FILED
Court of Appeals
Division III
State of Washington
7/9/2018 1:21 PM

Supreme Court No. 96090-9
Court of Appeals No. 34233-6-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

BISIR BILAL MUHAMMAD,
Defendant/Appellant/Petitioner.

APPEAL FROM THE ASOTIN COUNTY SUPERIOR COURT
Honorable Scott D. Gallina, Judge

PETITION FOR REVIEW

SUSAN MARIE GASCH
WSBA No. 16485
P. O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutions and Statutes

Court Rules

I. IDENTITY OF PETITIONER/DECISION BELOW

Bisir Bilal Muhammad requests this Court grant review pursuant to RAP 13.4 of the published decision of the Court of Appeals in *State v. Muhammad*, No. 34233-6-III, filed June 7, 2018.[1] A copy of the opinion is attached as Appendix A.

II. ISSUES PRESENTED FOR REVIEW

1. Does Petitioner have a reasonable expectation of privacy under article 1, section 7 and the Fourth Amendment in the transmissions between his cell phone and cell towers—i.e., the "pings"—such that police were required to obtain a warrant before obtaining real-time coordinates derived from those "pings" from AT&T? RAP 13.4(3), (4).

(a) Does the court of appeals' conclusion that exigent circumstances justified the warrantless "pinging" of Petitioner's cell phone to obtain his real-time location violate established law? RAP 13.4(1), (2).

2. The United States Supreme Court and Washington Supreme Court have held that the double jeopardy clause of the Fifth Amendment prohibits convictions for a qualifying crime and felony murder predicated on that crime.

(a) Does entry of convictions for rape and felony murder predicated on rape violate double jeopardy? RAP 13.4(1), (2), (3).

(b) Does the separate sentence imposed for the predicate crime of rape merge into the felony murder where the two crimes were alleged to be for the same acts? RAP 13.4(1), (2), (4).

[1] The current online version is found at *State v. Bisir Bilal Muhammad*, __ Wn. App. __, 419 P.3d 419 (2018).

III. STATEMENT OF THE CASE[2]

On November 7, 2014, a nude body later identified as 69-year-old Ina Clare Richardson was discovered next to an access road to a park in Clarkston, Washington. Evidence indicated a sexual assault had taken place and the potential homicide may have occurred elsewhere. CP 72, 85–88; RP 265–66, 286–91, 304–05, 308–11, 314–15, 324–25, 331, 333.

Ms. Richardson was last seen the prior evening leaving the Albertsons store in Clarkston. CP 73–74, 94; RP 263, 270, 276–77, 331–32, 334–35, 545–46, 569–70, 794–95. Police initiated a stop of a distinctive car similar to one seen during the same time frame in the store's parking lot video surveillance tape. The driver, Bisir Bilal Muhammad, gave the officer some information and was released and drove away. CP 94, 101–02; RP 334–36.

Based on Mr. Muhammad's statements and other information, review of Walmart and Quality Inn surveillance tapes showing the car was seen in those places at the relevant times, and an autopsy finding confirming homicide by strangulation, police applied for a vehicle search warrant of Muhammad's car and sent an officer back to keep the car under surveillance. CP 95, 102, 104–05; RP 464, 471–43. After leaving his post

[2] More detailed discussion of facts regarding the incident is contained in Petitioner's Brief of Appellant in the court of appeals ("AOB") at 3–8.

for an unknown reason and amount of time, the officer returned to find the car was no longer at Muhammad's home. Police requested "pings" from his phone company and located the car in the nearby Lewiston Orchards area of Lewiston, Idaho. CP 90–91, 102–03, 105; RP 338.

Relevant surveillance videos placed the car in the Albertsons parking lot and driven to an access road behind Quality Inn, where it stayed for about an hour before leaving. RP 361, 367–69, 376, 383–85, 392–95, 407–08, 429–34, 453, 517, 519–21, 544. Search of the car yielded evidence connecting it to the area in back of the inn and to Ms. Richardson's presence. RP 490, 492, 497–99, 502, 504, 508, 657–59. Search of Muhammad's cell phone produced evidence of usage coinciding with his alleged whereabouts on the night in question. RP 681–83.

Petitioner was charged with and convicted of first degree felony murder and first degree rape after a jury trial in Asotin County. CP 22–23, 383, 395. The jury found he knew or should have known the victim was particularly vulnerable. CP 396–97. The jury found he inflicted serious physical injury on Ms. Richardson during the rape but could not agree whether he kidnapped her. CP 398–99. The Honorable Scott D. Gallina imposed an exceptional sentence of consecutive terms totaling a minimum of 866 months. CP 576. Petitioner appealed and on June 7, 2018, Division

Three of the court of appeals affirmed in a published opinion. *See* App. A. Additional relevant facts are contained in the argument section below.

IV. ARGUMENT IN SUPPORT OF REVIEW

1. This Court should grant review to determine whether the warrantless search of transmissions between a cell phone and cell towers to obtain real-time location information violates a user's reasonable expectation of privacy under the state and federal constitutions and whether the court of appeals' conclusion that exigent circumstances justified the warrantless "pinging" violates established law.

Division Three declined to "decide the important question of whether a warrantless employment of a cell phone ping infringes on the phone owner's privacy rights under article I, section 7 of the Washington State Constitution" and "instead affirm[ed] the trial court's ruling that exigent circumstances warranted the ping." *Slip Op.* at 15–18.

The privacy rights of a Washington citizen in his physical location in the digital age of cell-phones poses a significant question of constitutional law and is of substantial public interest, warranting review by this Court. RAP 13.4(b)(3), (4); *see, e.g.*, *Carpenter v. United States*, 585 U.S. __ (No. 16-402, June 22, 2018) (under the Fourth Amendment, police need a search warrant to obtain historical cell-site location information ("CSLI")). Muhammad hereby incorporates his argument made below that the use of cell phone "pings" to obtain his real-time

location in Idaho was an illegal search in violation of article 1 section 7, the Fourth Amendment, and state law. App. B, AOB at pp. 19–33, 43–44.

Apparently conceding a search warrant was required under the Fourth Amendment, Division Three concluded exigent circumstances excused the warrant requirement. *Slip Op.* at 15. This conclusion violates established law. Review is appropriate under RAP 13.4(b)(1), (2).

Exigent circumstances exist to excuse the warrant requirement if demand for immediate investigatory action makes it impracticable for the police to obtain a warrant. *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127, 57 P.3d 1156 (2002). Danger to the public or the possibility that a suspect may escape can constitute an exigent circumstance. *State v. Counts*, 99 Wn.2d 54, 60, 659 P.2d 1087 (1983). To determine if exigent circumstances exist, the court considers six factors: (1) the gravity of the offense, and whether (2) the suspect is reasonably believed to be armed or (3) there is reasonably trustworthy information of the suspect's guilt or (4) there is a strong reason to believe the suspect is on the premises or (5) the suspect is likely to escape if not apprehended, and (6) whether the entry is made peaceably. *Cardenas*, 146 Wn.2d at 406. While all factors need not be present to establish exigency, in the aggregate, the articulated factors must establish the need to act quickly. *State v. Patterson*, 112 Wn.2d 731,

736, 774 P.2d 10 (1989). A court must look to the totality of the circumstances in determining whether exigent circumstances exist. *State v. Smith*, 165 Wn.2d 511, 518, 199 P.3d 386 (2009).

To prove that exigent circumstances are present, the State must "point to specific, articulable facts and the reasonable inferences therefrom which justify the intrusion." *State v. Diana*, 24 Wn. App. 908, 911, 604 P.2d 1312 (1979). The mere possibility of escape or mere suspicion that a suspect will destroy evidence is not sufficient to satisfy the "particularity" requirement. *State v. Coyle*, 95 Wn. 2d 1, 9, 621 P.2d 1256, 1260–61 (1980) (citations omitted). Thus, the particularity requirement must generally be satisfied in either of two ways: (1) police have specific prior information that a suspect has resolved to act in a manner which would create an exigency, or he has made specific preparations to act in such a manner, or (2) police are confronted with some sort of contemporaneous sound or activity alerting them to the possible presence of an exigent circumstance. *Coyle*, 95 Wn.2d at 10 (citations omitted).

Considering the relevant factors in determining an exigency, the State has not shown that exigent circumstances justified the warrantless search of Muhammad's cell phone to obtain location information. The

situation in this case stands in sharp contrast to other situations in which courts have held exigent circumstances to exist.

In *State v. Patterson*, exigent circumstances justified entry into a parked vehicle where a burglary had very recently been committed, the suspect was likely in the immediate vicinity of the vehicle because the officers discovered the vehicle a mere five minutes after the robbery, information in the automobile could help identify and locate the suspect, and a delay in searching the vehicle could have allowed the suspect to flee the area. 112 Wn.2d at 735–36. Similarly, exigencies in *Smith* were found where there was a tanker truck filled with 1,000 gallons of a dangerous chemical parked next to a house, a rifle had been seen in the house, the rifle was then discovered missing, and the two known occupants of the house did not possess the rifle. 165 Wn.23 at 518.

Likewise, in *Com. v. Rushing*, the appellant had just committed a triple homicide, was armed and dangerous, and had indicated he intended to continue his crime spree. Exigent circumstances existed because "[t]he seriousness of Appellant's crimes cannot be understated, he was armed, police had probable cause to arrest him, and he was a danger to others. … As both probable cause and exigent circumstances were present, the Commonwealth acted within its constitutional bounds in obtaining the

real-time cell site information after receiving a court order from the trial court." 2013 PA Super 162, 71 A.3d 939, 965–66 (2013), *rev'd on other grounds*, 627 Pa. 59, 99 A.3d 416 (2014). In *Riley v. California*, holding the search incident to arrest exception does not apply to cell phones, the court noted the exigent circumstances exception to the Fourth Amendment's warrant requirement *could* be available for the "extreme hypotheticals" posited by the government, such as a bomb that is about to detonate or a child abductor whose cell phone shows the child's location. The "critical point" was that the trial court would be able to examine the circumstances "in each particular case" to determine whether there was an emergency justification for a warrantless search. __U.S. __, 134 S.Ct. 2473, 2494, 189 L.Ed.2d 430 (2014).

The facts of the above cases and reasonable inferences therefrom have in common the closeness in time between the crime and the warrantless search, and articulated details of immediacy of the risks of harm or flight or destruction of evidence.

Here, when the "ping" was requested three days after the crime scene was discovered, the crime was over and completed. Muhammad had obviously not fled because he was pulled over by Officer Boyd that morning prior to the "ping" request. Although the officer earlier asked if

he'd been in the Albertsons parking lot and whether he'd seen a crime, no mention was made of a homicide, and Muhammad was left to go on his way after the stop. CP 102. Officer Boyd articulated no facts suggesting risk of harm, flight or destruction of evidence. *See id.*

Officer Boyd reported to his superiors. CP 102. New information was obtained about Muhammad's sex offender level status and out-of-state criminal history. CP 105. While other personnel applied for a search warrant for the vehicle, the officer was sent to Muhammad's house to conduct surveillance of the car. CP 95, 104–05. He saw Muhammad and a female get into the car, go to Walmart and return to his house, and saw Muhammad move the car to park in back of the complex. CP 102. These specific and innocent facts do not suggest risk of harm to others, flight or destruction of evidence.

Officer Boyd then "left for another reason [and an unknown amount of time] and when I came back the car was gone." CP 102. Det. Muszynski returned to the police station with the vehicle search warrant in hand, only to find the present location of the vehicle was not known. CP 105. Around this time the autopsy results came in, finding that the death was a homicide. CP 102. Based on this accumulating information, Officer Boyd requested the warrantless "ping" of Muhammad's cell phone to

determine his real-time location as "he was no place in Clarkston to be found." CP 102. These additional bare facts similarly do not present the exigent circumstances of imminent destruction of evidence or flight or that "other persons' lives may be in danger."

