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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

NICHOLAS LOUIS NOTARO, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kitty-Ann Van Doornick

No. 08-1-01503-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether a detective's statements constituted impermissible opinion testimony when they were not comments on defendant's guilt and were offered to place context around defendant's change of story?
2. Whether the jury was presented with sufficient evidence to find defendant acted with premeditation when he traveled from Alaska to Puyallup in order to murder Joseph Tarricone in the basement of his mother's house?

B. STATEMENT OF THE CASE.

1. Procedure

On March 25, 2008, the Pierce County Prosecutor's Office charged NICHOLAS LOUIS NOTARO, hereinafter "defendant," with one count of first degree murder. CP 1-2. Defendant filed a *Knapstad* motion to dismiss the case on October 27, 2008. CP 63-75. A CrR 3.5 hearing was held on December 11, 2008. RP 5. The court ruled defendant's statements during an interview with detectives were admissible in the State's case in chief. RP 175-176.

The case proceeded to trial on February 12, 2009, in front of the Honorable Kitty-Ann Van Doorninck. RP 181. Defendant made motion to dismiss based on lack of corpus delicti of the crime which the court

denied. RP 693-693. Defendant also asked the court to dismiss the charges based on alleged improper opinion testimony during direct of Detective Wood. RP 694-702. The court denied the motion. RP 702.

On February 24, 2009, the jury found defendant guilty of murder in the first degree and answered yes to the special verdict form finding defendant was armed with a firearm at the time of commission of the crime. RP 771-772. The court imposed the mandatory sentence of life in prison as was applicable to this pre-SRA offense. RP 784. Defendant filed a timely notice of appeal. CP 481-487.

2. Facts

Joseph Tarricone was a meat distributor in Alaska with six children from a previous marriage. RP 205-206, 210. In August of 1978, Joseph Tarricone went to visit his girlfriend Renee Curtiss who lived in Puyallup, Washington. RP 386-387. During the trip, he saw his daughter Gina Chavez who also lived in Washington. RP 387. That was the last time any of the children, whom he tended to call every few weeks, ever saw or heard from him again. RP 387. Mr. Tarricone, who had never missed a child support payment, missed his first in September of 1978. RP 377.

In March of 1979, Ms. Chavez filed a missing persons report with the Des Moines Police Department. RP 389. In 1990, Gypsy Tarricone, another daughter of Mr. Tarricone, started to investigate her father's disappearance. RP 214-215. She called multiple banks and found

unclaimed property still in his name, but nothing relating to the whereabouts of her father. RP 215.

On June 4, 2007, Travis Haney was excavating a property at Canyon Road and 104th street in Puyallup, Washington. RP 227-230. During the excavation, he uncovered what appeared to be a garbage bag filled with bones. RP 233. Mr. Haney called 911 and Detective Jason Tate of the Pierce County Sheriff's Department responded to the scene. RP 260. He shut down the excavation of the scene in order to preserve the evidence. RP 260.

The forensic services unit of the Pierce County Sheriff's Department managed and supervised the excavation and collection of the bones found at the scene. RP 340, 437-439. Multiple pieces of bone, as well as a small knife, were found over the following week. RP 634, 648. The bones were taken to the Pierce County medical examiner's office. RP 580.

After hearing on the news about human remains that were found at a construction site off Canyon Road in Puyallup, Janet Rhodes, a missing person's case investigator from the King County Sheriff's Department, called Detective Ben Benson, who was assigned to the Canyon Road case. RP 432-434. She told him that from 1998-2006 she had worked on a case where a girl, named Gypsy Tarricone, had reported her father missing from that address. RP 430. During her investigations, Ms. Rhodes had found nothing of value. RP 432. After speaking with Ms. Rhodes,

Detective Benson obtained the missing person's report filed by Gypsy Tarricone in 1979. RP 506, 510.

