

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
I. COUNTERSTATEMENT OF THE ISSUES.....	1
II. STATEMENT OF THE CASE.....	1
A. PROCEDURAL HISTORY	1
B. FACTS	1
III. ARGUMENT	9
A. EDWARDS’ ARGUMENT THAT THE CHARGING DOCUMENT WAS SOMEHOW IMPROPER OR INCOMPLETE SHOULD BE DENIED AS IT IS CLEARLY WITHOUT MERIT.	10
B. EDWARDS’ CLAIMS REGARDING VARIOUS ALLEGED ERRORS AT TRIAL SHOULD BE DENIED BECAUSE THEY ARE CLEARLY WITHOUT MERIT.....	16
1. Alleged Discovery Error re: Defense Investigator Report.....	16
2. Alleged Discovery Error re: “unedited” 911 call.	20
3. Alleged Trial Error re: Witness Reference to 911 Call.....	22
4. Alleged Trial Error re: Testimony Regarding Various Items.....	24
5. Alleged Trial Error re: “Citizen’s Arrest.”	26
6. Alleged Trial Error re: Defense Witness Kramer.	29
7. Alleged Trial Error re: Defense Witness Hayes.	31
8. Alleged Trial Error re: “Intent.”	32
9. Alleged Trial Error re: Defense of Property.....	34

10.	Alleged Trial Error re: Defense Exhibits.	35
11.	Alleged Trial Error re: State’s Exhibits.	36
12.	Alleged Trial Error re: Self Defense Instructions.....	37
13.	Alleged Trial Error re: Denial of Continuance Requested on First Day of Trial.	38
14.	Alleged Trial Error re: Cumulative Error	42
C.	EDWARDS’ VARIOUS CLAIMS REGARDING HER SENTENCING SHOULD BE DENIED AS THEY ARE CLEARLY WITHOUT MERIT.....	43
IV.	CONCLUSION.....	44

TABLE OF AUTHORITIES
CASES

In re Pers. Restraint of Lord,
123 Wn.2d 296, 332, 868 P.2d 835,(1994).....42

State v. Bonisisio,
92 Wn. App. 783, 790, 964 P.2d 1222 (1998).....14

State v. Chaten,
84 Wn. App. 85, 925 P.2d 631 (1996)..... 12

State v. Clausing,
147 Wn.2d 620, 628-29, 56 P.3d 550 (2002).....31

State v. Delmarter,
94 Wn.2d 634, 638, 618 P.2d 99 (1980).....32

State v. DeWeese,
117 Wn.2d 369, 376-77, 816 P.2d 1 (1991).....43, 44

State v. Downing,
151 Wn.2d 265, 272, 87 P.3d 1169 (2004).....38

State v. Easter,
130 Wn.2d 228, 242, 922 P.2d 1285 (1996).....10

State v. Elliott,
114 Wn.2d 6, 15, 785 P.2d 440 (1990).....9

State v. Foxhoven,
161 Wn.2d 168, 174, 163 P.3d 786 (2007).....23, 26

State v. Goodman,
150 Wn.2d 774, 784, 83 P.3d 410 (2004).....11, 12

State v. Green,
94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).....32

<i>State v. Guloy,</i> 104 Wn.2d 412, 432, 705 P.2d 1182 (1985).....	9
<i>State v. Hodges,</i> 118 Wn. App. 668, 673-74, 77 P.3d 375 (2003).....	42
<i>State v. Kerr,</i> 14 Wn. App. 584, 587, 544 P.2d 38 (1975).....	26
<i>State v. Kjorsvik,</i> 117 Wn.2d 93, 102, 812 P.2d 86 (1991).....	11, 12
<i>State v. Korum,</i> 157 Wn.2d 614, 627, 141 P.3d 13 (2006).....	14
<i>State v. Lee,</i> 69 Wn. App. 31, 35, 847 P.2d 25 (1993).....	14
<i>State v. McDowell,</i> 102 Wn.2d 341, 344, 685 P.2d 595 (1984).....	14
<i>State v. McFarland,</i> 127 Wash.2d 322, 332-33, 899 P.2d 1251 (1995)	25
<i>State v. Moles,</i> 130 Wn. App. 461, 465, 123 P.3d 132 (2005).....	33
<i>State v. Penn,</i> 32 Wn. App. 911, 914, 650 P.2d 1111 (1982).....	13
<i>State v. Pirtle,</i> 127 Wn.2d 628, 643, 904 P.2d 245 (1995).....	32
<i>State v. Saunders,</i> 120 Wn. App. 800, 826, 86 P.3d 1194 (2004).....	42
<i>State v. Taylor,</i> 140 Wn.2d 229, 245, 996 P.2d 571 (2000).....	12
<i>State v. Yates,</i> 161 Wn.2d 714, 764, 168 P.3d 359 (2007).....	10

United States v. Goodwin,
457 U.S. 368, 373, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982).....14

STATUTES

RCW 7.68.03544
RCW 9A.16.02027, 34
RCW 27.44.04028

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether Edwards' argument that the charging document was somehow improper or incomplete should be denied when it is clearly without merit?
2. Whether Edwards' claims regarding various alleged errors at trial should be denied when they are clearly without merit?
3. Whether Edwards' various claims regarding her sentencing should be denied when they are clearly without merit?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Colleen Edwards was charged by a second amended information filed in Kitsap County Superior Court with one count of assault in the second degree with a special allegation that she was armed with a firearm. CP 316. A jury found Ms. Edwards guilty of the charged offense and found that she was armed with a firearm. CP 531-32. The trial court then imposed a standard range sentence. CP 574. This appeal followed.

B. FACTS

On April 25, 2006, Ms. Edwards was charged with Assault in the Second Degree. CP 623. The charged was based on the allegation that on April 24 Ms. Edwards had approached two construction workers, ordered

them to stop working, and then pointed a firearm at the workers. CP 626.

An arraignment was held on August 25, and the court appointed an attorney to represent Ms. Edwards. CP 1, 631. Ms. Edwards' counsel later filed a motion asking the court to order Ms. Edwards to be evaluated regarding her competency to stand trial, and the court ordered the evaluation. CP 48, 57. Ms. Edwards sought discretionary review of this order, but this Court denied review. *See*, Order Denying Review, filed Oct. 26, 2007 in *State v. Edwards*, COA No 36601-1-II. Ms Edwards then sought review of this decision with the Washington Supreme Court, but that court also denied review. *See*, Ruling Denying Review, filed April 25, 2008 in *State v. Edwards*, WSC No 81305-1.

When this case ultimately returned to the trial court Ms. Edwards was evaluated and found competent to stand trial. CP 184, RP (7/11/08) 2-3. After Edwards was found competent, the trial court set a hearing to address Edwards' request that she be allowed to represent herself and proceed pro se. RP (7/11/08) 6-10. The court ultimately granted Edwards' motion and entered a written Waiver of Right to Counsel and Order Granting Motion to Proceed Pro Se. CP 187.

In 2007 the charges were amended to include two counts of assault in the second degree (one for each of the two victims) and both counts included

a special allegation that Edwards was armed with a firearm. CP 44. Prior to trial, however, the State amended the information and dropped the second count (in which Mr. Arthur was the named victim) as the State could no longer locate Mr. Arthur who had apparently left the State. CP 316, RP (9/12/08) 9, 27-31. The case then proceeded to trial with Ms. Edwards representing herself.

