IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON **Plaintiff/Respondent** **v.** **JARED D. EVANS,** **Defendant/Petitioner,** **Defendant Pro-Se**	**SUPREME COURT NO.** 93910-1 **COURT OF APPEALS NO. #48008-5-II** **SUPERIOR COURT CASE NO. #15-1-00951-8** **DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION TO THE COURT OF APPEALS DIVISION TWO (RAP RULE 13.5)**

A. IDENTIFICATION OF MOVING PARTY (PETITIONER)

The moving party is the defendant (Petitioner), JARED D. EVANS.

B. RELIEF SOUGHT

The defendant seeks:

1. This court to reverse the decision by the trial court and the Court of Appeals Division II and order a new trial..

C. DECISION BELOW

The Court of Appeals decision was: An oral order denying motion of dismissal made on November 29th, 2016 by the Honorable J. Lee Sutton and P. Worswick. See: Appendix A1, Court of Appeals decision.

D. ISSUE PRESENTED FOR REVIEW

1. Violations of the Fifth Amendment; double jeopardy.

2. Did the Court of Appeals commit obvious error? (RAP RULE 16.4 (C)?

3. Did the Court of Appeals' proceeding to a right of fair decision under RAP RULE 16.4 (C)?

4. Did the Court of Appeals' proceeding to the admission of misconduct under 16.4(C) substantially limit the freedom of the defendant to act? RAP 13.5?

5. Has the Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for review by the Supreme Court? RAP 13.5?

E. FACTS - STATEMENT OF THE CASE

The petitioner would ask the court to view Appendix B1, verbatim transcript of proceedings, Volume IV. In Appendix B1 the Honorable Stanley J. Rumbaugh made a ruling in which the defendant asked the court if he would be allowed to conduct a second interview with the witness, Mr. Donoghue. The court agreed, as Honorable Stanley J. Rumbaugh ordered that such interview must take place before trial starts. See page 5 herein Appendix B1.

F. GROUNDS AND ARGUMENTS

At this time, the defendant, Jared Evans, argues that under Green v. US, 184, 2 LEd2d 199, 87 SCt 221 (1961) the Constitutional right not to be placed in double

jeopardy, being a vital safeguard in American society, should not be given a narrow, grudging application.

It doesn't matter if the second interview with second witness, Mr. Donoghue, would have changed the outcome of the trial or the jury's decision, but the mere fact that the judge ordered and allowed the second interview and it is also a fact that the state prosecutor never objected to a second interview. This violated Mr. Evans' rights to a fair trial. See Appendix C1.

On May 29th, 2015, Mr. Evans filed a motion to interview Mr. Donoghue. This is the same motion in Appendix C1 in which the Honorable Judge Stanley ruled the Mr. Evans' investigator would be allowed to conduct a second interview.

The defendant in the case would ask the court to view Cline vs. Wal-Mart Stores, Inc., 144 F3d 294 (4h Cir, 1998), new trial will be granted if verdict (1) is against clear weight of evidence; (2) is based upon evidence which is false; or (3) will result in miscarriage of justice, even though there may be substantial evidence which would prevent direction of a verdict.

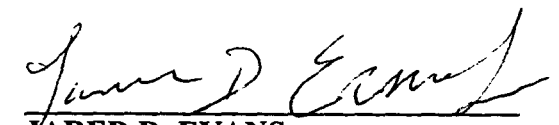
At this time, the petitioner, Jared Evans, would ask this court to take a real good look at Appendix B1 and B2 of the official verbatim reports in this case.

G. CONCLUSION:

Petitioner prays upon this court, based on factors in this Discretionary Review to grant relief herein under RAP RULE 13.5.

Respectfully submitted this 7th day of December, 2016.

Under penalty of perjury, that I did mail a copy of this motion to: The County Prosecutor's Office and to the Court of Appeals Division Two.



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Jared

Filed
Washington State
Court of Appeals
Division Two

November 29, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JARED DONALD EVANS, Appellant.	No. 48008-5-II UNPUBLISHED OPINION

WORSWICK, P.J. — Jared Evans appeals his conviction for first degree arson. He argues that (1) the State committed prosecutorial misconduct by referring to facts not admitted into evidence and misstating the law regarding the State's burden to prove that he acted knowingly and maliciously, (2) the State produced insufficient evidence to prove he acted maliciously, and (3) the "reasonable doubt" jury instruction improperly focused the jury on a search for "the truth." In his Statement of Additional Grounds for Review (SAG), Evans argues that the trial court violated his right to be free from double jeopardy. We reject Evans's arguments and affirm his convictions. We also waive appellate costs.

