

NO. 33328-1-III

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Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN MUNZANREDER,

Appellant.

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BRIEF OF RESPONDENT

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## I. ASSIGNMENTS OF ERROR

### A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes numerous assignments of error. These can be summarized as follows;

1. Mr. Munzanreder was denied his state and federal constitutional rights to a fair trial by an impartial jury.
2. The trial court erroneously denied Mr. Munzanreder's motion for change of venue based upon substantial saturation of pretrial publicity.
3. The process employed for removing biased jurors violated Mr. Munzanreder's state and federal due process rights to a fair trial by an impartial jury.
4. The trial court abused its discretion in failing to excuse biased jurors.
5. The trial court's instructions on murder in the first degree and the lesser-included offense, murder in the second degree, are ambiguous, contradictory and confusing, denying Mr. Munzanreder due process.
6. The judgment and sentence cites to the statutory provisions for a "deadly weapon" enhancement, but the jury found and the court imposed a "firearm" enhancement.
7. The judgment and sentence incorrectly lists the date of verdict as February 2, 2015.

### B. ANSWERS TO ASSIGNMENTS OF ERROR.

- 1-4. The Appellant was not denied a fair trial based on the jury selection process or the jury empaneled.
5. The jury instruction given were proper, there was no error.
- 6-7 Scrivener's errors, if they occurred can be corrected through the entry of an agreed order by the parties without the need to return the Appellant to court. There is no need for "resentencing" to fix the type of error alleged.

## II. STATEMENT OF THE CASE

The substantive and procedural facts have been set forth in

appellant's brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to specific sections of the record as needed within the body of this brief.

### III. ARGUMENT

**The court correctly denied the motion for a change of venue. The defendant did not and in this appeal has not demonstrated that the empaneled jury was neither fair nor impartial. Appellant has failed to meet his burden; the actions of the trial court should be upheld.**

The issue is whether the trial court erred by abusing its discretion in denying Appellant's change of venue motion. Munzanreder claims he presented an apparent probability that the jury was influenced by media reports. The court should find there was no abuse of discretion.

This court will review a decision to deny a change of venue for abuse of discretion. State v. Rockl, 130 Wn. App. 293, 297, 122 P.3d 759 (2005). Discretion is abused when it is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Due process requires that the accused receive a trial by an impartial jury free from outside influences, including prejudicial publicity. Sheppard v. Maxwell, 384 U.S. 333, 362, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). A presumption of juror prejudice may arise, based on a totality of circumstances, if a defendant shows pretrial publicity has created a

probability of unfairness or prejudice. *The focus is whether the jurors at the trial had such fixed opinions that they could not judge impartially the guilt of the defendant.* State v. Jackson, 150 Wn.2d 251, 269, 76 P.3d 217 (2003). (Emphasis added) “It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.” Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). We review venue denials for an abuse of discretion.

This court is tasked with the duty of independently reviewing the record to determine whether the probability of prejudice is so apparent that it constitutes error to deny a motion to change venue. State v. Thompson, 60 Wn. App. 662, 669, 806 P.2d 1251 (1991). This court has consistently examined the record of cases submitted to it with this issue to determine if it addresses the nine nonexclusive factors to determine whether the trial court abused its discretion:

- (1) [T]he inflammatory or noninflammatory nature of the publicity; (2) the degree to which the publicity was circulated throughout the community; (3) the length of time elapsed from the dissemination of the publicity to the date of trial; (4) the care exercised and the difficulty encountered in the selection of the jury; (5) the familiarity of prospective or trial jurors with the publicity and the resultant effect upon them; (6) the challenges exercised by the defendant in selecting the jury, both peremptory and for cause; (7) the connection of government officials with the release of publicity; (8) the severity of the

charge; and (9) the size of the area from which the venire is drawn. State v. Crudup, 11 Wn. App. 583, 587, 524 P.2d 479 (1974).

In Irvin, a "pattern of deep and bitter prejudice" was shown to be present throughout the Indiana community, which was "clearly reflected in the sum total of the *voir dire* examination of a majority of the jurors finally placed in the jury box." Irvin, 366 U.S. at 727. Eight of the 12 jurors thought he was guilty, although each juror seated promised to "be fair and impartial." *Id.* at 728. The Supreme Court reversed the conviction. *Id.* at 728.

Here, while many had heard of the case that contact for most was inconsequential or the juror expressed that the exposure did not cause them to form an opinion, and those left on the jury was extensively questioned in a "one on one" private setting that allowed the Appellant to extensively question them in a manner that did not infect the other jurors with opinions expressed in these interviews.

In State v. Rice, 120 Wn.2d 549, 844 P.2d 416 (1993) our state Supreme Court addressed the trial court's denial of a request for a change of venue in a case from Yakima County where the crime committed was far more "sensational" than the present case. The court determined that Yakima county was capable of empaneling a jury that could fairly consider the facts from that highly sensational and emotional case and

render an unbiased verdict.

In Rice, Mr. and Mrs. Nickoloff, an elderly couple were brutally murdered after letting Rice and McNeil, two juveniles, into their home. Both victims were repaid for their act of kindness by the two defendants who brutally stabbed them numerous times. The defendants made away with two television sets. McNeil pleaded guilty prior to Rice's trial. Rice was tried for two counts of aggravated first degree murder and the county sought the death penalty. The jury was not able to agree on the death penalty so Rice was sentenced to life in prison. (That sentence was later overturned and Rice is pending a resentencing.)

The Rice court examined the Crudup factors and found that the trial court had not abused its discretion when it denied the motions for change of venue.

It must first be noted that Appellant states in his brief that the media was "provocative" clearly this is not the test. (Apps Brief at ii, 12, 25, 26, 32, 47) Merriam-Webster defines provocative as 1.: serving or tending to **provoke, excite, or stimulate**. Whereas the Merriam-Webster defines inflammatory as: Legal Definition of inflammatory 1.: tending to **cause anger, animosity, or indignation** <the use of an alias by a defendant is...almost always inflammatory — F. D. Doucette> (Emphasis added.) The State could find no case that referred to the standard to be

that the media in question was “provocative” the test and standard is if the media was inflammatory. Clearly in the law “words have meaning.”

The State has examined the record that is presently before this court and it is wholly and totally insufficient to support any claim that there was prejudicial media that the members of this pool were exposed to. The record before this court is the duty of the Appellant. An appellant has the burden of providing a record sufficient to review the issues raised. State v. Garcia, 45 Wn. App. 132, 140, 724 P.2d 412 (1986); State v. Slemmer, 48 Wn. App. 48, 57, 738 P.2d 281 (1987) It is impossible, on this record, to review the Appellant’s claim that outside media was so corrosive that there was no possibility that a fair and impartial jury could be seated.

Appellant argues that the standard of review should be that set forth

**First Crudup Factor:**

Rice, Id at 557; “The first factor is whether or not the publicity was inflammatory.... In other cases defendants have also noted specific news articles that were inflammatory. See, e.g., Hoffman, 116 Wn.2d at 72.”

Munzanreder uses a circular argument that does not actually address whether any of the publicity was **inflammatory**. He argues that because 24 people admitted they had “formed an opinion” about the case

based on what they had heard or seen that therefore the information was inflammatory. This does not address the what this Crudup factor is about, this factor is an inquiry as to whether the publicity was such not factual or was of a “tabloid” nature.

Here appellant does not present any evidence, no facts, that would indicate that the article published or on television were inflammatory. A review of the exhibit sent to this court makes it apparent that the published media, both written and video, was not inflammatory and was factual, as media does, they made them into headlines. This does not change the facts; it may emphasize some but that is not “inflammatory.”

Munzanreder takes innocuous stories and tries to make them into something inflammatory. He claims that there was a video which as stated in his own brief actually says he is presumed innocent and he then changes this alleged video into something bad or sinister;

“**Cops: husband did it**” above a large photo of Mr. Munzanreder with a “a very dark black eye,” in jail clothes, and with his hands behind his back, presumably in handcuffs. (Apps brief at 26)

...

Moreover, as the story reports that Mr. Munzanreder “through it all maintains his innocence,” he is shown smiling, even laughing, with his attorney in court. Ex. F (KIMA video at 01:30-37). (Apps brief at 27)

...

“John Munzanreder is accused of devising a **gruesome plan** to have someone kill his wife, before ending up taking he shot himself. (Apps brief at 27-8)

(Munzanreder added the emphasis in his briefing it did ***not*** appear that way in the exhibit.)

Once again the record before this court does not support this argument, literally nothing.

Munzanreder continuously calls the headlines and television clips “salacious” and “provocative,” “pervasive” and “inflammatory.” The State would posit that if Munzanreder believes that the articles and television in this case meet those definitions he has not recently read a newspaper or watched television. It is also well known that a provocative headline most times does not reflect the content of the article.

It is very important to note those jurors who had stated that they had seen news coverage were question outside the pool thereby removing the possibility that any bias that they had would not affect the rest of the pool. “The court and counsel individually questioned jurors with extensive exposure to pretrial publicity or preformed opinions. (RP 755-8)

Appellant also claims that there were articles on the internet that contained information that was not presented to the jury. But he does not indicate that a single person on the jury read or heard that information. (Apps brief at 40.)

To say that Facebook has become pervasive and world-wide would be an understatement. There is no place on the face of the earth where a defendant could “hide” from Facebook. If this court is to base

consideration of an appellate claim that there was information disseminated and trafficked on Facebook there would be no method to conduct trials unless in each and every occasion the entire venire was sequestered. “This statistic shows a timeline with the worldwide number of monthly active Facebook users from 2008 to 2016. As of the second quarter of 2016, Facebook had 1.71 billion monthly active users. In the third quarter of 2012, the number of active Facebook users had surpassed 1 billion. Active users are those which have logged in to Facebook during the last 30 days. Furthermore, as of that quarter the social network had 1.57 billion mobile MAU. The platform is also the most popular social network worldwide. (<http://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/>)

Once again the fact is Munzanreder can't site to even one instance in the record where an individual in the jury pool states that they had knowledge of anything that was stated on Facebook. He continues to request that this court speculate as to what the jurors did not state during voir dire, once again a test which would be impossible to grade.

Appellant also continues to indicate that the comments that were made were “salacious” however the comments, the television stories run and the printed media had nothing to do with someone's prurient interest in sex least of all Munzanreder. (Apps brief at 1, 3, 9, and 41) *Meriam*

*Webster's online dictionary:*

1: arousing or appealing to sexual desire or imagination:  
lascivious 2: lecherous, lustful...  
(of writing, pictures, or talk) treating sexual matters in an indecent way  
and typically conveying undue interest in or enjoyment of the subject.

Because trial counsel for Munzanreder was very involved with the process of developing the questionnaire that was given to the jury pool Munzanreder was more than able to fashion an initial questionnaire that addressed the impact of the alleged inflammatory information. (January 9, 2015, RP 1145-47, 010615-010715-010815 pgs. 541, 545-6, 548, 553, 608-9 There is a very long extensive and in-depth discussion of the questionnaire 617-22, 625-43 It would appear from this portion of the record that trial counsel for the Appellant was the person who was actually preparing this questionnaire. (Vol. 12 pg. 1114, 1146) The process of working the questionnaire was extensive with the parties submitting separate questionnaires to the court. (Sept. 29, 2014, Vol. 9 pg. 803, 820) The discussion regarding the "private" interviews which were conducted was initially mentioned by Munzanreder's counsel. (Vol. 12, RP 1158, 1160-63) Counsel was clearly able to address any concerns regarding the nature and extent of each and every juror's exposure to media regarding this case.

The trial court judge lives in Yakima county, works in Yakima

county and is a member of the community of Yakima county. The trial court judge swore an oath to protect the rights of individuals such as Mr. Munzanreder. This same judge sat through the entire voir dire process, he was very involved in the vetting the people called to serve in this case, he was very aware of the statements and attitudes of each and every juror. Many of whom were brought in for individual interview with the court and counsel. As such there is no one better positioned to know and understand whether these people were able to sit and render a fair and impartial verdict. There is an enormous component to selecting a jury that is fair and impartial that comes from sitting in the room with those individuals and evaluating not just their words but their demeanor and physicality while addressing the court and counsel.

At no time did trial counsel formally move to have any of the jurors Munzanreder now says obviously should not have been seated. After the private interview of one of these jurors the Court states that the “motion” is denied and yet the record is clear that trial counsel never moved the court to strike that juror, the other two he did not challenge either, nor did trial counsel indicate at the end of the jury selection that he believed that Munzanreder needed additional preemptory challenges in order for him to have a jury that was acceptable to him.

That Jurist, member of the Yakima community, a person exposed

to the very same media that these jurors were exposed too ruled as follows:

THE COURT: Before we break, I need to put on the record -- perhaps it's obvious. There was a motion for change of venue. The motion is denied. I was impressed by the quality of the panel. I was impressed by their promises and descriptions of how they would stay free of any outside influence or their representations as to how any influences might have impacted them.

There has been coverage on this case. I, frankly, don't think it's as extensive as has been represented. A number of the identifications that have been offered, newspaper headlines, frankly, two of them startled me. I never saw those. I quickly looked at the date. They were approximately two years ago. I didn't recall them personally.

I saw nothing in the dialog we had with the jurors that we've impaneled now that would suggest that they were in any way influenced or (sic) biased by the news coverage. I think we have an excellent panel.

I also noted that the nature of the media coverage has changed over the years. The fact that TV might have covered this in the last week or two, I was also interested to see how few people really had seen it. News coverage is very diverse, and local coverage seems to be left out of the mix to a large extent.

One of the comments that one of the panelists had made was that there have been so many homicides in Yakima that she couldn't tell whether it was this case or another that she was thinking about. Obviously that's not a good thing to say about the community. On the other hand, it certainly added to my belief that there was no particular prejudice by denying the motion.

So the motion is denied. We'll move forward. We will start at 1:30. All right.

RP 1231-2

The first Crudup factor does not justify a change of venue.

**Second Crudup Factor:**

Rice 120 Wn.2d at 887; “The second factor is the degree to which publicity was circulated. The publicity in this case was so extensive that nearly all of the 153 prospective jurors noted on their juror questionnaires that they knew of the Nickoloff murders. Although this factor favors change of venue, widespread factual publicity does not invariably justify a change of venue. See State v. Rupe, 108 Wn.2d 734, 752, 743 P.2d 210 (1987) (Rupe II), cert. denied, 486 U.S. 1061 (1988).”