At trial, Paul Miller explained that on April 24, 2006 he was working as a heavy equipment operator on the piece of property in question. RP (11/3/08) 408-09. Mr. Miller was cleaning up brush, old trees, garbage, and other debris that had been left at the site. RP (11/3/08) 409-10. Another construction worker (Peter Arthur, who had just started working that week) was also on the site with Mr. Miller. RP (11/3/08) 412, 486, 490.

While Mr. Miller was working at the site, Edwards and a male friend (later identified as Mr. Monfort) came onto the property. RP (11/3/08) 410-11. Edwards was wearing a bicycle helmet and some kind of vest. RP (11/3/08) 445. Mr. Miller explained that when he works on heavy equipment he is usually on the look out for people due to safety concerns given the nature of the heavy equipment and because his views can sometimes become obstructed. RP (11/3/08) 410.

When Mr. Miller saw Edwards and Monfort come onto the property he walked over to them. RP (11/3/08) 411. Edwards then immediately told Miller that he needed to get off of the property. RP (11/3/08) 411. Mr. Miller told Edwards that she could contact his employer, Pat Hall, and offered to give Mr. Hall's business card to Edwards so that she could call him. RP (11/3/08) 411. Edwards, however, said that she had already talked to Hall. RP (11/3/08) 411. Mr. Miller then told Edwards that his boss had sent him to the property to do the work and that if Edwards had a problem she should contact Mr. Hall. RP (11/3/08) 41. Mr. Miller then proceeded to walk away and intended to go back to his work. RP (11/3/08) 411. Mr. Miller also testified that both he and Mr. Arthur were polite to Edwards and that there were not threatening acts nor "bad words exchanged, nothing like that." RP (11/3/08) 415.¹

Mr. Miller went back to work on the property, but after only 10 or 15 seconds he heard Edwards again call out to him stating that she was making a "citizen's arrest." RP (11/3/08) 412. Mr. Miller turned around to face Edwards and saw that she had a "handgun pointed directly at [him]." RP (11/3/08) 412. Mr. Miller told Edwards to settle down and he then called his boss and told him that "she's got a gun and she had it pointed right at me."

¹ Mr. Miller also stated that Mr. Arthur did not threaten Edwards with a pipe or a piece of metal. RP (11/3/08) 414-15.

RP (11/3/08) 412. Mr. Miller explained that he was “pretty terrified” and that he had never had a gun pulled on him before. RP (11/3/08) 413.

Patrick Hall, Mr. Miller’s employer, stated that he was at lunch when he received the call from Mr. Miller and that he told Miller him to leave the property. RP (11/3/08) 488-89. Hall then called 911 and left his lunch meeting and headed to the property. RP (11/3/08) 489.

Mr. Miller then shut off the machines, locked everything up, and got off the site. RP (11/3/08) 413. Upon leaving the site Mr. Miller went down the road a short distance where he soon met Mr. Hall, who had arrived at the scene. RP (11/3/08) 414. Four deputies from the Kitsap County Sheriff’s Office also soon responded to the scene. RP (11/3/08) 414, 530. Mr. Miller told the deputies that Edwards had a gun and had pointed it directly at him. RP (11/3/08) 414.

The KCSO deputies then took up positions near the property from where they could see Edwards. RP (11/3/08) 531. Deputy Stacy then called out to Edwards and told her to drop her weapon. RP (11/3/08) 532. Edwards then dropped her gun. RP (11/3/08) 532.² Edwards was then ordered to walk towards the deputies and eventually told to get on her knees, which she did. RP (11/3/08) 532. Edwards was then arrested and her firearm was recovered

² Stacy also ordered Mr. Monfort to drop his weapon. RP (11/3/08) 532.

and placed into evidence. RP (11/3/08) 532-34. The gun was found to be loaded, and Edwards was also found to be carrying an additional magazine of ammunition on her person. RP (11/3/08) 537.

Edwards also testified at trial, and she admitted that she had come onto the property and confronted Mr. Miller. RP (11/10/08) 1022. She also acknowledged that she was carrying a firearm and ammunition, but she claimed that she did not point the firearm at Mr. Miller. RP (11/10/08) 1031-32, 1067. In addition, Edwards claimed that although she had drawn her weapon on Mr. Arthur, she had done so in self defense because Mr. Arthur had threatened her with a piece of metal. RP (11/10/08) 1025.

Edwards, however, did not allege that Mr. Miller had similarly threatened her. Rather, in her direct testimony Edwards did not claim that Mr. Miller, the charged victim, had threatened or attacked her at all. On cross-examination, however, Edwards claimed that Mr. Miller had driven a piece of equipment towards her (although it was unclear from her brief testimony when she was alleging this took place). RP (11/12/08) 1058.

Edwards also claimed that she was making a citizen's arrest of the workers because the property was an Indian burial ground. RP (11/10/08) 1025. Edwards' belief in this regard was apparently based on her claim that some of her dogs had "alerted" on the property, indicating that there were

remains buried there. RP (11/10/08) 1041. Edwards, however, never asserted that any actual remains were ever found on the property nor did she assert that any remains were actually disturbed on the day in question.

Mr. Miller, however, testified that he had never heard any mention or story that the property might have been an ancient Indian burial ground, and that while he was working on the property he did not see anything that caused to think that the property was a burial ground. RP (11/3/08) 409-10, 414.³

Mr. Hall explained that Edwards had told him a “rumor” that the property was a burial ground, but he had never heard this from anyone but Edwards. RP (11/3/08) 487. Nevertheless, Hall explained that he then had conversations with County employees and the State Department of L & I during the permitting process, and was assured that he had a “clear green light to proceed with the work that I intended to do.” RP (11/3/08) 487-88, 512. He then obtained demolition permits from the County and from Labor and Industries and stated that the permits were posted on the property. RP (11/3/08) 518, 520. When Edwards cross-examined Mr. Hall on why he had not further investigated her claim that the property contained a burial ground, Mr. Hall explained that Edwards was “pretty hard to believe” and that she had said a lot of things that were “very hard to believe.” RP (11/3/08) 514-

³ Mr. Miller also explained that he wasn’t doing any deep digging on the property that day. RP (11/3/08) 414.

15.⁴ In addition, there was no evidence that Hall or anyone else ever relayed Edwards' claims regarding a burial ground to Mr. Miller or Mr. Arthur.

On this issue of Edwards' claim that Mr. Arthur had threatened her with a piece of metal, Mr. Miller testified that Mr. Arthur did not threaten Edwards with a pipe or a piece of metal. RP (11/3/08) 414. In addition, Mr. Monfort (Edwards' friend that had accompanied her to the property on the day in question) testified that he did not see anyone threaten or attack Edwards with a piece of metal or a pipe. RP (11/4/08) 584. In fact, Mr. Monfort stated that although the construction workers seemed "confused" by Edwards demands, they "seemed to oblige." RP (11/4/08) 585, 627, 631. In addition, Mr. Monfort stated that although he himself was armed, he never felt the need to draw his firearm. RP (11/4/08) 585. Mr. Monfort also stated that although he had also heard Edwards claim that the property contained a burial ground, he did not see anything on the property that caused him to think that it was a burial ground. RP (11/4/08) 580, 583.