FACTS

On the evening of February 27, 2015, Jared Evans arrived at St. Anthony Prompt Care, a medical facility in Gig Harbor, Washington. Evans had a device with a flashlight at one end and a Taser at the other. The Taser operated by eliciting an electrical charge between its four probes and emitting a spark. Evans began to click the Taser repeatedly outside of St. Anthony. Janette Siler, an employee of St. Anthony's, asked Evans to move away from the door. Evans agreed.

When Siler heard the clicking again, she went back outside to again ask Evans to stop the clicking. She noticed that a large stone garbage can had been moved from the sidewalk into the roadway in front of St. Anthony. Evans told Siler he did not know how the garbage can got there, but helped her move it out of the roadway.

Shortly thereafter, Evans entered the facility and went into a restroom. Approximately four and a half minutes later Kevin Donoghue entered the same restroom. Donoghue saw a person removing burning paper towels from the bathroom garbage can and placing them on the floor. Donoghue left the bathroom, walked into the hallway and yelled, "Fire." Verbatim Report of Proceedings (VRP) (Aug. 25, 2015) at 64. When no one paid attention to him he contacted a staff member and brought her to the restroom. Donoghue then retrieved a fire extinguisher and put out the fire. When Donoghue left the restroom to get help, Evans left the restroom and ran toward the front of the building where he was seen by responding Officer Joseph Hicks of the Gig Harbor Police Department. Evans did not notify anyone in the building that there was a fire in the bathroom. Officer Hicks stopped Evans, and with Evans's consent located the Taser and a cigarette lighter in Evans's bag.[1]

The State charged Evans with one count of first degree arson. At trial, the State admitted surveillance video[2] from St. Anthony showing Evans walking around the facility, holding the Taser and activating it. The video showed sparks emitting from the Taser. The video also showed Evans entering the bathroom, Donoghue entering the bathroom four and half minutes

[1] The police did not confiscate either the Taser or the lighter, and these items were not admitted as evidence.

[2] The video is not in the record on appeal. However, there is extensive testimony in the record about the video's contents.

afterwards and immediately reacting to the fire, and Evans running from the bathroom as Donoghue went to get help.

Evans testified that he was at St. Anthony on the day in question, and that he interacted with Siler as described above. However, Evans testified that he did not start the fire in the bathroom, but rather discovered it when he walked in and tried to put it out by removing the burning towels. Evans said he possessed the Taser for self-defense purposes and possessed the lighter to light his cigarettes.

During closing argument, the prosecutor made reference to a Taser's ability to start a fire. Evans did not object. Evans's closing argument centered on the theory that he did not start the fire.

The jury found Evans guilty as charged. Evans appeals.

ANALYSIS

I. PROSECUTORIAL MISCONDUCT

A. *Legal Principles*

To prevail on a claim of prosecutorial misconduct, Evans must show that the prosecutor's conduct was both improper and prejudicial. *State v. Emery*, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). Once a defendant has demonstrated that the prosecutor's conduct was improper, we evaluate the defendant's claim of prejudice under two different standards of review, depending on whether the defendant objected to the misconduct at trial. *Emery*, 174 Wn.2d at 760.

If the defendant did not object, he is deemed to have waived any error unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice. *Emery*, 174 Wn.2d 760-61. When there is no objection, we apply

a heightened standard requiring the defendant to show that "(1) 'no curative instruction would have obviated any prejudicial effect on the jury' and (2) the misconduct resulted in prejudice that 'had a substantial likelihood of affecting the jury verdict.'" *Emery*, 174 Wn.2d at 761 (quoting *State v. Thorgerson*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011)).

When analyzing prejudice, we look at the comment, not in isolation, but in the context of the total argument, the issues in the case, the evidence, and the instructions given to the jury. *State v. Yates*, 161 Wn.2d 714, 774, 168 P.3d 359 (2007). Also, we presume the jury follows the trial court's instructions. *State v. Anderson*, 153 Wn. App. 417, 428, 220 P.3d 1273 (2009).