As indicated in Rice nearly **all** of the pool had heard of those heinous murders. Here many of the jury pool had heard of the murders but far from the nearly 100% in Rice. If this court uses the figure that was determined by Appellant only eighty percent of those on the jury had had any exposure to this case prior to being called as a juror. These exposures ranged from juror 9 Delores Aggett CP 902/910 who stated in her questionnaire “It sounded like the husband was involved.” and juror 19 Gary Nelson CP 962/970 “Opinion mainly from recent events in news – All I have to go by.” To juror 235 Gerald Farnsworth CP 811/819 who wrote; Bastard is guilty as sin!

Munzanreder states, without facts to support the claim, that “[t]he publicity...heavily saturated the area from which (the) jury was drawn.”

(Apps brief at 30) He then cites to the one exhibit that contains information about the trial. This case had been pending for almost two years (Third Crudup factor) by the time this jury was selected and yet the volume and nature of the publicity that is before this court is minimal and definitely not inflammatory. The now ubiquitous Exhibit F, contains articles and references to media that taken as a whole do not amount, in the world today, to sufficient evidence to support a finding that the second factor supports a change of venue.

Under Crudup, no basis exists to change venue. The trial court exercised great care in jury selection and it is very important to note that Yakima County is not an extremely small county in size or population. As indicated above in 2014 there were approximately a quarter of a million people living in the county. The entire process of selecting a jury, in this non-capital case was discussed by all parties as taking four to five days. (Vol 11, pg. 1047)

The verbatim report of proceeding for just the jury selection process is five full volumes, starting on January 12, 2015 and being completed on January 16, 2015 covering pages RP 651- 1302.

Munzanreder walks away from the test set forth in Crudup and would apparently have the standard be this court should speculate about what was in the minds of the jury pool. He states as an issue that there

“where three jurors who actually sat on Mr. Munzanreder’s jury and **many more who did not admitted** (sic) to having already formed opinions on guilt, where the government was involved in the dissemination of some of the information, where the charge was among the most serious in the state, and where jurors spent only four hours deliberating?” (Apps brief at 2)

There literally is no method to respond to this. Obviously there is no record to support or deny this allegation, nor by definition could there be, and yet Munzanreder would apparently have this court speculate as which jurors these liars where, with the obvious result being that because the State can’t refute the unknown that therefore this argument is true.

Appellant continues this type of argument later in the body of his brief. “Those numbers only reflect jurors who admitted they has formed an opinion. (Apps brief at 29, emphasis in original.)

If this court were to adopt such a standard, there would never be a trial by jury. The idea behind a juror questionnaire and voir dire is to allow the parties a road map a guide to the people called to sit as a jury of the defendant’s peers, warts and all. The idea is to weed out bias and prejudice and thereby allow the parties to present their case to as clean a slate as any group of humans can ever be. There is absolutely no method to ferret out all information about each juror. And this type of wild speculation has no supporting law because there is and can be none to in

the system this country employs to conduct trials.

Apparently Munzanreder is able now to read the minds of these nefarious characters who skulked onto this jury, obviously as part of a large conspiracy between the State and the community to empanel a highly biased jury to convict this innocent man in a case where the most significant evidence against him was the testimony of the man, coconspirator, Munzanreder hired to help him kill his wife.

Munzanreder claims that this alleged widespread coverage was because Union Gap had experienced only two or three other homicides. As this court is well aware, the town of Union Gap long ago became a contiguous portion of the City of Yakima. There is literally nothing that would notify a person traveling from one city to the other that they had transited from one city to the other except possibly a sign and an understanding of the locality. A quick search of Google Maps indicates that it is 3.8 miles from the City Hall of Union Gap to the Yakima County Courthouse. The City of Yakima has been the scene of numerous homicides, including Rice and those cases were fairly tried with a pool of jurors drawn from the entire county. Clearly those who live in the area are also well aware of all of the homicides that occur in the entire county. The fact that Union Gap has had only two or three homicides had no impact on this jury pool nor their ability to render as fair and impartial verdict.

Yakima County had twenty-one homicides in 2015, the year this case was tried. There were ten in 2014; twenty-three murders in 2013, the year Appellant killed his wife and fourteen killings the year before, 2012.

[http://www.yakimaherald.com/news/crime\\_and\\_courts/yakima-county-homicides-in-usually-involved-males-firearms/article\\_b1e41f92-ac6a-11e5-a7f5-bb477715eea7.html](http://www.yakimaherald.com/news/crime_and_courts/yakima-county-homicides-in-usually-involved-males-firearms/article_b1e41f92-ac6a-11e5-a7f5-bb477715eea7.html)

From beginning to 2013, the year of this homicide, to the end of the year this case was tried 2015, there were 54 reported homicides in Yakima County. Jury selection in this case started on January 12, 2015 (RP 011214 pg. 652) and ended with a verdict of guilty on February 4, 2015. (CP 122) According to the article listed above there were four murders in Yakima County from January 6- February 4, 2015.

Once again clearly this one homicide did not stand out in this crowded field of carnage. This very fact was stated by one of the prospective jurors and repeated by the trial court when that court denied the motion for change of venue.

By comparison, in Spokane County there were thirteen homicides in 2013 <http://www.spokesman.com/stories/2014/jan/26/2013-spokane-county-homicide-numbers-hold-steady/>.

The population for Yakima County for that time frame is listed as 243,231, Spokane County is listed as 422,221, clearly the population of

Yakima County, and therefore the residents of the City of Union Gap, are unfortunately very familiar with homicide.

Munzanreder states that his case is unlike State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987) and State v. Stiltner, 80 Wn.2d 47, 53, 491 P.2d 1043 (1971) cases which are 29 and 45 years old, respectively. These cases predate the world wide web which did not become accessible until 1990. [https://en.wikipedia.org/wiki/History\\_of\\_the\\_Internet](https://en.wikipedia.org/wiki/History_of_the_Internet)

Therefore, none of these cases have taken into account the rise of social media and ubiquitous use of the internet in all aspects of people's lives, from the method of reading the news to interaction between people worldwide, aspects of communication never dreamed of when the cases cited were published. And methods that are now so common as to not even be a consideration.

**Third Crudup Factor:**

Rice at 120 Wn.2d at 557;

The third factor we consider is the length of time from the publicity to the trial. The murders took place on January 7, 1988; McNeil pleaded guilty on August 25, 1989; and, voir dire began on November 6, 1989. Thus, voir dire occurred approximately 22 months after the murders and a little over 2 months after codefendant McNeil pleaded guilty. Previously, this court has not overturned denials of motions for change of venue when the trial took place 5 to 6 months after the murders. See State v. Jeffries, 105 Wn.2d 398, 409, 717 P.2d 722 (finding 6 months between the murders and the trial

sufficient), cert. denied, 479 U.S. 922 (1986); Rupe I, 101 Wn.2d at 675 (finding 5 months between the murders and trial sufficient). Thus, the timing of the trial did not justify change of venue.

As stated above this case went to trial just under two years after Mrs. Munzanreder was murdered. The declaration of probable cause lists the date of the murder as February 28, 2013. CP 2 The first day of jury selection took place on January 12, 2015. RP 011215.

Yakima County had twenty-one homicides in 2015, the year this case was tried. There were ten in 2014; twenty-three murders in 2013, the year Appellant killed his wife and fourteen killings the year before, 2012.

[http://www.yakimaherald.com/news/crime\\_and\\_courts/yakima-county-homicides-in-usually-involved-males-firearms/article\\_b1e41f92-ac6a-11e5-a7f5-bb477715eea7.html](http://www.yakimaherald.com/news/crime_and_courts/yakima-county-homicides-in-usually-involved-males-firearms/article_b1e41f92-ac6a-11e5-a7f5-bb477715eea7.html)

From beginning to 2013, the year of this homicide, to the end of the year this case was tried 2015, there were 54 reported homicides in Yakima County. Jury selection in this case started on January 12, 2015 (RP 011214 pg. 652) and ended with a verdict of guilty on February 4, 2015. (CP 122) According to the article listed above there were four murders in Yakima County from January 6- February 4, 2015.

The Criminal Justice Data Book lists the total number of homicides that were filed each year in Superior Court. In 2013 - 33, 2014 – 22 and

2015 – 27. From the time this crime was committed to the time it was prosecuted there had been 82 homicide cases filed in the Superior Court for Yakima County.

Co-defendant Juan Pablo Ibanez-Cortez plead to second degree murder in exchange for testifying against Munzanreder. RP 012315 pgs. 1826 That plea occurred in October of 2014 RP 012315 pg. 1936, 1941.

**Fourth Crudup Factor.**

Rice at 120 Wn.2d at 558;

The fourth factor is the care exercised and the difficulty encountered in juror selection. The prospective jurors were repeatedly instructed regarding their duties and responsibilities. Over a 3-week period all of the prospective jurors underwent extensive individual questioning. Each juror that actually sat on the jury underwent two rounds of individual questioning. This extensive questioning allowed the court and counsel to examine the impartiality and demeanor of each juror. The care with which the jury was selected did not support a change of venue.

State v. Stackhouse, 90 Wn. App. 344, 350, 957 P.2d 218 (1998):

The right to trial by a jury assumes the right to an unbiased and unprejudiced jury. Accordingly, if one or more members of the jury panel are biased or prejudiced, the constitutional right to trial by jury is denied. State v. Parnell, 77 Wn.2d 503, 507, 463 P.2d 134 (1969). But a defendant assigning error to the court's denial of a challenge for cause must show more than the mere possibility that the juror was prejudiced. State v. Noltie, 116 Wn.2d 831, 840, 809 P.2d 190 (1991) (citing 14 *LEWIS H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: TRIAL PRACTICE* SS 202, at 331 (4th ed. 1986)). And, therefore, unless it is very

clear, the court's denial of a challenge for cause must be sustained. Noltie, 116 Wn.2d at 839; State v. Witherspoon, 82 Wn. App. 634, 637, 919 P.2d 99 (1996), review denied, 130 Wn.2d 1022 (1997).

Munzanreder relies heavily on the fact that 80% of the jury pool was exposed to some type of coverage of this case. He states that “150 jurors were summoned” this is incorrect. (Appellant’s brief at 35) The clerk’s papers contain information from over 200 perspective jurors and the trial court states “[w]e’re talking about having two groups come in, one in the morning of about 120 and then a second group of 120 in the afternoon.” RP 010615-010815-010815 pg. 645. The last sequentially numbered juror questionnaire is found at CP 881 and that is for juror 243. (CP 199-1481)

If in fact Munzanreder has scoured the record for those jurors who stated they had exposure to media related to this case, then this would clearly reduce his stated 80% exposure to 40% exposure and enormous difference.

As stated above there was nearly 100% exposure in Rice and the Supreme Court easily found that a change of venue was not warranted.

Here the parties worked together to fashion a juror questionnaire. The final questionnaire was based primarily on the questionnaire that was

submitted by Munzanreder's trial counsel. RP 010615 - 010715 –  
010815,

Voir dire was extensive, taking place over five days to complete. This voir dire is so extensive that it takes up almost the entirety of RP 011215, RP 011315, RP 011415, RP 011515, RP 011615. A large number of the jurors were questioned privately many because they requested “private” interviews and many because the court and the parties determined that a private interview would allow for more in-depth questioning and at the same time reduce the other members of the pool from exposure from other jurors knowledge about the case.

THE COURT: I think one of the issues other than the 404(b) that we need to take a hard look at will be the questionnaire tomorrow so that we can -- that's going to guide obviously in the type of interviews, private interviews, that we would be having and how many people we're going to need.

Jury instructions, will those be –

MR. DOLD: We glossed over something quick. You said private interviews. One of the things that's going to come up with the questionnaire and the interviews is the venue issue and the large amount of press that's played out.

THE COURT: Correct.

MR. DOLD: Having not had a lot of time but spending a little time to the trial in Boston, I got the feeling the court somewhat ahead of that judge has figured out the appropriate time to address the venue issue is once we got the people here to see how they respond to those questions.

THE COURT: Yes.

MR. DOLD: I'm going to be spending time making sure our questions in the questionnaire accurately get at

that. I think that's probably an area where some private interviews will be entirely appropriate so we don't share that information with the rest of the panel.

THE COURT: You have made clear your intent on the venue issue. I think you're right. That would be the timely moment to bring it.

(RP 010615-010715-010815 pgs. 545-6)

...

MR. DOLD: So between 10:00 and 10:30 should be possible. We can do that. That will give Ms. Powers an opportunity to go through it. I will have a chance to make mine a whole lot prettier.

A lot of what Ms. Powers addressed, I think, was carefully considered by Judge Reukauf. I think her decision was that it's better to ask them in a private setting when they don't have to answer those kinds of questions with everybody else around to get that information. That was the Luis Gomez-Monges trial that that questionnaire was used, and I felt that it was a relatively good one. I tried to adapt it to this case and do a couple things a little differently. (RP, Id. 618-19)

THE COURT:...So I'm figuring we'll bring them back, we'll know who we're going to need based on their request for individual interviews. There will be a certain number who have not asked for an interview, but we're going to want them to have it –Vol. 12 RP 1159

This is a typical situation where the court and the parties

determined that there was need for more extensive interviews with persons

who had mentioned the media:

THE COURT: Well, you're smart to bring a book.

As I told you, there is a little bit of waiting involved here, and I appreciate your patience.

You didn't ask for a private interview, but we thought we should talk to you simply because you indicated you heard something about the case. You said you heard on TV that he had someone else to do it for him.

JUROR NO. 154: Yes.

THE COURT: Let me ask you. You mentioned TV. Is that your primary news source?

JUROR NO. 154: Mostly, mm-hmm.

THE COURT: Do you recall the last time you might have heard something about this case?

JUROR NO. 154: Pardon me?

THE COURT: When was the last time you heard something about this case?

JUROR NO. 154: It's months. I never paid any attention after it first broke, happened.

THE COURT: I'm not going to tell you whether or not what you think you've heard on the news is correct or not. Can you put aside anything you might have heard about this case and listen only to the evidence that's presented in court? Can you do that?