⁴ When Edwards asked for specifics, Mr. Hall explained that Edwards had claimed that she was a private investigator, ran a dog training business, trained for the FBI and the State, and other things that were very hard to believe. RP (11/3/08) 515. Mr. Hall also stated that in the two years since he has finished working on the property he has never been contacted by the Department of Archeology or the Suquamish tribe about the property. RP (11/3/08) 525.

III. ARGUMENT

Despite the great length of Edwards' brief, the vast majority of her claims are conclusory and undeveloped. RAP 10.3(a)(5) requires parties to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." Arguments not supported by pertinent authority or meaningful analysis need not be considered. *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990). This Court, therefore need not address many of Edwards' claims. The State, however, has attempted to address all of Edwards' claims in order to assist the Court and to clarify factual misstatements by the Appellant.

Furthermore, as most of the facts at trial were not disputed, the only actual factual issue presented to the jury was very narrow: namely did Edwards assault Mr. Miller with a firearm and did she act in self-defense. As the vast majority of Edwards' claims relate to issue or evidence that was essentially irrelevant to this factual issue, any error (even if this Court were to assume for the sake of argument that error occurred) caused no discernable prejudice.

For instance, a trial court's decision to admit evidence is subject to harmless error analysis. *See e.g., State v. Guloy*, 104 Wn.2d 412, 432, 705 P.2d 1182 (1985). "Where evidence is improperly admitted, the trial court's

error is harmless ‘if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.’” *State v. Yates*, 161 Wn.2d 714, 764, 168 P.3d 359 (2007) (quoting *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997)), *cert. denied sub nom. Yates v. Washington*, 554 U.S. 922, 128 S. Ct. 2964, 171 L. Ed. 2d 893 (2008). Similarly, a constitutional error is harmless if the reviewing court is “convinced beyond a reasonable doubt any reasonable jury would have reached the same result absent the error.” *State v. Easter*, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

Thus as Edwards claims generally relate to irrelevant or insignificant matters, her claims of error, even if they were true would be harmless error. The State, nevertheless, has attempted to address all of Edwards’ claims in order to assist the Court in its decision.

A. EDWARDS’ ARGUMENT THAT THE CHARGING DOCUMENT WAS SOMEHOW IMPROPER OR INCOMPLETE SHOULD BE DENIED AS IT IS CLEARLY WITHOUT MERIT.

Edwards argues that there were several “charging errors” in the present case. Specifically, it appears that Edwards’ claims are that: the information failed to include language that the assault was “intentional” and that the State improperly amended the information to include a firearm

enhancement “15 days before trial.” App.’s Br. at 13-18. These claims are without merit because the charging document included all of the elements of the charged offense and because the information was amended to include a firearm enhancement well over a year before trial.

A charging document is constitutionally sufficient under the Sixth Amendment to the United States Constitution FN4 and article I, section 22 of our constitution when it includes all “essential elements” of the crime. *State v. Goodman*, 150 Wn.2d 774, 784, 83 P.3d 410 (2004). The purpose of the well-established “essential elements” rule is to apprise the defendant of the charges against him or her and properly allow the accused to present a defense. *Goodman*, 150 Wn.2d at 784.

When a defendant argues for the first time on appeal that an information failed to include element of the crime, the reviewing court is to construe the charging documents more liberally in favor of validity than does a trial court when the charging documents are challenged initially or during trial. *Goodman*, 150 Wn.2d at 787, citing *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991). Thus when the challenge is raised for the first time on appeal the court is to apply a two-pronged inquiry: “(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack

of notice?” *Goodman*, 150 Wn.2d at 788; *Kjorsvik*, 117 Wn.2d at 105-06. This method of liberal construction also permits the court to fairly infer the apparent missing element from the charging document's language. *Goodman*, 150 Wn.2d at 788; *Kjorsvik*, 117 Wn.2d at 104.

The Washington Supreme Court has previously held that (even under the strict standard of review employed when an information is challenged before verdict) that an “allegation of assault by its plain meaning conveys an allegation of intent” because the word “assault” conveys an intentional act. *State v. Taylor*, 140 Wn.2d 229, 245, 996 P.2d 571 (2000). Thus, the Court concluded that a charging document that charged an “assault” without including the word “intent” was nonetheless constitutionally sufficient. *Id.* at 245.

Furthermore, in *Taylor* the Supreme Court approved of a prior Court of Appeals decision that had held that a charging document that alleged an assault but did not include the word “intent” was sufficient even under strict pre-verdict construction. *Taylor*, 140 Wn.2d at 242-44, citing *State v. Chaten*, 84 Wn. App. 85, 925 P.2d 631 (1996). In *Chaten*, the Court held that “Because an assault is commonly understood as an intentional act, a mere allegation of assault does not, by definition, omit the element of intent. *Taylor*, 140 Wn.2d at 238, quoting *Chaten*, 84 Wn. App. at 87.

In the present case, Edwards did not challenge the charging document below, thus this Court is to apply the more liberal test which permits the court to fairly infer an apparent missing element from the charging document's language. Since the Washington Supreme Court and the Court of Appeals have previously found that the term "assault" by its plain meaning conveys an allegation of intent (and is sufficient under even the more strict construction test), the charging document in the present case was sufficient either because the use of the word assault conveyed an allegation of intent, or because intent was implied by the use of the word assault or because intent could be fairly inferred from the charging document's use of the word intent.⁵ Edwards claim, therefore, is without merit.

Edwards next appears to argue that the State improperly amended the charge against her by adding a firearm enhancement "15 days before trial." Her specific claim appears to be that this act was untimely and vindictive. App.'s Br. at 13-14.

A prosecutor is entitled to amend an information before the verdict or finding if the substantial rights of the defendant are not prejudiced. CrR 2.1(d); *See also, State v. Penn*, 32 Wn. App. 911, 914, 650 P.2d 1111 (1982) (the State has discretion to amend a charge where evidence supports the

⁵ In addition, the trial court in the present case instructed the jury that an "assault" is an act, with unlawful force, done "with intent to create in another apprehension and fear of bodily

additional charges). But constitutional due process principles prohibit prosecutorial vindictiveness. *State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13 (2006); *United States v. Goodwin*, 457 U.S. 368, 373, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982). “Prosecutorial vindictiveness occurs when ‘the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights.’” *Korum*, 157 Wn.2d at 627 (quoting *United States v. Meyer*, 258 U.S.App. D.C. 263, 810 F.2d 1242, 1245 (1987)). There is no presumption of prosecutorial vindictiveness, however, when the State amends charges in a pretrial setting. *Korum*, 157 Wn.2d at 629; *State v. Bonisisio*, 92 Wn. App. 783, 790, 964 P.2d 1222 (1998). Rather, proof of actual vindictiveness is required before an appellate court may invalidate the prosecutor's adversarial decisions made before trial. *State v. McDowell*, 102 Wn.2d 341, 344, 685 P.2d 595 (1984). Thus, “[p]rosecutorial vindictiveness must be distinguished, however, from the rough and tumble of legitimate plea bargaining.” *State v. Lee*, 69 Wn. App. 31, 35, 847 P.2d 25 (1993). Finally, the defendant bears the burden of proving prosecutorial vindictiveness. *Bonisisio*, 92 Wn. App. at 791.

