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SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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NO. 96769-5

THE SUPREME COURT OF
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JOSE PEDRO LINARES,
Appellant/Petitioner.

ANSWER TO PETITION FOR REVIEW
BY YAKIMA COUNTY

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A. INTRODUCTION.

This case was affirmed by the Court of Appeals, Division III. The court found the evidence presented by the State was sufficient to support the jury's determination that Linares was guilty of assault in the second degree for stabbing Mr. Ruiz in the back. The Court of Appeals also determined that the State had provided the jury with sufficient evidence to support their finding that Linares was armed with a deadly weapon when he stabbed Mr. Ruiz in the back.

The Court of Appeals opinion cited well settled case law regarding the issues raised by Linares. Linares comes before this court challenging only the Court of Appeals decision regarding the deadly weapons enhancement, not the underlying assault in the second-degree conviction for stabbing Mr. Ruiz in the back.

ISSUES PRESENTED BY PETITION

1. This Court should grant review because the Court of Appeals opinion as that opinion is in conflict with other decisions of the Court of Appeals.
 - a. The State presented insufficient evidence to support the deadly weapon enhancement.

ANSWER TO ISSUES PRESENTED BY PETITION

1. The Court of Appeals opinion does not merit review. Linares has not met the standards set forth in the Rules of Appellate Procedure, 13.4, which determine whether this court should accept review of a decision of the Court of Appeals.

- a. The Court of Appeals correctly determined that there was sufficient evidence presented to support the deadly weapon enhancement.
- b. The Court of Appeals opinion does not merit review under any circumstance and specifically not under RAP 13.4

B. STATEMENT OF THE CASE

Linares chose to not take the stand and he did not testify in his trial. Set forth below is the Statement of the Case from the State's opening brief.

The victim Mr. Ruiz was at a local laundromat, the Agitation Station, with his two daughters, who were two and four years old at the time of the assault. RP 377. The three of them were doing their laundry, Mr. Ruiz had been to the Agitation Station on several other occasions. RP 377-78. The three of them had driven to the laundromat in Mr. Ruiz's Ford Taurus which is red in color. RP 378. Mr. Ruiz testified that he parked his car to the left of the building near a taco truck and nearly in front of the of the door to the business. RP 380, 381.

Mr. Ruiz entered the business with his two daughters and began to do his laundry. RP 381. Mr. Ruiz identified the interior of the business from photographic exhibits admitted at trial. RP 383-4. Mr. Ruiz and his daughters sat down in some of the chairs which are located inside the business. Once inside Mr. Ruiz noticed a man, whom he had never seen before, pacing back and forth inside the business. Mr. Ruiz testified that

eventually there were two people pacing around. He testified that these two men were walking around one side and back around the other way.

RP 384

Mr. Ruiz testified regarding the appearance of the two men who were pacing about, he was able to tell them apart. RP 384. One of the men was not inside the building when Mr. Ruiz and his daughters first arrived. That man was wearing what he described as a gray zip-up sweater and dark blue jeans. Mr. Ruiz testified that this man arrived about 10-15 minutes after he arrived. Both of these men were doing what he described as a “routine” that was walking back and forth from one side of the laundromat to the other. Mr. Ruiz did not hear these two men talking and did not see them doing laundry. RP 384-5.

Mr. Ruiz testified that he sat and waited for his laundry to finish washing, he had determined that he was going to take his clothes to another laundromat to dry them. He testified that he “...felt uneasy being there.” RP 385. He went on stating “Just I've never been there like that with people just walking back and forth not doing their laundry...It just gave me a bad vibe, like I shouldn't be here. Something is kind of sketchy.” When asked if they were looking at him he testified, “Not that I could tell because they just kind of walked with their heads kind of down.” RP 385-6.

Mr. Ruiz testified the two men “looked pretty much similar” and he believed the two were related. He believed them to be about 25 or 26 years old, they were Hispanic and had similar complexions. RP 386-7.

Mr. Ruiz testified there were only two other people in the building besides the defendant and his brother. One of those was an employee of the laundromat and about five to ten minutes before his laundry was done this employee approached Mr. Ruiz and asked him to call the cops. She made this request of Mr. Ruiz because she was afraid to call the cops herself. RP 388-9.