The exigent circumstances cannot be created by the police themselves. *State v. Hall*, 53 Wn. App. 296, 303, 766 P.2d 512, 517 (1989) (citing to *United States v. Rosselli,* 506 F.2d 627, 629–30 (7th Cir.1974) (where police observed drug deliveries made to two apartments, if the risk of a warning call created an apparent emergency, it would have been avoided by leaving an agent with Miss Ackley and the Anderson children in the arrestee's apartment while a warrant was being secured to search the other apartment)). Officer Boyd was sent to keep an eye on the vehicle and was aware his fellow officers were in the process of obtaining a warrant to search it. If immediacy of destruction, flight or harm to others were truly feared, a prudent officer would have called for back-up assistance before leaving sight of the vehicle.

A court must be satisfied that the invocation of exigency is not simply a pretext for conducting an impermissible search. *Smith*, 165 Wn.2d at 523 (citing *State v. Ladson*, 138 Wn.2d 343, 356, 979 P.2d 833 1999). Police may not invoke an exception as pretext to an evidentiary

search. *Id. (*citing *State v. Lawson,* 135 Wn. App. 430, 435–36, 144 P.3d 377 (2006)). Police had no probable cause to arrest Muhammad. The stated reason for wanting to continue gathering evidence was because he had "become a person of interest" and "needed to be interviewed in detail." CP 102–03. An officer's action in leaving surveillance of the car with no replacement is inconsistent with the stated purpose of preventing imminent harm, flight or destruction of evidence. Claiming exigency necessitated the warrantless search of Muhammad's cell phone to locate him was merely pretext to allow investigation to be resumed as quickly as possible.

Nor did the State establish that obtaining a warrant was otherwise impracticable. If time was of the essence, police can seek an immediate telephonic warrant. CrR 3.2(c); *State v. Komoto*, 40 Wn. App. 200, 214, 697 P.2d 1025 (1985) (availability of telephonic warrant factor in assessing exigent circumstances); *see also* RCW 9.73.260(6) (providing for an emergency court order). For example, we do not know whether Officer Boyd could have used a cell phone or radio to procure a telephonic warrant. The record contains no evidence of what he would have had to do

to procure a warrant at the time of the intrusion into the cell phone data. *See State v. Tibbles*, 169 Wn.2d 364, 371, 236 P.3d 885, 889 (2010). [3]

In sum, the mere possibility or suspicion of risk of flight or danger or destruction of evidence is insufficient to establish exigent circumstances. *Coyle*, 95 Wn. 2d at 9. Expediency is similarly insufficient even where police had obtained a search warrant for Muhammad's car. "[W]hatever relative convenience to law enforcement may [result] from forgoing the burden of seeking a warrant once probable cause to search arises in circumstances such as here, we adhere to the view that 'mere convenience is simply not enough.' " *Tibbles*, 169 Wn.2d at 372 (citing *Patterson*, 112 Wn.2d at 734). The State did not satisfy the exigent circumstances exception to the warrant requirement because it did not prove the imperative of a warrantless search, including the unavailability of a telephonic warrant in the circumstances of this particular case. *Smith*, 165 Wn.2d at 518.

2. Review should also be granted to resolve conflicting authority whether entry of convictions and separate sentencings for

[3] It appears law enforcement officers did see the need to obtain a search warrant after the fact. On November 12, 2014, a search warrant was obtained for Muhammad's location information records from AT&T. CP 77–84. The application for search warrant and resulting search warrant were obtained within minutes of each other. *Id.* Similarly the November 11, 2014, application for search warrant of Muhammad's cell phone (now in police possession) and resulting search warrant were obtained within minutes of each other. CP 153–61.

rape and felony murder predicated on rape violate the Fifth Amendment prohibition on double jeopardy and merger doctrine.

This Court should accept review under RAP 13.4(b)(1)–(4) because the decision below highlights conflicts with decisions of this Court and the Court of Appeals in interpreting constitutional principles. "[M]any decisions support the State's arguments and numerous decisions corroborate [Petitioner's] contrary arguments, such that this court would stand on firm foundation in ruling in favor of either party …. We conclude … that [the convictions] do not offend double jeopardy because the murder did not necessarily follow from the rape and the murder statutes and rape statutes serve diverse purposes" and because the crimes "had independent purposes and effects…. the two crimes may be punished separately." *Slip Op.* at 19, 35.

"No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb…." U.S. Const. amend. V. Similarly, "[n]o person shall be ... twice put in jeopardy for the same offense." Const. art. I, §9. To determine whether multiple convictions violate double jeopardy, courts apply the "same evidence" test. *State v. Calle*, 125 Wn.2d 769, 777, 888 P2.d 155 (1995) (*citing Blockburger v. United States*, 284 U.S. 299, 304, 76 L.Ed. 306, 52 S.Ct. 180 (1932)). Under that test, absent clear legislative intent to the contrary, two convictions violate double jeopardy

when the evidence required to support a conviction on one charge would have been sufficient to warrant a conviction upon the other. *Id*.; *State v. Freeman*, 153 Wn.2d 765, 772, 777, 108 P.3d 753 (2005). Prosecutors may not "divide a defendant's conduct into segments in order to obtain multiple convictions." *State v. Jackman*, 156 Wn.2d 736, 749, 132 P3.d 136 (2007). If the prosecution has to prove one crime in order to prove the other, entering convictions for both crimes violates double jeopardy. *Id.*

In light of the above rules, the United States Supreme Court and this Court have recognized that entering convictions for both felony murder and the underlying felony violates the Fifth Amendment right to be free from double jeopardy. *Harris v. Oklahoma*, 433 U.S. 682, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977); *In re the Personal Restraint of Francis*, 170 Wn.2d 517, 522 n.2, 242 P.3d 866 (2010); *In re the Personal Restraint of Orange*, 152 Wn.2d 795, 818, 100 P.3d 291 (2004) (citing *Harris*, 433 U.S. 682). This is so because "t[o] convict a defendant of felony murder the State is required to prove beyond a reasonable doubt each element of the predicate felony." *State v. Quillin*, 49 Wn. App. 155, 164, 741 P.2d 589 (1987). It is impossible to commit felony murder without committing the underlying felony, and entering convictions for both violates double jeopardy. *See Jackman*, 156 Wn.2d at 749.

The Court of Appeals, this Court and the U.S. Supreme Court have all required that convictions be vacated for double jeopardy violations in similar circumstances. *See e.g., State v. Williams*, 131 Wn. App. 488, 491–92, 128 P.3d 98 (2006) (reversing an attempted robbery conviction because it "merged into the felony murder because it was the predicate offense"); *State v. Fagunde*s, 26 Wn. App. 477, 485–86, 614 P.2d 198 (1980) (vacating predicate felonies of first-degree kidnapping and first-degree rape because proof of the underlying felonies provided essential elements of the first-degree murder); *State v. Womac*, 160 Wn.2d 643, 647,656, 160 P.3d 40 (2007) (Where the defendant was convicted of homicide by abuse, felony murder predicated on assault, and assault, this Court ordered the latter two convictions vacated. Only one of the first two convictions could be sustained because there was only one homicide, and the assault conviction could not stand because "Womac could not have committed felony murder in the second degree without committing assault in the first degree"); *Harris*, 433 U.S. 682 (holding the Fifth Amendment prohibited the defendant's conviction for robbery following a conviction for felony murder predicated on robbery); *Whalen v. United States*, 445 U.S. 684, 693–94, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980) (vacating the predicate rape conviction because a "conviction for killing in the course of

a rape cannot be had without proving all of the elements of the offense of rape").

The same is true here. Muhammad could not have committed felony murder without also committing the underlying rape. *Quillin*, 49 Wn. App. at 164; *Williams*, 131 Wn. App. at 498–99; *Fagundes*, 26 Wn. App, at 485–86. Thus, his convictions for both crimes violate the Fifth Amendment prohibition on double jeopardy. *Harris*, 433 U.S. 682; *Orange*, 152 Wn.2d at 818; *Jackman*, 156 Wn.2d at 749.

The sentencing "merger" doctrine is a tool of statutory construction, designed to determine whether the Legislature intended that the defendant should be punished multiple times for a particular act. *State v. Saunders*, 120 Wn. App. 800, 86 P.2d 232 (2004). Thus, the court in *Fagunde*s held that because proof of an underlying felony was an essential element of the proof for elevating the death to a felony murder, the underlying felonies charged against the defendant merged into the felony murder. *Fagunde*s, 26 Wn. App. at 846.

Similarly, in *Williams, supra*, the defendant was tried on first-degree felony murder with a predicate crime of robbery or attempted robbery. *Williams*, 131 Wn. App. at 497–98. On appeal, the prosecution argued that the robbery was "factually disconnected" and served "a

different purpose or intent" than the murder, and thus did not merge. 131 Wn. App. at 499; *see e.g. State v. Peyton*, 29 Wn. App. 701, 630 P.2d 1362, *review denied*, 96 Wn.2d 1024 (1981).

In rejecting the prosecution's argument, the *Williams* court first noted that two offenses merge if "to prove a particular degree of crime, the State must prove that the crime 'was accompanied by an act which is defined as a crime elsewhere in the criminal statutes.'" *Williams*, 131 Wn. App. at 498, quoting *State v. Vladovic*, 99 Wn.2d 413, 419 & n. 2, 662 P.2d 853 (1983). Next, the court looked at the statutes, "to determine whether the legislature intended to impose a single punishment for a homicide committed in furtherance or in immediate flight from" the predicate offense. *Williams,* 131 Wn. App. at 498–99. Because the elements of the first degree felony murder statute specifically required proof of the predicate crime, the court noted that to find the defendant guilty of the felony murder, the jury had to find him guilty of the underlying crime and of killing the victim in the course, furtherance, or immediate flight "therefrom." 131 Wn. App. at 499. As a result, the predicate crime merged with the felony murder. *Id.*

In reaching its conclusion, the *Williams* court rejected the argument that the "general merger law" applied and, under that law, "criminal acts

with a different purpose and effect do not merge," regardless whether one is an element of the other. 131 Wn. App. at 498. Cases involving felony murder are different from regular "merger" cases, the court held, because the lesser offense is "an essential element of the greater offense" under the felony murder statute. 131 Wn. App. at 499–500. Without proof of the underlying crime, there could be no first-degree murder conviction. *Id.* It was therefore improper to impose a separate sentence for the underlying or predicate felony, which merged into the felony murder offense. 131 Wn. App. at 499–500.

Here, Muhammad was charged with and convicted of committing first degree felony murder under RCW 9A.32.010(1)(c), by causing Ms. Richardson's death while "committ[ing] or attempt[ing] to commit the crime of rape in the first or second degree." CP 22, 395, 572. He was also charged with and convicted of the very same first degree rape. CP 23, 395, 572. In order to find Muhammad guilty of first degree murder, the jury had to find him guilty of rape and of killing Ms. Richardson in the course of or in furtherance of or in immediate flight from that crime. RCW 9A32.010(1)(c). The rape would not merge only if it was "'merely incidental' to the homicide. *Williams,* 131 Wn. App. at 499, quoting *Vladovic,* 99 Wn.2d at 421. That is not the case here. The rape "was

integral to the killing. The [strangulation] had no purpose or intent outside of accomplishing the [rape] or facilitating [Muhammad's] departure from the scene." *Williams*, 131 Wn. App. at 499. The rape should have been merged into the first-degree felony murder for sentencing. *Williams*, 131 Wn. App. at 498–99; *Fagundes*, 26 Wn. App. at 485–86.

In *Peyton* the court of appeals did not reject *Fagundes*. Instead the court simply held that under the unique facts of *Peyton*, the crimes of robbery and felony murder were not "intertwined" and thus did not merge. *Peyton*, 29 Wn. App. at 719–20. There, after a completed bank robbery, the robbers fled in one vehicle, abandoned it, fled again in another vehicle, and then shot a law enforcement officer in a gunfight. The robbery did not merge with the homicide because it was disconnected in time, place, and circumstances. 29 Wn. App. at 719–20. Thus in *Peyton* the predicate felony was over and the murder was an entirely separate act—unlike here, where the underlying felony is alleged to have been committed by essentially the same acts as the felony murder.

As the court explained in *Williams*, if the predicate crime and homicide are "factually disconnected," the defendant could not be convicted of felony murder:

> If, as the State suggests, the jury found the attempted robbery was complete when Mr. Williams took some undefined substantial step

> earlier in the evening, then it could not have found that the shooting was in furtherance of ... that attempt. And the first degree murder conviction could not stand. Likewise, the State's assertion that the two crimes were completely unrelated is inconsistent with the felony murder charge.