Edwards was initially charged with one count of assault in the second and the initial information did not contain a firearm enhancement. CP 623. Edwards, however, was advised on August 9, 2006 that at a further

injury.” CP 515.

arraignment hearing the State would file an additional count of assault in the second degree and add firearm enhancements to both counts. RP (8/09/06) 2-3. Furthermore, on May 9, 2007 the State filed a First Amended Information charging Edwards with two counts of Assault in the Second Degree with firearm enhancements on both counts. CP 44.

The State did file a Second Amended information approximately 15 days before trial, but that information simply removed one count and thus changed the charges from two counts of Assault in the Second Degree with firearm enhancements down to one count of Assault in the Second Degree with firearm enhancement. Se CP 44, 316.

Given these facts it is clear that Edwards was well aware of the firearm enhancement more than two years before her trial began. In addition, the firearm enhancement was actually filed as part of the First Amended Information that was filed more than a year before the trial began. Any claim that the amendment was untimely is, therefore, clearly without merit.

Furthermore, the record shows that more than two years before trial Edwards was well aware that if she elected to go to trial and not enter a plea she would potentially face more serious charges. In fact, the firearm enhancement was actually filed more than a year prior to trial. As Edwards has failed to show any evidence of actual prosecutorial vindictiveness, her

arguments are clearly without merit.⁶

B. EDWARDS' CLAIMS REGARDING VARIOUS ALLEGED ERRORS AT TRIAL SHOULD BE DENIED BECAUSE THEY ARE CLEARLY WITHOUT MERIT.

Edwards next claims that the trial court committed numerous errors at trial. These various claims are clearly without merit, as discussed below.

1. *Alleged Discovery Error re: Defense Investigator Report.*

Edwards argues that the State failed to provide some portion of a defense investigator's report concerning an interview of Michael Monfort, a witness in the case. App.'s Br. at 18. Edwards also argues that the State failed to obtain this report from the defense investigator, Sandy Francis, and that the State merely made one unsuccessful attempt to contact Ms. Francis regarding the report. App.'s Br. at 18-19. Edward's claims are without merit

⁶ Finally, Edwards claims that the charging document was improper because it was not supported by probable cause. App.'s Br. at 14. Edwards fails to explain how the probable cause was lacking. Furthermore, Edwards argument in this regard is moot, as a finding of probable cause is only required in order to support conditions of pre-trial release, and the conditions imposed in the present case have long since expired.

Pursuant to CrR 3.2, a court is required to make a finding of probable cause before setting conditions of release. A judicial finding of probable cause, however, is not required for a criminal charge to be filed or for a criminal case to go forward. Rather, CrR 3.2 states, "If the court does not find probable cause, the accused shall be released without conditions." See also, *Gerstein v. Pugh*, 420 U.S. 103, 125, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975) ("Because the probable cause determination is not a constitutional prerequisite to the charging decision, it is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial"). Thus, any issue regarding whether the trial court had probable cause that would justify the pre-trial imposition of conditions of release is clearly moot. In addition, the probable cause statement in the present case clearly established probable cause for the charged offense. CP 623-27.

because the record does not show that there actually was any report that was not turned over to Edwards, and the record further shows that the State did in fact contact Ms. Francis who explained that her full report had been provided to Edwards.

In the proceedings below Edwards informed the court that Sandy Francis had prepared a report regarding an interview of Michael Monfort, but Edwards claimed that she had only received “half” of this report and that Ms. Francis had stated that she would not provide the rest of the report unless she was paid \$30. RP (10/10/08) 31-35; *See also* RP (9/12/08) 17-18. Edwards also alleged that there might be some other unknown reason that Ms. Francis was refusing to turn over the report. RP (10/10/08) 34-35. The State then explained that Ms. Francis had given a copy of the report to Edwards and that Edwards had then in turn given a copy to the State. RP (10/10/08) 35. The State then explained that it appeared Ms. Edwards was claiming there was some additional portion of the report that Ms. Francis had not turned over, and the State then offered to assist by calling Ms. Francis to see if the State could find out what was going on. RP (10/10/08) 35. The court and Ms. Edwards then agreed to take the State up on this offer of assistance. RP (10/10/08) 35-36.

Shortly thereafter the court took a short break to allow the State to call Ms. Francis. RP (10/10/08) 40. After the break the State informed the court

that it had attempted to contact Ms. Francis on both her work and cell phone but did not reach her, but that the State had left Ms. Francis a message asking her to call and clarify the issue. RP (10/10/08) 40. The court then set a hearing for the following week at which time the court hoped to hear from the State regarding what Ms. Francis had to say on the matter. RP (10/10/08) 42.

At the hearing the following week the State informed the court that it had spoken to Ms. Francis and that she had explained that she had turned over all of her materials on the case to the Ms. Edwards' original defense counsel and that there was no report that she was refusing to turn over until she was paid. RP (10/17/08) 7-8. Ms. Francis also denied ever having contact with Ms. Edwards other than in a letter that Edwards had filed with the court. RP (10/17/08) 8. The State then informed the court that it had contacted Ms. Edward's original counsel, Mr. Houser, and that he stated that he had turned everything he had over to Ms. Edwards' second counsel, Mr. Thimons. RP (10/17/08) 8. The State also then contacted Mr. Thimons, and he explained that he had turned everything he had over to Ms. Edwards. RP (10/17/08) 8.⁷

⁷ Edwards claim that the prosecutor "did not make any substantial efforts to acquire" this allegedly missing report and that the prosecutor only made one "phone call that was not answered" is simply false. App.'s Br. 18-19. Rather the record shows that the prosecutor went to great lengths and wasted a considerable amount of time attempting to track down some "missing" portions of a report when in fact the entire report had been turned over to Edwards previously (which she, in turn gave to the prosecutor) and when there were no "missing" portions as alleged by Edwards.

Edwards continued to assert that she believed that some report existed that had not been turned over, and that she would draft some kind of motion if the court desired one. RP (10/17/08) 9-10. The court explained that it was not certain any such report existed, as the information the court was getting from the attorneys and Ms. Francis was contrary to the assertions Edwards was making. RP (10/17/08) 10. The court however, told Edwards that this was her case and she was not telling Edwards what to do, and that she would rule on any motion when it was provided to the court. RP (10/17/08) 10-11. Edwards stated that she would draft a motion and file it the following Monday. RP (10/17/08) 10. As best as the State can tell, Edwards never filed any further motion and the issue was never raised again.

A prosecutor's discovery obligations are outlined in CrR 4.7. That rule requires the State to provide any written or recorded statements of witnesses to a defendant if those written statements are in the prosecutor's possession. CrR 4.7 (a)(1)(i). There is no evidence or allegation that the State was ever in possession of any report that was not provided in discovery in the present case. Rather, as the State explained, Ms. Francis was a defense investigator and the State actually obtained a copy of her report from Edwards herself. RP (10/10/08) 35. In addition, CrR 4.7(d) provides that upon a defendant's "request and designation of material or information" in the possession of third parties, the State shall attempt to cause that material to

be turned over to the defendant. Although not specifically requested to do so, the State in the present case offered to assist in this manner and contacted Ms. Francis and Ms. Edwards' previous attorneys and then reported back that all the materials had already been provided to Edwards. In so doing, the State fully complied with its discovery obligations under the rule. Although Edwards stated she intended to file a motion on the matter, she never followed through on this. Given these facts, Edwards' claim that there was a discovery violation is without merit.