Mr. Ruiz did not dry his laundry at this business. It took about forty minutes for the wash to be done and when it was done he threw the laundry into his baskets, put them in a cart and walked them out to his car. RP 389-90.

The defendant and his brother walked outside during the period of time that Mr. Ruiz was loading up his laundry. Mr. Ruiz exited the business through the same door he had entered. He had his two young daughters perhaps a foot or two in front of him as he was leaving. The family car was only about five feet from the front door. RP 390

Mr. Ruiz was taking his keys out as he was walking to his car, “I was asked if I gang banged. I proceeded and told him no. I went to open my door, and I got stuck in the back.” It was only a matter of fifteen to

twenty seconds from the time that Mr. Ruiz was asked if he gang banged and he responded that he did not, until he was stabbed in the back. Mr. Ruiz was actually opening the front passenger door when he was stabbed, his two daughters were right in front of him when he was stuck, he put them into his car and left.

Mr. Ruiz identified the person who asked him if he gang banged as the defendant who was sitting in the courtroom. RP 391. He further identified the defendant as the person who had stabbed him. Mr. Ruiz was 100% certain that the defendant was the person who had stabbed him. RP 418, 421.

Mr. Ruiz stated that he knew that he had been stabbed when he could feel blood dripping down his back. He stated that it was hard to describe what being stabbed felt like. He testified;

A. It's kind of hard to describe. Maybe like (indicating.), like a real quick, like a medium-soft punch to the back.

Q. And how did you know you were stabbed?

A. I felt the blood dripping down my back.

Q. What was your reaction to that?

A. I just turned around to see like if he was still there, and then he wasn't there. So, I put my girls in the car and then put my laundry in the car and took off.

Q. Did you tell anyone at the Agitation Station?

A. Yeah. I told the lady that was working there that I'd gotten stabbed in the back.

Q. Okay. Did you tell her by who?

A. No. I just said the guys that were in here.

Q. The same people that she was concerned about?

A. Yes. RP 391-2.

Mr. Ruiz testified he left the Agitation Station because he was afraid that the defendant would come back and potentially harm his daughters. And that he could see the second person from inside the business was standing around the corner of the building when he was stabbed. Mr. Ruiz testified that the two men ran off behind the building together after he was stabbed. RP 392-3.

Mr. Ruiz testified that his two daughters were crying and the older one was freaking out, that they knew something had happened. He then drove the two little girls to his girlfriend's place of business. RP 393-4. He testified that it took several minutes for him to drive to Jackson Hewitt, his girlfriend's place of work. He told his girlfriend what had occurred and another employee of the business called the police. He testified that they were "freaking out." He stated that he was infuriated by what occurred and that his plan regarding his daughters was "just to get them out of harm's way and to try to do something with my wound." RP 394.

Mr. Ruiz testified that he was still in shock and that the people at Jackson-Hewitt were applying pressure to the wound "to try to stop the bleeding." RP 395. Mr. Ruiz identified photographs which were taken of his car that showed that the bleeding from this stab wound was on the car seat. Mr. Ruiz's shirt had a hole in it and blood from the stab wound, stating "[t]hat's the hole where the knife or whatever was used to stab me

that (sic) left in the back of my shirt.” RP 399. Mr. Ruiz was shown several exhibits, specifically 6A- 6D which were of him while he was in the hospital.

The testimony regarding those exhibits was that they depicted Mr. Ruiz after the assault, the stab wound, and blood on the hospital bed from the wound. He testified that the pictures were taken while he was waiting to be taken in for a CT scan to determine if there was any internal bleeding. He also had a urine test to see if there was blood in his urine. When asked if there was a determination regarding the depth of the wound the following exchange occurred;

Q. Okay. And 6D, do you recognize that?

A. Yes.

Q. What is that?

A. That's a picture of the wound.

Q. Did they determine how deep the wound went?

A. No.

Q. Is that why they were doing the tests?

A. Yeah. They did the test to make sure I wasn't bleeding internally.

Q. Make sure it didn't hit any vital organs?

A. Yeah.

Q. What were the results of the test?

A. They were negative. RP 403-4.

Mr. Ruiz testified that he was in the hospital for two and a half or three hours. On the day of the stabbing Mr. Ruiz did not go to the police station because he was sore from the assault. He testified that he felt sore, like he had lifted weights two days in a row but the pain was not

excruciating. He testified that his level of pain persisted for about three maybe four days. RP 415

On cross-examination Mr. Ruiz stated that he did not see a knife and that he had not seen the two brothers threaten anyone “until [he] was outside and they stabbed me.” RP 426. He stated that the people from the ambulance advised him to go to the hospital. And that it was about one-half hour after the stabbing that he was told that he should go to the hospital.