JUROR NO. 154: I think so.

THE COURT: That would be all you would consider?

JUROR NO. 154: Mm-hmm.

THE COURT: Would you continue to follow my instruction that Mr. Munzanreder is presumed innocent?

JUROR NO. 154: Yes.

THE COURT: And the state has the burden of proving beyond a reasonable doubt that he is guilty?

JUROR NO. 154: Yes.

THE COURT: All right. You can do that?

JUROR NO. 154: Yes.

THE COURT: Any reason why you couldn't serve as a juror?

JUROR NO. 154: No.

011415 RP pg. 938-9

Thereafter the parties asked almost five pages of additional questions of this one juror.

THE COURT: No. 235, 70, 88, 96, 40, 59, 115, 125, 66. None of these or all of these are what I would call hardship issues more than they involve work, pain, scheduling.

MR. DOLD: Publicity or private interviews.

THE COURT: Some of them are private, but these

are the ones that we can get rid of this morning.  
011315 RP pg. 752

...  
MR. DOLD: I think that we probably can find 20 depending on what happens in the group from yesterday morning that will either want to be talked to privately or there are publicity issues. I think there is a safe cutoff, and Ms. Powers may want to speak to this, that we may want to excuse other than the private ones that you want to talk to now on hardship issues.

We could excuse everyone now from 116 and below. I don't know how you want to get in touch with them as to when they want to come in for privates. I'm not totally ready to who needs to be spoken to there.  
Id, pg. 753

This incredibly extensive methodology was used throughout this trial. This Crudup factor does not lend support to the motion for change of venue.

#### **Fifth Crudup Factor.**

Rice at 120 Wn.2d at 558;

The fifth factor is the jurors' familiarity with publicity and its effect on them. As already noted, nearly all of the 153 prospective jurors had knowledge of the Nickoloff murders. However, the fact that a majority of prospective jurors had knowledge of the case, without more, is irrelevant. Rupe II, 108 Wn.2d at 751 (citing Patton v. Yount, 467 U.S. 1025, 1035, 81 L. Ed. 2d 847, 104 S. Ct. 2885 (1984)). The relevant analysis is whether the jurors had such fixed opinions that they could not act impartially. Rupe II, at 751 (citing Patton, 467 U.S. at 1035).

Rice presented a public opinion researcher to testify regarding the impartiality of the members of the venire based upon their questionnaires. Due to internal inconsistencies in the answers, the researcher determined only 44 percent of the potential jurors were actually

impartial. However, the validity of the researcher's conclusions is questionable because she did not include in her analysis the answers given by jurors during their individual questioning. Therefore, even though most prospective jurors were familiar with this case, we conclude Rice has not shown they were partial. (Emphasis added.)

State v. Toennis, 52 Wn.App. 176, 758 P.2d 539 (1988) “The mere fact that jurors may know about a case is not the central issue. In Patton v. Yount, 467 U.S. 1025, 104 S.Ct. 2885, 2890-91, 81 L.Ed.2d 847 (1984), the United States Supreme Court said that the fact that a great majority of veniremen knew about the case is irrelevant: The relevant question is not whether the community remembered the case, but whether the jurors ... had such fixed opinions that they could not judge impartially the guilt of the defendant.” State v. Jackson, 150 Wn.2d 251, 269-70, 76 P.3d 217 (2003);

The trial court's decision to grant or deny a motion for a change of venue is within the trial court's discretion, and appellate courts are reluctant to reverse the trial court's decision absent a showing of abuse of discretion.

...

He contends that where the appellate court finds that some of the factors favor a change and others are neutral, an abuse of discretion must be found if the trial court denies a motion for a change of venue. We disagree. Instead, careful consideration and balancing of all the Crudup factors and the facts in a particular case is the appropriate course. Here, although the publicity was at times extensive, and some of it inflammatory, and the great majority of

the veniremen had heard of the case, the care taken by the trial court to ensure an impartial panel leads us to conclude that the Court of Appeals correctly found no abuse of discretion. (Citations omitted.)

Many individuals in the pool stated that they had read about or seen news coverage of this case. Very few stated that they had any great exposure specifically to the case and the State could find no juror who indicated that they “followed” this case. In this media saturated world it would be nearly impossible to seat a jury that consisted of persons who had not heard of a case such as this. That does not however disqualify those who were called and seated.

Clearly a juror questionnaire is the beginning of the process of inquiry, not the end. The statements in these questionnaires allow the attorneys and the court to have an outline, a preview, of that juror’s mindset. Many people express something in these documents and upon further inquiry by court and counsel it is made clear that while they stated something in a questionnaire they are willing to sit and listen to the evidence as presented and apply the law as given, many times in contravention of what was stated in the questionnaire.

The State scoured the record and has attached to this brief Appendix A, which contains the entire record of the voir dire of the individuals who were eventually seated on Appellant’s jury. It is clear

from reading the transcripts that the trial court's ruling was very accurate. There was a familiarity with this case but it was not to such an extent that those seated were incapable of rendering a fair and impartial verdict.

The fact is, the jurors made it clear through their answers in voir dire that they could render a fair and impartial verdict even if they had some information about this case.

**Sixth Crudup factor:**

Rice at 120 Wn.2d at 558-9 “The sixth factor involves the challenges used by defense counsel. Rice's attorneys did not exercise all of the peremptory challenges they were allocated. Defense counsel argues it is not good trial practice to use all of the peremptory challenges that are available. Brief of Appellant, at 27 (citing 1 F. *Lane, Goldstein Trial Technique* SS 9.29 (3d ed. 1984)). However, this court has noted that if a defendant does not exercise all peremptory challenges it is presumed that he or she was satisfied with the jury. Jeffries, 105 Wn.2d at 409. Therefore, this factor does not favor change of venue.”

State v. Saintcalle, 309 P.3d 326, 178 Wn.2d 34, 84 (Wash. 2013);

It is perhaps not surprising then to find that “empirical studies testing the predictive value of scientific jury selection have produced inconclusive findings.” *Franklin Strier & Donna Shestowsky, Profiling the Profilers: A Study of the Trial Consulting Profession, Its Impact on Trial Justice, and What, if Anything, To Do About It*, 1999 WIS. L.REV. 441, 458-64 (discussing and collecting

studies); see also *Dru Stevenson, Jury Selection and the Coase Theorem*, 97 IOWA L.REV. 1645, 1653 n.38 (2012) (same); *Reid Hastie, Is Attorney-Conducted Voir Dire an Effective Procedure for the Selection of Impartial Juries?*, 40 AM. U.L. REV. 703, 718-20 (1991) (same).

Munzanreder cites volumes of information regarding studies where a person was biased. (Apps brief at 48-51) the fact is that all persons exposed to information process that information for use later. Here they suggest some “heightened” method to discover the alleged bias but the same bias could and probably would be found in another county. It is ludicrous to believe in the media heavy world that we live in that a case such as this if transferred to another venue would not result in the same headlines in that counties local newspaper or media due to the fact that now the case has been dumped in their town/county for them to absorb the cost in time, money and effort to resolve.

Munzanreder appears to indicate that the common man is incapable of sitting on a jury in Yakima or for that matter any county. These citizens are apparently incapable of being truthful in their responses;

Accepting a prospective juror’s **spontaneous** assurance to be fair and impartial does not resolve pervasive prejudice. **Jurors with predetermined opinions**—most of whom have never sat through a criminal trial or been tasked with determining another’s life and liberty—**cannot be presumed to fairly assess their own ability to set those opinions aside.** (Apps brief at

51)(Emphasis added.)

Munzanreder states that the initial failure of the trial court to excuse juror 29 for cause is yet another factor that this court should consider as demonstrating that the empaneled jury was biased. Juror 29 was in fact excused for cause. Munzanreder appears to want this court to engage in speculation stating other venire men were just better at hiding their emotions and therefore their prejudice and bias and were therefore probably impaneled on his jury. Once again Munzanreder cites to absolutely no authority to support this speculative test. As was stated nearly 50 years ago “[a] defendant charged with a crime is constitutionally entitled to a fair trial, but not necessarily to a perfect trial.” Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968).

Munzanreder claims to have made at least seven challenges for cause on six jurors and five of those were rejected and yet in his own footnote he cites to the record and indicates only juror 51, 89 and 49 were denied. Of those one was in fact seated, 51 whom the judge stated:

THE COURT: I'm going to deny the motion. I think he was very candid and very open. The questions are phrased both for good and bad in an open-ended way, I suspect, to generate some conversation. At the same time, it allows, I think, the author of the answers to misunderstand and answer questions that they think are proposed rather than what we're actually seeking.

I thought he was very candid about his concern for the

system, that he would be fair, (sic) unbiassed. He would follow my rulings regarding the evidence. He would set aside what he heard in the newspaper and listen to the evidence that was presented in court.

I do not understand, if you're hearing him, his comment, the answer that he had made, that he had, in fact, prejudged anything. I did not understand that to be the case. Motion denied. RP 787-8

Here Munzanreder used all of his peremptory challenges however he never indicated a need for additional challenges so that he could remove anyone from that panel that was chosen.

As stated by lead counsel for the State when the motion for change of venue was raised:

There isn't a showing that there is any difficulty with challenges for cause or a concern with insufficient peremptories. Counsel has not referred to a difficulty in that area.

...

I don't hear that there is an offer of insufficient peremptories, that there are any residual concerns on behalf of the defendant that have not been exercised either by, A, your Honor excusing individuals or, B, challenges for cause. (RP 01.15.15 page 1103, 1105)

It is noteworthy that after this issue was raised by the State trial counsel replied that the need for additional challenges would be best left to after the court ruled on the motion for change of venue. "The issue of additional peremptories and the rest I don't think are relevant until the court makes a decision on the venue question." (RP 01.15.15 pg. 1105) After the court made its ruling denying the motion for change of venue,

counsel still did not state that there was a need for additional challenges.

The court asked trial counsel directly if there were any questions he needed answered prior to the beginning of peremptory challenges. (RP 01.16.15, pg. 1212.)

It is also noteworthy that trial counsel for Appellant went on the record during the portion of the trial where peremptory challenges are made and discussed with the court and counsel the methodology of using his challenges. At no time during this portion of the trial did Munzanreder's counsel express any need for additional challenges.

**Seventh Crudup Factor.**

Rice, Id at 559, “The seventh factor we consider is the connection between government officials and the release of publicity. Rice concedes in his brief that there was no government connection with publicity. Brief of Appellant, at 27. Therefore, this factor also does not favor change of venue.

Munzanreder indicates that “the State did play some role in the inflammatory press” citing to VRP 1.15.15 at 1103, this is patently false. The statement on that page from the lead attorney for the State actually states:

**The state has not had a connection with the release of publicity. This is not a case where the state has sought out interviews and is providing information.** It appears

that information at some point during the early stages of the investigation may have been provided by law enforcement. I haven't had an opportunity to read what's marked as Identification G, and I just ask that it be handed to me. With reference to this information there may have been some contact. (Emphasis added)

The only thing that Appellant could find in the totality of the history of this case was that on one occasion the State made a press release. This press release occurred in March of 2013, the trial occurred in February of 2015 nearly two full years after this press release. The public has a right to be informed about cases that occur. It is the duty of the Prosecuting Attorney for any county to communicate to the public regarding the actions the office will take regarding crimes committed in that county. There is nothing in the press release that could even remotely be considered inflammatory.

Further, the leap from a press statement regarding possible charges and Munzanreder's claim that meant he was eligible for the death penalty as alleged by Munzanreder is also hyperbole. (Apps brief at 38) That was not something stated in the press, that is yet another "fact" Munzanreder has pulled from the ether.

Munzanreder then through the use of smoke and mirrors somehow equates this press release to one comment apparently on line that alleged that Munzanreder should "hang." There is ABSOLUTELY nothing in any

record that would or could tie a press release about this case to some online comment, nor is there on indication in the record that anyone had seen or read this press release.

The minimal amount of media involvement by the State in this case pales in comparison to many cases. One press release and one comment after the pleas of the coconspirator does not equate to inflammatory acts on the part of the State. There were no speeches from the steps of the court house, no phalanx of microphones in the halls of the Courthouse.

**Eighth Crudup Factor.**

Rice, Id at 559, “The eighth factor is the seriousness of the crime. Defendant was charged with aggravated first degree murder and the prosecutor sought the death penalty. This factor favors change of venue.”

Here, as in Rice, the defendant was charged with aggravated first degree murder. While Rice states that this is factor “favors” change of venue the State must once again point out the fact that the homicide rate in Yakima County is such that the filing of an aggravated murder case is no longer a shocking or unusual event.

The Criminal Justice Data Book does not list the total number of homicides that were filed the year Rice was filed, the closest date found is 1990 when there were 28 homicide cases filed in Superior Court. In 2013

- 33, 2014 – 22 and 2015 – 27.

While there is no doubt that the crime charged against Munzanreder was serious, during the time frame from when he committed this crime to the time it was prosecuted there had been an additional 82 homicide cases filed in the Superior Court for Yakima County.

**Ninth Crudup Factor.**

Rice Id at 559, “The ninth and final factor is the size of the area from which the venire is drawn. Yakima County had 73,148 registered voters on October 24, 1989. Previously, this court has upheld denial of motions for change of venue in Rupe II, 108 Wn.2d at 753, where the venire was drawn from 61,000 registered voters and Jeffries, 105 Wn.2d at 409, where the venire was drawn from 50,000 registered voters. This factor lends no support to the motion for change of venue.

The population for Yakima County the year that Rice was published is listed to have been 219,748 in July of 2014, the last reported date the State could find, is reported to have been 247,687. The following link sets forth a graph of the population of Yakima County from which these numbers were derived;

[http://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude\\_&ctype=l&strail=false&bcs=d&nselm=h&met\\_y=population&scale\\_y=lin&ind\\_y=false&rdim=country&idim=county:53077:53011&ifdim=country&hl=en](http://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude_&ctype=l&strail=false&bcs=d&nselm=h&met_y=population&scale_y=lin&ind_y=false&rdim=country&idim=county:53077:53011&ifdim=country&hl=en)

[&dl=en&ind=false](#) Additional data is listed at

<https://fortress.wa.gov/esd/employmentdata/reports-publications/regional-reports/county-profiles/yakima-county-profile> This second site lists the

following;

*Population facts*

(Source: U.S. Census Bureau QuickFacts)

	Yakima County	Washington state
Population 2014	247,687	7,061,530
Population 2010	243,231	6,724,543
Percent change, 2010 to 2014	1.8%	5.0%

The number of registered voters for Yakima County in 2015 is was 108,481. <http://www.yakimacounty.us/1120/Turnout-Statistics> . This number is approximately 35,000 more that were registered at the time of the Rice case.

