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King County Prosecutor
Appellate Unit

67142-1

NO. 67142-1-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RANDALL CONNOR,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Sharon Armstrong, Judge

BRIEF OF APPELLANT

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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A. ASSIGNMENT OF ERROR

The evidence was insufficient to prove beyond a reasonable doubt that appellant committed premeditated murder.

Issue Pertaining to Assignment of Error

Was the evidence insufficient to prove beyond a reasonable doubt that appellant committed premeditated murder when there was no evidence of planning, and the evidence instead indicated that if appellant did commit the murder, it was due to a spontaneous and uncontrollable act of rage?

B. STATEMENT OF THE CASE

1. Procedural History

The State charged appellant Randall Connor (Connor) with premeditated first degree murder. CP 1; RCW 9A.32.030(1)(a). The State alleged that sometime late Wednesday, March 7, 2007, or early Thursday, March 8, 2007, Connor deliberately stabbed to death his girlfriend, Merianne Lorentson, in her Kent apartment. CP 2-9.

A jury trial was held January 10, 2011 through April 14, 2011, before the Honorable Sharon Armstrong. 10RP-37RP.¹ Connor was convicted as charged and sentenced to 388 months in prison. CP 159-68; 37RP 11-13; 38RP 31-32. Connor appeals. CP 176.

2. Substantive Facts

At about 9 am on Friday, March 9, 2007,² staff at the Village Green Apartments in Kent found Lorentson dead in her unlocked apartment after her friend Stan Muller called asking that someone check on her because he had been unable to reach her for days. 16RP 43-46, 74-79, 101, 123-25. Lorentson was found clothed in a black "Baby Phat" t-shirt and blue pants, laying on the living room floor, a pillow over her face, and copious amounts of blood around her, on a nearby chair, and, to

¹ There are 38 volumes of verbatim report of proceedings referenced as follows; 1RP - 10/2/09; 2RP - 1/5/10; 3RP - 1/29/10; 4RP - 3/26/10; 5RP - 5/7/10; 6RP - 6/30/10; 7RP - 8/20/10; 8RP - 9/10/10; 9RP - 10/15/10; 10RP - 1/10/11 & 1/11/11; 11RP - 1/12/11; 12RP - 2/23/11; 13RP - 2/28/11; 14RP - 3/1/11; 15RP - 3/2/11; 16RP - 3/7/11; 17RP - 3/8/11; 18RP - 3/9/11; 19RP - 3/10/11; 20RP - 3/14/11; 21RP - 3/15/11; 22RP - 3/16/11 & 3/17/11; 23RP - 3/21/11; 24RP - 3/22/11; 25RP - 3/23/11; 25RP - 3/24/11; 27RP - 3/28/11; 28RP - 3/29/11; 29RP - 3/30/11; 30RP - 3/31/11; 31RP - 4/4/11; 32RP - 4/5/11; 33RP - 4/6/11; 34RP - 4/11/11; 35RP - 4/12/11; 36RP - 4/13/11; 37RP - 4/14/11; and 38RP - 5/11/11 (sentencing).

² Unless otherwise indicated, all reference to dates in "March" are for the year 2007.

a much lesser extent, in apartment's bathroom. 17RP 15-17, 23, 29-30, 47, 179; 18RP 82-83; Exs. 13, 15, 47 & 175.

An autopsy revealed blunt force trauma to Lorentson's face and head, and over 30 incised³ and stab wounds, mostly around her neck. 31RP 70-104; Ex. 175. Neither the order in which the wounds were inflicted, nor whether they were inflicted before or after death, could be established. 31RP 70, 114. There were, however, a notable lack of defensive wounds. 31RP 118. Her death was designated a "homicide" resulting from "multiple stab wounds." 31RP 118-19.

Muller was interviewed by police the afternoon the Lorentson's body was discovered. 19RP 51. One of the interviewing officer noted Muller cried when told Lorentson was dead, but never asked how she died. 19RP 53, 71.