Det. Berry went to the hospital to make contact with Mr. Ruiz, he testified that when he was at the hospital that “[h]e was lying on a hospital bed hooked up to various machines.” RP 445. This detective testified that stab wounds can be fatal, that he had observed a person or persons who had died from stab wounds to the torso. That this type of wound resulted in internal bleeding having severed an artery. That death could result from a single stab wound if it hit a vital organ. RP 445-6. Det. Berry collected the victim’s clothing and identified them in trial. His testimony addressed the blood on the back of the victim’s shirt and the hole in the shirt. The blood was found on the shirt from the center of the back of the shirt and extended almost to the tail of the shirt and this blood stain was approximately six inches wide. RP 449.

On cross-examination Linares’ counsel was questioning Det. Berry

regarding the condition of Mr. Ruiz when he met with him. The officer testified that he did not think that Mr. Ruiz was going to die from the stab wound. Counsel went on to query this officer about the location of the stab wound asking if a vital organ had been damaged. Det. Berry's responded, "Based on my observations and training and experience, the location of the wound caused concern." RP 471. This was followed up by the State's attorney:

Q. You indicated to Mr. Therrien-Power the location of the wound caused you concern. Can you explain?

A. It was in the area of the vital organs.

Q. You indicated it's on his flank. What's behind there or inside?

A. You could have kidneys and possibly a lung.

Q. What are your lungs used for?

A. Breathing. RP 474

Officer Jeff Cunningham, an officer with twenty-seven year's experience, was one of the first responders to Jackson-Hewitt where he contacted the victim, Mr. Ruiz. This officer testified that when he arrived on the scene Mr. Ruiz's girlfriend was doing compression on the wound. RP 650-1 The officer stated the Mr. Ruiz was injured and concerned because of the wound and the officer called the fire department and had them come examine Mr. Ruiz. Officer Cunningham testified that he had seen numerous stab wounds in his career. That some of them such as ones delivered by a pocket knife or a stiletto are usually used for "jabbing, like

thrusting...[t]hey are usually long, skinny, with a point.” When asked about the type of wound they could make he testified that such a blade could leave a small but deep wound. RP 652-3. His final answer was regarding whether he had seen a small wound that were deadly, his response was “Yes, I have during autopsies.” RP 654.

The defendant was identified by several witnesses to be an associate of or affiliated with the Sureno street gang. That gang “claims” the color blue and is the stated enemy of the Norteno gang that claims the color red. The defendant had several tattoos, a BGL – Bell Garden Locos, on his neck, a BGL emblem on a forearm and three dots on one wrist and one on the other, which stands for the number 13 which is claimed by the Sureno sect. RP 465, 607-9

Mr. Ruiz identified photographs of his red car, the red beads hanging from his mirror, some little gloves with the “49ers” on it. Portions of the 49ers emblem is red and gold. His shirt contained the colors Black white and red RP 397-8. Mr. Ruiz testified that his attire was a short-sleeve shirt and that his tattoos were visible. Those tattoos include his last name, his daughter’s name and an angel with his mother’s name. He described them as being done in “Old English” lettering and that they took up most of the area on his forearms. He also has three stars behind his right ear. He testified that none of his tattoos had any connection with

any gang. RP 405-6. Mr. Ruiz testified that he had some knowledge regarding gangs and colors and that the Norteno gang wore red and Surenos who blue. He also testified that these two gangs did not get along. RP 407-8

Mr. Ruiz thought the reason he was attacked was because of the star tattoos, the red color of some of his clothes and the red color of his car. RP 409. He confirmed that he had never met and did not know the defendant, that he was not a member of a gang, and the only thing that was said to him by the Defendant before he was stabbed was “do you gang bang.” He could think of no other motivation for the attack that resulted in him being stabbed. RP 410.