Munzanreder seems to isolate Union Gap from the rest of Yakima County, (Apps brief at 30) unfortunately Yakima County is a high crime area and was even recently rated as one of the top ten cities people are afraid to live. <http://time.com/69550/10-cities-where-americans-are-pretty-much-terrified-to-live/> , <http://kimatv.com/news/local/yakima-in-top-tier-nationally-for-crime-rate> The unfortunate truth is that in Yakima murder is a fairly commonplace occurrence.

It would appear from Appellant’s brief that unless the geographic area fit the definition of “metropolis” such as where Skilling and Mu’Min

were tried, as stated in his brief, a fair venire could apparently not be had. (Apps brief at 31) Skilling, 561 U.S. 358; Mu'Min v. Virginia, 500 U.S. 415, 440, 111 S. Ct. 1899, 114 L. Ed. 2d 493 (1991)

The claim by Munzanreder that because the city of Union Gap only has a population of approximately 6000 people there would be no ability to seat a fair panel is ludicrous. If this was true it would eliminate the ability of three counties in this State to conduct jury trials, Columbia, Wahkiakum, and Garfield counties each have lower population than the city of Union Gap. <http://mrsc.org/Home/Research-Tools/Washington-County-Profiles.aspx>

Once again the math performed by Munzanreder is based on his belief that there were only 120 persons called when in fact it would appear that there were actually closer to 250 people initially called.

Appellant says that 80% of the pool had heard about the case, of that 80%, 20% “admitted the publicity had led them to form an opinion, and virtually all of them had predetermined Mr. Munzanreder was guilty. (Apps brief at 34-5). He states 128 individuals were called of those Munzanreder states that 24 admitted that they had formed an opinion but fails set forth the actual number he claims believed that he was “guilty” Apps brief at 13. CP 199-1481 Once again the pool was nearly 250 people not 128.

**Additional facts show probable prejudice.**

While obviously Munzanreder has not been through a jury trial before or it would appear from his criminal record, he urges this court to take as an additional “fact” the time it took the jury to come to a determination of guilt. There are no cases cited to support this additional “fact” because it is ludicrous and there are no cases which would set time of deliberation as a standard. There is absolutely nothing that one can garner from the speed, fast or slow, with which a jury comes to a verdict.

Speculating into the reasons the jury came to the verdict are NOT something that this court can and will do, however that is what Appellant is asking this court to do. He states:

Other facts, not enumerated in *Crudup*, suggest the extent of prejudice here. First, although the presentation of the case took 12 days, the jury deliberated for only about 4 hours. See CP 1510 (trial minutes p.15). The State’s evidence was far from airtight, and the scientific testimony was extensive. See generally *supra* at 14-20 (discussing expert testimony, other suspect evidence, contradictions in Ibanez’s testimony, and lack of direct evidence). The brevity of the deliberations, in comparison with the length of the trial and the extent of the evidence, strongly suggests the jurors had already made up their minds. (Apps brief at 39-40)

The courts of this State have steadfastly ruled that this type of speculation or inquiry is not appropriate. Appellant pulls from the ether “other facts not enumerated in *Crudup*” and states without support of

actual facts or law that they demonstrate the jury was prejudiced. Appellant states that he does not believe the evidence was “airtight” which is his first misstep. The State is not required to prove a charge is “airtight” it is tasked with presenting evidence which proves guilt “beyond a reasonable doubt.” The first “fact” cited to is the speed with which the jury returned its guilty verdict. Clearly, as this is his first jury trial, Appellant has not participated in other jury trials, as all litigators know a fast jury means one of two things you either won or you lost. There is absolutely nothing that anyone can nor should take away from the speed with which a jury came to the conclusion it did, that is within the prerogative of the jury and is sacrosanct. (Apps brief at 39)

State v. Linton, 156 Wn.2d 777, 787-8, 132 P.3d 127 (Wash. 2006):

Neither parties nor judges may inquire into the internal processes through which the jury reaches its verdict. *See Breckenridge v. Valley Gen. Hosp.*, 150 Wash.2d 197, 204, 75 P.3d 944 (2003).

The mental processes by which individual jurors reached their respective conclusions, their motives in arriving at their verdicts, the effect the evidence may have had upon the jurors or the weight particular jurors may have given to particular evidence, or the jurors' intentions and beliefs, are all factors inhering in the jury's processes in arriving at its verdict, and, therefore, inhere in the verdict itself.

*Cox v. Charles Wright Acad., Inc.*, 70 Wash.2d 173, 179-80, 422 P.2d 515 (1967); *see also State v. Ng*, 110 Wash.2d 32, 43, 750 P.2d 632 (1988) (“The individual or collective thought processes leading to a

verdict 'inhere in the verdict' and cannot be used to impeach a jury verdict." (quoting *State v. Crowell*, 92 Wash.2d 143, 146, 594 P.2d 905 (1979))). Considerations that "inhere" in the jury's verdict may not be considered by the court or the parties. *Ayers v. Johnson & Johnson Baby Prods. Co.*, 117 Wash.2d 747, 768-70, 818 P.2d 1337 (1991)

Next Munzanreder cites a 1965 case regarding the use of cameras in a courtroom. Obviously in 1965 the use of camera's in the courtroom setting was limited, *Estes v. Texas*, 381 U.S. 532, 545, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965). (Apps brief at 42) Now most courts record the proceedings on cameras and the use of cameras in court is now widespread and pervasive, one need only turn on a television and tune into one of the channels that runs a constant stream of live and record trials. Cameras in court are ubiquitous in this day and age.

There have even been challenges by defendants who claim that the courts improperly limited the use of camera's in the courtroom arguing after the fact that this was a violation of his right to a public trial, e.g., *State v. Russell*, 141 Wn.App. 733, 172 P.3d 361 (2007)

*State v. Russell*, 141 Wn.App. 733, 740, 172 P.3d 361 (2007);

Under GR 16, broadcasting, televising, recording, and taking photographs in the courtroom are permissible, subject to the trial court's permission and conditions, and provided the media personnel do not distract the participants or impair the dignity of the proceedings. GR 16; 13 Royce A. Ferguson,

Jr., *Washington Practice: Criminal Practice and Procedure with Forms* § 4307, at 234 (3d ed. 2004). Under GR 16(c), a trial court may limit courtroom photography if it makes particularized findings to support its decision. In making these findings, the trial court must presume open access, it shall hear from any party Before imposing limitations, and shall explain its reasons supporting limitations on photography and how they relate to the specific circumstances of the case. GR 16(c)(1)-(3).

He rests his argument on State v. Hillman, 42 Wash. 615, 617-19, 85 P. 63 (1906), which is valid law but it is to say the least dated. (Emphasis added.) This case has only been cited in 11 cases in the century since it was first published, it has only been cited a few times in the last forty years. At the time Hillman was tried the State would be willing to guess that there was only a handful of newspapers in the entire area and possibly in the northwest. And there most certainly was not the wall to wall coverage, literally, twenty-four hours a day, year round as there is now. Coverage that is now from literally hundreds of sources.

The sensibilities of jurors in 1906 is not comparable to that of a person picked to be on a jury today. In 1906, the jury pool consisted of white males, the State is fairly certain that Munzanreder is not suggesting that this court use that type of outdated standard in this case.

“The underlying goal of the jury selection process is ‘to discover bias in prospective jurors’ and ‘to remove prospective jurors who will not

be able to follow instructions on the law,’ and thus, to ensure an impartial jury, a fair trial, and the appearance of fairness.” State v. Saintcalle, 178 Wn.2d 34, 76, 309 P.3d 326 (2013) (Gonzalez, J. concurring) (quoting State v. Davis, 141 Wn.2d 798, 824-26, 10 P.3d 977 (2000)) (alteration in original). “One primary purpose of the voir dire process is to determine whether prospective jurors harbor ‘actual bias’ and are thus unqualified to serve in the case.” Saintcalle, 178 Wn.2d at 77-78 (Gonzalez, J. concurring). This aspect of voir dire is intended to determine whether a juror can “set aside personal beliefs, opinions, or values insofar as is necessary to follow the law and decide the case fairly;” “adjudicate disputed factual issues based solely on the evidence that is allowed and presented at trial;” and “be free from the undue influence of any special relationships or personal interests (even if such relationships or interests do not qualify as implied bias).” Id.

Appellant states that the length of the sentence is something that must be taken into account by this court when reviewing this case. First, the jury is very specifically instructed that they are not to consider the length of a sentence to be imposed in any trial, there is not possible basis for this to be included as a factor. Instruction 1; “You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may

follow conviction except insofar as it may tend to make you careful.” (CP 98, 168 WPIC 1.02)

Appellant states that because of the severity of the punishment, the standard range, is so severe that there is absolutely no room for any bias or prejudice on the jury. The State does not intend in any manner or fashion to make light of the severity of the sentence. However, the sentence here was 20-26 years with an added 5 years for the weapons enhancement. Many if not most people would think that a person serving “only” 280 months or slightly over 23 years plus the weapon enhancement is not that egregious of a sentence for shooting your wife in the head in broad daylight. (CP 142-3) And if “good time” formally known as “earned early release” is factored in the base sentence could be significantly shorter. RCW 9.94A.728 grants up to a 10% reduction based upon an offender’s actions while incarcerated.

While no doubt a lengthy sentence innumerable other offenses carry a same or longer sentence. To posit that a trial should be moved to some other county with the sentence length being a critical factor could potentially result in an enormous number of trials being moved to other counties.

**Alleged jury instruction conflict.**

This alleged error is of no consequence and it was not of import to

the jury. Clearly the jury did not address the elements instruction of the second degree lesser included instruction because they found the defendant guilty of first degree murder.

Sequentially the jury would have read the elements instruction for first degree murder then they would have read the elements instruction 13 found at CP 109, they would then read instruction 14 found at CP 14 which states;

The defendant is charged in Count 1 with the crime of First Degree Murder. If after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Second Degree Murder.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he shall be convicted only of the lowest degree.

(3) That Cynthia C. Kelley-Munzanreder died as a result of the defendant's **and/or** an accomplice's acts; and CP 110

...

(2) That Cynthia C. Kelley-Munzanreder died as a result of the defendant's **or** an accomplice's acts; and CP 113

It is a difference in the to convict instructions and the jury convicted on 1<sup>st</sup> degree. They would not even have looked at the second set of instructions. Even Appellant acknowledges that this is not an issue:

It is true that the jury was instructed to consider murder in the first degree first, and to move on to murder in the second degree only if

the jury could not agree or believed Mr. Munzanreder was not guilty of first-degree murder. CP 111. However, the jury might have been deadlocked on murder in the first degree and moved on to second degree murder only to find that the linguistic distinction in the second element prohibited them from finding Mr. Munzanreder and Mr. Ibanez's conduct together resulted in Mrs. Munzanreder's death. As a result, the jury might have returned to murder in the first degree and then had enough votes to convict Mr. Munzanreder of that crime.

Finally, even if the instruction were erroneous in any respect, Munzanreder affirmatively assented to the instruction at trial. " Under the doctrine of invited error, even where constitutional rights are involved, we are precluded from reviewing jury instructions when the defendant has proposed an instruction or agreed to its wording." State v. Winings, 126 Wn. App. 75, 89, 107 P. 3d 141 (2005); see also In re Det. of Gaff, 90 Wn. App. 834, 845, 954 P. 2d 943 (1998). Under these cases, Munzanreder invited any error in the challenged instruction and may not complain of it on appeal

THE COURT: ...Have you had chance to critique the state's proposed instructions?

MR. DOLD: I didn't see any difference between theirs and mine, and I thought mine were pretty damn good. **It would be like throwing a rock at a glass house to suggest that the state's needed fixing.** RP 2931 (Emphasis added.)

...

THE COURT: Any objections other than the lesser included? The record should reflect that you have objected or excepted to that, objected to that instruction, and over your objection it's been approved.

MR. DOLD: My reading of the state's instructions is they are all pattern WPIC instructions, that no

significant changes have been made. The state has included the necessary instructions that will allow each of us to argue our theory of the case. RP 2940

**Scriveners Errors – Judgment and Sentence.**

The State concedes that the date of conviction found in the Judgment and Sentence states an incorrect date. The jury returned its verdict on February 4, 2015 not February 2, 2015 as indicated on page one of the Judgment and Sentence found at CP 131.

Further, Appellant is correct that in section 2.2 of the Judgment and Sentence found at CP 131 the cited RCW is RCW 9.94A.510 which is actually Table 1 – Sentencing grid. What should have been cited was RCW 9.94A. 533(3).

This court should order that the trial court enter an order amending the original judgment and sentence. This court should order that this action be allowed without the necessity of returning the Defendant to Yakima County, there is no need for his presence to correct these scrivener's errors.

**Appellate Costs.**

State v. Sinclair, 192 Wn.App. 380, 385-86, 388-90, 367 P.3d 612 (quoting RAP 14.2), review denied 185 Wn.2d 1034 (2016) “The commissioner or clerk “will' award costs to the State if the State is the substantially prevailing party on review, 'unless the appellate court directs

otherwise in its decision terminating review. "... When a party raises the issue in its brief, we will exercise our discretion to decide if costs are appropriate.... We base our decision on factors the parties set forth in their briefs rather than remanding to the trial court."

Munzanreder was the manager of a division of a large automobile dealership. There is nothing presented in his brief that would indicate that when he is released from prison that he will not be able to find employment selling or repairing cars.

This case clearly is not Sinclair. This is an individual who was shown to be a person who will not be indigent in the future. This case is unlike Sinclair, there is a "realistic possibility" on the record before the court that Appellant will be able to pay costs in the future. *Id* at 393 Accordingly, this court should at this time decline to deny the State costs if the State is the prevailing party on appeal. RAP 14.2.