"In closing argument, a prosecutor is afforded wide latitude to draw and express reasonable inferences from the evidence." *State v. Reed*, 168 Wn. App. 553, 577, 278 P.3d 203 (2012). In rebuttal, a prosecutor generally is permitted to make arguments that were "invited or provoked by defense counsel and are in reply to his or her acts and statements." *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

A person is guilty of first degree arson if he knowingly and maliciously causes a fire or explosion in any building in which there is at the time a human being who is not a participant in the crime. RCW 9A.48.020.

B. *Referring to Facts Not Admitted Into Evidence*

Evans argues that the State committed prosecutorial misconduct by referring to facts not in evidence. Specifically, he contends that it was misconduct for the prosecutor to argue that Evans's Taser was capable of starting a fire without any testimony on the subject. We disagree.

During the State's closing argument, the prosecutor told the jury that a Taser's electrical charge "obviously creates heat, and that heat can start a fire." VRP (Aug. 27, 2015) at 17. In

response, Evans argued in his closing, "That Taser was never confiscated. It was never brought into court. It was never demonstrated it could start a fire. How do we know?" VRP (Aug. 27, 2015) at 25. On rebuttal, the prosecutor continued, "Of course a tazer [sic] can start a fire with paper material. It's an electrical charge. It's quite a bit of heat. It's obvious that that device could be used to start a fire." VRP (Aug. 27, 2015) at 35-36.

Evans contends that the prosecutor's comments amounted to arguing facts not in evidence. It is improper for a prosecutor to make prejudicial arguments based on facts not in evidence. *State v. Dhaliwal*, 150 Wn.2d 559, 577, 79 P.3d 432 (2003). However, a prosecutor has wide latitude during closing arguments to draw reasonable inferences from the evidence and to express those inferences to the jury. *Reed*, 168 Wn. App. at 577. The jury heard testimony describing the Taser and how it operated using electric charges. VRP (Aug. 26, 2015) at 59. Evans testified that the surveillance video showed flashes of light coming from the Taser as Evans activated it. Additionally, Officer Hicks testified that when he activated the Taser after apprehending Evans, "a spark emitted between the two probes on the end of it." VRP (Aug. 26, 2015) at 36. We hold that the State's comments amounted to nothing more than a reasonable inference from the evidence.

Nor can Evans show that the comments were so flagrant and ill-intentioned as to create incurable prejudice. First, had counsel objected at trial, the court could have issued a limiting instruction to cure any potential prejudice. Second, while counsel did not request, and the court did not issue, a limiting instruction, the jury was properly instructed that the lawyers' statements were not evidence and that the jury should "disregard any remark, statement, or argument that is not supported by the evidence or the law in [the] instructions." Clerk's Papers (CP) at 51; *State*

v. Montgomery, 163 Wn.2d 577, 595-96, 183 P.3d 267 (2008). Absent evidence that the jury was unfairly influenced, we presume that the jury followed the court's instructions. *Montgomery*, 163 Wn.2d at 596.

Moreover, Evans cannot show prejudice. Evans carried an additional ignition source—a lighter that he carried to light cigarettes—so the case did not turn only on whether the Taser could start a fire. It is just as probable that the jury believed Evans used the lighter to start the fire. Consequently, Evans's prosecutorial misconduct claim fails.

C. *Misstating the Law*

Evans also argues that the State committed prosecutorial misconduct by effectively eliminating the mens rea element of arson when it improperly characterized the State's burden to prove Evans knowingly and maliciously started the fire. We disagree.

The prosecutor may not misstate the law to the jury. *State v. Swanson*, 181 Wn. App. 953, 959, 327 P.3d 67 (2014), *review denied*, 181 Wn.2d 1024 (2015). We view prosecutor's allegedly improper remarks in the context of the entire argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury. *Yates*, 161 Wn.2d at 774.

During the State's closing argument, the prosecutor reviewed the "to convict" jury instruction. VRP (Aug. 27, 2015) at 14. The prosecutor explained that it appeared to him that the only element of the charge at issue was whether Evans started the fire. This reasoning was largely consistent with Evans's defense theory which was that he merely found the fire and tried to put it out, but did not start it. On appeal, Evans takes issue with the prosecutor's statement regarding the element that the fire was set knowingly and maliciously. During closing argument,

the prosecutor gave the element a cursory overview stating, "[I]f you determine that the Defendant acted in this case, that the Defendant started the fire, the act in itself is knowing and malicious. Clearly, you don't start a fire unless you know what you're doing, and you don't do so unless you're being malicious under your instructions." VRP (Aug. 17, 2015) at 15. The prosecutor then moved onto the focus of his closing argument, which was whether the evidence showed that Evans started the fire himself.