Det. Berry testified regarding the clothing that he collected from Mr. Ruiz. Those included the shirt and shorts that Mr. Ruiz was wearing that included red piping and lettering. The red coloring was significant to this detective because the defendant is a BGL/Sureno. RP 449-50.

Det. Berry testified regarding the phrase used by Appellant when he confronted Mr. Ruiz;

Q. Last series of questions. You heard Mr. Ruiz state that Mr. Linares, Pedro Linares, walked up and said basically, and I'm paraphrasing, do you gang bang or what do you bang.

In your training and experience, what does that mean?

A. It's a callout to find out whether they're a friend or foe.

Q. In your training and experience, does that callout often

precipitate violence?
A. Yes. RP 467

Officer Jose Ortiz testified about some specific issues pertaining to gangs and the actions and phrases often used in confrontations such as those in this case. He stated that the callout “what do you bang” was something that in his experience always means that something bad is going to happen, an altercation is going to happen. RP 630. He testified that this is used whenever a gang member is disrespected or when they are confronting a person they believe is in a rival gang. The following was a portion of Officer Ortiz’s testimony that addressed why an act like this might occur:

Q. You mentioned the term respect. What is that?
Can you define that for us or what it means in a gang like BGL.

A. I'm just going to say in gangs in general respect is everything to them. They will what they call throw down. They will fight for that. If they feel disrespected in any shape, way or form they're going to go for it whether it's a police officer, a teacher.

...

A. So it is kind of -- it is kind of scary in situations especially if they come up and they do that, they ask that particular question, but they won't back down.

Q. (By Mr. Clements) Are colors considered disrespect, rival colors? If somebody is flying colors in your presence, would that be a disrespect?

A. Yes, especially if they believe that you are of the rival gang and if you're in their territory. RP 630-

1

A. Like I said, when they throw something down like what do you bang, that's one of those things, if you answer or you don't answer, it's a tossup. You're probably going to get hit regardless. If you don't answer, the individual will think you're disrespecting them. If you answer or you're making a smart remark, you're going to get it. RP 632

...

Q. I'm saying somebody that has no gang affiliation whatsoever. Have you had assaults where the gang has mistakenly believed they're gang related or they're gang members when, in fact, they are not?

A. There has been, yes.

Q. And what types of assaults have occurred in Sunnyside?

A. For the most part it's been simple assaults, you know, a fistfight, you know, for the most part. Sometimes it could be more serious.

Q. When you say that, what do you mean?

A. A knife or a gun. RP 638

Officer Ortiz finished his direct testimony by stating, without objection, his expert opinion that "...this is a gang motivated assault..." that Linares would gain "...street credibility, notoriety for the gang. Again, it's asserting that they're a group to be contended with. They'll confront wherever, whenever...Reputation of not only him but the gang. That's what --that's a form of respect for them."

ARGUMENT

Motions for review of an opinion of the Court of Appeals are governed by RAP 13.4(b), Linares claims his petition meets the criterion of RAP 13.4(b)(3). This case does not meet any of the criterion set forth

in RAP 13.4(b) RAP 13.4(b) Considerations Governing Acceptance of Review. The opinion issued in this case does not raise an issue which is significant question under either the State or Federal Constitution; the opinion addresses the sufficiency of the facts presented to the jury, this is not a question that implicates either the Federal or the State Constitution.

Linares cites to RAP 13.4(b)(3) one time in his petition. He then recites that the due process requires the State to prove its case beyond a reasonable doubt, cites to the U.S. Constitution and the Washington State Constitution and that ends the Petitioner's explanation to this court as to how his particular case meets the criterion of RAP 13.4 as a "significant question" under our constitutions. As the State so often indicates, it is or may be a significant issue to the particular Petitioner but that does not meet the standard for review before this, the final court of review, in this State.

Insufficient evidence.

Linares limited his sufficiency challenge to the deadly weapons enhancement. Linares states in his petition for purposes of proving the "deadly weapon" element of the crime, the State need only prove "the weapon had the capacity **to cause death or serious bodily injury.**" This is an incorrect the instructions given to the jury define "deadly weapon" elementally as "Deadly weapon means any weapon, device, instrument, or

article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of **causing death or substantial bodily harm.** CP 86

For the special verdict deadly weapon is defined as “[a] deadly weapon is an implement or instrument that has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death.” CP 99.