2. *Alleged Discovery Error re: "unedited" 911 call.*

Edwards next argues that the prosecutor failed to provide the original "unedited" 911 call. App.'s Br. at 19-20. Specifically, Edwards argues that neither the court nor the prosecutor made any attempt to acquire the "original" 911 call from CenCom. This argument is clearly without merit, as explained below.

At trial, Ms. Edwards stated to the court that the State had provided her with a disk with a copy of a 911 call, but Edwards suspected that there was some "imperfection in the transfer process" and that she needed to listen to the original tape to see if there were any missing portions of the 911 call. RP (9/08/08) 7-8. The trial court expressed some reluctance in ordering that original CenCom 911 recordings be shipped off to Edwards or a defense expert, nor did the record reflect if this was even possible. RP (9/08/08) 19-

22. The prosecutor, however, offered to accompany Edwards to the CenCom headquarters, if necessary, in order for her to listen to the “original” tape if that was what she wanted, but the State noted that it had provided Edwards with a copy of everything it had on the call. RP (9/08/08) 22-23. The court then explained that it would order that Ms. Edwards be given an opportunity to listen to the “original” recording. RP (9/08/08) 23.⁸

At a hearing four days later the court asked if Edwards had reviewed the 911 call. RP (9/12/08) 21. Edwards explained that she had not done so because she did not have a written court order. RP (9/12/08) 22. The trial court then stated that if Edwards needed an order then she should prepare one. RP (9/12/08) 22. The following exchange then took place between the prosecutor (Mr. Enright) and the defendant and the court:

Mr. Enright: And I don’t know if this makes a difference to Ms. Edwards. We discussed this a little bit after court. I don’t intend on offering the 911 call.

Ms. Edwards: Are you withdrawing it?

⁸ Edwards was also asking the court to grant her funds (up to \$6000) for an expert witness, Mr. Nichols, to review the 911 call and provide technical expertise on the recording. RP (9/08/08) 6-8. Edwards explained that Mr. Nichols was in New York, and that some of the expense would involve his airfare, hotel, and that he charged \$150 an hour. RP (9/08/08) 9, 17-18. When the court stated that it would allow Edwards to listen to the original recording at CenCom, Edwards argued that this was not possible because she was a civilian. RP (9/08/08) 23. The court explained that the order took care of any problem in that regard. RP (9/08/08) 23. Edwards, however, continued to argue that she couldn’t go in the CenCom building because she wasn’t a police officer or a private investigator, and that she needed an investigator. RP (9/08/08) 24. The court explained that a court investigator was available to Edwards, but Edwards complained that this investigator wasn’t sufficiently qualified in this area. RP (9/08/08) 25. It was later revealed that Mr. Nichols is Ms. Edwards’ boyfriend. RP (10/28/08) 118.

Mr. Enright: I'm not going to offer it. I don't know if that may alleviate the problem or not.

Ms. Edwards: Yes, if – if Mr. Enright is not offering the 911 tape at trial, then the point is muted [sic] and – and I don't need to pursue it.

The Court: Very well.

RP (9/12/08) 23-24. The State did not offer the 911 tape at trial.

Given this record, Edwards has failed to show any discovery violation. The State provided a copy of the 911 call and stated that it provided Ms. Edwards of all the information it had. Although Edwards expressed a desire to listen to the “original” 911 call recording at the CenCom building (and the court ordered that she could do so), Edwards later withdrew this request when the State explained that the 911 call would not be offered as evidence. No error, therefore, occurred.

3. *Alleged Trial Error re: Witness Reference to 911 Call.*

Edwards next argues that the trial court erred in allowing several witnesses to mention that 911 was called despite the fact that the parties had agreed that the 911 call itself was not to be admitted. This claim is without merit because, consistent with the pre-trial agreement, the 911 call itself was not admitted at trial, and the mere fact that several witnesses mentioned that 911 was called did not violate the motion in limine (as the contents of the actual call were never offered at trial). Further, even if there had been an

error here, it was clearly harmless.

A trial court's evidentiary rulings are reviewed for an abuse of discretion. *State v. Foxhoven*, 161 Wn.2d 168; 174, 163 P.3d 786 (2007). Prior to trial Edwards asked the court to redact several statements from a 911 call made by Patrick Hall. RP (10/10/08) 20-21. The State explained that the 911 call had little evidentiary value and that, as the State had explained at a previous hearing, it did not intend on offering the 911 recording at trial. RP (10/10/08) 21. The State then explained that it would be more than happy to sign an order that the 911 tape was excluded. *Id.* An order was eventually entered stating that the 911 call of Patrick Harris should be excluded. CP 362. Consistent with order, the 911 was never played for the jury nor was it otherwise presented at trial.

On appeal, however, Edwards appears to argue that several witnesses improperly mentioned that 911 was called and that this violated the court's ruling. App.'s Br. at 23-26. While it is true that it was mentioned several times that Mr. Hall called 911, the call itself was never offered. Although Edwards objected to the mere mention that Mr. Hall had called 911, the trial court explained that objection was overruled because the State was not offering the contents of the call. RP (11/4/08) 674.

Thus, Edwards has failed to show any error. In addition, even if there had been an error in this regard, any error was clearly harmless as there was never any dispute that law enforcement was called to the scene and that this was due to the call placed by Mr. Hall.

4. *Alleged Trial Error re: Testimony Regarding Various Items.*

Edwards next argues that witnesses were allowed to testify that Edwards was carrying handcuffs, ammunition, and a magazine for her firearm despite the fact that these items were never actually entered into evidence. App.'s Br. at 27, 32. There is, of course, no requirement that limits a witness's testimony to only those physical items entered in evidence, and Edwards has cited no authority that would support such a claim. Edwards was free to argue to the jury that the State's failure to enter those items had some significance, but there is no requirement that the State enter those items. Edwards' claims, therefore, are without merit.

Edwards next argues that a DVD recording of Deputy Smith's testing of the firearm was played for the jury, but was not entered as evidence.

Edwards is correct that the DVD was played for the jury and it does appear that the DVD was not actually entered as an exhibit. At trial, Detective Ken Smith explained that he had taken Ms. Edwards' firearm from evidence and test fired it to determine whether it was an actual operable

firearm. RP (11/4/08) 655. He explained that the DVD depicted him and his testing of that firearm. RP (11/4/08) 655-56. The DVD was then played for the jury without objection from Edwards. RP (11/4/08) 656. The DVD recording was not the only evidence of the firearm's operability, however, as Detective Smith also testified that he tested the gun and found that it was fully operational. RP (11/4/08) 656-57.

Edwards' claim of error relating to the fact that the DVD was not itself entered as an exhibit fails for several reasons. First, Edwards did not object to the DVD being played for the jury. RP (11/4/08) 656. Thus she failed to preserve any error for appeal.⁹ Second, any error in this regard was clearly harmless. Even without the DVD, Detective Smith testified that he tested the gun and found that it was fully functional (a fact that Edwards never contested or disputed at trial). Thus the DVD itself was largely cumulative. In addition, Edwards herself explained that she was carrying a firearm on the day in question, but she claimed she was using it in self-defense.

In short, the issue regarding the playing of the DVD without it being formally entered as an exhibit was not properly preserved because Edwards did not object when the DVD was played. RAP 2.5(a); *McFarland*, 127

⁹ Washington appellate courts generally do not consider issues raised for the first time on appeal. RAP 2.5(a); *State v. McFarland*, 127 Wash.2d 322, 332-33, 899 P.2d 1251 (1995).