Detective Benson testified that he talked to the owner of the property where the bones were found, Marilyn Miller. RP 506. Ms. Miller had rented the property since the 1970's and kept detailed records which she gave to Detective Benson. RP 506. The rental agreement showed the house was rented to Mrs. Geraldine Hesse during the summer of 1978. RP 507. Ms. Hesse had two daughters, Renee Curtiss and Robin Rose, and one son, defendant. RP 510.

A search on Detective Benson's computer for information about Ms. Hesse's three children turned up a police report about Nicholas Notaro. RP 511. The report was filed by Arlene Tribbet and taken by Tacoma Police Officer Jim Callaway on March 21, 1994. RP 462. Detective Benson contacted Ms. Tribbet and arranged to interview her regarding the report. RP 511.

Ms. Tribbet testified that she had worked with defendant at Winchell's Doughnuts for four or five years in the late 1980's. RP 444-445. One night, when they were the only two working, defendant told her that he and his sister had killed his sister's fiancée in 1978. RP 445. He said he was in Alaska at the time and his sister had called him and asked him to do it. RP 445. Ms. Tribbet testified that defendant said he flew home to Canyon Road in Puyallup and lured the man to the basement of the house where he shot him in the back of the head. RP 445. Defendant

said he, his mother and his sister cut off the man's arms and legs, put him in garbage bags and buried him under the porch at the house. RP 445-446.

Ms. Tribbet testified she did not initially call the police because she did not believe the story. RP 448. But, in March of 1994, defendant talked about the incident again. RP 448. So on March 21, 1994, Ms. Tribbet filed a report with Detective Jim Calloway detailing what defendant had told her. RP 451. Detective Calloway testified that he had tried to locate defendant at the Canyon Road address, but when he went there it was a vacant home. RP 463.

Some of the recovered bones were sent to the FBI lab for DNA testing. RP 512. John Stewart, a forensic examiner for the FBI, obtained DNA samples from one of Joseph Tarricone's sons and Joseph Tarricone's sister, Mimi Kraft. RP 513. Mr. Stewart testified that when he compared their mitochondrial DNA to the bones, he found he could not exclude Joseph Tarricone as the source of the DNA from the bones. RP 656.

On March 24, 2008, Pierce County Sheriff's Detectives Denny Wood and Ben Benson interviewed defendant. RP 466, 514. Defendant was given a *Miranda* warning prior to speaking with the detectives and the initial portion of the interview was tape recorded. RP 465. Defendant was not told what the detectives were investigating. RP 468. The detectives testified that defendant spoke about his two sisters and how he would not let anyone mess with them. RP 470. He said he had his appendix out in Alaska in the late 1970's and upon his release from the

hospital he went to a JC Penney in Fairbanks and bought a .38 caliber special Smith and Wesson gun. RP 471. The detectives testified that defendant said he traveled to Seattle a few days later to visit his mother at her Puyallup residence and stayed for a week. RP 472. Defendant told the detectives he had moved to Seattle in March of 1989 and worked at Winchell's doughnut store with Arlene Tribbet. RP 473.

When asked about Joseph Tarricone, the detectives testified that defendant said Joe's relationship with his sister, Renee Curtiss, was off and on. RP 475. Defendant also said he had seen Mr. Tarricone when he visited his mother, but believed Mr. Tarricone had left and gone to Italy after that. RP 477. After a short break in the interview, the detectives testified they chose not to turn the recorder on for the rest of the interview. RP 478. They felt the recorder was making defendant uncomfortable as he was continually staring at it and acting nervous during portions of the interview. RP 478.

The detectives testified that they told defendant they were investigating the death of Joseph Tarricone and the discovery of human remains at the property off of Canyon Road. RP 478. At this, defendant sat up and pulled his shoulders back saying "my sisters were not involved. Not one iota." RP 479. The detectives testified that defendant said his mother, Ms. Hesse, had shot Mr. Tarricone in the back of the head and put him inside of the freezer. RP 479. He said she shot him because Ms. Curtiss was having problems with Mr. Tarricone. RP 479. The detectives

testified that defendant said he went to the basement and pulled the body from the freezer. RP 779. Defendant said the body was too heavy to carry upstairs so he went to K-Mart to purchase a chainsaw and a tarp. RP 779. The detectives testified that defendant said he cut up the body in the basement with the chainsaw while his mother held the tarp. RP 480. Ms. Hesse took the head while defendant placed the rest of the body in two bags and took them to the yard to bury them. RP 480.