If a court were to require proof of the depth of the injury or the actual weapon in each instance of assault using a knife this statute would be meaningless. Linares’ argument is solely based on the premise that the only way to determine if the weapon that he used to stab Mr. Ruiz in the back met the “heightened” definition of deadly was to have the actual weapon or by some method measure the depth of the wound. This statute RCW 9.94A.825 includes numerous “deadly weapons” which leave nearly no trace of an actual wound which can be observed as was the hole in Mr. Ruiz’ back. A “black jack, . . . billy sand club stated in the statute will not leave a well defined ½ inch hole that bleeds and in fact may leave little trace at all but given the proof of the surrounding circumstances of use those weapons may also be found to be deadly for a special verdict.

The statute lists only examples of what are in fact “deadly weapons” but it specifically allows for any “ . . . implement or instrument

that has the capacity to inflict death” AND “from the manner in which it is used, is likely to produce or may easily and readily produce death.” CP 99 (Emphasis added.) This court will evaluate the second category, use, by looking to the circumstances in which the instrument was used, including the defendant's intent and present ability. State v. Holmes, 106 Wn.App. 775, 781-82, 24 P.3d 1118 (2001). The instrument's capacity to inflict death "is determined in relation to surrounding circumstances, with reference to potential substantial bodily harm." 106 Wn.App. at 782 (quoting State v. Shilling, 11 Wn. App. 166, 171, 889 P.2d 948 (1995)).

The Court of Appeals opined:

The jury also found, by special verdict, that Mr. Linares used a deadly weapon when he committed the second degree assault. This finding was based on a slightly different deadly weapon definition. Pertinent to this case, to prove the use of “deadly weapon” as necessary for a sentence enhancement, the State must establish that (1) the instrument used by Mr. Linares had the “capacity to inflict death” and (2) Mr. Linares used the instrument in a manner “likely to produce” death or in a way that “may easily and readily produce death.” RCW 9.94A.825; State v. Peterson, 138 Wn. App. 477, 484, 157 P.3d 446 (2007). Sufficient evidence justified the jury’s determination that the instrument used by Mr. Linares met the two criteria of a deadly weapon. The instrument clearly had the capacity to inflict death, given it was sharp enough to pierce Mr. Ruiz’s shirt and skin. In addition, Mr. Linares used the instrument in a manner likely to cause death. Mr. Linares stabbed Mr. Ruiz in the back. In so doing, he risked injury to Mr. Ruiz’s arteries and internal organs. A jury could rightly view Mr. Linares’s conduct as more serious than an intentional aggravated battery. It was an attempted

assassination. The fact that Mr. Linares did not succeed in killing Mr. Ruiz does not change the nature of his conduct.

Based on the facts produced at trial, the deadly weapon enhancement was justified

The statute states "...an implement or instrument which has the capacity to inflict death and from the manner in which it is used...."

Linares seems to believe that "manner" means only the actual physical action of stabbing this victim in the back. The State is not limited to just the physical act and was not in this case. The State presented evidence related to the actions of the two suspects, Linares in particular. Those acts and actions that preceded this stabbing are part of the manner the knife was used. This stabbing was clearly motivated by some belief that the victim belonged to a rival gang based on his ethnicity, the color of his car and the style, color and type of clothing he was wearing when he was initially confronted and then stabbed in the back.

Supporting this totality of the facts, this "use" method of proving the deadly nature of the weapon is the unchallenged finding of the jury that this "...defendant personally commit(ed) the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang, its reputation, influence, or membership..." CP 106. Officer Ortiz testified that; Linares and his twin brother are associated with the Sureno (Bell Garden Loco) gang. RP

627, that gang members will ask other people if they "bang" to find out if the other person is affiliated with a rival gang. RP 630-31, Nortenos and Surenos are rival gangs in the Yakima area. RP 622, Nortenos claim the color red and the San Francisco 49ers football team and Seranos claim the color blue. RP 624-25, Officer Ortiz testified he believed Ruiz was mistakenly associated with the Nortenos gang based on these his appearance and was stabbed for those reasons. RP 638-40.