Williams, 131 Wn. App. at 499. Here, unlike in *Peyton*, the decedent was not killed after the perpetrator raped someone else and fled the scene of the rape. The state had insufficient evidence to establish the rape and homicide were disconnected in time, place, and circumstances. This is why Muhammad was charged with felony murder as opposed to intentional murder.[4] The jury determined Ms. Richardson was killed by Muhammad in the course of or in furtherance of the rape or in immediate flight therefrom. If the jury instead found the rape was complete before the murder was committed, then it could not have found that the murder was in furtherance of or in flight from the rape. And, the first degree murder conviction could not stand. *Williams*, 131 Wn. App. at 499.

V. CONCLUSION

For the reasons stated, this Court should grant review.

Respectfully submitted on July 9, 2018.

s/Susan Marie Gasch, WSBA #16485
Gasch Law Office, P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149; FAX: None
gaschlaw@msn.com

[4] By amended information, the State removed the alternative charge of premeditated murder. *Cf.* CP 14 with CP 22.

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on July 9, 2018, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of appellant's petition for review and Appendices A and B:

Bisir Bilal Muhammad (#388875)
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla WA 993622

E-mail: bnichols@co.asotin.wa.us
Benjamin C. Nichols
Asotin County Prosecutor

E-mail: jennifer.joseph@kingcounty.gov
Jennifer Paige Joseph
King County Prosecutor's Office

_____
s/Susan Marie Gasch, WSBA #16485

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

FILED
The Court of Appeals
Division III
State of Washington
7/9/2018 1:22 PM

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

June 7, 2018

Jennifer Paige Joseph
King County Prosecutor's Office
516 3rd Ave Ste W554
Seattle, WA 98104-2362
jennifer.joseph@kingcounty.gov

E-mail
Susan Marie Gasch
Gasch Law Office
PO Box 30339
Spokane, WA 99223-3005

E-mail
Benjamin Curler Nichols
Asotin County Prosecutors Office
PO Box 220
Asotin, WA 99402-0220

CASE # 342336
State of Washington v. Bisir Bilal Muhammad
ASOTIN COUNTY SUPERIOR COURT No. 141001578

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:sh
Enclosure
c: **E-mail** Honorable Scott D. Gallina

c: Bisir Bilal Muhammad
#388875
1313 N. 13th Ave.
Walla Walla, WA 99362

FILED
JUNE 7, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. BISIR BILAL MUHAMMAD, Appellant.	)))))))))	No. 34233-6-III PUBLISHED OPINION

FEARING, J. — Appellant Bisir Muhammad challenges the validity of the stop of his car, the search of his car, and the gathering of other evidence. He also challenges his convictions for first degree murder and first degree rape on the basis of double jeopardy and merger. We reject Muhammad's challenges and affirm his convictions.

FACTS

This appeal lies from the callous murder of Ina Clare Richardson, a petite 102-pound, 69-year-old woman. A jury convicted Bisir Muhammad of the homicide. Because issues on appeal concern a motion to suppress evidence and trial evidence, we alternate between facts presented at the suppression hearing and the trial.

We begin with some trial testimony. Victim Ina Richardson suffered from bipolar disorder. During her manic phases, Richardson openly trusted others. On the night or

morning of November 6-7, 2014, someone beat, raped, and strangled Richardson to death.

On November 7, a couple on a morning walk discovered Ina Richardson's naked corpse discarded along the side of an access road to a park in Clarkston. The unidentified Richardson bore bruises, scrapes, and cuts throughout her body and swollen lips. Her body bore defensive wounds indicating Richardson had struggled with her attacker. One of Richardson's pinkie nails was torn off. Richardson bled from her vagina and carried bruises on her thighs and genitalia. Since Richardson's feet remained remarkably clean, law enforcement officers suspected her killer slayed her elsewhere and transported the corpus to the dump site.

After the media broadcasted a description of the unidentified body, Ina Richardson's friend, Jeff Smith, told law enforcement that he suspected Richardson to be the deceased person. Smith explained that he encountered Richardson at the Clarkston Albertsons on the night of November 6 and that Richardson then sought a ride home from the store. Smith could not help Richardson because he rode a bicycle. Richardson unsuccessfully asked others to provide a ride.

Based on Jeff Smith's tip, law enforcement procured and reviewed security camera footage from an Albertsons grocery store, a Costco store, a Walmart store, and a McDonald's restaurant and spoke to workers at the business establishments. The businesses surrounded one another. The various security cameras activated on movement

and deactivated without movement. Law enforcement constructed a timeline of Ina Richardson's last night alive using the footage.

Walmart videotape showed a distinctive car leaving the nearby Quality Inn and parking in the Walmart parking lot for approximately one-half an hour. Bisir Muhammad worked that evening at the Quality Inn. The older, boxy, maroon American model car exhibited a discolored front driver's side rim, a chrome strip, and a light on the side between the front and rear doors.

An Albertsons inside store camera depicted Ina Richardson shopping for one hour and ten minutes. Video from the Albertsons outside security camera showed Richardson leaving the store at 11:06 p.m. and walking southeast through the parking lot toward a ubiquitous McDonald's restaurant. The video shows the distinctive car parked in the southeast end of the parking lot near the McDonald's for a considerable time before Richardson approached, with no one entering or emerging from the car. The camera stopped recording as Richardson walked into the darkness.

The Albertsons video next displays the activation of the headlights of the distinctive car. Seven minutes later the car traveled west through the parking lot. Video from a nearby Costco surveillance camera then showed the same vehicle moving with two people inside. The car drove on to an access road behind the Quality Inn and parked in a service entrance area behind the hotel. Law enforcement later found a condom wrapper in this secluded location. At 12:37 a.m., video showed the car leaving the

vicinity. Richardson was never again seen alive.

An autopsy confirmed that someone sexually assaulted and strangled Ina Richardson. The autopsy also verified injuries to Richardson's scalp, face, lips, arms, forearms, hands, thighs, knees, legs, right buttock, and left groin region. Finally, the autopsy showed a large laceration in Richardson's vaginal canal that evidenced a blunt object being forced into the vagina and tearing tissue inside.

Swabs of Richardson's vagina later yielded a small amount of deoxyribonucleic acid (DNA) consistent with Bisir Muhammad's DNA profile. Forensic scientist Anna Wilson testified at trial that use of a condom would explain the limited amount of DNA to test. DNA retrieved from under Richardson's fingernails also matched Muhammad's DNA.

Because video last pictured Ina Richardson walking toward the distinctive maroon car that soon left the parking lot, law enforcement studied the features of the video in hopes of locating the motor vehicle. On November 10, three days after the discovery of Richardson's body, Clarkston Police Officer Darrin Boyd espied the car driving on a city street. Officer Boyd read the vehicle's license plate number and stopped the maroon car to identify the driver and registered owner of the car. Both were Bisir Muhammad.

We now turn to the content of police records filed in response to the motion to suppress. During the investigating stop, Officer Darrin Boyd told Bisir Muhammad of a crime that occurred in the Albertsons parking lot on November 6 and of a car matching

Muhammad's car being in the lot. Officer Boyd asked Muhammad whether he parked in the parking lot that night, and Muhammad said no. Muhammad commented that, to his recollection, he drove directly home after finishing his work shift at the Quality Inn that night. Muhammad asked Boyd what crime occurred, and Boyd responded by inquiring of Muhammad if he read the paper. Muhammad answered no. Muhammad asked Boyd if someone robbed McDonalds, and Boyd again answered in the negative. To our knowledge, Boyd did not disclose the nature of the crime. Boyd gained Muhammad's phone number from Muhammad. Officer Boyd thanked Muhammad for his time, apologized for any inconvenience, and released him.

After questioning Bisir Muhammad, Officer Darin Boyd informed others at the Clarkston Police Department that he located the distinctive car depicted in the video footage. Sergeant Richard Muszynski reviewed records and learned that Muhammad was a registered sex offender. Muszynski also noted a prior rape conviction from Arkansas for Muhammad under the alias "Billy Joe Dallas." Clerk's Papers at 414, 475.

Still on November 10, Sergeant Richard Muszynski directed Officer Darrin Boyd to surveil Bisir Muhammad and Muhammad's vehicle. Officer Boyd viewed Muhammad retrieve a woman from his apartment residence, drive to Walmart, enter the store, and return to his home. Muhammad parked the maroon car at the rear of the apartment. For some unknown reason, Boyd abandoned his surveillance. When Boyd returned to the Muhammad apartment building, Boyd noticed the car missing.

Still on November 10, while Officer Darrin Boyd tailed Muhammad, Sergeant Richard Muszynski procured a warrant to search the maroon car. Police could not thereafter locate the car.

Officer Darrin Boyd grew concerned that Bisir Muhammad might flee, destroy evidence, or endanger someone else's safety. Officer Boyd asked police dispatch to request AT&T, Muhammad's cell phone carrier, to "ping" Muhammad's phone. The onomatopoeic term "ping" references the sending of a signal to identify the current location of a cell phone. The phone carrier can discern the location through cell-site locations, truncated as cell-site location (CSL) or cell-site location information (CSLI), or by tracking satellite-based global positioning system data (GPS). The carrier detects a general, not specified, area of the phone by CSL when the cell phone connects with a cell tower in order to initiate or receive a call. GPS data reveals the exact location of the phone by revealing the phone's latitude and longitude coordinates regardless of a pending call.

We now return to more trial testimony. On November 10, Bisir Muhammad's cell phone carrier used a CSL ping and discovered Muhammad's presence in the vicinity of several Lewiston, Idaho, orchards. Lewiston police officers accompanied Clarkston officers in searching the region and locating Muhammad and his car. At the orchards, Sergeant Richard Muszynski advised Muhammad that he held a search warrant for the maroon car and asked if Muhammad would speak to officers at the Clarkston police

station. Muhammad agreed, and officers seized his car pursuant to the warrant. While in the orchards, officers also seized Muhammad's cell phone without a warrant. After traveling to Clarkston, officers advised Muhammad of his constitutional rights. Muhammad signed a form that waived his rights and consented to speak with the officers.

During the beginning of the Clarkston Police Department interview, Bisir Muhammad claimed again that he drove directly home after his shift washing dishes at the Quality Inn on November 6. Muhammad also stated he would have been home by 10:25 p.m. Of course, law enforcement had already viewed videos that contradicted Muhammad's statement. When confronted that a video showed him parked in the Walmart parking lot, Muhammad first responded that he did not remember going to Walmart and had no reason to shop there. Muhammad next declared that he entered Walmart to cash a paycheck, but the store refused to cash the check. Officers then disclosed that the Walmart security video depicted Muhammad sitting in his car in the parking lot for thirty minutes and never emerging from the car. Muhammad again changed his story and asserted that he saw his friend Mike Delameter at a nearby Motel 6. When officers told Muhammad that a video pictured Ina Richardson walking toward his car that night, he stated he visited with Delameter in the motel at that time. Officers later approached Delameter, who denied seeing Muhammad that night.

During the November 10 interview at the Clarkston Police Department station, Bisir Muhammad also told officers that he worked at the Clarkston Albertsons for two

months, ending two weeks before November 6, 2014. The officers showed Muhammad a picture of Ina Richardson and asked if he knew her from her shopping at Albertsons. Muhammad recognized Richardson but maintained that he only spoke to her once in a large group setting. Nevertheless, Albertsons security camera footage from inside the store showed Muhammad and Richardson talking alone together on two occasions. In one of the videos, taken one week before her rape and murder, Richardson appears to rebuff an attempted kiss from Muhammad.

During the November 10 interview, Bisir Muhammad repeatedly denied participation in Ina Richardson's disappearance and death and refused to donate a DNA sample. Muhammad finally exercised his right to counsel and left the interview.