According to Muller, on the afternoon of Wednesday, March 7th, Lorentson had arranged to meet him that evening at a skating rink near her apartment. 16RP 38-39, 42, 49. Muller claimed Lorentson never showed up, however, and his repeated attempts to call her that evening and the

³ The Medical Examiner described an "incised wound" as "more of a cut than a stab[,] and tends to be "longer than it is deep, whereas a stab wound is deeper than it is long." 31RP 83.

following two days failed, so he called the apartment manager and asked them to check on her. 16RP 43-44, 46, 50-51.

The first person physically detained by police was Lorentson's former lover and the father of her daughter (J.B., d.o.b. 8/7/01), Ronnie Bland. 21RP 16-17. Bland was apprehended at about 11:30 am on March 9th, as he and J.B. drove into the parking lot of the Village Green Apartments. 21RP 23-26. At the time, Bland's right arm was in a cast, which he initially claimed was the result of breaking his arm on Monday, March 5th, but later said was the result of punching a wall on Sunday, March 4th. 21RP 30-31, 66.

Bland said he and Lorentson ended their relationship as lovers six to eight months after J.B.'s birth. 21RP 17. Bland was thereafter required to pay \$282 a month in child support, an obligation he did not always fulfill and which led to arguments between he and Lorentson. 21RP 83, 85-86. And although Bland was entitled to regular overnight visits with J.B., Lorentson sometimes denied these, which also led to arguments. 21RP 49-50, 82-83, 85-86. Lorentson's death gave Bland full custody of J.B. and government assistance with the cost of her care. 21RP 18, 73-74.

Bland gave conflicting statements about his contact with Lorentson in the days immediately preceding discovery of her body. At trial he

claimed he last saw her Tuesday, March 6th, when he picked up J.B. from her apartment, and that J.B. remained in his care from then until he was apprehended March 9th. 21RP 50-53, 65-66, 72. Bland admitted saying previously, however, that Lorentson retrieved J.B. from him the morning of Wednesday, March 7th, and that he saw Lorentson again that evening after he picked up J.B. from her in Ballard. 21RP 57-62.

Similarly, Bland's recollection of his actions at the Village Green Apartments before Lorentson's body was found conflicted with those from others. For example, Bland denied speeding away from the Village Green Apartments on Thursday, March 8th, as apartment staff claimed he had. 16RP 133, 138; 21RP 54. Bland also claimed he could not recall he and J.B. standing together outside the apartment complex at any time during the week of Lorentson's death, despite claims to the contrary by police who saw him there looking "nervous" as they were responded to an unrelated call the morning of Thursday, March 8th. 21RP 54, 90-92; 22RP 159-60.

Bland denied killing Lorentson, claiming he had not been in Lorentson's apartment for months. 21RP73-74. Moreover, Bland denied any violent encounters after their relationship ended, including an incident Lorentson's older brother recalled at trial in which he claimed Bland

shoved Lorentson against a wall and put his hands around her neck, as if to strangle her, as they argued over visitation. 16RP 67; 21RP 67, 72.

Base on a tip from Muller, and a letter signed by "Randy" found in Lorentson's apartment, police focused their investigation on Connor, ultimately securing and executing a search warrant at Connor's mother's home early the morning of Saturday, March 10th. 16RP 55-56; 17RP 109-10, 115; 19REP 53, 72; 26RP 16-17. Police interviewed several people at the home that morning, including Connor's sister - Mary Connor (Mary), Connor's uncle - Laurence Rex (Rex), Connor's aunt - Kim Cason, and Connor's brother Robert's girlfriend - Kimberly Swanstrom. 19RP 75; 20RP 51, 53; 26RP 62, 65; 32RP 71; 33RP 126.

