

No. 297241

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

**FILED**  
Nov 28, 2011  
Court of Appeals  
Division III  
State of Washington

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STATE OF WASHINGTON,

Respondent,

vs.

JESUS FABIAN PERALES,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE BLAINE G. GIBSON, JUDGE

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BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	ii
I. <u>ASSIGNMENTS OF ERROR</u> .....	1
A. <u>ISSUES PRESENTED BY ASSIGNMENTS OF ERROR</u> .....	1
B. <u>ANSWERS TO ASSIGNMENTS OF ERROR</u> .....	1
II. <u>STATEMENT OF THE CASE</u> .....	2
III. <u>ARGUMENT</u> .....	2
1. <b><u>Sufficiency of the Evidence</u></b> .....	2
A. <b><u>There was sufficient evidence of the rape</u></b> .....	3
B. <b><u>Two other aggravating factors support the life sentence</u></b> ...	4
C. <b><u>There was sufficient evidence of the use of a three inch knife</u></b> .....	5
IV. <u>CONCLUSION</u> .....	6

TABLE OF AUTHORITIES

	PAGE
<b>Cases</b>	
<u>State v. Boggs</u> , 80 Wn.2d 427, 495 P.2d 321 (1972).....	4
<u>State v. Camarillo</u> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	2
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980).....	2
<u>State v. Galisia</u> , 63 Wn.App. 833, 822 P.2d 303, <i>review denied</i> , 119 Wn.2d 1003, 832 P.2d 487 (1992).....	3
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992) .....	2
<u>State v. Walton</u> , 64 Wn.App. 410, 824 P.2d 533, <i>review denied</i> , 119 Wn.2d 1011, 833 P.2d 386 (1992).....	2, 3

I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether sufficient evidence supported the special verdict finding that Jesus Perales committed premeditated murder in order to conceal the commission of the crime of second degree rape, or to protect the identity of any person committing that crime?
2. Whether the trial court erred in denying Perales' motion to strike the second degree rape aggravating circumstance aggravator jury instruction?
3. Whether there was sufficient evidence to support the special verdict finding that Perales was armed with a deadly weapon when the crime of murder was committed?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1., 2. There was sufficient evidence that the crime of second degree rape was committed. Additionally, any error in denying the motion to strike that aggravator was harmless, as special verdict findings as to two other aggravators independently supported the sentence entered by the court.

3. There was sufficient evidence to support the deadly weapon finding.

## II. STATEMENT OF THE CASE

The State does not dispute the Statement of Facts in the Appellant's opening brief, but will supplement that narrative herein.

## III. ARGUMENT

### 1. Sufficiency of the Evidence.

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

Credibility determinations are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). An appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64

Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992).

In reviewing the sufficiency of the evidence, an appellate court need not be convinced of guilt beyond a reasonable doubt, but must determine only whether substantial evidence supports the State's case. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303, *review denied* 119 Wn.2d 1003, 832 P.2d 487 (1992).

**A. There was sufficient evidence of the rape.**

As noted in the Appellant's brief, the victim, Ms. Hernandez, awakened as she was being driven home by Mr. Flores. Appellant Perales was also a passenger in the car. Several times she stated that Isaac Perales had raped her, and she was going to report the rape. It was then that Jesus Perales directed Flores to turn around and head into a rural area while he considered what to do next. **(RP 130-31; 248-51)**

Earlier, Isaac Perales had been alone in a bathroom with Ms. Hernandez, after which Flores observed that she was highly intoxicated, with her clothes disheveled, and her pants down around her thighs. **(RP 234, 246-48, 254, 27071, 283)**

While it is true that Ms. Hernandez' autopsy revealed no tears or mechanical damage to the vaginal tissue, it is evident that her body was in

the river for some time, and in fact was not discovered until February 5, 2009. (RP 487)

The pathologist testified at trial that it was his opinion that the body had been in the water for several weeks. (RP 515)

It is well-settled that the act of sexual penetration may be proved by circumstantial evidence. State v. Boggs, 80 Wn.2d 427, 431, 495 P.2d 321 (1972). Whether circumstantial evidence of rape is consistent with guilt is a question for the jury. Appellate review is limited to a determination of whether the state has produced substantial evidence tending to establish the circumstances. Id., (citations omitted)

Here, the fact of intoxication, the fact that Ms. Hernandez' pants were down to her thigh, and her repeated, and excited, utterances that Isaac had raped her were sufficient to place the aggravating factor before the jury.

**B. Two other aggravating factors support the life sentence.**

The jury here was instructed on not just one aggravating factor, but three. In addition to the aggravating factor of concealment of the commission of second degree rape, the jury was also instructed on concealment of the crime of indecent liberties, and, as well commission of the crime of murder in the course of, in furtherance of, or in immediate flight from the crime of first degree kidnapping. (CP 104-05)

The jury answered in the affirmative that each of the three aggravating factors had been proven beyond a reasonable doubt. (CP 120-21)

On appeal, Perales has not assigned error to the alternative aggravating circumstance instructions. As any one of the aggravating factors, found beyond a reasonable doubt by the jury, would support a sentence of life imprisonment without possibility of parole, any error in instructing as to second degree rape would have been harmless, as the outcome of the trial could not have been different. RCW 10.95.020(9); (11)

**C. There was sufficient evidence of the use of a three inch knife.**

As noted in Appellant's opening brief, Dr. Reynolds testified at trial that the fatal wound to Ms. Hernandez was caused by a smooth-bladed knife at least three inches in length. (RP 520) Indeed, the wound was to the depth of the cervical spine, halfway through the neck. (RP 512) This testimony alone was sufficient to support the deadly weapon finding; it was up to the jury to determine whether it was convinced beyond a reasonable doubt.

IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the sentence and sentence enhancement entered by the trial court.

Respectfully submitted this 23rd day of November, 2011

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***Certificate of Service***

I, Kevin G. Eilmes, hereby certify that on this date I served copies of the foregoing upon counsel for the Appellant via electronic filing with the court, by agreement, and pursuant to GR 30(B)(4), and on the Appellant Jesus Perales by depositing a copy in the U.S. Mail.

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Dated at Yakima WA this 23rd day of  
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