On searching Bisir Muhammad's maroon car, officers found, in the trunk, latex gloves, personal lubricant, pornographic digital video disks, and a box of condoms bearing the same lot number as the condom wrapper found in the secluded area where Muhammad had parked for an hour after leaving the Albertsons parking lot. Albertsons clerk Vickie Hollahan testified at trial that Muhammad informed her that he and his wife, who is disabled, do not have sex. Law enforcement tested blood stains on the front passenger seat and headrest and confirmed the fluid as Ina Richardson's blood.

Officers also garnered a warrant to search Bisir Muhammad's cell phone and to gather Muhammad's phone records from AT&T. The phone records undermine Muhammad's claim that he arrived home on November 6 by 10:25 p.m. The records

confirm phone calls between Muhammad and his wife beginning at 12:17 a.m. on November 7, 2014, an hour after his car left the Albertsons parking lot. AT&T CSL data confirmed that Muhammad's phone remained stationary during the time his car was parked behind the Quality Inn. After 12:30 a.m., his phone used other cell phone towers, indicating Muhammad traveled. At one time, Muhammad's phone used a cell tower with an unobstructed line of sight to the location where the walkers found Ina Richardson's body.

Police arrested Bisir Muhammad on November 13, 2014. The local newspaper reported the arrest on the front page of the November 13 edition. At 4:50 a.m., on November 14, Muhammad's wife, Detra, called her insurance agent Vicki DeRoche. Detra hysterically wept and told DeRoche that she worried Muhammad had acted awfully. Detra explained that Muhammad came home late on the night of the murder without explanation, that blood spotted his clothes, and that he discarded a used condom while claiming the condom was a latex glove he used to help an injured coworker.

PROCEDURE

The State of Washington charged Bisir Muhammad with murder in the first degree and rape in the first degree. The State pled first degree murder under the felony murder provisions of RCW 9A.32.030(1)(c) based on Muhammad committing the homicide in the furtherance of the rape.

Bisir Muhammad moved to suppress all physical evidence obtained during the law

enforcement investigation of his case and identification and location information derived from the warrantless ping. Muhammad also sought suppression of his prearrest statements, including statements made to Officer Darrin Boyd during the car stop. Muhammad argued that Officer Boyd conducted an unlawful stop and that law enforcement improperly gained all search warrants based on information gathered during that stop. Muhammad also argued that officers lacked authority to seize his car in Idaho based on a Washington warrant and that the cell phone ping used to locate Muhammad qualified as an unlawful search. The trial court found that, even if the ping constituted a search, exigent circumstances justified immediate police action to direct the ping. The trial court denied the suppression motion. The court issued an order denying suppression, but entered no formal findings of fact.

After a trial, the jury found Bisir Muhammad guilty of both charges. The jury also found the facts sufficient to support the presence of aggravating circumstances, because of Ina Richardson's vulnerability. The trial court imposed a term of 548 months' confinement for the murder and an indeterminate sentence of 318 months' confinement to life for the rape. Due to the jury's finding of aggravating circumstances, the court ordered, as an exceptional sentence, that the two sentences be served consecutively instead of concurrently. The total term amounts to at least 866 months. The trial court entered findings and conclusions in support of the exceptional sentence that the rape and murder do not merge because the two crimes had independent purposes and effects.

LAW AND ANALYSIS

Vehicle Stop

Bisir Muhammad first contends that Officer Darrin Boyd's stop of his maroon car on November 10, 2014 violated the Fourth Amendment. Muhammad insists that officers saw no criminal conduct in the security videos footage, and thus Boyd lacked grounds to stop his car. By stopping the car, Boyd discovered the identity of Muhammad and his ownership of the distinctive car, which information officers employed that day to procure the search warrant for his car. Because of the illegality of the stop, Muhammad asks that we reverse the trial court's refusal to suppress all physical evidence and statements procured during his questioning. According to Muhammad, all evidence gathered resulted from the illegal stop.

Officer Darrin Boyd detained Bisir Muhammad's car for questioning of the driver rather than to arrest the driver. Thus, we characterize the stop as a *Terry* stop and address the propriety of a *Terry* stop under the circumstances known to Boyd.

We review the traffic stop of the distinctive maroon car only under Washington law, since state law affords an accused greater protection. As a general rule, warrantless searches and seizures are per se unreasonable, in violation of article I, section 7 of the Washington State Constitution. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). Washington recognizes at least six narrow exceptions to the warrant requirement: consent, exigent circumstances, searches incident to a valid arrest, inventory

searches, plain view searches, and *Terry* investigative stops. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). The State bears the burden of demonstrating that a warrantless seizure falls into a narrow exception to the rule. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010).

Whether pretextual or not, a traffic stop constitutes a "seizure" for the purpose of constitutional analysis. *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). Warrantless traffic stops pass constitutional challenge under article I, section 7 as investigative stops, but only if based on a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope. *State v. Chacon Arreola*, 176 Wn.2d 284, 292-93, 290 P.3d 983 (2012); *State v. Ladson*, 138 Wn.2d at 350. Likewise, police may conduct a *Terry* stop if police have a reasonable suspicion of criminal activity. *State v. Ibrahim*, 164 Wn. App. 503, 508, 269 P.3d 292 (2011). *Terry* permits an officer to briefly detain, for limited questioning, a person whom he or she reasonably suspects of criminal activity. *State v. Broadnax*, 98 Wn.2d 289, 293-94, 654 P.2d 96 (1982), *abrogated on other grounds by Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993).

When police have been unable to locate a person suspected of involvement in a past crime, the ability to briefly stop that person, ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice. *United States v. Hensley*, 469 U.S. 221, 229, 105 S. Ct.

675, 83 L. Ed. 2d 604 (1985). The minimally intrusive *Terry* stop, therefore, allows an officer to make an intermediate response to a situation for which he or she lacks probable cause to arrest but which calls for further investigation. *State v. Kennedy*, 107 Wn.2d 1, 17, 726 P.2d 445 (1986).

Officer Darrin Boyd did not observe any criminal conduct either on the security videos or while observing Bisir Muhammad and before stopping Muhammad. Nevertheless, the totality of the circumstances gave rise to reasonable suspicion for Officer Boyd to initiate an investigatory stop based on past criminal conduct occurring off camera and known to Boyd. After studying video footage from the night of Ina Richardson's disappearance, Officer Boyd noted distinctive features of a vehicle toward which Richardson fatefully walked. Three days later, Boyd witnessed the same distinctive car driving in town. Based on the idiosyncratic character of the maroon car, Officer Boyd possessed grounds to suspect its driver might hold knowledge concerning the crimes or might have participated in the horrendous crimes against Ina Richardson.

Officer Darrin Boyd's stop did not exceed the scope of a *Terry* search. Boyd gained identification of Muhammad, asked him if he was present at the crime scene nights earlier, asked him if he saw any suspicious activity that night, and allowed Muhammad to proceed after answering the questions.

Bisir Muhammad contends the stop violated the state constitution because Officer Darrin Boyd articulated no particularized facts supporting the possibility that Muhammad

engaged in a crime at the time of the stop. But, similar to federal law, Washington law does not limit *Terry* stops to crimes in progress. *State v. Snapp*, 174 Wn.2d 177, 198, 275 P.3d 289 (2012). Washington courts have long described the suspicion required to justify a *Terry* stop as "a substantial possibility that criminal conduct *has occurred* or is about to occur." *State v. Snapp*, 174 Wn.2d at 198 (emphasis added) (quoting *State v. Johnson*, 128 Wn.2d 431, 454, 909 P.2d 293 (1996)).

Bisir Muhammad cites to *State v. Quezadas-Gomez*, 165 Wn. App. 593, 267 P.3d 1036 (2011) to support his assignment of error. Muhammad uses the decision's analysis to conclude that, unless probable cause to arrest exists prior to the investigatory vehicle stop, the stop is unlawful. In *Quezadas-Gomez*, a law enforcement officer stopped the car driven by Eduardo Quezadas-Gomez based on probable cause that Quezadas-Gomez engaged in a drug transaction. This court held the stop to be legal because of the probable cause. The decision did not address the lawfulness of a *Terry* stop.

We observe that other decisions involve the law enforcement officer gaining reasonable suspicion that a person who previously engaged in, presently engages in, or is about to engage in a crime. Officer Darrin Boyd held reasonable suspicion that the car driven by Bisir Muhammad assisted in or functioned as the scene of a crime. On November 10, Boyd could not identify the driver of the maroon car as the driver of the car on the night of November 6. In this appeal, Muhammad does not argue the lack of reasonable suspicion because the videotape did not capture his face or because Officer

Boyd did not recognize Muhammad's face while the latter drove his car. We note that the government may temporarily seize property based on a reasonable and articulable suspicion of criminal activity and the object's connection to the activity. *United States v. Van Leeuwen*, 397 U.S. 249, 90 S. Ct. 1029, 25 L. Ed. 2d 282 (1970); *State v. Jackson*, 82 Wn. App. 594, 605-06, 918 P.2d 945 (1996).

The State also contends that, even without information gained by Officer Darrin Boyd during the traffic stop, law enforcement held probable cause to procure the search warrant for the maroon car. We need not address this contention.

Cell Phone Ping

Bisir Muhammad next contends the Clarkston Police Department violated his constitutional right to privacy when gathering from the phone carrier information as to the current location of Muhammad's cell phone. Thus, Muhammad seeks suppression of all evidence and information gathered after the warrantless, surreptitious ping. We decline to decide the important question of whether a warrantless employment of a cell phone ping infringes on the phone owner's privacy rights under article I, section 7 of the Washington State Constitution. We instead affirm the trial court's ruling that exigent circumstances warranted the ping.

Exigent circumstances exist to excuse the warrant requirement if demand for immediate investigatory action renders it impracticable for the police to obtain a warrant. *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127, 57 P.3d 1156 (2002). Exigent

circumstances excuse the requirement to obtain a warrant prior to conducting a search when obtaining a warrant is not practical because the delay inherent in securing a warrant would compromise officer safety, facilitate escape, or permit the destruction of evidence. *State v. Smith*, 165 Wn.2d 511, 517, 199 P.3d 386 (2009). Five circumstances qualify as exigent circumstances: (1) a hot pursuit, (2) a fleeing suspect, (3) danger to the arresting officer or to the public, (4) the mobility of a vehicle, and (5) the mobility or destruction of evidence. *State v. Counts*, 99 Wn.2d 54, 60, 659 P.2d 1087 (1983). To determine whether exigent circumstances exist, a court must look to the totality of the circumstances. *State v. Smith*, 165 Wn.2d at 518.

Six nonexclusive factors guide the analysis of whether exigent circumstances exist under the law of search and seizure: (1) the gravity or violent nature of the offense with which the suspect is to be charged, (2) whether the suspect is reasonably believed to be armed, (3) whether there is reasonably trustworthy information that the suspect is guilty, (4) there is strong reason to believe that the suspect is on the premises, (5) a likelihood that the suspect will escape if not swiftly apprehended, and (6) the entry is made peaceably. *State v. Cardenas*, 146 Wn.2d at 406 (2002). While every factor need not be present to establish exigency, in the aggregate the factors must establish the need to act quickly. *State v. Patterson*, 112 Wn.2d 731, 736, 774 P.2d 10 (1989). The mere suspicion of flight or destruction of evidence does not satisfy a "particularity" requirement of exigent circumstances. *State v. Coyle*, 95 Wn.2d 1, 9, 621 P.2d 1256

(1980).

All but one of the six exigent circumstances factors militate in favor of a finding of exigent circumstances in this appeal. Although officers knew Ina Richardson experienced a violent death, officers did not know Bisir Muhammad to bear arms. Nevertheless, the nature of the crime rises to the zenith in terms of an individual victim. Bisir Muhammad's driving of and ownership of the distinctive car found in the video, his employment near the site of the crime, and his previous encounters with Ina Richardson that could have led Richardson to trust him engendered a reasonable belief of his being a suspect. Muhammad already knew that law enforcement knew of his car's proximity to the crime and Muhammad would suspect that law enforcement considered him a suspect. Therefore, a wise Muhammad would have fled the region, but surprisingly failed to do so. Perhaps he thought he could hide from law enforcement in an orchard located in another state. Law enforcement peacefully entered the orchard where Muhammad reposed. Although such evidence could likely not be introduced at trial, officers also knew Muhammad to be a registered sex offender with a previous rape conviction under another name. Use of the ping would reasonably identify the location of Muhammad.