This attack was not some random slashing, it was not an manifestation of some angry outburst, it was an attack by two men to the back of another they viewed as a gang rival. The entry hole was measured at ½ inch, that is not some surface or superficial cut. The staff at the hospital did not look at this wound and say well just put a band-aid on it and go home. They did additional testing to determine there were not internal issues with this victim, who was hooked to machines to monitor his health at the hospital. This takes Linares acts from the “less strict” elemental definition to the “heightened standard” of the enhancement. They were trying to kill this perceived rival, not just scare him or hurt him. They took his ability to defend away, they did this in front of his children, they tried to kill him, they just did not succeed.

This court has considered a similar case arising from Division III of the Court of Appeals, review was denied. The State would direct this

court, pursuant to GR 14.19(a) to consider as nonbinding authority and accord such persuasive value as this court deems appropriate the actions of the Court of Appeals and this court in that case.

State v. Tinajero, 28327-5-III (WACA) Court of Appeals of Washington, Division 3 August 22, 2013; Order Denying Motion for Reconsideration and Amending Opinion. Kevin M. Korsmo, Chief Judge

State v. Tinajero, 179 Wn.2d 1011, 316 P.3d 494 (2014) Rodolfo Ramirez Tinajero No. 89346-2 Supreme Court of Washington January 8, 2014. Appeal From: 28327-5-III Petition For Review: Denied.

The court in Tinajero ruled as follows regarding this issue:

Mr. Tinajero next assigns error to the court's increasing his sentence based on the jury's finding that Mr. Tinajero was armed with a deadly weapon, arguing that the evidence was insufficient to support the finding.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). A defendant challenging the sufficiency of the evidence in a criminal case admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *Id.* (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

A knife may qualify as a deadly weapon in two ways. It is a deadly weapon as a matter of law if it has a blade longer than 3 inches. Former RCW 9.94A.602 (1983), *recodified as* RCW 9.94A.825; *State v. Zumwalt*, 79 Wn.App. 124, 129, 901 P.2d 319 (1995), *overruled in part on other grounds by* *State v. Bisson*, 156 Wn.2d 507, 130 P.3d 820 (2006). Alternatively, the State can prove that it was a deadly weapon by presenting evidence that it "has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily or readily produce death." Former RCW 9.94A.602; *Zumwalt*, 79 Wn.App. at 129-30; *State v. Peterson*, 138 Wn.App. 477, 482, 157 P.3d

446 (2007). "Relevant to this determination are the defendant's intent and present ability, the degree of force used, the part of the body to which the weapon was applied and the injuries inflicted." *Zumwalt*, 79 Wn.App. at 130. The jury was provided with this definition.

Ms. V. testified that when Mr. Tinajero pulled his knife on her, he said, "you're not going to leave, you're going to do what I tell you to do now" and she was "very afraid." RP at 654. As he forced her at knifepoint into the interior of the orchard, she begged him to let her go, telling him she had two daughters, to which he responded, "if you don't do what I'm telling you to, then you're never going to see your daughters again." *Id.* at 655. She testified that as he was raping her, he held the knife to her throat. She received minor cuts from the knife, on her arms.

The evidence supports a finding that the way in which Mr. Tinajero used the knife rendered it a deadly weapon. In using it to threaten her, he treated it as life threatening, telling her that if she did not do as he said, she would not see her daughters again. She perceived it as life threatening. His threats are evidence of his intent and ability. A jury could reasonably find that even a small knife held to Ms. V.'s throat would have the capacity to inflict death when used in this manner. *State v. Cook*, 69 Wn.App. 412, 418, 848 P.2d 1325 (1993). Sufficient evidence supports the jury's verdict.

D. CONCLUSION

The Court of Appeals opinion does not merit review under RAP 13.4. A challenge to the sufficiency of evidence does not automatically implicate a defendant's due process rights does that challenge cause it to become an issue of significance to the public.

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Respectfully submitted this 14th day of February 2019,

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DECLARATION OF SERVICE

I, David B. Trefry, state that on February 14, 2019, I emailed a copy of the State's Answer to: Casey Grannis at Sloanej@nwattorney.net

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14th day of February, 2019 at Spokane, Washington.

s/ David B. Trefry
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