Wn.2d at 332-33. Furthermore, any error that might have occurred was clearly harmless, since the operability of the firearm was established by actual testimony and the operability of the firearm was never a contested issue at trial. For all of these reasons Edwards claims are without merit.

5. *Alleged Trial Error re: “Citizen’s Arrest.”*

Edwards next raises several arguments relating to her claim that the property where the assault took place was an ancient Indian burial ground and that she was making a citizen’s arrest of Mr. Miller. Specifically, Edwards argues that the trial court erred in failing to instruct the jury that force is lawful when necessarily used by a person arresting another who has committed a felony and by limiting her ability to present evidence on a “citizen’s arrest” and her claim that the property was a ancient Indian burial ground. App.’s Br. at 34-36, 55, 90.

A trial court’s evidentiary rulings are reviewed for an abuse of discretion. *State v. Foxhoven*, 161 Wn.2d 168, 174, 163 P.3d 786 (2007).

A trial court need not submit a possible defense to the trier of fact in a criminal case when it is not supported by the evidence. *State v. Kerr*, 14 Wn. App. 584, 587, 544 P.2d 38 (1975).

Despite Edwards’ claim to the contrary, the trial court did allow Edwards to testify that she thought the property was a burial ground. RP

(11/10/08) 1041. Edwards' belief in this regard was apparently based on her claim that her dogs had detected human remains on the property. RP (11/10/08) 1041. Similarly, Edwards was allowed to testify that she told Miller that she was making a citizen's arrest, and Edwards was even allowed to demonstrate what she considered to be the proper method of making a citizen's arrest. RP (11/4/08) 1025, 1034.¹⁰

The testimony that Edwards claims was improperly excluded was testimony for other witnesses that Edwards had told them that the property was a burial ground or that she was making a citizen's arrest. See App.'s Br. at 35-36. Such testimony, however, was properly excluded as hearsay.

Edwards also argues that the trial court improperly refused to instruct the jury on her claim that she was authorized to use force in making a citizen's arrest. This claim is without merit because the trial court properly found that this instruction was unwarranted since there was no evidence supporting such an instruction. RP (11/12/08) 1100.

RCW 9A.16.020(2) provides that the use of force is not unlawful: "Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him

¹⁰ . Edwards also testified that Mr. Arthur had approached her with a piece of metal and that she drew her weapon towards Mr. Arthur, but Edwards denied ever pointing her firearm at Mr. Miller, the named victim. RP (11/4/08) 1025, 1067.

or her into custody.” Edwards proposed an instruction that used this language. CP 430. Edwards’ argument in support of this instruction and related testimony was that she believed the property in question was an ancient Indian burial ground and that the two construction workers were committing a felony by working on the property. RCW 27.44.040 provides that:

- (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe. The expenses of reinterment are to be paid by the office of archaeology and historic preservation pursuant to RCW 27.34.220.

Although Edwards testified that she believed the property was an ancient Indian burial ground and also testified that soil had been disturbed on the property, there was absolutely no testimony that any actual graves or human remains (let alone the graves or remains of any “native Indians”) were removed, mutilated, defaced, injured, or destroyed. In short, even if Edwards claims that there were human remains on the property were to be believed, there was still not evidence that Mr. Miller or anyone else ever knowingly disturbed any actual graves or remains. The trial court noted this fact when it

stated, “There has been no evidence whatsoever that there was a knowing disturbance of an Indian – a native Indian grave.” RP (11/12/08) 1100. Thus, there was no actual evidence that the felony as described in RCW 27.44.040 had been committed. Without evidence of a felony, there could be no defense under RCW 9A.16.020(2). The trial court, therefore, properly refused Edwards’ “citizen’s arrest” instruction, as it was not supported by evidence.

6. *Alleged Trial Error re: Defense Witness Kramer.*

Edwards also claims that the trial court erred in denying defense witness Stephanie Kramer.” App.’s Br. at 48. Edwards listed Ms. Kramer as a witness and told the court that Ms. Kramer worked as an archaeologist for the Department of Historic Preservation and Archaeology. Edwards also listed Mr. Charlie Sigo as a witness and explained that Mr. Sigo formerly worked for the Suquamish Tribe. Neither witness, however, ever appeared at trial. Although the trial court signed Edwards’ subpoenas for these two witnesses, the trial court clearly instructed Edwards that she needed to arrange for service of the subpoenas. RP (10/29/08) 151. The trial court later reminded Edwards that she was required to arrange for personal service of the subpoenas. RP (11/6/08) 832. No proof of personal service, however, was ever filed.¹¹ RP (11/06/08) 873-74, RP (11/10/08) 889, RP (11/12/08) 1089-

¹¹ Rather, at most it appears that Edwards had the subpoenas mailed to these witnesses. RP 889-90, 1089-90.

90.

Furthermore, when the issue of these witnesses failure to appear came up, the prosecutor contacted the two witnesses to inquire as to why they had failed to appear. RP (11/06/08) 874. The prosecutor then explained to the court that Ms. Kramer indicated that she had not been properly served with a subpoena. RP (11/06/08) 874. In addition, Ms. Kramer indicated that no one from the Department of Archaeology had ever been to the property, as the Department didn't believe there had been any credible allegations of a burial ground being located there. RP (11/06/08) 874-75. Ms. Kramer also indicated that she would not be testify that the site was a burial ground, as she had no knowledge that that was the case. RP (11/06/08) 875.

The State also contacted Mr. Sigo who apparently gave the State a memo (which the prosecutor passed on to Edwards) that stated that he "couldn't identify [the property] as a burial site." RP 875. The trial court then noted that if Edwards provided proof of proper service and requested any further action the trial court would likely seek to talk to the witnesses on the phone to make sure they had relevant testimony before the court took any further action. RP (11/06/08) 875.

Ultimately, neither Ms. Kramer nor Mr. Sigo appeared at trial. Edwards did not seek material witness warrants for either witness nor did she

ever provide proof of personal service. Edwards also did not request a recess in order to attempt to personally serve the witnesses. Thus, the fact that neither witness appeared for trial was not due to any error by the trial court. Rather, Edwards simply failed to secure the appearance of these witnesses. Furthermore, given the fact that both of these witnesses told the prosecutor that they had not relevant testimony to offer, their failure to appear was of no consequence whatsoever. In short, Edwards has failed to show any error below.

7. *Alleged Trial Error re: Defense Witness Hayes.*

Edwards next claims that the trial court erred in refusing to allow a defense witness, Mr. Hayes, testify about what sorts of actions did and did not qualify as a legal use of force or self-defense. App.'s Br. at 41. Edwards also similarly argues that the trial court erred when it refused to allow Edwards or any witness to testify to the jury about the law and the right to bear arms and refused to allow testimony. App.'s Br. at 65.

Washington Constitution article IV, section 16, provides that the court "shall declare the law." Thus, under Washington law it is improper for a witness to testify to the jury on the law as such testimony would usurp the role of the trial judge. *State v. Clausing*, 147 Wn.2d 620, 628-29, 56 P.3d 550 (2002). "Each courtroom comes equipped with a 'legal expert,' called a judge, and it is his or her province alone to instruct the jury on the relevant

legal standards.” *Clausing*, 147 Wn.2d at 628.