According to Mary, Connor called her from Lorentson's apartment Wednesday afternoon, March 7th, claiming Lorentson wanted to break up with him and move to California, and he wanted to know what had been said to her by others that might have caused this. 20RP 53-56, 69. Mary recalled Connor showing up at their mother's house sometime later that day. 20RP 72. She thought he arrived after their mother had returned from playing bingo, which typically does not end until 9:30 or 10 pm.⁴

⁴ A representative of the facility where Connor's mother routinely played bingo noted that players are not required to remain at the facility for the full session. 27RP 17.

20RP 58; 27RP 14. But Mary also testified Connor was at the home by 9 pm that night, and did not leave until the next day. 20RP 72, 78.

Mary recalled Connor had no injuries or blood on him when he arrived. 20RP 74. She said he took a shower, and then they played cards before going to bed. 20RP 59. Mary agreed that Connor made a comment to her and their mother that evening that if anyone asked, they should say he was there by 9 pm. 20RP 59-60.

The following day, Connor accompanied Mary and their mother to the dentist where Mary had four teeth pulled. 20RP 60, 70. Mary recalled that after the appointment Connor said he might be going to jail soon. When Mary offered that a year for a parole violation was no big deal, Connor allegedly replied, "no, I'm ready to do more. I got to do at least a year[.]" 20RP 60-63. Mary agreed, however, that she was on "a lot" of Vicodin at the time because she was "in a lot of pain" after the dentist appointment. 20RP 60-61.

Mary also recalled Connor usually carried a small folding knife, but that he did not have it with him when they went to the dentist. When she asked where it was, Connor allegedly told her he lost it, which made

sense to Mary because he "always losses stuff. He was . . . always losing his cigarettes, he was always losing everything." 20RP 64-66.

Connor's Uncle Rex, a former methamphetamine addict turned police informant,⁵ was interviewed several times about his recollection of events at Connor's mother's house on March 7th and 8th, including interviews on March 10th, October 2007 while incarcerated in Missouri, and March 24, 2011. 26RP 65-66, 128-29, 131-32, 145 32RP 29. At trial, Rex claimed he lied and was intentionally evasive during the first interview because of his extensive criminal history, and noted the effects of excessive alcohol and marijuana used at the time hampered his ability to recall things accurately.⁶ 26RP 75-76, 110, 117, 130, 145. Rex told police at the time that he had last seen Connor on Thursday, March 8th, after playing bingo and that Connor showed up at about 10:45 or 11 pm. 26RP 110. Rex told police Connor said Lorentson had dropped him off. 26RP 112. Rex also told police that after he arrived, Connor smoked a cigarette and had a cup of coffee, then took a bath, smoked a couple more

⁵ After being released from parole in Missouri, Rex began working for the "Northwest Missouri Drug TASC Force" as a paid undercover drug buyer for Missouri law enforcement agencies. 26RP 76-77, 132.

⁶ Rex's sister, Kim Cason, claimed Rex was also a crack cocaine user at the time, although Rex denied this at trial. 26RP 131; 32RP 76.

cigarettes, and then went to bed. 26RP 117-18. Rex agreed at trial that during his first interview he never said Connor showed up with a bag of bloody clothes or that Rex started a fire to burn them. 26RP 75, 118.

Similarly, although Rex claimed at trial he could not recall much about his second interview, he did agree he did not tell police about burning bloody clothes. 26RP 75, 132-43. Rex also agreed he was intentionally evasive and failed to be truthful during the second interview. 26RP 145. The officer who interviewed Rex in Missouri, Detective Steven Kelly, recalled Rex claiming Connor was dropped off at his mother's home at about 9 or 9:30 pm on Wednesday, March 7th, that he seemed calm, and went about his usual routine of laundering some clothes. 31RP 30-31. Kelly recalled Rex also specifically denied knowing anything about Connor burning clothes, although Rex said he had heard rumors to that effect. 31RP 35-36.