Detective Wood testified that he told defendant he did not believe his mother was able to put Mr. Tarricone's body in the freezer all by herself if he had such a hard time pulling it out and taking it upstairs to bury it. RP 481. Detective Wood also said he did not believe mothers shot people, but rather they call their sons to come deal with the problem. RP 482. The detectives testified that defendant nodded his head up and down while Detective Wood said this. RP 482. Detective Wood told defendant to tell him the truth. RP 482.

The detectives testified that defendant said that his mother had called him and told him Mr. Tarricone was trying to get Ms. Curtiss in bed with him and would not leave her alone. RP 484, 522. Defendant went to his mother's house and lured Mr. Tarricone to the basement with the pretense of fixing the washing machine. RP 483. The detectives testified that defendant said he got a gun from inside the house and shot Mr. Tarricone twice in the back of the head. RP 483. The detectives said defendant said he went to K-Mart and bought a chainsaw and tarp. RP

483. Defendant said that while his mother held the tarp, he cut off Mr. Tarricone's arms, legs and head. RP 484. Defendant and his mother carried the body parts in bags up to the yard where they buried them. RP 486.

The detectives testified that defendant could not remember what happened to the chainsaw and gun. RP 486. When asked if anyone had asked him to kill Mr. Tarricone, the detectives testified that defendant replied "nobody had to tell me to kill him." RP 484-485. Defendant was arrested and charged with first degree murder. CP 1-2.

At the trial, Shirley Hamel testified that she had employed defendant in Alaska the summer of 1978. RP 277. She said that defendant had had an appendectomy in September of 1978 and she saw him after his release from the hospital on September 23, 1978. RP 278, 281. Ms. Hamel testified that defendant called her September 25, 1978, saying he had to go to Seattle and asked if she could pick up his car for him. RP 283. Ms. Hamel testified she kept the car for a week until defendant called her to get the car back. RP 283.

Carol Barnett, the director of medical records for Fairbanks Memorial Hospital in Alaska, testified that the hospital had a record of defendant having an appendectomy. RP 587. It showed he was admitted on September 19, 1978, and discharged on September 21, 1978. RP 589.

Two Alaska State Troopers testified that on October 21, 1978, they went to defendant's home. RP 606-612. They testified they found an

Alaska Airlines receipt to Seattle and a checkbook with a record of a check made out to Alaska Airlines dated September 26, 1978, for \$147.43. RP 606-610. They also testified they searched defendant's car and found a receipt from JC Penney from the purchase of a Smith and Wesson .38 gun. RP 612.

Gary Teller, a JC Penney Clerk in Fairbanks from 1974 to 1980, testified that he gave a tape recorded statement to an Alaska State Trooper on October 23, 1978. RP 593. He testified that he told the trooper that he had sold defendant a Smith and Wesson .38 special double action revolver and cartridges on September 21, 1978. RP 593-597.

Janelle Miller, the director of Aviation Security for Alaska Airlines, testified that the company had no passenger records from 1978 because they were not required to keep them that long. RP 628. She also testified that in 1978, airlines did not screen checked luggage. RP 630.

At trial, Dr. Erick Kiesel, the medical examiner of Pierce County, testified that he examined the bones recovered from the site off Canyon Road. RP 294. He was given a copy of the record of defendant's statements to the detectives. RP 298. He testified that based on that information, he made a presumptive identification of the bones as being Joseph Tarricone's. RP 298. He testified that his opinion as to the cause of death was homicidal violence, not specified. RP 313. He also testified that the death certificate states the bones are those of Mr. Tarricone. RP 322.