We hold that the State's comment regarding the knowing and malicious element was not improper. Malice may be inferred when the State provides circumstantial evidence that a defendant intentionally caused a fire. *State v. Clark*, 78 Wn. App. 471, 481, 898 P.2d 854 (1995). A prosecutor has wide latitude during closing arguments to draw reasonable inferences from the evidence and to express those inferences to the jury. *Reed*, 168 Wn. App. at 577. RCW 9A.04.110(12) explicitly states, "Malice *may be inferred* from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse."[3] (Emphasis added).

Even assuming the comment was improper, given the fact that the prosecutor's comment was but a mere moment in the State's closing argument, Evans cannot show that the comment was so flagrant and ill-intentioned as to create incurable prejudice. Had counsel objected at trial, the court could have issued a limiting instruction to cure any potential prejudice.

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[3] Evans contends that because the jury did not receive a permissive inference instruction, "it was improper for the State to rely on inference." Br. of Appellant 9. However, Evans provides no authority or argument to support his contention and we decline to address it further. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Moreover, the jury was properly instructed on the definitions of knowingly and malice. And the "to convict" instruction explicitly required the jury to find beyond a reasonable doubt that Evans knowingly and maliciously caused the fire. Absent evidence that the jury was unfairly influenced, we presume that the jury followed the court's instructions. *Montgomery*, 163 Wn.2d at 596. Evans's argument that the State's comment "eliminated the *mens rea* from the equation" fails. See Br. of Appellant 8.

II. INSUFFICIENT EVIDENCE

Evans further argues that the State produced insufficient evidence to support his conviction because the State did not prove Evans acted maliciously. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Tilton*, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We consider circumstantial evidence to be as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

A person commits the crime of arson in the first degree when he knowingly and maliciously causes a fire or explosion in any building in which there is at the time a human being who is not a participant in the crime. Evans argues only that the State was unable to prove he maliciously caused the fire.

"Malice" is defined as "an evil intent, wish, or design to vex, annoy, or injure another person." CP at 58. Malice may be inferred from an act done in willful disregard of the rights of

another, or an act wrongfully done without just cause or excuse. RCW 9A.04.110(12). We infer malice when the State provides circumstantial evidence that a defendant intentionally caused a fire. *Clark*, 78 Wn. App. at 481.

Here, the State proffered evidence of Evans's disruptive behavior at the medical clinic leading up to the fire. Evans was carrying a Taser and a cigarette lighter. The surveillance video showed Evans entering the bathroom. Four and a half minutes later, Donoghue entered the bathroom and witnessed Evans pulling burning paper towels from the garbage can onto the floor, which could be interpreted as Evans attempting to spread the fire. Immediately after being discovered, Evans ran from the building without warning anyone about the fire. Evans only stopped when he was detained outside the building by Officer Hicks.

Taking this evidence in the light most favorable to the State, it is sufficient to support a finding that Evans acted maliciously. Therefore, sufficient evidence supports the jury's verdict.

III. REASONABLE DOUBT

Evans also argues that the trial court's reasonable doubt jury instruction was constitutionally deficient because it impermissibly focused the jury on a search for the truth of the charge. We disagree.

The trial court's reasonable doubt instruction stated, in part:

> A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

CP at 54.

We have rejected the exact argument Evans now makes. *See State v. Jenson*, 194 Wn. App. 900, 378 P.3d 270 (2016). Evans provides no reason for us to reconsider that decision. Accordingly, Evans's argument fails.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In his SAG, Evans argues that his conviction violated his right to a fair trial and placed him in double jeopardy. Specifically, Evans argues that the trial court punished him multiple times for the same offense by denying his request to conduct a second interview of a witness 30 days before the start of trial. Evans's double jeopardy claim is meritless.

We review alleged double jeopardy violations de novo. *State v. Fuller*, 169 Wn. App. 797, 832, 282 P.3d 126 (2012). The state and federal double jeopardy clauses protect a defendant from being punished multiple times for the same offense. *State v. Adel*, 136 Wn.2d 629, 632, 965 P.2d 1072 (1998).