Bisir Muhammad promotes the lack of exigent circumstances due to the fact that Ina Richardson's murder occurred three days earlier. He also emphasizes that Officer Darrin Boyd made no mention of a homicide when stopping Muhammad earlier that day. Muhammad underscores that he had not fled by the time Boyd stopped him. Finally,

Muhammad highlights the fact that Boyd abandoned his surveillance of Muhammad at the latter's apartment. Nevertheless, none of the exigent circumstances factors depend on whether an officer earlier disclosed the nature of a crime to the suspect. While the crime occurred three days before officers pinged Muhammad's phone, the ping, as the trial court noted, occurred only hours after Boyd encountered Muhammad and commented that police knew of the crime and knew of the presence of the maroon car in the location of the crime. Muhammad had not earlier fled, but he lacked knowledge that officers knew of the connection of the maroon car to the crime. Officers could reasonably deduce that the window of time for collection of evidence rapidly closed. Like Muhammad, we question Boyd's abandonment of the surveillance, but the abandonment could be the result of another emergency or simple neglect. Neglectful conduct does not dissipate exigent circumstances.

We question, as does Bisir Muhammad, the validity of the exigent circumstances exception to the warrant requirement now that law enforcement may promptly gain a search warrant through telephone calls to a judge at nearly any time of day. Nevertheless, any abrogation or restriction of the exigent circumstances doctrine should come from our state Supreme Court. We also cannot preclude the possibility that some circumstances, such as immediate unavailability of a magistrate, prevented law enforcement from quickly gaining a search warrant for the ping on November 10.

Double Jeopardy

Bisir Muhammad assigns error for the first time on appeal to his convictions for both first degree murder and first degree rape. By emphasizing that the State employed the rape to qualify him for a first degree murder conviction, Muhammad contends the two convictions violate double jeopardy principles.

Whether the two convictions violate double jeopardy principles poses as the most difficult question in this appeal. Both parties raise excellent arguments in advance of each's respective position. Because of a common practice of charging an offender for more than one crime based on one act or one course of conduct, the jurisprudence of double jeopardy spawns numerous federal and state decisions. In turn, courts have split double jeopardy principles into multipart tests, rules, and subrules that emphasize different features of a prosecution or the multiple acts of the accused. For these reasons, many decisions support the State's arguments and numerous decisions corroborate Bisir Muhammad's contrary arguments, such that this court would stand on firm foundation in ruling in favor of either party. We conclude, however, that convictions for first degree rape and first degree murder, under this appeal's circumstances, do not offend double jeopardy because the murder did not necessarily follow from the rape and the murder statutes and rape statutes serve diverse purposes.

Under the United States Constitution, no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. Under our

state constitution: "No person shall be . . . twice put in jeopardy for the same offense." WASH. CONST. art. 1, § 9. These clauses protect defendants against "prosecution oppression." *State v. Womac*, 160 Wn.2d 643, 650, 160 P.3d 40 (2007).

The double jeopardy clause of the Fifth Amendment encompasses three separate constitutional protections: against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. *State v. Gocken*, 127 Wn.2d 95, 100, 896 P.2d 1267 (1995). The federal and state double jeopardy provisions parallel one another in thought, substance, and purpose and thus afford the same protections. *In re Personal Restraint of Davis*, 142 Wn.2d 165, 171, 12 P.3d 603 (2000).

An offender may raise a double jeopardy challenge for the first time on appeal. *State v. Jackman*, 156 Wn.2d 736, 746, 132 P.3d 136 (2006). The usual remedy for violations of the prohibition of double jeopardy is to vacate the lesser offense. *State v. Hughes*, 166 Wn.2d 675, 686 n.13, 212 P.3d 558 (2009).

Despite the double jeopardy clause, the State may bring multiple charges arising from the same criminal conduct in the same proceeding. *State v. Michielli*, 132 Wn.2d 229, 238-39, 937 P.2d 587 (1997). Because the legislature holds the power to define offenses, whether two offenses are separate offenses hinges on whether the legislature intended them to be separate. *In re Personal Restraint of Francis*, 170 Wn.2d 517, 523, 242 P.3d 866 (2010). Within constitutional constraints, the legislature may define crimes

and punishments as it sees fit. *State v. Smith*, 177 Wn.2d 533, 545, 303 P.3d 1047 (2013); *State v. Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995).

In the context of an accused, such as Bisir Muhammad, charged with crimes under two statutes, courts base any double jeopardy review on statutory analysis, not constitutional law. One might question if a prosecution under two distinct statutes even raises double jeopardy concerns, because courts defer to intent of the legislature. The legislature, without constitutional restrictions, may punish the same act twice by creating distinct crimes.

A trial court's imposition of more than one punishment for a criminal act that violates more than one criminal statute does not necessarily constitute multiple punishments for a single offense for purposes of double jeopardy. *State v. Calle*, 125 Wn.2d at 780 (1995). In order to determine if multiple convictions violate double jeopardy, we ask whether the legislature intended to allow multiple punishments for criminal conduct that violates more than one statute. *State v. Louis*, 155 Wn.2d 563, 569, 120 P.3d 936 (2005). If the legislature intended that cumulative punishments can be imposed for the crimes, double jeopardy is not offended. *In re Personal Restraint of Borrero*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007). Also, if the legislature does not value a court's decision prohibiting an accused from convictions on two crimes for the same act or similar acts, the legislature could avoid the repercussions of the ruling by increasing the punishment of one of the crimes. For this reason, the double jeopardy

clause constrains more the prosecution and the courts, rather than the legislature.

The analysis throughout a double jeopardy review focuses on the intent of the legislature, but we start with determining whether the language of the criminal statutes shows a desire to allow prosecution for the separate crimes. To determine whether the legislature intended two separate offenses, we first consider any express or implicit representations of legislative intent. *In re Personal Restraint of Francis*, 170 Wn.2d at 523 (2010). We seek to determine if the legislature defined what it considered to be one unit of prosecution. The unit of prosecution is the essential conduct that makes up the core of the offense. *In re Personal Restraint of Francis*, 170 Wn.2d at 528 (2010).

We quote the relevant sections of the first degree murder and first degree rape statutes, the crimes of Bisir Muhammad's convictions. RCW 9A.32.030 defines murder in the first degree as:

> (1) A person is guilty of murder in the first degree when:
> (a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or
> . . . .
> (c) He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants. . . .

RCW 9A.32.030(1)(c), one of two felony murder statutes, allows the State to convict a defendant of first degree murder without showing premeditated intent if the defendant

also commits one of five crimes, including rape. *State v. Craig*, 82 Wn.2d 777, 781-82, 514 P.2d 151 (1973). First degree felony murder requires no specific criminal mental state other than the one necessary for the predicate crime. *State v. Frazier*, 99 Wn.2d 180, 192, 661 P.2d 126 (1983). RCW 9A.32.050(1)(b) contains another felony murder provision when a defendant commits a felony, other than the five listed in RCW 9A.32.030(1)(c), during the course of the murder, but this statute classifies the crime as second degree murder. Under the former statute, RCW 9A.32.030(1)(c), the State need not prove a consummated rape, only an attempt to rape, to convict for first degree felony murder.

RCW 9A.44.040 defines first degree rape as:

> (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:
> (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
> (b) Kidnaps the victim; or
> (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious. . . .

One might conclude that the legislature wanted Bisir Muhammad convicted of two crimes, since it created two distinct crimes, but such a conclusion would mean double jeopardy could never bar charges under two statutes. One might also conclude that the legislature only wanted Muhammad convicted of one crime since the first degree murder statute incorporates the first degree rape statute. But we also observe that the State may

convict a defendant of first degree felony murder without convicting the defendant of rape by convicting him of one of five other felonies. In the end, we discern no clear evidence, in the statutory language, of the Washington State Legislature's intent as to whether the State may convict one or both first degree rape and first degree murder for one course of conduct.

When, as here, the language of the statutes lies silent on this question, we next apply the *Blockburger* "'same evidence'" rule of statutory construction. *State v. Freeman*, 153 Wn.2d 765, 776, 108 P.3d 753 (2005). Since this principle constitutes a rule of statutory construction, we again defer to legislative intent rather than enforcing constitutional principles.

Under the United States Supreme Court's decision in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932), when "the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or one is whether each provision requires proof of a fact which the other does not." Unless each crime contains an element not found in the other crime, double jeopardy precludes a conviction on both crimes. Although courts purportedly apply the *Blockburger* test when they cannot discern legislative intent, the test serves as just another means of discerning legislative intent. *State v. Calle*, 125 Wn.2d at 780 (1995).

Washington modifies the *Blockburger* test to read: "double jeopardy principles are

violated if the defendant is convicted of offenses that are identical in fact and in law." *In re Personal Restraint of Borrero*, 161 Wn.2d at 537 (2007). Going further,

> If the language of the criminal statutes under which the defendant has been punished does not expressly disclose legislative intent with respect to multiple punishments, the court then considers principles of statutory construction to determine whether multiple punishments are authorized. . . . If each offense contains an element not contained in the other, the offenses are not the same; if each offense requires proof of a fact that the other does not, the court presumes the offenses are not the same.

In re Personal Restraint of Borrero, 161 Wn.2d at 536-37. Under this test, the facts of the case gain the same prominence as the legal definitions of the respective crimes.

Under the law half of the same evidence test, a double jeopardy violation occurs when the evidence required to support a conviction on one charge would suffice to warrant a conviction on the other. *State v. Freeman*, 153 Wn.2d at 772 (2005). But, when each offense requires proof of an element not required in the other and when proof of one offense does not necessarily prove the other, the offenses are not the same and multiple convictions are permitted. *State v. Louis*, 155 Wn.2d at 569 (2005).

In Bisir Muhammad's prosecution, the first degree murder charge incorporated the first degree rape charge. The State needed to prove all elements of first degree rape in order to convict on first degree murder. Therefore, convicting Muhammad of first degree rape did not require proof of an element not needed to convict of first degree murder. If our analysis ended here, the two convictions breached double jeopardy restrictions. In fact one of the decisions cited by Bisir Muhammad, *State v. Jackman*, 156 Wn.2d 736

(2006), ends the double jeopardy analysis with the *Blockburger* test. Nevertheless, other Washington Supreme Court decisions instruct us to continue with the analysis. We review those decisions shortly.

The State argues that the proof between first degree felony murder and first degree rape differs because an accused may commit felony murder by attempted rape. The State need not establish a completed rape.

We agree with the State that, when one of the two crimes is an attempt crime, the double jeopardy test requires further refinement. *In re Personal Restraint of Borrero*, 161 Wn.2d at 537 (2007). This refinement results from the criminal attempt statute containing the element that the person performs an act that constitutes "a substantial step toward the commission of that crime." RCW 9A.28.020(1). Only by examining the actual facts constituting the "'substantial step'" can the determination be made that the defendant's double jeopardy rights have been violated. *In re Personal Restraint of Borrero*, 161 Wn.2d at 537.

We discern no need to distinguish between a felony murder statute that permits a conviction based on an attempted predicate crime, as opposed to a completed predicate crime, for double jeopardy purposes in this appeal. We consider any such distinction irrelevant when the State charges the defendant with a completed felony. The State charged and convicted Bisir Muhammad with a consummated rape. We find no decision that performs a refined analysis of the *Blockburger* test when felony murder could be

committed by an inchoate crime, but the accused committed a completed crime. The State's argument would require the refined scrutiny in every case involving Washington's first degree felony murder statute.

Washington's version of the *Blockburger* test does not end a court's analysis. The mere fact that the State employs the same conduct to prove each crime is not dispositive. *State v. Freeman*, 153 Wn.2d at 777 (2005). Although the *Blockburger* test or same evidence test probe indicators of legislative intent, the test does not always dispose of the question of whether two offenses are the same. *State v. Calle*, 125 Wn.2d at 780 (1995). Washington courts rely on additional indicia of legislative intent. *State v. Calle*, 125 Wn.2d at 780. In addition, the Washington Legislature holds the power to criminalize every step leading to the greater crime and the crime itself. *Whalen v. United States*, 445 U.S. 684, 688-89, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980); *State v. Freeman*, 153 Wn.2d at 771 (2005). So we continue with our statutory construction, not the application of constitutional tenets.