Dr. Katherine Taylor, a forensic anthropologist at the King County medical examiner's office, was brought in to help examine the bones. RP 667. She testified at trial that many of the bones cut marks were consistent with a chain saw. RP 667. She said that it was not possible those cuts were made by an excavator machine. RP 669-670. Dr. Taylor testified that the dismemberment occurred around the time of death. RP 671. She testified that the bones were from a male skeleton over forty years old. RP 681-683. She also said that only a part of the occipital skull from the top of the head was recovered. RP 678. The lower portion of the back of the head was not found. RP 678. Dr. Taylor testified that if the person had been shot in the back of the head, there may or may not be cracking in that portion of the skull that was recovered. RP 679.

Defendant presented evidence which showed that from 1987-1988 he was employed in the State of Wisconsin, but put on no witnesses at trial. RP 705. Defendant chose not to testify at trial.

C. ARGUMENT.

1. DETECTIVE WOOD'S STATEMENTS WERE NOT IMPERMISSIBLE OPINION TESTIMONY AS THEY WERE OFFERED TO PLACE CONTEXT AROUND DEFENDANT'S CHANGE OF STORY.

To determine "whether testimony constitutes an impermissible opinion on the defendant's guilt" the court looks to the circumstances of each case. *State v. Olmedo*, 112 Wn. App. 525, 531, 49 P.3d 960 (2002)

(citing *State v. Cruz*, 77 Wn. App. 811, 814-815, 894 P.2d 573 (1995)). In doing this, courts should consider factors that “include the type of witness, the nature of the charges, the type of defense and the other evidence.” *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) (citing *City of Seattle v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993)).

Generally, testimony given by lay and expert witness may not directly or by inference refer to defendant’s guilt. *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) (citing *City of Seattle v. Heatley*, 70 Wn. App. 573, 577, 854 P.2d 658 (1993)). But, “an opinion is not improper merely because it involves ultimate factual issues.” *State v. Olmedo*, 112 Wn. App. 525, 530, 49 P.3d 960 (2002) (citing *City of Seattle v. Heatley*, 70 Wn. App. 573, 578, 854 P.2d 658 (1993) (citing ER 704)).

Allegedly improper comments are reviewed in the context of the entire argument, the issues of the case, the evidence addressed in the argument, and the instructions given. *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997), *cert. denied*, 523 U.S. 1007 (1998); *State v. Bryant*, 89 Wn. App. 857, 950 P.2d 1004 (1998).

In the present case, Detective Wood testified about his interview with defendant. The following exchange took place:

PROSECUTOR: Based upon the defendant’s statement that he assisted his mother in chopping up the body, did he change his – his story?

DETECTIVE WOOD: Yes, ma'am, he did.

PROSECUTOR: And what did you say to him to have him change his story?

DETECTIVE WOOD: I leaned forward, and I told him I didn't believe him.

DEFENSE COUNSEL: Again, objection, Your Honor.
Demery.

THE COURT: I'm going to overrule. Go ahead.

DETECTIVE WOOD: I told him I didn't believe him. I said, I don't believe your mother was able to put Joseph's body in a freezer by herself if he had such a difficult time pulling it out and taking it upstairs to bury it.

DEFENSE ATTORNEY: Your Honor, I object. I'd like to be heard outside the presence of the jury.

THE COURT: We'll make a record later. Thank you.

DETECTIVE WOOD: I told him I didn't believe that that's what mother's did when they have a problem such as the problem they were having. They called their sons, and sons dealt with the problems. Mothers didn't shoot people.

...

PROSECUTOR: And when he was nodding his head up and down, what did you ask him next?

DETECTIVE WOOD: I told him to tell me the truth. Tell me the story of what happened.

RP 481-482.