At some point before trial, Rex revised his story about what occurred the evening of March 7th, claiming the change was prompted by his release from parole, getting a job and abstaining from alcohol. 26RP 76-77, 145. At trial Rex claimed Connor arrived at the home after

everyone had returned from playing bingo, wearing his brother Rico's⁷ clothes, carrying a bag filled with stained dark clothes, and immediately directed Rex to start a "good hot fire and don't ask any questions." 26RP 67, 69-70. Rex claimed once the fire was going Connor burned all the clothes in the bag before taking a shower. 26RP 70-71.

According to Connor's aunt, Kim Cason, she last saw Connor at his mother's house the night his mother and her husband went to play bingo. 32RP 72. Cason admitted that at the time she routinely used alcohol, marijuana and crack cocaine on a daily basis. 32RP 75. Cason claimed to recall coming out of her room to find Connor sitting in a recliner in the living room and her brother Rex sitting in front of the fireplace "burning some wood or something." 32RP 73-74. It was her recollection that this was before Connor's mother had returned from bingo. 32RP 78.

Cason claimed that after Connor's arrest, Rex told her he had burned Connor's bloody clothes, but she did not believe him because of his propensity to lie. 32RP 82-83, 86-87. Cason also agreed with the

⁷ The spelling of Rico Connor's first name is inconsistent throughout the verbatim report of proceedings, e.g., the spelling "Recco" is used for Rex's testimony. 26RP 69. For brevity and consistency, the spelling "Rico" is used in this brief.

prosecutor at trial, however, that whatever Rex was burning had an unusual odor. 32RP 85-86.

According to Connor's brother Robert's girlfriend, Kim Swanstrom, Connor showed up at his mother's house between 7 and 7:30 pm on Wednesday, March 7th, and they spent the rest of the evening together playing card. 33RP 127. Swanstrom recalled there was a fire going, but nothing about Connor wanting one started. 33RP 124. Swanstrom did recall Connor trying without success to get Rico to pick him up. 33RP 130, 135.

Several other friends, associates and family members of Lorentson and Connor were interviewed by police with regard to Lorentson's death, including Reginald Smith (a friend of Lorentson's) and several of Smith's family members, Sarah Pitera (Rico Connor's girlfriend), and Keaira Connor (Connor's niece). 22RP 65, 106; 25RP 29, 37; 33RP 91.

Police interviewed Smith on March 22nd. 22RP 65. According to the interviewing officer, Smith showed no change of emotion when told Lorentson was dead. 30RP 144.

Smith testified that he and Lorentson met in 2002 or 2003, but did not develop a close relationship until after they reconnected in early 2007,

when they began talking several times a day. 22RP 48-49, 52. Smith recalled that on March 4th or 5th, Lorentson agreed to give him a ride from his work in Seattle to his home in Federal Way, where he lived with his sister, Constance Smith (Constance), and her two young sons, D.F. and S.F. 22RP 46, 53-54.

Smith claimed the following day or the next (March 4th, 5th or 6th), was the only time he was ever in Lorentson's apartment, and that he spent the night with Lorentson (J.B. was not there). 22RP 54-55, 57, 71. Smith recalled they slept with pillows and blankets on the living room floor because Lorentson did not want him to see her dirty bedroom. 22RP 56. Smith claimed he "orally pleased" Lorentson, but that was the extent of their "sexual activity" that night. 22RP 55. In the morning Lorentson gave Smith a ride to work. 22RP 55-56.

Smith said the last time he saw Lorentson was at his house on March 7th, from late afternoon until about 9 or 10 pm. 22RP 59-60. Smith recalled Lorentson was wearing a black "Baby Phat" t-shirt and pants with a white jacket. 22RP 62, 88-89.

Smith said that although Lorentson declined his offer to perform oral sex on her that evening, saying "she wasn't clean down there", they did engage in vaginal intercourse without a condom and that he ejaculated

but he was not sure if he "pulled out" beforehand. 22RP 60-62, 87; 35RP 6. Smith later claimed to recall pulling out and ejaculating on Lorentson's stomach or leg, but admitted some of his semen may have been left in her vagina. 35RP 7-9. Lorentson put back on the clothes she had come in after they had sex. 22RP 88.