In the last of many steps behind double jeopardy scrutiny, we still examine the respective criminal statutes' language and their history to resolve whether the legislature intended to punish for separate crimes, even though committed by a single act. *State v. Calle*, 125 Wn.2d at 780. The differing purposes served by the respective statutes and their location in different chapters of the criminal code comprise evidence in part of the legislature's intent to punish the two acts as separate offenses. *State v. Calle*, 125 Wn.2d

at 780. At this stage of the double jeopardy review, we may return to other evidence of legislative intent, including the statutes' historical development, legislative history, location in the criminal code, or the differing purposes for which they were enacted. *State v. Freeman*, 153 Wn.2d at 777 (2005). We may discern legislative intent from the legislative history, the structure of the statutes, the fact the two statutes seek to eliminate different evils, or any other source of legislative intent. *Ball v. United States*, 470 U.S. 856, 862-64, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985); *State v. Calle*, 125 Wn.2d at 777-78. If each criminal statute serves an independent purpose or effect, the State may punish violations of the two statutes as separate offenses. *State v. Johnson*, 92 Wn.2d 671, 680, 600 P.2d 1249 (1979). The process is recursive, returning to the legislature's intent again and again. *State v. Freeman*, 153 Wn.2d at 777. In *State v. Calle*, the Washington State Supreme Court upheld convictions of rape and incest on the rationales that the two crimes lay in distinct chapters within the criminal code and each crime served to protect different societal interests, despite the same act forming the basis for each crime.

The statutes prohibiting murder and rape serve discrete goals. Chapter 9A.36 RCW, the code chapter creating homicide crimes, serves the public policy favoring the protection of human life. *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 944, 913 P.2d 377 (1996). One of society's most basic tasks is that of protecting the lives of its citizens and one of the most basic ways in which it achieves the task is through criminal laws against murder. *Gregg v. Georgia*, 428 U.S. 153, 226, 96 S. Ct. 2909, 49 L. Ed. 2d

859 (1976) (White, J., concurring).

Chapter 9A.44 RCW, the chapter creating sex crimes, primarily seeks to prohibit acts of unlawful sexual intercourse, with punishment dependent on the accompanying circumstances. *State v. Calle*, 125 Wn.2d at 781 (1995). The focus of the crime is not simply sexual violation, but also the fear, degradation and physical injury accompanying that act. Helen Glenn Tutt, Comment, *Washington's Attempt To View Sexual Assault as More Than a "Violation" of the Moral Woman-The Revision of the Rape Laws*, 11 GONZ. L. REV. 145, 155 (1975). Thus, the two criminal statutes violated by Bisir Muhammad serve distinct purposes that command two convictions.

We observe that Bisir Muhammad's rape of Ina Clare Richardson raised his crime from second degree murder to first degree murder. Thus, the rape formed an essential element of the murder charge. In *State v. Freeman*, 153 Wn.2d 765 (2005), the state high court noted that convictions for the crimes of first degree robbery and second degree assault generally could not stand because the assault raised the robbery from second degree to first degree. Nevertheless, under the facts of the appeal, the Supreme Court declined to strike the predicate crime because the victim of the crime suffered injuries from the assault distinct from any injury suffered by the robbery. Ina Clare Richardson suffered injuries from the rape distinct from the mortal harm incurring from the murder.

Bisir Muhammad maintains that *Harris v. Oklahoma*, 433 U.S. 682, 97 S. Ct. 2912, 53 L. Ed. 2d 1054 (1977) supports his position that felony murder cannot be

punished in conjunction with the predicate felony that forms the basis of the murder charge. We disagree. In *Harris*, the United States Supreme Court held the Fifth Amendment prohibited a separate trial and conviction for robbery, a predicate of felony murder, after the State convicted the accused of the murder. *Harris* does not address, let alone prohibit, trying and convicting a defendant of both felony murder and the predicate felony during the same trial. The *Harris* Court relied on the rule of law that, when conviction of a greater crime cannot be had without conviction of the lesser crime, double jeopardy bars prosecution for the lesser crime after conviction of the greater one. The State charged Bisir Muhammad with the predicate crime in the same prosecution as the felony murder.

A United States Supreme Court decision with closer facts is *Whalen v. United States*, 445 U.S. 684 (1980). The District of Columbia convicted Thomas Whalen of rape and killing the same victim during the perpetration of the rape. Rape was one of six predicate crimes that raised the murder to first degree murder. The United States Congress adopted the criminal code for the district, such that the United States Supreme Court sat more as the highest level of a state court system than as the Supreme Court of a nation. The District of Columbia Court of Appeals rejected Whalen's argument that the rape conviction merged, based on the double jeopardy clause, with the first degree murder conviction. The Supreme Court disagreed based on a District of Columbia statute enacted by Congress that precluded multiple punishments for two offenses arising out of

the same criminal transaction unless each offense required proof of a fact that the other did not. The Supreme Court reasoned that the statute ended the double jeopardy analysis with the *Blockburger* test, such that the Court refused to analyze further the legislative intent of Congress. The Court vacated the rape conviction since a conviction for killing in the course of the rape could not be had without proving all the elements of the offense of rape. We decline to follow *Whalen* since Washington has no similar statute.

Merger

When the accused challenges two convictions on double jeopardy grounds, the accused typically also challenges the convictions on the related doctrine of merger. Bisir Muhammad follows this practice.

Courts sometimes merge the merger doctrine with double jeopardy. Some courts often write that, because of double jeopardy constraints, the two crimes "merge." *State v. Johnson*, 92 Wn.2d at 681 (1979). Nevertheless, the law considers the two doctrines distinct despite both relying on legislative intent.

The merger doctrine serves as another tool of statutory construction designed to prevent the pyramiding of charges on a criminal defendant. *State v. Saunders*, 120 Wn. App. 800, 820, 86 P.3d 232 (2004). Similar to the double jeopardy analysis, courts employ the doctrine to resolve whether the legislature intends multiple punishments to apply to particular offenses. *State v. Saunders*, 120 Wn. App. at 820. Merger applies when proof of one crime proscribed in one section of the criminal code elevates a second

crime found in another section to a higher degree. *State v. Saunders*, 120 Wn. App. at 820. Generally a predicate offense will merge into the second crime, and the court may not punish the predicate crime separately. *State v. Saunders*, 120 Wn. App. at 821.

An exception to the merger doctrine lies when the predicate and charged crimes do not intertwine. *State v. Saunders*, 120 Wn. App. at 821. Even if two convictions appear to merge on an abstract level, they may be punished separately if the defendant's conduct forming one crime demonstrates an independent purpose or effect from the second crime. *State v. Kier*, 164 Wn.2d 798, 804, 194 P.3d 212 (2008). The merger doctrine applies when the legislature clearly indicates that it did not intend to impose multiple punishments for a single act that violates several statutory provisions. *State v. Vladovic*, 99 Wn.2d 413, 420-21, 662 P.2d 853 (1983).

The merger doctrine applies when one crime is incidental to the commission of the second crime. *State v. Harris*, 167 Wn. App. 340, 355, 272 P.3d 299 (2012). To the contrary, if the predicate crime injures the person or property of the victim or others in a separate and distinct manner from the crime for which it serves as an element, the crimes do not merge. *State v. Harris*, 167 Wn. App. at 355.

The merger doctrine applies at the time of sentencing and its purpose is to correct violations of the prohibition of double jeopardy. *State v. Parmelee*, 108 Wn. App. 702, 711, 32 P.3d 1029 (2001). As such, the doctrine aims at providing remedies. *State v. Chesnokov*, 175 Wn. App. 345, 355, 305 P.3d 1103 (2013).

Bisir Muhammad astutely relies on *State v. Fagundes*, 26 Wn. App. 477, 614 P.2d 198 (1980), in which this court merged the predicate felonies of first degree rape and first degree kidnapping into a felony murder conviction. We acknowledged the underlying felony served additional purposes apart from simply elevating the degree of seriousness for the murder charge, but nonetheless merged the convictions since proof of the underlying felony was necessary to prove the felony murder.

Bisir Muhammad also relies on *State v. Williams*, 131 Wn. App. 488, 128 P.3d 98 (2006), where a predicate robbery charge merged with felony murder because the murder occurred in the immediate flight from the robbery and served to help facilitate an escape. Nevertheless, this court clarified that the robbery would not merge if it was "merely incidental" to the homicide.

State v. Fagundes and *State v. Williams* support Bisir Muhammad's request for merger. Nevertheless, we follow the teachings of *State v. Vladovic*, 99 Wn.2d at 421 (1983) instead. *Vladovic* followed *Fagundes* by three years. In *Vladovic*, our high court declared: "if the offenses committed in a particular case have independent purposes or effects, they may be punished separately." 99 Wn.2d at 421.

We also find other Washington decisions that support rejection of merger in Bisir Muhammad's appeal. In *State v. Saunders*, 120 Wn. App. 800 (2004), this court held that convictions for felony murder and first degree rape did not merge when the murder was separate and distinct from the rape. Ray Saunders and Leanna Williams restrained

Marcia Grissett with handcuffs and leg shackles. Saunders attempted to force Grissett to perform oral sex on him, and Williams anally raped Grissett with a television antenna. Ultimately, Saunders stabbed Grissett in the chest with a knife and either Saunders or Williams strangled Grissett, who died from the stabbing and the simultaneous asphyxia from strangulation. On appeal, similar to Bisir Muhammad, Saunders argued that the two convictions should merge.

To determine whether Ray Saunders' two convictions sufficiently intertwined for merger to apply, this court considered whether the crimes occurred almost contemporaneously in time and place, whether the sole purpose of one crime facilitated the other, and whether the victim suffered any injury independent of or greater than the injury associated with the predicate crime. Even though the acts occurred at the same time and place, the court did not merge the two convictions. The court reasoned that Marcia Grissett sustained injuries independent of and exceeding that necessary to commit the murder and found the rape did not facilitate the murder.

In *State v. Peyton*, 29 Wn. App. 701, 630 P.2d 1362 (1981), William Peyton and his associates robbed a bank. After fleeing the bank in one vehicle, the robbers drove the vehicle to a nearby location, abandoned the vehicle, and entered and continued the flight in a second vehicle. The group eventually abandoned the second vehicle and ran across fields, where they engaged in a shooting match with pursuing officers. A bullet fired by Peyton killed one officer. The court held that the underlying robbery that served as the

predicate crime for first degree murder did not merge in the murder conviction because the two crimes did not intertwine.

Bisir Muhammad's rape of Ina Clare Richardson was not integral to her killing. Although Richardson's murder silenced her from reporting the rape, the murder did not effectuate or coincide with the rape. Following the reasoning of *Vladovic*, *Peyton*, and *Saunders*, the two crimes had independent purposes and effects. Ina Richardson suffered many injuries from her rape including a laceration in her vaginal canal that caused bleeding, and injuries to her thighs, knees, legs, right buttock and left groin region. These injuries differed from the injuries to her neck and eyes that resulted from being strangled to death. As a result, the two crimes may be punished separately. We refuse to merge the first degree murder with the first degree rape conviction.

CONCLUSIONS

We affirm Bisir Muhammad's convictions for first degree murder and first degree rape. Because the State does not seek an award of appellate costs, we deny an award of costs to the prevailing party.

Fearing, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Siddoway, J.

FILED
Court of Appeals
Division III
State of Washington
7/9/2018 1:24 PM

APPENDIX

B

not supported by probable cause and the evidence flowing from that search warrant must be suppressed.

The unlawful stop led to evidence used in each subsequent search warrant application. All of the search warrants issued in reliance on those applications are unlawful and the evidence obtained from them must be suppressed. This rule applies to the following search warrants and their returns:

> Buccal (saliva) swabs dated 11/11/2014 (CP 120–28
>
> Cell phone warrant dated 11/11/2014 (CP 153–63)
>
> Personal property of Mr. Muhammad dated 11/12/2014 (CP 129–42)
>
> Search warrant of Mr. Muhammad's home dated 11/12/2014 (CP 144–52)
>
> Cell phone location records directed to ATT dated 11/12/2014 (CP 77–84)
>
> Search warrant for evidence testing, dated 11/14/2014 (CP 173–82)

All evidence resulting from the searches performed under these unlawful warrants must be suppressed. *Ladson,* 138 Wn. 2d at 359.