Generally, a double jeopardy violation exists where "(1) jeopardy has previously attached, (2) jeopardy has terminated, and (3) the defendant is in jeopardy a second time for the same offense in fact and law." *State v. Strine*, 176 Wn.2d 742, 752, 293 P.3d 1177 (2013). "Jeopardy does not attach until a defendant 'is 'put to trial before the trier of the facts, whether the trier be a jury or a judge.'" *State v. George*, 160 Wn.2d 727, 742, 158 P.3d 1169 (2007) (internal quotation marks omitted) (quoting *Serfass v. United States*, 420 U.S. 377, 391, 95 S. Ct. 1055, 43 L. Ed. 2d 265 (1975)). As a result, jeopardy does not attach merely because the State files charges or pretrial proceedings occur. *George*, 160 Wn.2d at 742. Jeopardy attaches in a jury trial when the jury is empaneled. *George*, 160 Wn.2d at 742.

Evans argues the trial court put him twice in jeopardy when it denied his request on July 28, 2015 to conduct a second interview of a witness at least 30 days before trial. But the jury was empaneled on August 25, 2015. Accordingly, jeopardy had not attached before the trial court's denial. Additionally, the denial of a pretrial motion does not constitute punishment for an offense. Thus, Evans's double jeopardy argument fails.

APPELLATE COSTS

Evans filed a supplemental brief requesting that if the State substantially prevails in this appeal, we decline to impose appellate costs on him because he claims he is indigent. The State did not respond. We exercise our discretion and decline to impose appellate costs.

Under former RCW 10.73.160(1) (1995), we have broad discretion whether to grant or deny appellate costs to the prevailing party. *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, 192 Wn. App. 380, 388, 367 P.3d 612, *review denied*, 185 Wn.2d 1034 (2016). Ability to pay is an important factor in the exercise of that discretion, although it is not the only relevant factor. *Sinclair*, 192 Wn. App. at 389.

It appears from the limited trial court record that Evans does not have the present ability to pay appellate costs and it is questionable whether he will have the future ability to pay. The trial court found Evans indigent at trial, and counsel was appointed to represent Evans on appeal. The record does not support, nor does the State argue, that Evans's indigent status is likely to change. RAP 15.2(f).

In conclusion, we affirm Evans's conviction for first degree arson, and we exercise our discretion to waive costs on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Lee, J.

Sutton, J.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. JARED EVANS, Defendant.	)	Superior Court No. 15-1-00951-8 Court of Appeals No. 48008-5-II

VERBATIM TRANSCRIPT OF PROCEEDINGS
VOLUME IV

JULY 28, 2015
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE STANLEY J. RUMBAUGH

Carol Frederick, CCR, 2406
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 18
Tacoma, Washington 98402

APPENDIX B-1

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VOLUME IV

JULY 28, 2015

THE COURT: There is a pending motion. And my review of the file, in addition to my memory, indicates that on June the 5th I allowed Mr. Evans to proceed pro se in this case, and then I continued the case. At that time, trial had been set for June the 23rd. I continued it to today, July the 28th, which is about five weeks. So, Mr. Evans, are you prepared to go? What's the issue with your continuance?

MR. EVANS: I still have an issue to raise. I've been trying to make some pretrial motions. And while they have been honored by yourself, they have not been followed through with. So I need to ask why the Brady interview hasn't happened yet. And also I need to ask you to have the State give me a date when that can happen.

THE COURT: The Brady interview? Are you talking about the Brady case that requires the State to turn over evidence to you, or is there a Mr. or a Mrs. Brady that you want to interview?

MR. EVANS: The interview of Mr. Donoghue.

THE COURT: I read in your moving papers that Mr. Donoghue was going to be available for an interview today. Do you know anything about that, Mr. Nelson?

MR. NELSON: I can supplement this, Your Honor. So prior to Mr. Evans going pro se, Mr. Mark Quigley was his attorney. Mr. Quigley is present in court today, so the

Again my understanding is all of that discovery was provided to Mr. Evans when he went pro se. Mr. Evans, I guess, hired an investigator once he went pro se. That person contacted us requesting an additional interview of Mr. Donoghue. That was, I believe, three weeks ago before I started trial in State vs. Powell. The only dates that Mr. Donoghue was available were Mondays. And last Monday he was unavailable. Yesterday I was unavailable. So I then e-mailed the investigator and indicated that we were unavailable on these Mondays, but more importantly Mr. Donoghue had already been interviewed by the Defendant and that typically we don't set up a second interview without a Court order to do so. If there is some reason to do that, then we would obviously accommodate a second interview. But as far as I can tell, this witness has been interviewed. There's been a report generated, and there's no reason for a second interview in this case.