Smith testified it was his understanding that when Lorentson left, she was going to get cleaned up and then meet friends to go skating. 22RP 58, 90. Smith also testified Lorentson left her white jacket behind and that they subsequently discussed by phone her returning after skating to pick it up. 22RP 63, 89. Smith thought that was the last time he ever spoke to her, despite his repeated efforts to contact her by phone thereafter. 22RP 63-64.

Smith's sister, Constance, was away playing bingo when Smith had Lorentson over, but got home at about 10:15 or 10:30 pm that night. 22RP 98, 102. Constance noticed a girl's jacket at the house and reminded Smith he was not allowed to have girls over. 22RP 99. Constance claimed at trial she could recall hearing Smith in his room up until she went to bed at about 11 pm. 22RP 99.

Smith's nephew, D.F., recalled his uncle having a woman over when his mom was away playing bingo. 22RP 108. D.F. was 12 years

old at the time. 22RP 107. D.F. recalled Lorentson wearing a "white blouse with sparkles on it" rather than the black "Baby Phat" t-shirt Smith said she wore. 22RP 109.

Connor's brother Rico's girlfriend, Sarah Pitera, testified she picked Connor up from his mother's early in the evening on Thursday, March 8th, and drove him to her place of business on Lake City Way. 25RP 21, 26. Pitera claimed that on the way Connor told her Lorentson "was going white water rafting in California" and that he had discovered she was cheating on him with "a light-skinned man." 25RP 22. Pitera claimed Connor said "[h]e wasn't fucking with her anymore[,] and that "sometimes he felt like stabbing her." 25RP 22, 29. Pitera admitted, however, that she never revealed this alleged conversation to police until early in 2011, some four years after it allegedly occurred. 25RP 29.

Pitera said she told Connor that Lorentson was dead and that police came to his mother's house looking for him. 25RP 32. Connor apparently expressed concern that police were going to shoot him. 25RP 33.

Pitera claimed that during a jail call with Connor after his arrest, she asked him how he got to his mother's house on March 7th, and Connor allegedly gave her three different answers: (1) "Rachel"; (2) "a basketballer"; and (3) "Mack". 22RP 24-25, 34-36. No conforming

recordings were presented at trial, however, and Pitera admitted she told police in July 2007 that she may have heard about Connor's alleged inconsistent claims from others, noting there was a lot of gossip in the family about what had occurred. 25RP 37.

According to Pitera, the last time she saw Lorentson was Tuesday, March 6th, in downtown Seattle. 25RP 48-50. Pitera recalled being in her car with Connor when Lorentson called Connor on his cell phone and told him she was behind them and to pull over, so they did. 25RP 48. Pitera said Lorentson and Connor kissed and when Lorentson started groping Connor he told her to stop and said he would talk to her later. Pitera and Connor then drove away. 25RP 48-49.

In March 2007, Connor's niece, Keaira Connor (Keaira), was living with her newborn child at Rico's and Pitera's home. 33RP 90, 92. Connor would often spend the night as well. 25RP 46. Keaira recalled a night in early March 2007, when Connor was repeatedly calling Rico from somewhere asking for a ride, but Rico never left to pick him up. 33RP 101, 106.

Connor was first contacted by police about Lorentson's death on Monday, March 12th. 22RP 169. Connor participated in an unrecorded interview in the back of a patrol car for 30 to 45 minutes before providing

a video taped statement. 22RP 170-71, 184-85. The officers involved in the preliminary interview recalled Connor saying he had last seen Lorentson at around 9 or 10 pm on March 7th in downtown Seattle. 22RP 174; 205. Connor recalled Lorentson planned to leave for Oregon to go white water rafting, and then to a funeral in California. 22RP 175, 182, 188-89, 206.

The officers thought Connor told them the last time he spoke to Lorentson was by phone at about 9 or 10 am on March 8th, and that the last time they had sex was on a Tuesday or Wednesday "about a week ago" at Lorentson's apartment. 22RP 176-77, 206. Connor told them he helped Lorentson clean her apartment afterwards. 22RP 180, 207.

