496, 1508-1510. There were no phone calls between

9:41 p.m. on June 1 and 2:04 a.m. on June 2. Texts were sent and received between 9:46 p.m. and 10:39 p.m. with a stand-alone text exchange at 13:36. 9 RP 1512-514, 1516. There was a Google map search at 10:51 p.m. for a housing area 2.5 miles from M.C.'s killing followed by internet browsing. 9 RP 1514, 1515. The defendant began to use his phone again the next morning. 9 RP 516-517.

The defendant is correct not to challenge the time-limited portions of the warrant. Evidence seized under those provisions was properly admitted under the severability doctrine.

The infirmity of part of a warrant requires suppression only of evidence seized under the invalid part, not of the valid parts. State v. Perrone, 119 Wn.2d 538, 556, 834 P.2d 611 (1992); State v. Temple, 170 Wn. App. 156, 163, 285 P.3d 149 (2012). Severability applies when one part of a warrant is particular but there is insufficient probable cause to search other locations. Id. Severance is not available if the warrant is facially invalid or and when the valid portion is relatively insignificant. Id. at 557.

Temple lays out five-factor test for severability. The warrant must have lawfully authorized entry; it must include items for which there is probable cause; that section must be significant when

compared to the warrant as a whole; officers must have seized the items while executing a valid part of the warrant; and they must not have conducted a general search. Temple, 170 Wn. App. at 163.

Each of those factors is present here. The entry into the phone was lawful. The date-limited items were supported by probable cause; they were significant compared with the other items sought; officers seized them while searching specifically for those records; they did not conduct a general search. The doctrine of severance applies.

The Perrone warrant is a good example of a warrant that is not severable. 119 Wn.2d at 558-59. In that child pornography case, the warrant was overbroad and lacking in particularity. It was written without severable phrases or clauses. Id. at 560. There were no discrete parts that could be severed and editing to save valid parts would have been extensive. Id.

Those problems do not exist in the present case. The court can easily sever the parts of the warrant that are unlimited in duration from those that are time-limited.

The issue is to what extent evidence was seized under the overbroad, un-time-limited portions of the warrant. That evidence consisted of the following facts: no internet history saved before

June 18; the defendant made five visits to websites containing articles about M.C.'s death; the defendant conducted a Google map search on June 1 for a housing area 2.5 miles from where M.C. was killed.

Admitting evidence obtained through an overbroad provision of a warrant is an error of constitutional magnitude. See Keodara, 191 Wn. App. at 317. The State must show the error was harmless beyond a reasonable doubt, that is, it could not have contributed to the verdict.

In Keodara, police served an overbroad warrant on the defendant's cell phone and collected photos and text messages. Id. at 316. Probable cause was based entirely on generalizations and the warrant allowed for a search for items unassociated with criminal activity. The trial court admitted the text messages and photos into evidence. Id. at 316-318

The reviewing court found error but deemed it harmless. The texts messages and photos seized were certainly relevant and even helpful to the State's case. However, they provided only one piece of information, were not the sole basis of the State's case, and were cumulative of other testimony. Moreover, the untainted evidence was strong. Id. at 318.

The same is true of the evidence here. The defendant's defense was based on his claim that he was not present at the crime scenes. The lack of internet history before June 18 did not add or detract from that claim. The Google map search was merely cumulative since the defendant admitted that he was driving in the area both when M.C. was killed and when the other shootings occurred. As to the articles, the defendant also admitted that he had used his cell phone to do internet searches and had read articles about M.C.'s death.

As discussed, supra, evidence of the defendant's guilt was strong and none of this evidence was essential or crucial. It was merely corroborative of what the evidence, including the defendant's statements, already showed, that the defendant was in the area the night the shootings took place, that he was interested in M.C.'s death, and that he conducted computer searches on his cell phone. No prejudicial error occurred.

3. The Warrant For BECU Records Was Overbroad But Any Error In Admitting Evidence Was Harmless.

The BECU warrant was quite different in that it had no parameters as to scope and was overbroad. CP 347-48. But since

the only evidence it led to was cumulative and not prejudicial, any error was harmless beyond a reasonable doubt.

The reasoning of Keodara applies here as well. The BECU records were offered by the State through Det. Wells. 11 RP 1727-1731. Comparing receipts found at the defendant's home with the records, the bank records were shown to be unhelpful in determining the defendant's location on June 1 and 2. That is because the records showed when transactions were posted on their ledgers, not when they actually occurred. Id. The only thing the BECU records did was confirm the Irishman visit, something the defendant, the receipt, and Irishman's bartender had already done. In fact, the records were helpful to defense who could establish that the defendant's statements about where he might have been on June 1 could not be disproved by BECU records and had not been followed up by police.

The bits of evidence provided by BECU records were in part relevant and even helpful to the State but were also just as unhelpful. They provided only one piece of information, were not the sole basis of the State's case, and were at times cumulative of evidence already admitted. The jury had a mountain of other evidence to support its verdicts. BECU records could not have

contributed to those verdicts and any error in admitting them was harmless beyond a reasonable doubt.

IV. CONCLUSION

For the foregoing reasons, the conviction should be affirmed.

Respectfully submitted on March 29, 2016.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: _____
JANICE C. ALBERT, #19865
Deputy Prosecuting Attorney
Attorney for Respondent

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

THE STATE OF WASHINGTON, Respondent, v. ERICK N. WALKER, Appellant.	No. 73440-7-I DECLARATION OF DOCUMENT FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 30th day of March, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Mark D. Mestel, mark.mestel@gmail.com.

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

Dated this 30th day of March, 2016, at the Snohomish County Office.

Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office