I indicated to the investigator that we would address this on the record in front of Your Honor today, and that if the Court authorized a second interview, we would certainly accommodate that and we would try to do so as we went during trial, take a break or something before a witness, that sort of thing. But as far as I can tell, there has been no record made as to why a second interview of this witness is necessary, given that he was

told the police. Anyway, he did create a report. So the record is clear on this, the interview occurred on May 15th, 2015. And Mr. Antonson, my investigator, generated a report to me, which I had given to Mr. Evans after the time that he was allowed to go pro se. So he has possession of that. If he doesn't, I have extra copies right now to give him.

THE COURT: So you have a copy of the document that Mr. Quigley described?

MR. EVANS: Yes, Your Honor.

THE COURT: And all of the other discovery that was generated prior to you going pro se has also been provided to you?

MR. EVANS: As far as I know, Your Honor.

THE COURT: So here is sort of the push/pull on the whole thing, Mr. Evans. Mr. Donoghue is a witness. He is not subject necessarily to our scheduling, and he has already complied with what the Court normally asked him to do, which was to give an interview and say what he saw. And there is a fine line here between requiring people to cooperate and harassing them into cooperation.

So what I'm going to allow is time for your investigator in the next day or so to talk to Mr. Donoghue either by phone or in person. But we're going to start the trial, so you will have ample opportunity to talk to your

she is going to get you something to wear. And when we start again at 1:30 with the jury up here, that's what you will be wearing. Okay?

MR. EVANS: Okay.

THE COURT: And we do that so it does not prejudice your appearance in front of the jury.

Normally at this point we go through motions in limine. These do not necessarily always have to be written, Mr. Evans, because there are certain standard motions in limine that the Court routinely grants. So, Mr. Nelson, if you would start.

MR. NELSON: Well, Your Honor, the first would be just to exclude witnesses from the courtroom during the pendency of the case unless the Court authorizes otherwise.

THE COURT: Any objection, Mr. Evans?

MR. EVANS: No, Your Honor.

THE COURT: Witness sequestration will be granted.

MR. NELSON: Your Honor, the second would be just to exclude any reference to any prior 404(b) type of material, any witnesses. I'm not aware of any. The Defense has not advised me of any. But I would just ask the Court to order that if that becomes an issue, we deal with that outside of the presence of the jury and make a record and then go forward.

THE COURT: Your response, Mr. Evans?

The Defendant has two prior convictions that would be admissible under ER 609 should the Defendant testify. Well, at least -- I'm sorry. He has more than two prior convictions. There's a 2009 burglary in the second degree. There's a 2014 trafficking in stolen property in the second degree.

THE COURT: When was the trafficking?

MR. NELSON: In 2014. Those are both out of Pierce County Superior Court. There is a 2008 theft in the third degree. That's out of Gig Harbor Municipal Court. There's a 2009 vehicle prowling in the second degree out of Pierce County District Court. There's a 2010 theft in the third degree out of Gig Harbor Municipal Court. There's another 2010 Theft 3 out of Gig Harbor Municipal Court. There's another Theft 3 out of Pierce County District Court. These are all 2010. There's a 2012 Theft 3 out of Tacoma Municipal Court, and a 2014 possession of stolen property in the third degree out of Pierce County District Court.

And obviously, Your Honor, if we get there, I would have certified copies of the Judgment and Sentence, and I would mark those as exhibits. But if the Defendant were to testify, I believe all of those are admissible under 609. And just preliminarily, I guess, I would just ask the Court to make a finding that that would be the sort of impeachment material under 609 or I could utilize it if the

rules of the court.

And I think Your Honor again kind of alluded to that earlier when you indicated that it's not your role to advise him as to what to do or not to do, but I think that's just important to be clear on the record.

THE COURT: Not only did I allude to it this morning, on two prior occasions at two separate hearings I went over in great detail with Mr. Evans the fact that I would have to treat him as any other litigant, that the Rules of Evidence apply, that the Rules of Procedure apply. I inquired as to whether he had read the Rules of Procedure or the Rules of Evidence. He said some equivocal response. I think it was that he had looked at some of them. I encouraged him to have a look.

But the point being, Mr. Evans, is that I'm not here as an advocate for anybody. That's not my role. My role is to make legal decisions, to make sure that the trial is conducted properly, that everybody involved gets a fair trial, that the jury discharges their responsibilities that they are constitutionally obliged to undertake. And that's what my role is. We all have our jobs, and my job is not to provide legal advice to you.