In the present case the trial court clearly explained to Edwards that the court would be the only one to instruct the jury on the law and that it was improper for a witness to testify about the law. RP (11/10/08) 892, 916-17. The court also explained to Edwards that “instruction of law come through the judge, not through witnesses, and Ms. Edwards has the opportunity to propose those instructions of the law and that’s the proper forum for that kind of education.” RP (11/10/08) 1015.

The trial court’s ruling in this regard was clearly correct and Edwards has failed to offer any authority to support her claims of error. Edwards’ arguments, therefore, are without merit.

8. *Alleged Trial Error re: “Intent.”*

Edwards next argues that the trial court erred in excluding evidence regarding her intent. App.’s Br. at 52. Edwards argue here appears to actually be a claim that there was insufficient evidence to show her intent and was insufficient to show that Mr. Miller felt threatened. App.’s Br. at 52-55.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21,

616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In the present case Mr. Miller testified that Edwards pointed her firearm directly at him and that this cause him to be “pretty terrified” and “fearful of [his] life.” RP (11/3/08) 412-13, 421, 446. When Edwards cross-examined Mr. Miller, he specifically stated that,

I felt my life was threatened in the process of you pointing a gun at me, realizing that somebody that I do not even know is actually pointing this gun at me and holding my life with her finger trying to play God. I didn't really appreciate that, and I was totally terrified.

RP (11/3/08) 469. He also explained that Edwards was pointing the gun at his chest and that he could see the end of the barrel of the gun and that it was pointed directly at him. RP (11/3/08) 469.

Viewing this evidence in a light most favorable to the State there is no question that the State presented sufficient evidence to show, consistent with the trial court's instruction, that Edwards acted with unlawful force and with “the intent to create in another apprehension and fear of bodily injury, and

which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.” CP 515. Edwards claim regarding the sufficiency of the evidence regarding her intent and Mr. Miller’s fear is, therefore, without merit.

9. *Alleged Trial Error re: Defense of Property.*

Edwards next argues that the trial court erred in its rulings regarding defense of property. App.’s Br. at 61.

In a motion in limine the State asked the court to exclude any argument regarding a potential defense of defense of property. RP (10/28/08) 63-64. The State explained that the defense of property requires that a showing that the property was lawfully in the possession of the actor, and that Edwards did not qualify because the property in question did not belong to her. RP (10/28/08) 65; *See also*, RCW 9A.16.020(3) (which provides that force in not unlawful when used by a person defending property that is “lawfully in his or her possession” when the force used is not more than is necessary).¹²

The trial court then granted the motion in limine and stated that the materials it had reviewed did not show that Edwards was the owner of the

¹² The State further explained that it had evidence and testimony to offer that Edwards was not the owner of the property, but that the State and Edwards had agreed that both sides would not introduce evidence about ownership of the property. RP (10/28/08) 64-65. Edwards responded that the property had been sold and that she did not contest that and that

property. RP (10/28/08) 67. The court, however, told Edwards that the court would reconsider this issue if Edwards had any documentation showing that she had an ownership interest in the property, but the court also explained that if Edwards wished to pursue a defense of property defense then she needed to present any documentary evidence to the court prior to the beginning of opening statements. RP (10/28/08) 67-68. No such evidence was ever presented.

At trial, there was no evidence presented that Edwards had an ownership interest in the property, thus the statutory defense of defense of property did not apply in the present case. Edwards has thus failed to show any error in this regard.

10. *Alleged Trial Error re: Defense Exhibits.*

Edwards next argues that the trial court erred in refusing to admit several physical exhibits; specifically, two NRA certificates, a concealed weapons permit, and a copy of the Washington State Criminal Justice Training Commission Handbook. App.'s Br. at 72, 73, 83.

Edwards, however, was allowed to testify, and the State did not contest, that she had the NRA certifications and a concealed weapons permit. RP (11/10/08) 987, 989. Although the relevance of these facts is unclear,

she had agreed to not go into the civil matters regarding the property. RP (10/28/08) 65-66.

Edwards was nevertheless allowed to testify about these issues. The actual physical exhibits, therefore, were unnecessary and Edwards has failed to show any error. Even if there were error, any error was clearly harmless.

With respect to the WSCJC handbook, Edwards argued at trial that the handbook should be admitted to show a number of things regarding the law on self-defense and the lawful use of force. App.'s Br. at 83-89. The State objected that the handbook was hearsay and that it the only proper way to instruct the jury on the law was through the court's jury instructions. RP (11/10/08) 974-75. The trial court agreed. RP (11/10/08) 976. Edwards has failed to offer any authority that would call the trial court's ruling in this regard into doubt. Edwards, argument, therefore, is without merit.

11. Alleged Trial Error re: State's Exhibits.

Edwards next argues the trial court erred in allowing her firearm, and Kevlar vest to be admitted. App.'s Br at 76-83. With respect to the firearm, Edwards appears to argue that in her opinion the force used was lawful, thus there was no crime and the firearm was not evidence of a crime. This argument is clearly frivolous, as committing an assault with a firearm is a crime regardless of whether the person had a concealed weapons permit or a constitutional right to bear arms.

With respect to the Kevlar vest, the State explained below that the vest was evidence that Ms. Edwards went to the property with the intent to enter into a confrontation and that the vest was evidence of that intent. RP (10/10/08) 30. Edwards disputed this. The trial court then concluded that the Edwards' objection went to the weight that should be given to the item of evidence, not to its admissibility. RP (10/10/08) 30. Edwards has failed to provide any authority to demonstrate that the trial court abused its discretion in this regard. Furthermore, the fact that Edwards went to the scene wearing a Kevlar vest (and carrying a firearm and ammunition) was clearly evidence of her intent. Edwards' argument, therefore, is without merit.¹³

12. *Alleged Trial Error re: Self Defense Instructions.*

Edwards next argues that the trial court failed to instruct the jury on self-defense. App.'s Br. at 90. This argument is without merit, as the trial court did instruct the jury on self-defense. CP 518-524; RP (11/13/08) 1132-35. Edwards' argument, therefore, is without merit.

¹³ Edwards also argues that the "SAR pouch" that she was wearing was improperly admitted as well. App.'s Br. at 79. Deputy Stacy described this item and "ammunition vest" and stated that Edwards was carrying a magazine of ammunition in either this vest or the Kevlar vest. RP (11/3/08) 541. In addition, Edwards offers no argument as to how this item, even if it was erroneously admitted, caused her any prejudice. Thus, even if there was error, it was clearly harmless.

13. *Alleged Trial Error re: Denial of Continuance Requested on First Day of Trial.*

Edwards next argues that the trial court erred in failing to grant her request for a continuance. App.'s Br. at 92.

In criminal and civil cases, the decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Thus, trial court decisions to grant or deny motions for continuances are reviewed under an abuse of discretion standard. *Downing*, 151 Wn.2d at 272. An appellate court, therefore, will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing ... [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id* at 272-73. Furthermore, in exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure. *Id* at 273.