2. The use of cell phone "pings" to obtain Mr. Muhammad's location in Idaho was an illegal search in violation of article 1, section 7, the Fourth Amendment, and state law.

Supplemental police reports describe how Mr. Muhammad's vehicle was located:

> I had obtained Bisir's phone number from him at the stop[,] which is 541-992-5366[,] and had dispatch contact his phone company to start a ping on his number as he was no place in Clarkston to be found. (CP 102)
>
> Due to the rising concerns regarding Muhammad's involvement in this case, a search and seizure warrant for his vehicle was petitioned for and obtained. Muhammad's vehicle was not at his residence, so his cell phone was pinged and his whereabouts were determined to be in Lewiston, ID. Officers from the Clarkston Police Department and the Lewiston Police responded to the area of the cell phone ping and located the vehicle. (CP 95)

a. Mr. Muhammad had a reasonable expectation of privacy under art. I, section 7.

It is well-established that article 1, section 7 of the Washington Constitution provides greater protections than those afforded by the Fourth Amendment. *State v. McKinney*, 148 Wn.2d 20, 26, 60 P.3d 46 (2002) (citing *City of Seattle v. McCready*, 123 Wn.2d 260, 267, 868 P.2d 134 (1994)). The Washington Supreme Court has recognized privacy interests in telephonic and other electronic communications. See, e.g., *State v. Gunwall,* 106 Wn.2d 54, 720 P.2d 808 (1986). Similarly, both the Washington Supreme Court and the U.S. Supreme Court have found that placement of a GPS device on a defendant's vehicle for purposes of tracking location requires a warrant. *U.S. v. Jones*, __ U.S. __, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012); *State v. Jackson*, 150 Wn.2d 251, 76 P.3d 217 (2003).

In determining whether a search violates article 1, section 7, the court must first decide whether the action in question intruded upon a person's "private affairs." *McKinney*, 148 Wn.2d at 27 (citing *In re Pers. Restraint of Maxfield*, 133 Wn.2d 332, 339, 945 P.2d 196 (1997)). Generally, private affairs are "those privacy interests which citizens of [Washington] have held, and should be entitled to hold, safe from governmental trespass." *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984). This determination is not "merely an inquiry into a person's subjective expectation of privacy, but is rather an examination of whether the expectation is one which a citizen of this state should be entitled to hold." *McKinney*, 148 Wn.2d at 27 (citing*McReady*, 123 Wn.2d at 270)).

In the present case, Mr. Muhammad has a reasonable expectation of privacy in the transmission of information between his cell phone and cell towers, which information may be used to determine his specific location. "Cell phones, including the information that they contain, are 'private affairs' under article 1, section 7. As a private affair, the police may not search a cell phone without a warrant or applicable warrant exception." *State v. Samalia,* 185 Wn.2d 262, 268, 272, 375 P.3d 1082 (2016). As observed in *Gunwall*,

> A telephone subscriber ... has an actual expectation that the dialing of telephone numbers from a home telephone will be free from

> governmental intrusion. A telephone is a necessary component of modem life. It is a personal and business necessity indispensable to one's ability to effectively communicate in today's complex society ... The concomitant disclosure to the telephone company, for internal business purposes, of the numbers dialed by the telephone subscriber does not alter the caller's expectation of privacy and transpose it into an assumed risk of disclosure to the government.

106 Wn.2d at 67 (quoting *People v. Sporleder,* 666 P.2d 135, 141 (Colo.1983)). Likewise, in *Jones*, Justice Alito recognized the growing ubiquity of cell phones and the ability to use them to track the location of cell phone users:

> Perhaps most significant, cell phones and other wireless devices now permit wireless carriers to track and record the location of users—and as of June 2011, it has been reported, there were more than 322 million wireless devices in use in the United States. For older phones, the accuracy of the location information depends on the density of the tower network, but new "smart phones," which are equipped with a GPS device, permit more precise tracking. For example, when a user activates the GPS on such a phone, a provider is able to monitor the phone's location and speed of movement and can then report back real-time traffic conditions after combining ("crowdsourcing") the speed of all such phones on any particular road. Similarly, phone-location-tracking services are offered as "social" tools, allowing consumers to find (or to avoid) others who enroll in these services. The availability and use of these and other new devices will continue to shape the average person's expectations about the privacy of his or her daily movements.

132 S. Ct. at 963 (J. Alito, concurring) (footnotes omitted).

Simply put, a cell phone is a modern necessity just as a land line phone was determined to be a necessity of modern life in *Gunwall*. Yet,

the simple act of turning on the cell phone may enable a cellular service provider to triangulate the location of the phone to a specific latitude and longitude. It is entirely unreasonable to suggest that, but the act of turning on one's cell phone, one intends to thereby waive all privacy interests in the phone's transmissions with the cell phone towers and the real-time (and historical) location information that can be derived from those transmissions.

In an analogous setting, the Supreme Court has protected electric consumption records. *Maxfield*, 133 Wn.2d 332. In *Maxfield*, the employee of a public utility district volunteered information about the defendant's increased electric utility consumption to law enforcement. 133 Wn.2d at 335. Police used the information to obtain a search warrant, leading to the discovery of a marijuana grow operation. *Id.* The *Maxfield* court concluded, "While the privacy interest in electric consumption records may be characterized as 'minimal,' it is still a privacy interest subject to the protections of article 1, section 7." 133 Wn.2d at 340. If one has a privacy interest in the information that can be read from one's electrical meter, surely one has a similar expectation of privacy in the "pings" between one's phone and the service provider's cell towers.

Another line of cases has prohibited the use of GPS technology to track a suspect's location without a warrant. In *Jackson*, for example, the Washington Supreme Court disagreed with the State that the placement of GPS tracking devices simply augmented the senses of the officers in tracking the defendant's location. 150 Wn.2d at 261–62. In distinguishing between the ability to directly observe and to follow a vehicle using GPS tracking technology, the *Jackson* court stated,

> It is true that an officer standing at a distance in a lawful place may use binoculars to bring into closer view what he sees, or an officer may use a flashlight at night to see what is plainly there to be seen by day. However, when a GPS device is attached to a vehicle, law enforcement officers do not in fact follow the vehicle. Thus, unlike binoculars or a flashlight, the GPS device does not merely augment the officers' senses, but rather provides a technological substitute for traditional visual tracking. Further, the devices in this case were in place for approximately two and one-half weeks. It is unlikely that the sheriff's department could have successfully maintained uninterrupted 24-hour surveillance throughout this time by following Jackson. Even longer tracking periods might be undertaken, depending upon the circumstances of a case. We perceive a difference between the kind of uninterrupted, 24-hour a day surveillance possible through use of a GPS device, which does not depend upon whether an officer could in fact have maintained visual contact over the tracking period, and an officer's use of binoculars or a flashlight to augment his or her senses.

Id. (footnote omitted). Similarly here, the State could not have located Mr. Muhammad's location by simple use of an officer's senses had it not effectively converted Mr. Muhammad's phone into the kind of tracking device held to require a warrant in *Jackson* and *Jones*.

In surveillance cases, the question whether the defendant enjoys a reasonable expectation of privacy turns in large part on whether the information has been exposed to the public. *U.S. v. Maynard*, 615 F.3d 544, 558 (2010) (quoting *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). Although *Katz* establishes that "[w]hat a person knowingly exposes to the public … is not a subject of Fourth Amendment protection," courts have recognized the degree of surveillance permitted by modern technology vastly exceeds what the public reasonable expects another may do. *Katz*, 389 U.S. at 351. In *Maynard*, the Court of Appeals for the D.C. Circuit held that a warrant was required to install a GPS device on the defendant's vehicle and track the vehicle's location over a substantial length of time. The *Maynard* court reasoned,

> "What may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene." Prolonged surveillance reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly, what he does not do, and what he does ensemble. These types of information can each reveal more about a person than does any individual trip viewed in isolation. Repeated visits to a church, a gym, a bar, or a bookie tell a story not told by any single visit, as does one's not visiting any of these places over the course of a month. The sequence of a person's movements can reveal still more; a single trip to a gynecologist's office tells little about a woman, but that trip followed a few weeks later by a visit to a baby supply store tells a different story. A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular

> individuals or political groups—and not just one such fact about a person, but all such facts.

Maynard, 615 F.3d at 562 (internal citations omitted). Yet this is precisely the kind of information that would be readily available to police without any warrant requirement should this court determine that Mr. Muhammad lacks a reasonable expectation of privacy in the cell phone transmissions used to track his location.

Any suggestion that *Jackson* and *Jones* are distinguishable because the use of a GPS requires placement of a physical object where the use of cell phone tracking technology does not is a distinction without a difference. Physical intrusion, or trespass, is no longer the touchstone of whether an unlawful intrusion occurs. As held by the U.S. Supreme Court, "the Fourth Amendment protects people, not places." *Jones*, 132 S.Ct. at 950 (quoting *Katz*, 389 U.S. at 351). The question is simply whether a person has a reasonable expectation of privacy in the area searched. *Id.* It would be revolutionary for this court to hold that a person lacks a reasonable expectation of privacy in the transmissions from his cell phone.

The use of cell tracking technology without a warrant is equivalent to converting Mr. Muhammad's cell phone into a GPS device without his

knowledge or consent.[1] Such technology, unchecked, permits the State to obtain an extraordinary amount of private, personal information by monitoring the person's whereabouts. There is no precedent for the trial court's conclusion that Mr. Muhammad lacked a reasonable expectation of privacy in the "pings" between his phone and the cell towers, and compelling reasons are present why this court should conclude that such a privacy interest exists.

A contrary holding would effectively require the public to choose between using a necessary medium of modern communications, or revealing private information about one's location to the government at will. Moreover, there is no evidence in the record to suggest that the public has any knowledge that such technology is readily available, such that use of a cell phone could be construed as an assumption of the risk that the cellular transmission information could be secretly monitored. A reasonable person expects that his or her cell phone is used to make phone calls, not to continuously transmit information to the government.

---

[1] Accord, *In re Application of U.S. for an Order Authorizing Disclosure of Location Info. of a Specified Wireless Tel.*, 849 F. Supp. 2d 526, 577 (D. Md. 2011) ("This judge now joins others who have found that cell phones, to the extent that they provide prospective, real time location information, regardless of the specificity of that location information, are tracking devices. Thus, a cell phone's prospective, real time location data —whether cell site or GPS—is a communication from a tracking device … .").

Accordingly, this court should hold that Mr. Muhammad had a privacy interest in the cellular transmissions that law enforcement intercepted.[2]

The second prong of article 1, section 7 requires "authority of law" before an individual's private affairs can be disturbed.

> Generally speaking, the 'authority of law' required by Const. Art. I, § 7 in order to obtain records includes authority granted by a valid (i.e. constitutional) statute, the common law or a rule of this court. In the case of long distance toll records, 'authority of law' includes legal process such as a search warrant or subpoena.

Gunwall, 106 Wn.2d at 68–69 (citations omitted).

The State did not obtain a warrant prior to intercepting the cellular transmissions. As such, all information obtained by exploiting the illegality is fruit of the poisonous tree and must be excluded. *State v. Early*, 36 Wn. App. 215, 220, 674 P.2d 179 (1983) (citing *State v. Aydelotte*, 35 Wn. App. 125, 131, 665 P.2d 443 (1983)).

b. Mr. Muhammad had a reasonable expectation of privacy under the Fourth Amendment.

---

[2] *Compare*, a portion of the trial court's findings: "In 2015 it can fairly be said the cell phone users (including non-adult users) are aware of both the capacity for their phone to be located by GPS, and their ability to avoid that function by turning off their phone or disabling phone location services on their device. Based on both the side use of this technology for car navigation, location of lost cell phones, and apps which use a phone's location to provide attractive services, it can no longer be said that one can reasonably expect that a cell phone that is turned on will have its location remain private. This is not a function of surreptitious police investigative intrusions *but rather is part of the package for cell phone users.*" *CP* 224–25 (emphasis added). There is no precedent for the court's conclusion waiver of constitutional privacy rights may be assumed from a consumer's purchase and use of cell phone technology.