MR. EVANS: My mistake, Your Honor.

THE COURT: All right. Anything else on limine motions, Mr. Nelson?

and I will read off the numbers of the positive responses into the record. So it would be wise to keep track of their answers. Then after I ask my questions, I allow follow-up 20 minutes per side, 20 minutes for the Prosecution to begin, 20 minutes for the Defense, and then another round of 20 minutes. That is an opportunity to talk to jurors. In a way it is designed to determine whether they can conduct themselves fairly and discharge their obligations as jurors in a fair and impartial manner.

It is not an opportunity to argue your case, to instruct the jury about what the law is, or to advise what kind of evidence you think that the record is going to reflect at the end of the case. After the two 20-minute rounds are completed, we select the jurors by passing a sheet back and forth. The sheet -- and I'll give a copy of it to Mr. Quigley. He can explain to you how it works because it's a procedural matter. But you indicate by number a juror that you wish to have excluded.

If you feel that one of the jurors, based on responses to the questions that you are asking at the time it's your time to ask questions, is not going to be able to discharge their obligation to weigh the facts impartially, to apply the beyond a reasonable doubt burden of proof on the State, then you can make what's called "a challenge for cause." You have to specifically designate the juror and what you

custodian for the --

THE COURT: Spell the last name for me.

MR. NELSON: P-i-z-l. And James is the common spelling. And unless there is a stipulation from the Defendant as to foundation for the video recording, I will need to call him to authenticate the surveillance video. Janette Siler, who is the initial 911 caller. It's spelled J-a-n-e-t-t-e S-i-l-e-r. Kevin Donoghue. Kevin is common spelling, and Donoghue is D-o-n-o-g-h-u-e.

I don't plan on admitting the 911 recordings, but Tifni Buchanan from South Sound 911 is the records custodian there, so it's probably appropriate to announce her name as well. That should be it.

THE COURT: Anything else from the State?

MR. NELSON: No, Your Honor.

THE COURT: Mr. Evans?

MR. EVANS: No, Your Honor.

THE COURT: Court will be at recess until 1:30.

JUDICIAL ASSISTANT: All rise. Court is at recess.

(Court at recess.)

JUDICIAL ASSISTANT: All rise. Court is reconvened.

THE COURT: Good afternoon. Please be seated. I understood there were a couple of matters before we send for the jury.

MR. NELSON: Your Honor, just briefly, we did get in

afternoon before we bring the jury up?

MR. EVANS: Yes. Good afternoon, Your Honor. I would like to bring up the fact that I put in a motion for help under 3.3(f) for services other than an attorney, and I would like you to honor that motion, please.

THE COURT: Specifically, are you requesting financial relief?

MR. EVANS: Yes, for my investigator.

THE COURT: All right. I will take that under advisement, and we'll talk about it at the end after we're done with the jury selection today. I want to bring the jury up so we can get them picked. After we're done, then we can talk about this.

MR. EVANS: Okay. Your Honor, for personal reasons I would like to withdraw my pro se status.

THE COURT: Mr. Quigley?

MR. QUIGLEY: Well, Your Honor, that's news to me. I am not prepared to represent him today. I am prepared to act as standby counsel. Candidly, I was on vacation last week. I'm certainly ready to assist Mr. Evans in any way that I can, given what I know about his case. But I'm not prepared to pick a jury. I'm not prepared to represent him in any fashion today.

He would not get a fair trial with my services if we started the trial today with me. Further, I think the case

case law supports the proposition that the Defendant may not later demand appointment of counsel as a matter of right. That is State vs. Imus, 37 Wn.App. 170 and State vs. Bolar, 118 Wn.App. 490. So I have to balance Mr. Evans' request for certainly a much needed attorney in this case in light of a valid waiver and the interest of the orderly administration of justice.

I would observe that this case is 140 days old, which is not terribly ancient in light of the whole spectrum of case age. I was more swayed by the fact that during the motions in limine I heard a laundry list of prior offenses that are within the past ten years that probably puts the offender rating somewhere around 8 or 9 in this case.

MR. NELSON: Actually, most are misdemeanors, Your Honor. He has three prior felony convictions.

THE COURT: Three, and then you get two, if convicted for arson first degree, for a total of five; is that right?

MR. NELSON: He would come in as a 3, so he'd still be a 3. There's no multipliers because there's no other occurrence. But regardless, Your Honor, he does have extensive misdemeanor history.