The record in the present case shows that although Edwards was initially arraigned on April 25, 2006, the trial in this case did not start until October 2008. CP 1. In the two and a half years between the arraignment and trial, the court below was extraordinarily accommodating towards Edwards and continued this case repeatedly at the request of the defense. *See*,

e.g, RP (6/01/06) 2; RP (08/29/06) 2; RP (4/27/07) 8; RP (9/12/08) 27-31; RP (10/10/08) 11.¹⁴

When the case eventually came before the court for trial on October 27, 2008, Edwards requested yet another continuance and claimed that her medical conditions had worsened. RP (10/27/08) 2-8. The trial court questioned the credibility of Edwards' claims and asked for medical documentation to support the claims. RP (10/27/08) 5-6. The trial court then addressed Edwards as follows:

Let me be frank with you. My concern is that the additional stress of preparing for trial and being on the eve of trial has somehow triggered this increase in seizures for you and that this will become a never-ending problem every time we get on the eve of trial the increased stress will result in increased seizures to you and this matter will be indefinitely continued. It's been almost – it's been over two years since the incident and this matter has yet to make it to trial. My understanding of what you are requesting today is an open-ended continuance until things – until you get an opinion from a doctor who's yet to be identified, and that causes me concern.

RP (10/27/08) 7. Ms Edwards then asked the court to take her at her word and know “that when I state something I can and will back it up with medical proof.” RP (10/27/08) 9. The trial court, however, pointed out to Edwards

¹⁴ Prior to trial the State had charged a second count of assault in the second degree relating to the assault of Mr. Arthur, the second construction worker at the scene. CP 44. The State had been in contact with Mr. Arthur as late as May of 2007, but after that point the State lost track of Mr. Arthur, who had apparently left the State. RP (9/12/08) 9. The State thus ultimately dismissed the second count relating to Mr. Arthur. RP (9/12/08) 9. RP (9/12/08) 27-31.

that, “unfortunately that hasn’t been the case thus far,” and that in saying so the court was talking about “the history of [Edwards’] representations to the Court.” RP (10/27/08) 9-10. Nevertheless, the court continued the matter one day and explained that the following day Edwards should provide documentation regarding her new medical issues so that the court could confirm that there were actual medical issues going on and that this was not some sort of “strategic move” on Edwards’ part. RP (10/27/08) 13-14. The motion to continue was then set over until the next day. RP (10/27/08) 14.

The following day the court explained that Edwards had said she was going to go to a doctor the previous afternoon and the court had directed her to bring confirmation to court. RP (10/28/08) 17. Edwards claimed she had spoken to a doctor the previous day and that he had said she needed a referral to another doctor (with an appoint set for November 19th). RP (10/28/08) 17-19. When the court asked for documentation to confirm this claim, Edwards provided none. RP (10/28/08) 19. The court then stated,

Ms. Edwards, I’m going to repeat. I’m not going to take your uncorroborated statements in terms of what’s happening. I need confirmation from your doctors as to the situation, not your self-reporting.

It seems to me that if the next appointment is for November 19, the doctors don’t believe this is any imminent threat to you in between now and then, or they would have admitted you immediately.

RP (10/28/08) 20. The court then explained that if Edwards had a seizure at trial the court staff would call 911, and the court also explained that it would take breaks whenever Edwards needed one. RP (10/28/08) 28-29. The trial then proceeded without any medical emergencies.

On appeal, Edwards briefly claims, without citation to the record, that the trial court “failed to respect the needs of the defendant and the orders of the physician.” App.’s Br. at 92. This claim however, is without merit as the record reveals that the trial court continued the case multiple times at the defense’s request, yet when the matter finally was called for trial (two-and-a-half years after arraignment) Edwards again requested a continuance. The trial court explained that it would not entertain further requests for a continuance without some documentation, yet Edwards failed to provide any documentation to support her claims that a continuance was medically necessary. Given the record as a whole, the trial court did not abuse its discretion.

Furthermore, Edwards’ cursory discussion of this issue in her brief fails to point to any specific prejudice that she suffered from the trial court’s ruling. Thus, based on the record before this court, any potential error in this regard was harmless. For all of these reasons, Edwards claim that the trial court erred in denying the motion to continue is without merit.

14. Alleged Trial Error re: Cumulative Error

Finally, Edwards argues that the trial court committed numerous errors and the cumulative effect of these errors warrants a reversal. App.'s Br. at 92-94. This claim is without merit, as the trial court did not err.

Cumulative error applies when several errors occurred at the trial court level but none alone is sufficient to warrant reversal. Where the combined errors effectively denied the defendant a fair trial, the cumulative error requires reversal. *State v. Hodges*, 118 Wn. App. 668, 673-74, 77 P.3d 375 (2003). But where there was no "prejudicial error, there can be no cumulative error that deprived the defendant of a fair trial." *State v. Saunders*, 120 Wn. App. 800, 826, 86 P.3d 1194 (2004). The defendant bears the burden of proving an accumulation of error of sufficient magnitude that retrial is necessary. *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 332, 868 P.2d 835, clarified by 123 Wn.2d 737, 870 P.2d 964 (1994).

Here, Edwards has not shown that she suffered prejudice based on the combined identified errors. Therefore, her argument that cumulative errors require reversal is without merit.

**C. EDWARDS' VARIOUS CLAIMS REGARDING
HER SENTENCING SHOULD BE DENIED AS
THEY ARE CLEARLY WITHOUT MERIT.**

Edwards next raises several claims regarding her sentencing. Edwards first claims that the trial court erred in refusing to continue the sentencing in order to allow Edwards to possibly hire an attorney. App.'s Br. at 94.

After a defendant has made a valid waiver of his right to counsel and requests to proceed pro se, appointment of new counsel is a matter within the trial court's discretion. *State v. DeWeese*, 117 Wn.2d 369, 376-77, 816 P.2d 1 (1991). Our Supreme Court has stated:

We observe a tension between a defendant's autonomous right to choose to proceed without counsel and a defendant's right to adequate representation. To protect defendants from making capricious waivers of counsel, and to protect trial courts from manipulative vacillations by defendants regarding representation, we require a defendant's request to proceed in propria persona, or pro se, to be unequivocal. Once an unequivocal waiver of counsel has been made, the defendant may not later demand the assistance of counsel as a matter of right since reappointment is wholly within the discretion of the trial court.

DeWeese, 117 Wn.2d at 376-77. Thus,

After a defendant's valid *Faretta* waiver of counsel ... the trial court is not obliged to appoint, or reappoint, counsel on the demand of the defendant. The matter is wholly within the trial court's discretion. Self-representation is a grave undertaking, one not to be encouraged. Its consequences, which often work

to the defendant's detriment, must nevertheless be borne by the defendant.

DeWeese, 117 Wn.2d at 379.

In the present case Edwards unequivocally waived her right to counsel and she has not claimed any errors with respect to the trial court's decision to allow her to represent herself. CP 187. As outlined above, once Edwards unequivocally waived her right to counsel, the trial court was not obligated to continue the sentencing hearing when Edwards asked for yet another continuance. Edwards claim of error, therefore, is without merit.

Edwards next argues that the trial court erred in ordering restitution to Mr. Miller in the amount of \$500. App.'s Br, at 95. This claim is without merit as there was no restitution ordered in the present case. CP 579. The trial court did, however, order a "\$500 victim assessment" pursuant to RCW 7.68.035. CP 579. As the statute requires the assessment, Edwards claim of error is without merit.

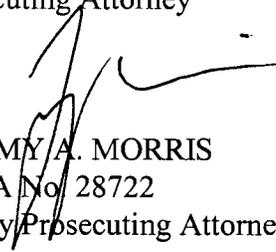
IV. CONCLUSION

For the foregoing reasons, Edwards's conviction and sentence should be affirmed.

DATED May 23, 2011.

Respectfully submitted,

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