**Federal v. State standard of review.**

Appellant argues that the State Constitution should be the basis for review in this case. He cites cases such as State v. Smith, 150 Wn.2d 135, 75 P.3d 934 (2003) to support his argument that this court should use this "more broad" standard to review this case. The problem with citation to Smith is it states: "Although the Gunwall analysis indicates that the Washington Constitution generally offers broader protection of the jury

trial right than does the federal constitution, a historical analysis of Washington law at the time of the adoption of our state constitution indicates that juries did not then determine sentences. We therefore conclude that there is no constitutional requirement that defendants be given a jury trial on the fact of their prior convictions.” It is therefore factually distinguishable. City of Pasco v. Mace, 98 Wn.2d 87, 653 P.2d 618 (1982) involved a jury demand in a case where a jury was not available.

Appellant then goes through the “Gunwall analysis” (State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)) indicating that this court should adopt a new standard of review. That is completely unnecessary in this case. No new test or standard of review is needed. This allegation fails under any standard of review. The plain and simple fact is that there was a normal and reasoned media reaction to the “contract” murder of a man’s wife. A homicide that occurred in a town that is hardened to this type of crime because of the number and nature of homicides that occur each and every year in Yakima County. As stated before the record that has been supplied to this court of the alleged inflammatory media is actually surprisingly small and in this day of media hype rather tame.

The State firmly disagrees that there is a need for some new test of standard and there is no need for a “Gunwall” analysis, no matter what

standard is used, this allegation must fail.

#### IV. CONCLUSION

Munzanreder states that the process used to select the jury in this case was done in a hasty manner. That the process was not in-depth and not expansive enough to expose what he appears to claim is the fact that the people of Yakima County were incapable of rendering a verdict based on the facts that were presented and only those facts. He appears to argue for some unnamed method or process which would allow those who are trying the case to ferret out those people in the pool who are apparently incapable of sitting on a case due to their hidden and unknown biases. Biases which are not revealed by the method of jury selection used for years, decades a method that allows for interaction by all parties with the jury pool and in this case specific one on one interaction with each juror so that the parties had the ability to dig into each juror's beliefs so that a fair and impartial jury may be seated.

Based Munzanreder's brief the State is uncertain if a jury would ever be capable of being seated that fulfilled Munzanreder's criterion.

It is sad to say that in this day in age a homicide with a single victim would have to be extraordinarily gruesome or unusual, especially in light of the number and nature of homicides in Yakima county and the pervasive nature of the medial, regular and "social", for that homicide to

be so sensational and the press so inflammatory such that a person in today's society would find themselves overwhelmed by anything in the media.

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this 28<sup>th</sup> day of September 2016,

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# APPENDIX A

**JUROR 13**

MS. POWERS: Okay. Thank you. I appreciate it.

I also wanted to speak briefly with Mr. Bender, if I could.

JUROR NO. 13: Yes, ma'am.

MS. POWERS: Mr. Bender, I recall from your questionnaire that you served in the United States army; is

RP 1112

that correct?

JUROR NO. 13: Yes, ma'am.

MS. POWERS: That was for what period of time?

JUROR NO. 13: Back in the 70's, 1976 to 1980.

MS. POWERS: All right. During that period of time, did you have any training in the use or maintenance of firearms?

JUROR NO. 13: Oh, yes, ma'am.

MS. POWERS: And in terms of other experience, have you ever -- do you have any firearms that you may have shot if you're a hunter?

JUROR NO. 13: Yes, ma'am.

MS. POWERS: There may be evidence presented. In fact, there will be evidence presented about the use of a firearm in the commission of this crime. Will you be able to focus on this evidence, not to the exclusion of your own experience, but being guided by the evidence that you hear to reach a decision?

JUROR NO. 13: Yes, ma'am.

MS. POWERS: Thank you, sir. I appreciate that.

...

DOLD

Who else do we have? Juror No. 13, you sat on a jury.

JUROR NO. 13: Yes, sir.

MR. DOLD: What is the most important qualification to be a juror?

JUROR NO. 13: When we went in there to deliberate everybody had their own perspective of what went on.

MR. DOLD: Good.

JUROR NO. 13: It was all listened to when everybody discussed it, what the evidence was and not only what they thought they got from the evidence. We did have an issue. We wanted the judge to give us a dictionary because there was one person on there that didn't understand.

MR. DOLD: You wanted to hit them with the RP 1152 dictionary?

JUROR NO. 13: No. He wouldn't give us a dictionary.

MR. DOLD: Do you understand why that is?

JUROR NO. 13: No, I didn't.

MR. DOLD: Let me explain it to you. The judge will tell you, I suspect, that you have to base your decision on things that happen in the courtroom. If I give you a dictionary, you can look up anything, right?

JUROR NO. 13: Yes, sir.

MR. DOLD: At that point we've now started --we've introduced a whole new expert in the case that

Ms. Powers and I haven't had chance to talk to, to ask questions about. The jury is using information that didn't

come from the courtroom. Does that make sense?

JUROR NO. 13: That makes sense but that wasn't the case. The lawyer out there used the word force. That's what we wanted to know. The one lady didn't endorse what force was. All we wanted to do is look it up and let her read that and see if it makes more sense to you. That's all we wanted.

MR. DOLD: I'm not sure the judge necessarily understood that. The reason –

JUROR NO. 13: I thought that's what this whole thing is, discuss and talk with each other and get things

RP 1153

straight.

MR. DOLD: It's my job and Ms. Powers' job and Judge Eloffson's job to give you instructions that hopefully will resolve that. For example, you've heard the term domestic violence. Do you know what that means?

JUROR NO. 13: Yes, sir.

MR. DOLD: What is that?

JUROR NO. 13: Thumping on your wife. Thumping on somebody else in the family.

MR. DOLD: It's any crime committed against a household member, any crime. Does that make sense?

JUROR NO. 13: You're asking. Sure it makes sense to me.

MR. DOLD: If I give you that instruction, is that a problem?

JUROR NO. 13: No, sir.

MR. DOLD: If we give instructions to the jury in a way that makes sense, have we done our jobs?

JUROR NO. 13: Yes, sir.

MR. DOLD: Have you done your job with asking questions?

JUROR NO. 13: Sure.

MR. DOLD: You got a question to the judge.

JUROR NO. 13: Yes.

MR. DOLD: Would you do that in this case?

RP 1154

JUROR NO. 13: Yes, we would.

MR. DOLD: Thank you.

RP 1155

**JUROR 19**

THE COURT: Good afternoon.

JUROR NO. 19: Good afternoon.

THE COURT: You are No. 19. I was looking at some of your responses. I guess in particular you had spent some time reading about this case either in the newspaper or watching it on TV or the radio.

JUROR NO. 19: Internet. Well, I look at all of them.

THE COURT: Do you?

JUROR NO. 19: When you're retired you have more time to do that.

THE COURT: You also tell us -- you don't answer the question whether you believe or disbelieve the news media. How do you stand on that?

JUROR NO. 19: I don't think -- it's not balanced most of the time. I get a real strong feeling the media is not balanced. If you went by just what the media is saying, that would really swing you one way or the other. That's for sure.

RP 801

THE COURT: Question 36, it said, describe in detail what you have heard read or commented about the case, that a couple go to a movie, wife shot, killed outside theatre by a known assailant. Latest news, one person tried and found guilty, will testify in this case against accused. Are those the bigger points that you recall? Is that why you put that down?

JUROR NO. 19: Well, I was trying to put snippets down as I read about it. I haven't read anything recently so much, as I read about it originally.

THE COURT: Can you tell me when was the last time you heard about anything either on the TV, radio or read it in the newspaper?

JUROR NO. 19: I believe it was just last week or two they had another note about it in the newspaper.

THE COURT: In the newspaper. You said that, in answer to question 39, you have formed opinions about this case.

JUROR NO. 19: From what I already known I had formed an opinion, yes.

THE COURT: What is that opinion? Again, keep in mind you haven't heard any evidence about anything.

JUROR NO. 19: No, I haven't been part of the case, just from what I've read.

THE COURT: What is that opinion?

RP 802

JUROR NO. 19: I thought he was guilty.

THE COURT: From what you have read?

JUROR NO. 19: Just based on the news media.

THE COURT: Just based on the news media?

JUROR NO. 19: Just based on the articles I've read, yeah.

THE COURT: Certainly when you read something in the newspaper you form thoughts?

JUROR NO. 19: Correct.

THE COURT: Those are perhaps different in my mind than opinions. The question is ultimately can you set aside the things you have heard? Can you set aside the feelings that you have generated and listen to the facts and the evidence that are presented in this case?

JUROR NO. 19: I think I'm open minded. I have worked in science all my life. I deal with facts. I don't like grey areas. I like black and white pretty much. Grey areas bother me in my work. You have to be accurate and do things correctly. If I hear evidence, I would look at it, you know.

THE COURT: Can you help me understand. I want to be able to get around when you say you formed an opinion. How does that square with your statement that you would listen to the evidence that's presented in court?

JUROR NO. 19: It's not like it's set in stone.

RP 803

But from the evidence I've heard so far, that's how I felt, how I felt about the case just from what I've heard so far. That doesn't mean have my mind changed. At this point that's where I was.

THE COURT: Do we have to change your mind about

something or will you be an open mind?

JUROR NO. 19: I don't feel I -- I think you can change my mind.

THE COURT: Do we have to change your mind or is it an open mind? Which do you have?

JUROR NO. 19: Change my mind or open minded. I feel I'm an open minded person, but you would have to change my mind.

THE COURT: You have formed some conclusive ideas or thoughts about this case; is that correct?

JUROR NO. 19: I would have to say yes. I'm trying to be truthful.

THE COURT: I understand. People have heard about this. You understand Mr. Munzanreder enjoys the presumption of innocence. He's presumed innocent. That's our system. Are you saying that you can't start with that presumption?

JUROR NO. 19: I could.

THE COURT: You could. And do you?

JUROR NO. 19: If I was on the other side, I would hope people that are sitting here would feel that way, that  
RP 804

they have an open mind.

THE COURT: If you were to switch seats, would you want a juror like yourself?

JUROR NO. 19: I would hope so. I mean, I'm not -- I don't close my mind off to facts.

THE COURT: Ms. Powers.

MS. POWERS: Thank you, your Honor.  
Good afternoon, sir.

JUROR NO. 19: Good afternoon.

MS. POWERS: Do you think that you're in a position, if you were seated over here on the jury, if you were selected to serve, could you focus on the evidence that's presented in this trial and make up your mind just based upon this evidence?

JUROR NO. 19: Yes.

MS. POWERS: What was that?

JUROR NO. 19: Yes, I could do that.

MS. POWERS: Okay. I just want to briefly touch on the questionnaire. On the questionnaire you indicated that you heard certain things through the media and that you formed an opinion.

JUROR NO. 19: Yes.

MS. POWERS: Is it possible for you, in order to do the work of a juror, to put that opinion or impression aside and afford to the defendant his presumption of RP 805 innocence and base your decision just on the evidence presented here?

JUROR NO. 19: I would have to.

MS. POWERS: All right.

JUROR NO. 19: Could I? I would certainly try, yes.

MS. POWERS: Just to take it one step further, can you make that kind of commitment? Is that what you want to do?

JUROR NO. 19: I could make that commitment.

MS. POWERS: All right. Thank you very much.

THE COURT: Mr. Dold.

MR. DOLD: Mr. Nelson, you tell us you're a man of

science. What does that mean?

JUROR NO. 19: I worked in that for 40 years.

MR. DOLD: What does that mean?

JUROR NO. 19: When you work in a pharmacy where there is life and death, you have to be accurate 100 percent. I deal with facts. I can't deal with grey areas. I don't deal with something out here. I have to see it, touch it, know what I'm doing.

MR. DOLD: I come in with a prescription and you're supposed to deliver one month of a controlled substance. I have a prescription for it. You start counting out the pills and somebody calls you and says what RP 806

about that Smith prescription? Where is it? Are you going to trust yourself to go back in and know that you've counted 18 when it might have been 19, might have been 20?

JUROR NO. 19: If I got interrupted in the process, I would probably start over again. That's how we do it with a controlled substance.

MR. DOLD: Let's go back to the word probably.

Why would you go back and start over at all?

JUROR NO. 19: Because I don't like to make mistakes.

MR. DOLD: Okay. Why did you only use the word probably then?

JUROR NO. 19: Good question.

MR. DOLD: That's the science part that I want to get to.

JUROR NO. 19: Yeah.

MR. DOLD: For example, you write that latest news, one person already tried and found guilty.

JUROR NO. 19: Yes.

MR. DOLD: That's a mistake. Nobody went to trial. Okay. So my concern is that if you had a belief that somebody had already gone to trial and you found out later that you were mistaken, how would you deal with that?

JUROR NO. 19: Well, I would have to figure out what really happened because from my understanding somebody  
RP 809

has already been found guilty of a crime in this case.

MR. DOLD: So let me ask you this: Do you think it's a juror's job to determine what happened or is it a juror's job to judge the evidence that the prosecutor presents to determine whether or not it meets the test of beyond a reasonable doubt?

JUROR NO. 19: Yeah, that's what I believe.

MR. DOLD: Which of the two?

JUROR NO. 19: It isn't our job -- I'm not going to be questioning anyone. I'm listening to what's coming to me.

MR. DOLD: Okay. So it's not your job to prove the case. It's your job to evaluate the evidence.

JUROR NO. 19: Mm-hmm.

MR. DOLD: In doing that, what steps could you take to see to it the stuff you read in the paper -- I think you told us that you don't necessarily believe that they're fair. You marked the box now. Do you believe the media presents both sides in a criminal case fairly? You marked no. What would you do to see to it, when this case starts up, you'll be in that scientific frame of mind?

JUROR NO. 19: Open minded.

MR. DOLD: Okay. Is there -- what you told us was if you had any doubt about the pill count you would have immediately gone back and recounted.

RP 810

JUROR NO. 19: Mm-hmm.

MR. DOLD: Is it possible that you could start with the proposition that you know absolutely nothing until it happens here in the courtroom? Could you put yourself in that frame of mind?

JUROR NO. 19: You keep saying that. I would try.

I would try. Like I say, it's --

MR. DOLD: Probably would try?

JUROR NO. 19: Probably would try. A man of science, I know. We're all this way, aren't we?