Because the article 1, section 7 violation is dispositive, there is no need to engage in a Fourth Amendment analysis. See *State v. Patton*, 167 Wn.2d 379, 396 n.9, 219 P.3d 651 (2009) (court does not reach Fourth Amendment arguments when the article 1, section 7 provides "independent and adequate state grounds" to resolve the issue). Should this Court determine otherwise, a Fourth Amendment analysis is provided. Police violated the Fourth Amendment in pinging Mr. Muhammad's cell phone for real-time location information because he had a subjective and objectively reasonable expectation of privacy in the CSLI[3].

The trial court reasoned that "Mr. Muhammad's phone was being used by him in Idaho at the time the information was gathered thus making the Fourth Amendment analysis more appropriate to the circumstances." CP 224. However, article 1, section 7 of the Washington Constitution, unlike the federal constitution, explicitly protects the privacy rights of Washington citizens. *State v. White,* 97 Wn.2d 92, 110, 640 P.2d 1061 (1982) (emphasis added). Moreover, article 1, section 7 affords its citizens greater protection than does the Fourth Amendment. *State v. Stroud,* 106 Wn.2d 144, 148, 720 P.2d 436 (1986). Washington law enforcement requested and obtained real-time cell site location information in order to

[3] CSLI stands for "cell site location information."

track the whereabouts of Mr. Muhammad, a Washington citizen. The court cited no authority to support its "finding" that in the context of the location of a personal cell phone, a Washington citizen loses the protection of the state constitution simply by crossing the several mile distance from Clarkston, WA to the Lewiston Orchards area in nearby Lewiston, ID. The court's finding is further diluted where Mr. Muhammad's vehicle was last seen at his Washington residence (CP 102) and the record does not disclose that the "pings" occurred exclusively in Idaho.

Emerging Fourth Amendment jurisprudence in this area also does not support the court's finding. Thus far the federal trial courts appear to have unanimously decided that under the Fourth Amendment, a reasonable expectation of privacy exists in real-time pings used to provide location information, and almost all have found that the same exists in historical ping data. See, e.g. *In re Application of U.S. for an Order Authorizing Disclosure of Location Info. of a Specified Wireless Tel.,* 849 F.Supp.2d 526 (D. Md. 2011) (finding that suspects have a Fourth Amendment reasonable expectation of privacy in their cell phone "pings"); *In re U.S. for an Order Authorizing the Release of Historical Cell-Site Info.,* 809 F.Supp.2d 113 (E.D.N.Y. 2011) (same); *In re Application of U.S. for an Order Authorizing Release of Historical Cell-Site Info.,* 736 F.Supp.2d

578 (E.D.N.Y. 2010) (same); *In re Application of U.S. for an Order Authorizing Installation and Use of a Pen Register and a Caller Identification Sys.*, 402 F.Supp.2d 597 (D. Md. 2005) (same).

Other state jurisdictions have recognized Fourth Amendment privacy rights in real-time phone location information using a cell phone network. Florida, for example, recognizes a privacy interest in real-time cell phone location data:

> Therefore, we hold that regardless of Tracey's location on public roads, the use of his cell site location information emanating from his cell pho ne in order to track him in real time was a search within the purview of the Fourth Amendment for which probable cause was required. Because probable cause did not support the search in this case, and no warrant based on probable cause authorized the use of Tracey's real time cell site location information to track him, the evidence obtained as a result of that search was subject to suppression.

Tracey v. *State,* 152 So.3d 504, 526, 39 Fla.L.Weekly S 617 (Fla. 2014).

Massachusetts similarly finds a warrant requirement:

> Having so concluded, the central question here remains to be answered: whether, given its capacity to track the movements of the cellular telephone user, CSLI[4] implicates the defendant's privacy interests to the extent that under art. 14, the government must obtain a search warrant to obtain it.

Commonwealth v. Augustine, 467 Mass. 230, 4 N.E.3d 846, 863 (2014).

New Jersey requires a warrant as well: "Because we find that cell phone

---

[4] CSLI stands for "cell site location information."

uses have a reasonable expectation of privacy in their cell phone location information, and that police must obtain a search warrant before accessing that information, we reverse the judgment of the Appellate Division." *State v. Earls*, 214 N.J. 564, 569, 70 A.3d 630, 94 A.L.R.6th 785 (N.J. 2013).[5]

The federal appellate courts have not definitively addressed the Fourth Amendment in this context. For example, in *United States* v. *Davis,* 754 F.3d 1205 (11th Cir. 2014), the court ruled:

> In short, we hold that cell site location information is within the subscriber's reasonable expectation of privacy. The obtaining of that data without a warrant is a Fourth Amendment violation. Nonetheless, for reasons set forth in the next section of this opinion, we do not conclude that the district court committed a reversible error.

Id. at 1217. The court found a good faith exception applied because officers followed a court order rather than a warrant.[6] *Id.* at 1218. (See **update noted below).**[7] See also, *In re Application of United States for*

---

[5] In addition, Montana recently passed legislation requiring a warrant for cell phone location information. Montana Code Annotated 46-5-110. The exclusionary rule is statutorily implemented. MCA 46-5-110(c) ("Any evidence obtained in violation of this section is not admissible in a civil, criminal, or administrative proceeding and may not be used in an affidavit of probable cause in an effort to obtain a search warrant.").

[6] Washington does not allow a "good-faith" exception. *State* v. *Williams,* 171 Wn.2d 474, 251 P.3d 877, 883 (2011) ("Based upon the text of article 1 section 7, however, we have declined to follow federal courts in creating " good faith" exceptions to the exclusionary rule for warrantless searches.").

[7] On May 5, 2015, the 11th Circuit reversed itself in *Davis,* finding that officers obtained a court order for business records pursuant to the Electronic Communications Act, and

Historical Cell Site Data, 724 F.3d 600 (5th Cir. 2013) (holding that a court order under the "specific and articulable facts" standard under the Stored Communications Act, 18 USC §2703 was a constitutional application of the "third-party records" doctrine); *cf. State v. Skinner*, 690 F.3d 772 (2012) (defendant did not have a reasonable expectation of privacy in data emanating from his cell phone to determine its real-time location as he transported drugs along the public highway).

This court should find Mr. Muhammad had a reasonable expectation of privacy under a Fourth Amendment analysis.

c. The exigent circumstances exception to the warrant requirement does not apply.

The trial court's alternative ground for noncompliance with the search warrant requirement was that "exigent circumstances, as previously discussed, existed justify[ing] immediate action by the police." CP 225. In its earlier ruling that participation by Idaho law enforcement in seizure by impoundment of the car in Idaho was justified, the court had noted "[i]t was only hours after Mr. Muhammad had been contacted for the first time by law enforcement concerning a heinous crime to which they believed he was connected. The [Idaho] officers could reasonably infer that the window for collection of evidence would be closing rapidly now that the

---

that such an order did not constitute a search under the 4th Amendment. *U.S. v. Davis,*

section 7. The State did not satisfy the exigent circumstances exception to the warrant requirement because it did not prove the imperative of a warrantless search, including the unavailability of a telephonic warrant in the circumstances of this particular case. *Smith*, 165 Wn.2d at 518.

d. The use of cell phone "pings" to obtain Mr. Muhammad's location was done without authority of law.

Washington has a "long history of extending strong protections to telephonic and other electronic communications." *State v. Hinton*, 179 Wn.2d 862, 871, 319 P.3d 9 (2014) (citing *Gunwall*, 106 Wn.2d at 66). A cell phone is a "private affair" within the meaning of article 1, section 7, and intrusion into its contents or a search of the data it supplies must be done under authority of law. *Hinton*, 179 Wn.2d 862, 873–74, 319 P.3d 9 (2014); *cf.*, also, *Riley v. California*, 134 S.Ct. at 2488–89. RCW 9.73.260 generally prohibits law enforcement's collection and/or use of a person's electronic data without a court order that specifies the person, place, or thing to be searched or seized. Here, it is undisputed police did not obtain a prior court order.

An emergency court order may be obtained for qualifying collection and use of electronic data under the statute if police and a prosecuting attorney jointly determine there is probably cause to believe an

---

(now in police possession) and resulting search warrant were obtained within minutes of

emergency situation exists that involves immediate danger of death or serious bodily injury to any person. RCW 9.73.260(6)(a). No emergency order was sought in this case and the record would not have supported the issuance of one.

Law enforcement's use of real-time location information from AT&T to find Mr. Muhammad was a seizure performed without authority of law. The State bears the burden of justifying a warrantless seizure. *State v. Gantt*, 163 Wn. App. 133, 138, 257 P.3d 682 (2011). This Court should conclude the State did not meet its burden to show the seizure was lawful.

3. All evidence flowing from the illegal searches and seizures should be suppressed under article I, section 7 of the state constitution.

When police engage in a search or seizure in violation of article 1, section 7, "all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed." *Ladson*, 138 Wn.2d at 359. This strict rule applies not only to evidence obtained during an illegal search or seizure, but also evidence derived therefrom, and "'saves article 1, section 7 from becoming a meaningless promise.'" *State v. Gaines*, 154 Wn.2d 711, 716-17, 116 P.3d 993 (2005); *Ladson*, 138 Wn.2d at 359 (quoting

---

each other. CP 153–61.

GASCH LAW OFFICE

July 09, 2018 - 1:24 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	34233-6
Appellate Court Case Title:	State of Washington v. Bisir Bilal Muhammad
Superior Court Case Number:	14-1-00157-8

The following documents have been uploaded:

- 342336_Other_Filings_20180709132223D3996522_7970.pdf
  This File Contains:
  Other Filings - Other
  The Original File Name was Pet for Review APPENDIX B Excerpt of Argument from AOB Muhammad Bisir 342336.pdf

A copy of the uploaded files will be sent to:

- bnichols@co.asotin.wa.us
- jennifer.joseph@kingcounty.gov

Comments:

Appendix B to petition for review

Sender Name: Susan Gasch - Email: gaschlaw@msn.com
Address:
PO BOX 30339
SPOKANE, WA, 99223-3005
Phone: 509-443-9149

Note: The Filing Id is 20180709132223D3996522

GASCH LAW OFFICE

July 09, 2018 - 1:22 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	34233-6
Appellate Court Case Title:	State of Washington v. Bisir Bilal Muhammad
Superior Court Case Number:	14-1-00157-8

The following documents have been uploaded:

- 342336_Other_Filings_20180709132120D3846229_5015.pdf
  This File Contains:
  Other Filings - Other
  The Original File Name was Pet for Review APPENDIX A COA opinion 6-7-18 published Muhammad Bisir 342336.pdf

A copy of the uploaded files will be sent to:

- bnichols@co.asotin.wa.us
- jennifer.joseph@kingcounty.gov

Comments:

Appendix A to petition for review

Sender Name: Susan Gasch - Email: gaschlaw@msn.com
Address:
PO BOX 30339
SPOKANE, WA, 99223-3005
Phone: 509-443-9149

Note: The Filing Id is 20180709132120D3846229

GASCH LAW OFFICE

July 09, 2018 - 1:21 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	34233-6
Appellate Court Case Title:	State of Washington v. Bisir Bilal Muhammad
Superior Court Case Number:	14-1-00157-8

The following documents have been uploaded:

- 342336_Petition_for_Review_Plus_20180709131950D3164269_8240.pdf
  This File Contains:
  Affidavit/Declaration - Service
  Petition for Review
  The Original File Name was Petition for review 2018 07 09 Muhammad Bisir 342336.pdf

A copy of the uploaded files will be sent to:

- bnichols@co.asotin.wa.us
- jennifer.joseph@kingcounty.gov

Comments:

Sender Name: Susan Gasch - Email: gaschlaw@msn.com
Address:
PO BOX 30339
SPOKANE, WA, 99223-3005
Phone: 509-443-9149

Note: The Filing Id is 20180709131950D3164269