When asked, Connor said he had last carried a "gray and black Smith and Wesson buck type knife" about three weeks before. 22RP 181-82, 208. Connor said he tried to contact Lorentson by phone 15 to 20 times after they last spoke on March 8th. 22RP 184. Connor also told police "he had heard there was a shoot to kill warrant for his arrest" and that he was ultimately arrested "on Madison in Seattle." 22RP 192.

When told that Lorentson was dead, Connor denied killing her, and asked, "why would I do something to Merianne, that's my girl?" 22RP 188. When specifically asked if he had killed her, Connor replied, "didn't

have shit to do with it. I would be gone[.]" 22RP 189. Connor also told police that if he knew who it was, he would kill the person who killed Lorentson. 22RP 218.

When asked if he would appear on Village Green apartments surveillance video, Connor replied they might see him "moving tables and taking out trash" but nothing of him after Wednesday. 22RP 194-95. There was no video surveillance system at the Village Green Apartments at the time of Lorentson's death, but police asked him about it just to see how he would react. 22RP 218.

The jury was twice provided the opportunity to view a redacted version of Connor's subsequent recorded interview with police, Exhibit 106; once at trial, and once during deliberations. 22RP 216; 37RP 9. The jury was provided a transcript of the interview both times in order to follow along. Ex. 107; 22RP 216, 37RP 8-9.

In his recorded interview, Connor explained he met Lorentson at a Christmas party in 2005, and they quickly became friends. Ex. 107 at 5. When asked, he said he thought they would last find him on any surveillance video at the Village Green Apartments going to Lorentson's apartment on Tuesday, March 6th or Wednesday, March 7th. Ex. 107 at 7. Connor said they "kicked it", "fed [J.B.]", "[h]ad sex" in the bedroom and

"then we took [J.B.] to school." Ex. 107 at 10. Connor said that was the last time they had sex. Ex. 107 at 12.

Connor also said he thought Lorentson was about a month and a half pregnant with his baby. Ex. 107 at 12. Connor admitted, however, that both Lorentson and the doctor told him she had had a miscarriage. Id.

Connor admitted to the officers that he liked knives and weapons in general, but that he had not carried a knife since "[a] few weeks ago." Ex. 107 at 19, 34. He repeated that it had been a "Smith & Wesson buck knife", but he lost it. Ex. 107 at 19-20.

Connor denied having anything to do with Lorentson's death. Ex. 107 at 33. Connor specifically denied stabbing Lorentson. Ex. 107 at 40.

Several jail inmates testified at Connor's trial. Ericson-Gerard Gonzalez shared a portion of the King County Jail with Connor for a few months beginning August 19, 2010. 30RP 45, 71-72. Gonzalez was jailed on charges of first degree child molestation, but took care to ensure other inmate did not find out, fearing they would treat him badly if they did. 30RP 45-46. Gonzalez explained he had been facing a minimum sentence of ten years if found guilty of the charged offense, but managed to plead down to a misdemeanor, which had him free by the time of Connor's trial,

but denied receiving the deal in return for his testimony. 30RP 49-50, 67-69, 97.

Gonzalez said he and Connor became friends after Connor comforted him after he lost his father to cancer. 30RP 51. They began sharing food and items from the commissary. 30RP 52-53. At first, Connor only told Gonzalez "I'm here with stabbing someone, murder, stabbing." 30RP 54. Gonzalez claimed Connor subsequently told him, "I stabbed my ex-girlfriend, aspiring model, half Venezuelan, half Asian and, you know." 30RP 55. Gonzalez also claimed Connor told him his motive was jealousy over her having sex with another man and fear she might turn him in to law enforcement agencies, and that it happened after they had a big argument in her Kent apartment. 30RP 56. When pushed to elaborate, Gonzalez claimed Connor told him he was high on drugs at the time, "lost his emotion and he just started stabbing her." 30RP 58. When questioned further, Gonzalez offered that Connor said he considered dragging the girl into the bathroom and decapitating her, "[b]ut since he was so high that day on drugs and he got lost composure and just took off" and went to a relative's house and got cleaned up. 30RP 59-60.