MR. DOLD: Is there any reason that you would think of that you would be willing to take shortcuts or do less than the very best you could to determine what the state had proved and whether or not that was beyond a reasonable doubt?

JUROR NO. 19: No, I wouldn't.

MR. DOLD: Is there any reason you can think of why you would vote to convict John Munzanreder of a crime if the state wasn't able to do that?

JUROR NO. 19: No, I wouldn't convict him of a crime if they couldn't convince me.

MR. DOLD: That's beyond a reasonable doubt?

JUROR NO. 19: Beyond a reasonable doubt.

MR. DOLD: No further questions.

THE COURT: Mr. Nelson, before you go, just to

RP 811

confirm again, the evidence will come in through the courtroom. You'll follow my instructions what evidence can be considered and not be considered. You'll only consider the evidence presented in the courtroom; is that correct?

JUROR NO. 19: That's the way I would think, yes.

THE COURT: That's what you will do?

JUROR NO. 19: Mm-hmm.

THE COURT: You will follow the instructions that are given to you?

JUROR NO. 19: (Nods head affirmatively.)

THE COURT: Thank you. You have nodded yes.

JUROR NO. 19: Yes, I did. I said yes. Am I done?

THE COURT: You are. Thank you. I told you it was a question and answer session. You just raised the bar, though.

(Juror No. 19 left the courtroom.)

THE COURT: Any motions?

MS. POWERS: Not from the state.

MR. DOLD: Not from the defense, your Honor.

Although I would be a lot happier with some firmer answers, I appreciate the fact he's never been a juror before.

THE COURT: I think his responses were intelligent, perceptive, candid. He stays.

RP 812

...

JUROR NO. 19: Yes.

MS. POWERS: I believe, sir, that you have a background in science specific to your many years of work as pharmacist; is that correct?

RP 1113

JUROR NO. 19: That's correct.

MS. POWERS: We anticipate the presentation of evidence regarding DNA, regarding blood spatter, regarding gunshot residue. Have you ever been involved in the study in any of these specific areas?

JUROR NO. 19: No, not really, no.

MS. POWERS: Would you be open to the presentation of evidence from forensic scientists, folks who will testify as to the work that they did?

JUROR NO. 19: Yes.

MS. POWERS: Do you think you would be able to listen to that with an open view notwithstanding any other areas that you may have studied?

JUROR NO. 19: Yes.

MS. POWERS: All right. I also wanted to ask you, since I already have you standing up and maybe won't come back a second time, regarding the nature of this crime, as I advised Ms. McCracken, No. 6, we anticipate the presentation of evidence of a very violent crime. Is there anything about this dimension of work that would give you any concern about your ability to focus on this evidence and, when appropriate, discuss it with your fellow jurors?

JUROR NO. 19: No.

MS. POWERS: Is that something, sir, we could all handle in stride in an effort to do the work that's

RP 1114

requested?

JUROR NO. 19: I believe so, yes.

MS. POWERS: Can you think of any reason, maybe something known only to you from any life experience, that you think would effect you in any way in your ability to be fair to the defendant and fair also to the State of Washington?

JUROR NO. 19: No.

MS. POWERS: Okay. Thank you.

...

MR. DOLD: Would it be respectful to insist that you agreed? Does it make sense what we're talking about? A person is presumed innocent.

Juror No. 19, science. Do you remember the null hypothesis going way back?

JUROR NO. 19: No.

MR. DOLD: Anybody know what the null hypothesis means? It's a basic principle of science. It's the reason science works. You can't prove something is true until you've disproved everything else in science.

**JUROR 23**

MS. POWERS: Okay. Thank you.

I'd like to go to No. 23, Ms. Walsh. Is it correct that you serve as a nurse?

JUROR NO. 23: Yes.

MS. POWERS: Which facility or hospital are you associated with at the present?

JUROR NO. 23: Yakima Valley Regional.

MS. POWERS: How long have you worked at Regional, Yakima Regional?

JUROR NO. 23: Ten years.

MS. POWERS: Is there any specific floor that you assist on?

JUROR NO. 23: I work in the clinics, family practice clinics.

MS. POWERS: If you were to hear the presentation of medical testimony, would you be in a position to listen to this testimony and to be guided by the information that RP 1115 you're provided?

JUROR NO. 23: Yes.

MS. POWERS: All right. Thank you.

RP 1116

...

MR. DOLD: Good. I'm old. I'm sorry. When I started out, that movie was made in Snohomish County. It's the second or third one that was made there. When that came out, they shot it with a movie camera, not a digital camera. We've worked with movies a long time.

Would you do me a favor, two things from you, and we'll go along. Pay attention. You can't use what she said.

She's got the easy spot. One thing you remember from the movie about trials that is important and one thing about yourself that would make you a good juror.

JUROR NO. 6: Listen.

MR. DOLD: Start with the movie, what the movie said.

JUROR NO. 6: I don't remember.

MR. DOLD: Oh.

JUROR NO. 6: I'm sorry. I don't. That was a long time ago.

JUROR NO. 23: Yeah, it was.

RP 1142

**JUROR 27**

JUROR NO. 27: Hi. Just a couple little things.

I'm a stay-at-home mom. All the transporting of the children falls on other people. My husband, his job, I don't know about four. Two weeks is fine.

The other thing, I started and math team for the elementary schools in the morning. It's three days a week.

I have subs and a fill-in for two weeks. Four weeks is difficult. It's not impossible. If you want my mind here, that might not be a guarantee.

THE COURT: Is that something -- it sounds like it's a potential problem but you're not sure that it is a problem.

JUROR NO. 27: Yeah.

THE COURT: Can you find out?

JUROR NO. 27: I can call my husband maybe and make sure that would be okay.

THE COURT: I don't want you to have any domestic issues here.

JUROR NO. 27: Not a problem.

THE COURT: He's going to be filling in for you, then?

JUROR NO. 27: Yeah. I have a couple other people

and parents and places for the school. The competition is like two months. It's not the end of the world, but it's going to be work.

RP 690

THE COURT: I'm going to leave you on for now.

Check with your husband. See what you can find out, and let me know.

RP 691

...

MS. POWERS: Are there other folks that are present that use firearms to go hunting or other recreational activities? If you could let me know, I would appreciate knowing that.

There are quite a few of you. I'm going to talk to a couple of you and not ask the rest of you to hold up your hands the whole time.

No. 27, tell us about your experience. You look like you enjoy the outdoors.

JUROR NO. 27: We do. Just a couple times a year we will take out like the .22 and the BB gun, just to shoot some cans. And then we just recently got a concealed weapons permit just for when we're taking in case of --mainly for protection.

MS. POWERS: Okay. I'll ask everybody the same question. We anticipate the presentation of evidence about the usage of a firearm in the commission of the allegation of this crime, first degree murder. Are you in a position to listen carefully to that evidence and to focus on the testimony of the forensic scientist in that regard?

JUROR NO. 27: Yes.

RP 1133

**JUROR 28**

MS. POWERS: All right. Thank you.

No. 28, Mr. Thomas.

JUROR NO. 28: Yes, ma'am.

MS. POWERS: I wanted to ask you, with regard to some of the evidence that is expected in this case, have you ever had any training specific to the use of firearms or do you enjoy hunting or anything of that nature?

JUROR NO. 28: I have been in the military the last 23 years, ma'am. Firearms, yes.

MS. POWERS: You have a fair amount of experience then.

JUROR NO. 28: I wouldn't say extensive, but I have had some training, yes, ma'am.

MS. POWERS: All right. We anticipate that there is going to be evidence presented regarding the use of a firearm in this case. Are you in a position -- we're not asking you to put aside your experience, but are you going to be able to listen carefully to the information that's provided and then make up your mind as the evidence unfolds?

JUROR NO. 28: Yes, ma'am.

MS. POWERS: Thank you very much.

RP 1116

...

MS. POWERS: Okay. Thank you.

I'm going to go back. One of the questions that I have asked you has been about firearms. I know from some of you

present that you have received training in firearms. No. 28 and, I believe, your No. 13, you've discussed that with us.

RP 1132

JUROR NO. 28: Yes, ma'am.

RP 1133

DOLD

...

MR. DOLD: You have been great.

Does somebody want to tell us why I say absolutely nothing? Juror No. 56, based on your experience, if the state doesn't prove their case, absolutely nothing happens.

Why do I say that?

JUROR NO. 56: Because they didn't prove their case.

MR. DOLD: What happens when they don't prove their case? Juror No. 28.

JUROR NO. 28: The charge would be dropped, I believe.

MR. DOLD: If the defendant is innocent when he goes in and the state doesn't prove their case, he's --JUROR NO. 28: Innocent going out.

MR. DOLD: Which means that before you can get a person from innocent anywhere else something has to happen and that is --

RP 1174

JUROR NO. 28: You have to prove beyond a reasonable doubt that the charges were indeed committed by the person on trial.

MR. DOLD: They have to produce enough evidence to

convince you personally.

JUROR NO. 28: Yes.

MR. DOLD: Does that make sense that what's on trial is the evidence?

Thank you. That was a great answer.

RP 1175

**JUROR 32**

MS. POWERS: Thank you very much.

Let's see. Ms. Garrison, I wanted to ask you regarding the nature of the crime. You probably have the question

RP 1116

memorized by now because I have asked it before. There is a reason for that. Is there anything about this case -- you don't know a lot about it. You know the charge is first degree murder, domestic violence, and that it's alleged the victim, the deceased, was the wife of the defendant. Is there anything about the nature of this crime in and of itself that you feel would make it unduly uncomfortable to be seated over here as a juror and to do the work that's expected of you?

JUROR NO. 32: No.

MS. POWERS: Do you think that's something that you can handle in stride with your fellow jurors?

JUROR NO. 32: Yes, ma'am.

MS. POWERS: Thank you very much.

RP 1117

...

MS. POWERS: Okay. Thank you.

I would appreciate it if you could help me again with  
RP 1129

your hands. I may not get to you fast. I'll start here  
with No. 32.

JUROR NO. 32: I'm also a registered nurse.

MS. POWERS: All right. Are you affiliated with a  
medical institution?

JUROR NO. 32: No. I work for the Washington  
State Nurse's Association.

MS. POWERS: Okay.

JUROR NO. 32: I'm a union rep.

MS. POWERS: All right. I remember that from your  
questionnaire.

JUROR NO. 32: Yes. I'm not in hands-on nursing  
anymore.

MS. POWERS: All right. You've had that  
background and training. We anticipate the testimony of a  
forensic pathologist who's going to testify. Are you in a  
position to listen to and evaluate that testimony?

JUROR NO. 32: Yes, I am.

MS. POWERS: Great. Thank you.

RP 1129

### **JUROR 33**

MR. DOLD: Does that give you some idea why we've  
asked you questions about your background, your training,  
your experience and how you approach a case? Are we  
starting to take the mystery out of this? Are you getting  
more comfortable with what your job as a juror might be?

Juror No. 33, does it sound as terrible as when we were talking about gruesome photographs?

JUROR NO. 33: No.

MR. DOLD: That makes me feel better. I was concerned if you were worried about watching dozens of gruesome photographs you just wouldn't be able to do what we're asking you to do. Okay.

JUROR NO. 33: I'm not worried about it, no.

RP 1181

MR. DOLD: Thank you.

RP 1182

**JUROR 36**

JUROR NO. 36: I've been waiting over a month for a doctor's appointment next week on the 23rd. I don't know, if I reschedule it, if it's going to be another month.

THE COURT: If you could reschedule, would that –

JUROR NO. 36: I would, yeah, but I don't know if -- my wrist is healing incorrectly because it hasn't been looked at yet. That would be my only conflict.

THE COURT: I'll leave you on for now. Call your doctor and find out if that's an important appointment. If it is, can you get it rescheduled to later in the day.

JUROR NO. 36: All right. Thank you.

RP 670

...

THE COURT;...No. 36.

JUROR NO. 36: I just need to check with my

employer to see if there is a limit to how many days they pay for jury duty.

THE COURT: All right. Do that and will let us know.

JUROR NO. 36: Yes.

...

(Juror No. 36 entered the courtroom.)

THE COURT: Good afternoon.

JUROR NO. 36: Good afternoon.

THE COURT: You were going to check with your employer.

JUROR NO. 36: I did, and I'm covered.

THE COURT: You are?

RP 841

JUROR NO. 36: Yes.

THE COURT: So that is not an obstacle to your service?

JUROR NO. 36: No.

THE COURT: You said in your responses, No. 36, that you read the paper every day.

JUROR NO. 36: Yes.

THE COURT: Do you believe what you read?

JUROR NO. 36: Not all of it, no.

THE COURT: Okay. That would be a question. You have answered that. You have said bits and pieces of information in my brain from that, and I believe you're talking about the Herald.

JUROR NO. 36: Yes. You know how you hear stuff or you read. You retain some of it and some of it you

don't.

THE COURT: Is your source of information that allows you to have certain thoughts come from the newspaper or other sources?

JUROR NO. 36: What do you --THE COURT: Is it just the newspaper? Is that where you get your information?

JUROR NO. 36: Pertaining to --THE COURT: This case.

JUROR NO. 36: This case. What I see on the news.

RP 842

THE COURT: TV?

JUROR NO. 36: Eating dinner, watching the news, in and out of the room.

THE COURT: When was the last time you saw anything about this case?

JUROR NO. 36: This case? This morning I seen a headline that they were working on jury duty, and then I stopped reading it.

THE COURT: Good for you. You knew it to be true.

JUROR NO. 36: Yeah.

THE COURT: Your comments are fairly limited, shooting at a theatre parking lot. Again, you have not heard any evidence in this case.

JUROR NO. 36: No.

THE COURT: You understand that all the evidence will come from this witness chair right here to my left?

JUROR NO. 36: Right.

THE COURT: You will be -- you can't consider any or evidence except that.

JUROR NO. 36: Exactly. I know with the Yakima Herald they're always retracting stuff or saying they made a mistake. That's not really -- I mean, if you're going to be truth, truth, that's not --THE COURT: Can you put inside anything you might

have heard in the past about this case and consider only the RP 843

evidence presented in court?

JUROR NO. 36: Yes.

THE COURT: Will you follow my instruction that Mr. Munzanreder is presumed innocent?