The defense attorney objected and the court overruled. RP 482. Detective Wood testified that defendant described to him how defendant's mother told him about the problem and defendant asked Mr. Tarricone to the basement and shot him. RP 482-483. The defense attorney chose not to ask that a limiting instruction be given to the jury stating "I'm asking for a dismissal rather than a curative instruction." RP 488, 696.

Detective Wood's comments were not impermissible opinion testimony. Rather, Detective Wood was merely testifying to what occurred during his interview with defendant. By stating that Detective Wood did not believe defendant, he was not commenting on defendant's guilt, but employing a commonly used police tactic used in interrogating suspects to determine whether a suspect will change their story.

When placed in context, Detective Wood's statements are necessary for the jury to understand why defendant changed his story. Initially, defendant claimed that his mother was the one who shot Mr. Tarricone and defendant only helped cover up the murder. Without Detective Wood's statements during the interview, it is unclear to the jury why defendant suddenly changed his story to saying he was the one who

shot Mr. Tarricone. Detective Wood's statements about not believing defendant provide clarity and context to defendant's statements throughout the interview.

Defense counsel clarifies this further during her cross examination of Detective Wood. Defense counsel asked "And by saying you didn't believe him, related back to that statement that your sisters were involved, correct?" RP 502. Detective Wood answered "Did it relate back to that?" ... "I just didn't believe the story, ma'am, about his mother." RP 502. These statements provide an explanation to the jury about why defendant changed his story halfway through the interview.

The court in the present case correctly understood this distinction when she ruled saying:

This is not a situation where Detective Wood said, "Oh, and I think the defendant is lying." He was reiterating what he told the defendant to elicit statements that he wanted to elicit, and I think that that is part of Defense theory, and it's only fair to let that in and let the jury have the whole picture about what's going on.

RP 701-702.

This is similar in all respects to what occurred in the Supreme Court case *State v. Demery*, 144 Wn.2d 753, 30 P.3d 1278 (2001). In *Demery*, the court admitted, over objection, a taped interview of Demery's interrogation without redacting statements made by officers which

suggested that Demery was lying during the interview. *Demery*, 144 Wn.2d at 757. The court held that the officer's statements were solely designed to see whether Demery would change his story during the interview, and thus not opinion testimony. *Demery*, 144 Wn.2d at 761. The court went further to say that "unlike those statements offered by a witness during trial to impeach the defendant's credibility, the officer's statements in this case were admitted solely to provide context for the responses offered by the defendant." *Demery*, 144 Wn.2d at 761.

Also in *Demery*, as in the present case, the defense attorney chose not to ask for a limiting instruction. *Demery*, 144 Wn.2d at 757. *Demery* held that although a court may choose to give a limiting instruction to give context to the third party statements:

such a limiting instruction was not required in this case because the jury clearly understood from the officer's testimony that the statements were offered solely to provide context to the defendant's relevant responses.

Demery, 144 Wn.2d at 762.

Likewise, in the present case, defense counsel did not ask for a limiting instruction and the court's decision not to give one was not error because the jury could understand the context of the statements from Detective Wood's testimony. RP 488, 696.

Detective Wood's statements in the present case were elicited and offered for the same purpose as why the officers' statements in Demery were not redacted. As such, they are not impermissible opinion testimony which comments on defendant's guilt. Rather, they provide context and reason to defendant's subsequent change of story.

2. THE JURY HAD SUFFICIENT EVIDENCE TO FIND DEFENDANT ACTED WITH PREMEDITATION WHEN HE TRAVELED TO SEATTLE AND MURDERED JOSEPH TARRICONE IN THE BASEMENT OF HIS MOTHER'S HOME.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the State met the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also, challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*,

29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Salinas*, 119 Wn.2d 192; *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. Credibility determinations are necessary because witness testimony can conflict; these determinations should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[G]reat deference . . . is to be given the trial court’s factual findings. It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, if the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

To prove a defendant guilty of murder in the first degree, the State had to convince a jury of the following elements beyond a reasonable doubt:

- (1) That on or about the period between the 21st day of September, 1978 and the 21st day of October, 1978, the defendant, or an accomplice, acted with intent to cause the death of Joseph Tarricone;
- (2) That the intent to cause the death was premeditated;
- (3) That Joseph Tarricone died as a result of the defendant's acts; and
- (4) That any of these acts occurred in the State of Washington.