THE COURT: Well, misdemeanor history would not affect the grids, so you're probably looking at something in the 40- to 50-month range on conviction with a felony score of 3. How much time would you require, Mr. Quigley?

MR. NELSON: Your Honor, I would maybe shoot for the 19th or the 20th of August. That's about three and a half weeks from now. I have a window where that works. In talking with Mr. Quigley, if we set it to the 20th, that actually works perfectly. One of my officers is on vacation until the 23rd, which is the Sunday after that Thursday, if we do jury selection and pretrial motions that day and then have testimony the 24th. I honestly think this is a two- or a three-day trial. It's not that complicated.

THE COURT: So on the 24th, Mr. Nelson, you are here on State vs. Snyder, State vs. Gregory?

MR. NELSON: Right. And, Your Honor, I'm confident that if we started the 20th, we would be finishing either the 24th or 25th, and we can just start up on those other cases immediately after this.

THE COURT: The 24th.

MR. NELSON: That's fine.

THE COURT: So that puts you in conflict, just for your own information, Mr. Nelson, on State v. Snyder, State v. Gregory and State v. Welch.

MR. NELSON: Right. And, Your Honor, not to minimize that, but I generally sort of cross that bridge when I get there. And I will be prepared on those cases.

THE COURT: I'm familiar with the way things roll here.

your issue up.

MR. NELSON: Your Honor, what's the case age on this at this point?

THE COURT: 140.

MR. NELSON: And I believe there has been two prior continuances?

JUDICIAL ASSISTANT: Four.

THE COURT: The last one was when Mr. Evans insisted on going pro se despite the Court's reluctance.

MR. NELSON: Well, Your Honor, actually, technically I think the last one was when Mr. Evans -- I had to set it over one day because I was out yesterday, but that was a one day, very brief --

THE COURT: That's -- you know, you may see that again.

MR. NELSON: What I have done, Your Honor, is put this on for the 24th of August. Did Your Honor want to set any intervening dates between now and then or just leave it on the 24th?

THE COURT: If you need something, call. We'll try to get you in. Otherwise, I'm relatively tightly booked, and it's ready to go.

MR. NELSON: Right.

THE COURT: The case will be continued until the 24th of August to enable Mr. Evans to consult with counsel and prepare counsel, assist counsel in his defense.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. JARED EVANS, Defendant.	Superior Court No. 15-1-00951-8 Court of Appeals No. 48008-5-II

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Carol Frederick, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 25th day of January 2016.

Carol Frederick

CAROL FREDERICK, CCR
Official Court Reporter

3-27-15

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	**CASE NO: 15-1-00951-8**
Plaintiff,	**AFFIDAVIT IN SUPPORT FOR STATE WITNESSES/VICTIM TO BE INTERVIEWED BEFORE A TRAIL CAN START**
vs	
JARED D. EVANS,	
Defendant	

COMES NOW: The defendant herein respectfully moves this court to order that the state's victim be interviewed by the defendant's legal investigator before a trial can start under Riley vs. Taylor, 237 F.3d 300 [Brady Material].

A ISSUE:

If there is evidence that may be used to impeach, does this evidence qualify as "Brady Material"?

B. ARGUMENT:

The defendant's argument is that a pre-trial interview of the state's key witness is necessary for impeachment reasons the victim in this case must be interviewed before a trial can start.

APPENDIX G-1

The defendant in this case would ask that such interview take place at least thirty days before a trail can start under US vs. Gill, 297 F.3d 93 (2nd Cir), that Brady Material must be disclosed in time for its effective use at trial.

The defendant in this case needs time before a trial can start to allow the defendant's legal investigator to investigate what was said at the "Brady Interview." It is a prosecutor's duty to disclose evidence encompassing both exculpatory and impeachment evidence. See: U.S. vs. Elem, 269 F.3d 877 (7th CIR). Therefore, it is a must and the defendant has a constitutional right under "Brady" to such pre-trial interview of the victim in this case.

C. CONCLUSION:

The defendant/petitioner, JARED D. EVANS, prays upon this court based on reasons indicated to allow the defendant's investigator to conduct an interview of the states key witness/victim at least thirty days before a trial can start. This request comes under the rules of "Evidence" state and federal laws.

Respectfully submitted this _____ day of May, 2015

X_____
JARED D. EVANS
B.A. #2015064036
PIERCE COUNTY JAIL
910 TACOMA AVENUE SOUTH
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