JUROR NO. 36: Yes.

THE COURT: It's the duty of the state to prove beyond a reasonable doubt each element of the crime.

JUROR NO. 36: Yes.

THE COURT: Ms. Powers.

MS. POWERS: I have no questions. Thank you.

THE COURT: Mr. Dold.

MR. DOLD: You'll be able to continue to avoid looking at the newspaper and listening to the television and the radio?

JUROR NO. 36: If I'm on the jury, yes. That's not a problem.

MR. DOLD: You sat on a jury before, a civil case?

JUROR NO. 36: Maybe like 2006 or something. It's been a while. There were only six on the jury. I don't know what kind of case it was.

MR. DOLD: Nothing further. Thank you.

THE COURT: Thank you for coming in.

JUROR NO. 36: Oh, one more thing. I did find out that I have a medical appointment on February 10th at 10:30 in the morning. It's at Waters Edge Pain Clinic. I don't  
RP 844

know if they will -- I've tried to get them to contact me back and they haven't to get them to reschedule it. They only give us our medication up to our next appointment.

THE COURT: Were you on the phone this morning trying to get ahold of them out in the hallway?

JUROR NO. 36: Yeah.

THE COURT: I think I heard that. Can you try that again?

JUROR NO. 36: I'll keep trying them, yes.

THE COURT: It's possible if you were to move it to later in the day, that will work as well, like at 4:00, 4:30.

JUROR NO. 36: Yeah. I will talk to them. I'll call them as soon as I leave here.

THE COURT: We can probably accommodate that, if you can do it the end the day.

JUROR NO. 36: Okay. I will talk to them. All right. Thank you. All done?

THE COURT: You are done. You will come in tomorrow morning, but it will only be briefly.

JUROR NO. 36: Okay. Thank you.

(Juror No. 36 left the courtroom.)

RP 845

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MR. DOLD: Juror No. 36, the most important

qualification of a juror. You can't use anything anybody else said. Speak to them, not me. They need to now.

JUROR NO. 36: Wow, there's a lot of you. I would say the most important thing that a juror does or needs to do is to have that ability to use evidence in their decision making process and/or whatever is presented during court instead of thinking, you know, well, maybe this or maybe that and going by past experiences and things like that, to be able to look at just that part of it or your experience, just the evidence, just the testimony.

MR. DOLD: Okay. If you saw a juror straying away from that, what would be a polite way to steer them back?

JUROR NO. 36: I would probably say -- I guess we can take notes. I would say, I don't find that on my notes. Does anybody have a recollection of whether that happened?

MR. DOLD: It's a group process.

RP 1156

JUROR NO. 36: Right. I would ask for where that is in that scope of evidence or testimony.

RP 1157

### **JUROR 38**

MS. POWERS: Great. Thank you.

I want to go to some of the people that held their hands up so long for me. You can put them down. I won't ask you to keep doing it.

No. 38, what was your background in?

JUROR NO. 38: Well, I'm not a nurse but I'm in the medical profession, a radiation therapist.

RP 1129

MS. POWERS: You have certainly had medical training and education relevant to that work.

JUROR NO. 38: Absolutely.

MS. POWERS: Are you in a position to listen to the presentation of this evidence, the forensic pathologist that's going to testify, and evaluate that testimony?

JUROR NO. 38: Absolutely.

MS. POWERS: All right. Thank you.

RP 1130

**JUROR 51**

January 13, 2015

THE COURT: Good afternoon.

THE BAILIFF: I'll bring in No. 51 first.

THE COURT: Okay.

(Juror No. 51 entered the courtroom.)

THE COURT: Have a seat, please. Good afternoon.

JUROR NO. 51: Good afternoon.

THE COURT: I was looking at your questionnaire, and I was drawn to your comment at the end. It says, about anything being extraordinary hardship, you said just losing the opportunity to earn extra money at \$187 a day.

JUROR NO. 51: Yeah.

THE COURT: That got my attention.

JUROR NO. 51: Oh, good.

THE COURT: Well, obviously this is a four-week

trial. Can you tell me what -- it says here you're 75.

JUROR NO. 51: I'll be 76 Thursday.

THE COURT: Well, you're a vigorous 76, almost 76.

Are you working?

JUROR NO. 51: I substitute teach and referee basketball. That's why I asked to be first so I can get a game today. If not, I have to phone in and tell them to get another one. But that's just money. It's extra. It's not RP 780

-- I'm retired and I have two incomes.

THE COURT: Is it a financial hardship on you to serve?

JUROR NO. 51: No.

THE COURT: I appreciate your saying that and I appreciate what it means. That is a lot of money. It says you did have some background information or information provided to you through the news media about this case; is that right?

JUROR NO. 51: Just by what I read in the paper. I didn't even connect it until I saw the gentleman.

THE COURT: Okay. Now, you indicated, in answer to question 39, which said have you formed any opinions about this case, yes, that he was the responsible one.

JUROR NO. 51: From the paper, primarily the paper.

THE COURT: Do you understand that, number one, news media is not always right?

JUROR NO. 51: No. I think I say that.

THE COURT: Would you be able to set aside

anything you've heard about this case in the news media, set those issues aside and consider only the facts, the evidence that's produced in trial and base your decision only on the evidence that's presented?

JUROR NO. 51: Yes, I think I could.

RP 782

THE COURT: All right. It's important because there are sometimes -- I make the evidentiary decisions. That's my job. Will you accept my decision when I make decisions about evidence? Will you accept those decisions?

JUROR NO. 51: Yes.

THE COURT: And you won't try to guess what would have been or what might have been?

JUROR NO. 51: (Shakes head affirmatively.)

THE COURT: You put there I was in corrections quite a while with juvenile and adult and CPS, all the other stuff.

JUROR NO. 51: My approach, when I get somebody reporting to me, you know, they have been adjudicated. Now it's up to me to supervise and monitor them. I wasn't saying, you know, make a big deal about the fact that they got convicted.

THE COURT: So is there anything about your work as a probation officer that you think would have an impact on your ability to sit as a juror?

JUROR NO. 51: I don't think so.

THE COURT: Ms. Powers, do you have any questions?

MS. POWERS: No, your Honor.

THE COURT: Mr. Dold.

MR. DOLD: Yes, a couple.

Mr. Dabalos, your primary source of information about  
RP 782

criminal cases comes from TV, radio and newspaper?

JUROR NO. 51: Yes.

MR. DOLD: And you tell us that you generally  
believe what you read in the newspaper.

JUROR NO. 51: Yes.

MR. DOLD: Are you telling us what you know about  
Mr. Munzanreder's case you got from the newspaper?

JUROR NO. 51: That's all, yes.

MR. DOLD: Did it appear to you that the newspaper  
had made up its mind about what happened in this situation?

JUROR NO. 51: I don't know whether they make up  
their mind, but to me a lot of stories like this or events  
are glamorized or sensationalized in the media.

MR. DOLD: I suspect that on the one hand that  
sells soap or whatever it is they're selling. On the other  
hand, they're very good at persuading people, but that's  
what they do. So my concern is that when you say have you  
have formed any opinions about this case based on the above,  
you say, yes. You're asked in detail to describe the  
opinions that you've formed. You say, he was the  
responsible one.

JUROR NO. 51: That's what the paper was telling  
you.

MR. DOLD: Well, except what you're telling us is  
that was your opinion.

RP 783

JUROR NO. 51: Okay. Well, that's my opinion based on what the newspaper told me.

MR. DOLD: Okay. Do you think it's now up to Mr. Munzanreder to change your mind?

JUROR NO. 51: No. I think it would be up to the evidence to change my mind.

MR. DOLD: Okay. What you're saying is that the evidence needs now to convince you that he's not guilty?

JUROR NO. 51: Right.

MR. DOLD: One of the things the judge told you is that you have to give a defendant the presumption of innocence. In other words, you have to start from the exact opposite place. You have to start from a belief that a person is innocent unless they're proven guilty.

JUROR NO. 51: That's what I believe.

MR. DOLD: You're telling us that you've decided that my client is the responsible one. What steps would you take to see to it that you totally reverse that and follow the court's instructions?

THE COURT: I'm going to interrupt.

JUROR NO. 51: Just based on the evidence. I don't know -- I don't know all the facts. You know what I mean? I don't know all the facts. I read the paper. I didn't -- in fact, the first time I don't read it in detail.

I just kind of read the main headlines. I don't care for RP 784

all the details.

MR. DOLD: You wrote that Mr. Munzanreder shot his wife and a fellow employee pillows a firearm. You did get

some details.

JUROR NO. 51: That was the kernel of everything I got out of that.

MR. DOLD: Okay. As a corrections officer, you believed all of your clients were innocent or they were all guilty because they had been convicted before they came to see you?

JUROR NO. 51: Well, yes. They were sentenced as guilty from the court on probation. When they are coming from the institution, they already did their time there.

MR. DOLD: Am I correct that as a probation officer you probably heard people tell you that they weren't guilty, that they had been wrongly convicted?

JUROR NO. 51: Yes, some would.

MR. DOLD: You had to disregard that because you had to supervise them because they had been convicted?

JUROR NO. 51: Right. I would tell them, let's see what you can do to get this over with and resume normal life. I mean, you're not going to get anything from looking at the past but look to the future.

MR. DOLD: How would that experience help you follow the court's instruction during a trial in this case?

RP 785

JUROR NO. 51: I think I've always been very objective.

MR. DOLD: Okay. So if somebody came to you who actually was innocent, you would have disregarded that because you had to do a job?

JUROR NO. 51: If they were innocent? What?

MR. DOLD: If somebody came to you that actually was wrongfully --MS. POWERS: I would object to that.  
JUROR NO. 51: How would I know whether they were innocent?

THE COURT: Mr. Dold, he's been very clear. I'm not sure he can answer a question of that speculative nature as to what might or might not have happened.  
Let me ask. Can you be fair and unbiased in this case?

JUROR NO. 51: I believe I could.

THE COURT: All right. Thank you. That will conclude the questioning.

JUROR NO. 51: Okeydoke.

(Juror No. 51 left the courtroom.)

THE COURT: So not to focus the spotlight, if you want to motion to excuse, raise your hand. Otherwise I'm going to let him go. Mr. Dold.

MR. DOLD: My position with Mr. Dabalos is that  
RP 786

I'm not sure he understands -- I'm sorry. Let me check one other thing real quick.

The only case he sat on was 20 years ago in Sunnyside. Having worked as a corrections officer and presuming people are guilty regardless of what the facts might be doesn't bode well. He tells us that he has decided my client's guilt but that he doesn't have any details. Then he has given us the most significant or salient details from the case. I'm concerned that prejudgment would disqualify him as a juror in this case.

THE COURT: I'm going to deny the motion. I think he was very candid and very open. The questions are phrased both for good and bad in an open-ended way, I suspect, to generate some conversation. At the same time, it allows, I think, the author of the answers to misunderstand and answer questions that they think are proposed rather than what we're actually seeking.

I thought he was very candid about his concern for the system, that he would be fair, unbiassed. He would follow my rulings regarding the evidence. He would set aside what he heard in the newspaper and listen to the evidence that was presented in court.

I do not understand, if you're hearing him, his comment, the answer that he had made, that he had, in fact, prejudged anything. I did not understand that to be the  
RP 787

case. Motion denied.

MR. DOLD: Thank you.

RP 788

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MS. POWERS: Thank you very much.

I'd like to ask, No. 51, sir, I'd like to ask you a question that's going to seem a little different. How do you feel about problem solving just in your everyday life? By that, I mean, if there is a disagreement between family or friends or people that you might be working with, is it important to you to try to work this disagreement out? Some folks, you know, may not want to be involved in it. Would you explain your problem-solving approach for us.

JUROR NO. 51: Well, I worked in children's services with parents and teenagers.

MS. POWERS: Okay.

RP 1117

JUROR NO. 51: You work it out with them.

MS. POWERS: Okay.

JUROR NO. 51: That was part of it.

MS. POWERS: Okay. What kind of skill do we need to approach that kind of work to help people try to work out differences? What do you bring to it, sir?

JUROR NO. 51: I bring to being a good listener, one, and getting everyone to express their viewpoints and to listen to each other.

MS. POWERS: Okay. Listening, that's where it begins.

JUROR NO. 51: Yes.

MS. POWERS: Have you had a chance to serve on a jury yet?

JUROR NO. 51: For municipal.

MS. POWERS: For municipal. Did you have a chance to try out your problem-solving skills? We can't ask you to say what the verdict was. It's okay to ask you if a verdict was reached.

JUROR NO. 51: Well, there wasn't much deliberation because it was pretty clear-cut.

MS. POWERS: Okay.

JUROR NO. 51: I was the jury foreman or whatever.

MS. POWERS: Okay.

JUROR NO. 51: Just sit down and say did everybody

RP 1118

understand the evidence and any questions involving them, that way.

MS. POWERS: Okay.

JUROR NO. 51: That's about it.

MS. POWERS: What are your thoughts about applying that experience and the skill that you've described to the work of this jury? Given the little that I can share with you, what the charge is, what do you think about that?

JUROR NO. 51: It looks like a big job. So I think it's going to take a lot of thought.

MS. POWERS: All right. And careful listening.

JUROR NO. 51: Yes.

MS. POWERS: All right. Thank you very much, sir.

RP 1119

DOLD

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MR. DOLD: Thank you.

Juror No. 51, you told us briefly about your jury experience. What is the most important quality for a good juror?

JUROR NO. 51: They said a lot.

MR. DOLD: Talk to them.

JUROR NO. 51: Respecting other people's points.

MR. DOLD: Okay. Okay.

RP 1158

**JUROR 56**

THE COURT: All right. Thank you.

No. 56.

JUROR NO. 56: Kind of the same thing. I'd like to see how many days my employer covers. I know they do two weeks. I'm not sure after that.

THE COURT: We'll wait for that information.

...

MS. POWERS: What are your thoughts about applying that experience and the skill that you've described to the work of this jury? Given the little that I can share with you, what the charge is, what do you think about that?

JUROR NO. 51: It looks like a big job. So I think it's going to take a lot of thought.

MS. POWERS: All right. And careful listening.

JUROR NO. 51: Yes.

MS. POWERS: All right. Thank you very much, sir. I would also like to ask No. 56 that question about problem solving.