CP 390-410, Instruction No. 11.

Defendant disputes the second element. The court's instructions to the jury defined premeditation as:

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

CP 390-410, Instruction No. 10.

Characteristics that should be considered in establishing evidence of premeditation are motive, procurement of a weapon, stealth and the method of killing. *State v. Ortiz*, 119 Wn.2d 294, 312, 831 P.2d 1060 (1992). Standing alone, multiple wounds and sustained violence do not

support an inference of premeditation. *Id.* Mere opportunity to deliberate is not sufficient to support a finding of premeditation. *State v. Pirtle*, 127 Wn.2d 628, 644, 904 P.2d 245 (1995). Premeditation may be proved by circumstantial evidence where the inferences drawn by the jury are reasonable and the evidence supporting the jury's finding is substantial. *Id.* at 643.

Multiple appellate cases have considered the sufficiency of evidence with respect to premeditation and demonstrate that a wide range of proven facts will support an inference of premeditation. *See State v. Gentry*, 125 Wn.2d 570, 598, 888 P.2d 1105 (1995).

In the present case, defendant does not challenge the instructions. The law is properly laid out to the jury. The evidence before the jury supports the inference that defendant acted with premeditation when he killed Joseph Tarricone.

First, there was evidence defendant planned the crime by procuring a weapon. Defendant purchased a gun from a JC Penney in Alaska prior to his arrival in Seattle and after his mother had called him asking for his help. RP 484, 522. The detectives testified that defendant told them he shot Mr. Tarricone twice in the back of the head with the gun. RP 483.

Second, there was evidence that defendant planned the murder by the method of killing and stealth with which it was carried out. Detectives Benson and Wood testified that defendant told them he asked Joseph Tarricone to come down to the basement on the premise of fixing the

washing machine. RP 483, 522. The detectives testified that defendant said when Mr. Tarricone got to the basement of the house, he shot him twice in the back of the head. RP 483, 522. It can reasonably be inferred that defendant lured Mr. Tarricone to the basement of the house in an effort to conceal the sound of the gunshots and ensure there were no witnesses to the crime. Furthermore, it can be inferred that defendant chose his mother's house as the location based on the large backyard where it would be easy to bury and hide a body. This is clear evidence of planning and premeditated thought on the part of defendant.

Finally, defendant had a motive to kill Joseph Tarricone. The detectives testified that defendant was very protective of his sisters throughout the interview. RP 477-484. At the beginning, he immediately stated his "sisters were not involved. Not one iota." RP 479. The detectives testified that it was after they discussed how defendant was the protector of the family and sons dealt with problems that defendant stated he was the one who had killed Mr. Tarricone. RP 482. Detectives Benson and Wood also testified that defendant said Mr. Tarricone was trying to get Ms. Curtiss in bed with him and would not leave her alone. RP 484, 522. From these statements and the description of defendant's demeanor throughout the interview by the detectives, a jury could reasonably infer that defendant's motive in killing Mr. Tarricone was to protect his sister from the unwanted advances of Mr. Tarricone.

Based on the substantial amount of evidence presented at trial, specifically defendant's statements, a jury could reasonably infer defendant acted with premeditation when he killed Mr. Tarricone.

D. CONCLUSION.

The State respectfully requests that this Court affirm defendant's conviction of murder in the first degree of Joseph Tarricone.

DATED: NOVEMBER 19, 2009

MARK LINDQUIST
Pierce County
Prosecuting Attorney



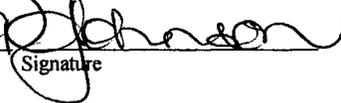
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811



Chelsey McLean
Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11/19/09 
Date Signature

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