JUROR NO. 56: Pretty much the same thing, you know. You have to have an open mind and listen.

MS. POWERS: Okay. If you're involved in a situation where there is an argument either at work or among family or friends and people have very different points of view, what skill do you bring to that kind of situation? Is it important to you to help people work it out, if that's possible?

JUROR NO. 56: Yeah, like talk through it and stuff like that.

RP 1119

MS. POWERS: Okay. Let me give you the flip side

of the question. What if you were involved in an argument and there was an effort to try to get you maybe to change to somebody else's point of view? If you firmly believed in your position, what would your response be?

JUROR NO. 56: That's kind of hard.

MS. POWERS: Without knowing what it is it probably is.

JUROR NO. 56: Yeah.

MS. POWERS: If you had a strongly-held conviction, are you open to discussing it?

JUROR NO. 56: Yeah, I would be. You have to have an open mind. You have to hear both sides before you make some kind of decision.

MS. POWERS: Okay. Thank you very much.

RP 1120

DOLD

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MR. DOLD: Thank you.

Juror No. 51, you told us briefly about your jury experience. What is the most important quality for a good juror?

JUROR NO. 51: They said a lot.

MR. DOLD: Talk to them.

JUROR NO. 51: Respecting other people's points.

MR. DOLD: Okay. Okay. Juror No. 56, you knew we were going to get to you, right? You've got a smile.

JUROR NO. 56: Thank you. Everybody said pretty

RP 1158

much.

MR. DOLD: Oh, come on.

JUROR NO. 56: You've got to take a lot of notes.

MR. DOLD: Do you trust your notes or do you trust your recollection and everybody else's recollection?

JUROR NO. 56: All of the above.

MR. DOLD: I've taken a bunch of notes that I probably couldn't go back and read right now. It makes me feel good to write with a pen.

JUROR NO. 56: Follow the discretion of the judge when he gives the directions to you.

MR. DOLD: When is the last time you were in school?

JUROR NO. 56: Oh, man.

MR. DOLD: When I was in school the words open book and test were never used in the same sentence, never. That's changed. Have you ever taken an open-book test?

JUROR NO. 56: Yeah.

MR. DOLD: Do you have to study as much for an open-book test as for a closed-book test?

JUROR NO. 56: Yes.

MR. DOLD: You have to study as much for an open-book test?

JUROR NO. 56: I felt.

MR. DOLD: My grandkids, when they have an  
RP 1159

open-book test, they just kind of skim it. They know where to find out stuff rather than having to know it. There is a reason. It's because it's a learning exercise. It's not a test. Do you understand why we don't tell you what the

questions you have to answer are until you have heard all the evidence?

JUROR NO. 56: Yeah.

MR. DOLD: Why do we do that?

JUROR NO. 56: So you will be -- I guess I don't understand.

MR. DOLD: So that you won't start looking for answers -- JUROR NO. 56: I see.

MR. DOLD: -- until you know what the questions are.

JUROR NO. 56: Right.

MR. DOLD: One of the questions is did John kill Cindy, right?

JUROR NO. 56: Right.

MR. DOLD: That's one of the questions.

JUROR NO. 56: Right.

MR. DOLD: Goodness knows what it's going to take to get there.

JUROR NO. 56: Right.

RP 1160

MR. DOLD: When the judge gives you those questions at the end of case, we haven't given you those so that you pay attention to everything everyone says. Do you think you'll be able to do that 100 percent?

JUROR NO. 56: Yes.

MR. DOLD: Okay. And if Juror No. 54 remembers something different, would you be willing to accept the possibility that maybe she remembers it better than you did, the possibility, not totally agree with?

JUROR NO. 56: I guess so.

MR. DOLD: Is that the respect you're talking about?

JUROR NO. 56: Right.

MR. DOLD: Is that what your experience was like?

JUROR NO. 56: Yeah. It was a good experience, I guess. We didn't have anybody bullying nobody. Everything went real smooth.

MR. DOLD: Juror No. 6 would much rather have been there as would the lady in back. Yeah. Is that the sort of situation you would like to have here?

JUROR NO. 56: Yes.

MR. DOLD: Okay.

RP 1161

...

MR. DOLD: You have been great.

Does somebody want to tell us why I say absolutely nothing? Juror No. 56, based on your experience, if the state doesn't prove their case, absolutely nothing happens.

Why do I say that?

JUROR NO. 56: Because they didn't prove their case.

RP 1174

**JUROR 59**

THE BAILIFF: No. 59.

(Juror No. 59 entered the courtroom.)

THE COURT: Good morning. You're No. 59. You have indicated that you get compensated for three weeks; is that right.

JUROR NO. 59: That's correct. But my employer

just contacted me. They will go to four weeks.

THE COURT: Does that resolve that conflict?

JUROR NO. 59: That's resolved.

THE COURT: All right. It sounds like you've read something about this case in the paper; is that right?

JUROR NO. 59: Yes.

THE COURT: You said you've formed some opinions.

RP 769

You said this was a violent crime and justice needs to be served appropriately. All statements need to be heard for me to form a solid opinion of guilt or innocence; is that correct?

JUROR NO. 59: Right, yes.

THE COURT: Do you understand that it's my job to determine what evidence comes in?

JUROR NO. 59: Yes.

THE COURT: Can you live with that?

JUROR NO. 59: I can live with that.

THE COURT: Can you follow my instructions on the law?

JUROR NO. 59: Yes.

THE COURT: One of the instructions would be that you're not to guess as to why I exclude evidence or the basis for any evidentiary decisions I make. Can you do that?

JUROR NO. 59: I can do that.

THE COURT: Have you formed any particular opinions about this case?

JUROR NO. 59: Not solid opinions, just what I've read, and it's not set in stone. What I hear will make my

decisions.

THE COURT: You have read some things in the paper; is that right?

RP 770

JUROR NO. 59: Yes.

THE COURT: Have you watched anything on TV?

JUROR NO. 59: Oh, yeah. They've had a few things. I guess not as much on TV. Probably more in the paper.

THE COURT: Do you understand that none of that is evidence?

JUROR NO. 59: Right, right.

THE COURT: Can you disregard anything that you've heard in the media and listen only to the facts that are presented in this case?

JUROR NO. 59: I could.

THE COURT: Can you be fair and unbiased to both sides?

JUROR NO. 59: Yes, I could.

THE COURT: Any questions, Ms. Powers.

MS. POWERS: No, your Honor.

THE COURT: Mr. Dold.

MR. DOLD: Mr. Butler, if somebody were to ask you today would your vote be innocent or guilty, would you have an opinion as to what your vote would be right now?

JUROR NO. 59: Right this minute, I would say probably from what I've heard in the paper –

THE COURT: I'm going to stop you.

MR. DOLD: I'm going to ask yes or no. Would you

RP 771

be able to vote on the innocence or guilt right now?

MS. POWERS: I'm objecting to the question, your Honor.

THE COURT: I want to clarify that.

MR. DOLD: Thank you.

THE COURT: It's not an unfair question, but one of the instructions you have to keep in mind is you haven't heard any evidence.

JUROR NO. 59: Correct.

THE COURT: And that's important because your decision will be based only on the evidence that's presented in this courtroom.

JUROR NO. 59: Well, in that case, no, I couldn't.

MR. DOLD: That's what I was getting at. Thank you. You said that with a degree of conviction.

JUROR NO. 59: Right.

MR. DOLD: Good. Do you know a Doug Butler?

JUROR NO. 59: Yes.

MR. DOLD: What's his relation to you?

JUROR NO. 59: He's a cousin.

MR. DOLD: Have you spoken to him about this case at all?

JUROR NO. 59: No. I haven't even –

THE COURT: Finish your comment that you have.

JUROR NO. 59: In several years, probably 20 years

RP 772

or better.

MR. DOLD: You won't have any trouble avoiding him

during the trial?

JUROR NO. 59: No.

MR. DOLD: Nothing further. Thank you.

THE COURT: Thank you for coming in.

JUROR NO. 59: All right.

(Juror No. 59 left the courtroom.)

THE BAILIFF: Staying with us?

THE COURT: Yes.

RP 773

### **JUROR 87**

MS. POWERS: I wanted to ask the gentleman here on the end, No. 87, do you know about how long ago that was when you served on a jury?

JUROR NO. 87: I believe it was about eight years.

MS. POWERS: Okay. It was a ways back.

RP 1120

JUROR NO. 87: Yeah.

MS. POWERS: Was it a civil or criminal?

JUROR NO. 87: It was criminal.

MS. POWERS: It was criminal. We can't ask you what the verdict was. It's okay to ask you if there was one. Was there a verdict?

JUROR NO. 87: There was.

MS. POWERS: What did you think about the process?

By that I mean you're seated in a jury box such as this and you're focussed on the testimony and the evidence. Then finally after argument you have the chance to go back and talk about it. What did you think of that?

JUROR NO. 87: I actually enjoyed hearing different people's perspectives and how you can have a group of people in each one hear or see different things.

Collectively I felt like we came to a decision.

MS. POWERS: Did you feel like you had an opportunity to be able to state what your position was regarding the issues that were being developed.

JUROR NO. 87: Yes, ma'am, I do.

MS. POWERS: Okay. All right. What would be your thoughts, given the limited information that we can give you at this time, about serving on this jury given what the charge and the anticipated nature of the evidence is?

JUROR NO. 87: I think you really have to listen.

RP 1121

Your ability to process what information is being given to you needs to be commensurate to what the charge is.

MS. POWERS: All right. Thank you very much.

RP 1122

DOLD

...

MR. DOLD: I would expect the same response out of anybody. How is it that we can pick a group of people who are fair and impartial? It's an interesting question.

We've been doing this for years. It's my experience that if you understand what it is you're being asked to do, like at a job -- Juror No. 87, if I asked you to be a nurse, is that something that you could do tomorrow?

JUROR NO. 87: No, sir.

MR. DOLD: It would be unfair for me to ask you

that, right?

JUROR NO. 87: (Nods head affirmatively.)

MR. DOLD: You all saw the movie, right?

Everybody see the movie?

UNKNOWN VOICE: Twice.

MR. DOLD: Twice?

RP 1141

...

MR. DOLD: Anybody seen Twelve Angry Men?

Juror NO. 87, what's the basic premise?

JUROR NO. 87: That all of them except one thought he was guilty.

MR. DOLD: Okay.

JUROR NO. 87: Only one of them thought he was not guilty. By using deduction and reasoning, he slowly convinced the other 11 by one to his point of view.

MR. DOLD: Somebody had a ball game they wanted to get to, right? Remember? Wasn't there a baseball game?

JUROR NO. 87: Yeah.

MR. DOLD: Chicago Cubs, they never win anyway.

But each person had a different reason for feeling the way he or she felt. Do you think it's inappropriate that everybody have a different way of approaching things?

JUROR NO. 87: Everybody approaches things from their own perspective.

MR. DOLD: Exactly. Is it important? Were all 12 jurors able to agree at the end?

RP 1146

JUROR NO. 87: If I remember right, they did.

MR. DOLD: Is there anything that says that all 12 jurors have to agree?

JUROR NO. 87: No.

MR. DOLD: Okay. If he managed to convince three or if he didn't manage to convince anybody, the verdict would have been the same, right?

JUROR NO. 87: State that again. I want to make sure I process it.

MR. DOLD: If he hadn't convinced everybody, it wouldn't make any difference.

JUROR NO. 87: Yes, it would make a difference.

MR. DOLD: How so?

JUROR NO. 87: Because you put your point of view out.

MR. DOLD: Right.

JUROR NO. 87: That lady that was just here that left, she was not able to put her point of view out.

Therefore, if you can put your point of view out, it is up to them just like the prosecutor to convince me that the evidence they've got is beyond a reasonable doubt and that person is guilty.

MR. DOLD: And if he or she or the prosecutor doesn't do that -- JUROR NO. 87: It is my duty to come back with a RP 1147

not guilty plea.

MR. DOLD: There you are. You're in the room.

You've listened to all the evidence. The judge has instructed you on what the law is. We'll come back and talk about that in a moment. You start talking to people and you

realize you're not satisfied beyond a reasonable doubt.

That's what you just gave me, right?

JUROR NO. 87: (Nods head affirmatively.)

MR. DOLD: Do you think that you have a duty to defend that position?

JUROR NO. 87: Yes.

MR. DOLD: Is that your belief?

JUROR NO. 87: No. I have a duty to defend my position.

MR. DOLD: Okay. Do you understand the judge is simply going to ask you to deliberate?

JUROR NO. 87: Right.

MR. DOLD: To work with everybody else so that everybody else has the benefit of your thought and you have the benefit of their thought. Do you have to convince anybody else?

JUROR NO. 87: No, I don't.

MR. DOLD: Wouldn't it be a terrible system if we set up a system that required jurors to do violence to other jurors' personally held beliefs? Does that make sense?

RP 1148

JUROR NO. 87: Correct.

MR. DOLD: If you have a personally held belief one way or the other, we're going to expect the other jurors to respect that.

JUROR NO. 87: Correct.

MR. DOLD: Correct.

JUROR NO. 87: Correct.

MR. DOLD: If in the course of talking about it

you realize possibly that, A, you have made a mistake, B, you misunderstood something or, C, you didn't understand what the law was, do you think it would be reasonable to reinspect?

JUROR NO. 87: Sure, it would be.

MR. DOLD: Is it necessary that you change your mind.

JUROR NO. 87: If that point of view was gotten across to me and by reason and deduction they were right, yes, I would have a right to change my mind.

MR. DOLD: You would have a right. You wouldn't have to.

JUROR NO. 87: Correct.

MR. DOLD: Jurors have rights, do they not?

JUROR NO. 87: Correct.

MR. DOLD: They have the right to be treated fairly. They have the right to share their opinions with  
RP 1149

others. They have the right to listen to other peoples opinions, and they have the right to their individual vote. Does that sound fair? Does that sound like the system the rest of you could work with?

RP 1150

DECLARATION OF SERVICE

I, David B. Trefry, state that on September 28, 2016, I emailed a copy, by agreement of the parties, of the Respondent's Brief to: Ms. Marla Zink at [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org)

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

DATED this 28<sup>th</sup> day of September, 2016 at Spokane, Washington.

s/ David B. Trefry  
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