Gonzalez denied having his wife research Connor's case for him. 30RP 94. Gonzalez admitted, however, viewing news coverage about

Connor's alleged crime on KIRO TV while they were in jail together, but claimed that was not where he learned the details about the killing. 30RP 62-66. The broadcasts he saw, however, do mention Connor is accused of killing an "aspiring" model by "stabbed [her] more than 30 times" "in her Kent apartment[,] " that they had a "relationship," and that "he was angry because she was dating other men." Exs. 170 & 171.

Gonzalez initially claimed he was the only one to whom Connor confessed. 30RP 82-83, 87, 102. Gonzalez also claimed he told no other inmates about what Connor told him. 30RP 93. He admitted, that during a recent interview, however, he had claimed Connor threatened to stab several inmates just like he stabbed his girlfriend if they "mess up". 30RP 90. Gonzalez also admitted saying at the interview that Connor told "Curtis Warey (phonetic)", "Truchess (phonetic)", "Taylor" and "other people" about stabbing his girlfriend. 30RP 91-93.

Charles Gray was incarcerated with Gonzalez and Connor in 2010. 32RP 6-7. His recalled Connor being a quiet individual who did not talk to people much about anything, much less his legal situation, and who played chess and was willing to help others if needed. 32RP 8, 11. His recollection of Gonzalez, on the other hand, was of a distressed individual who complained and whined, spent a lot of time on the phone, and

expressed a strong desire to get out of jail and back to his family. 32RP 8-9. The only time he recalled Gonzalez and Connor interacting was when they traded food. 32RP 10. Gray recalled seeing a news clip about Connor's alleged offense, and recalled Gonzalez made phone calls right after it aired. 32RP 11.

Cesar Enrique Trochez-Jimenez was also incarcerated with Connor and Gonzalez at the King County Jail. 33RP 47. Like Gray, Trochez-Jimenez recalled Gonzalez being stressed, concerned about losing his children, and talking to several inmates about his case, which he claimed stemmed from weapons-related charges. 33RP 48, 54. Connor, on the other hand, never discussed his case with anyone that Trochez-Jimenez was aware of. 33RP 48-49, 53.

The police investigation in to Lorentson death provided the prosecution with trial testimony and exhibits documenting Lorentson location at various times on Wednesday, March 7th. For example, a doctor testified Lorentson was with her for 50 minutes starting at 9:30 am. 22RP 9-12. A receipt from the Southcenter branch of the Seattle Metropolitan Credit Union indicated Lorentson was there at 11:23 am. Ex. 78. Likewise, video footage and associated documentation show Lorentson and J.B. at the Kent Kmart at around 12:45 pm. Exs. 144 &

164; 26RP 55-56. Similarly, video footage and associated documentation show Lorentson in a white t-shirt at the Kent TJMaxx store at around 9:30 pm on March 7th. Exs., 80 & 86; 19RP 46, 56-58.

Both the prosecution and defense introduced evidence through expert witnesses regarding DNA evidence collected and processed during the investigation. DNA evidence processed by the State's experts indicated both Smith and Connor had sex with Lorentson relatively close in time to her death. 28RP 56, 61, 62, 83-84, 86, 92, 107-110, 123. The defense DNA expert testified he generally agreed with the findings of the State's experts, but was less confident in the conclusions that could be made in the context of multiple DNA donor sample, in terms of whether it was appropriate to declare a match with a known DNA profile, or even to declare a known profile excludable or non-excludable. 34RP 80-84.

Several State witnesses testified about the ability to locate the geographical position of a particular cell phone based on call records showing which cell phone towers were used to complete the call. According to the State's experts, cell phones have the signal strength to broadcast to and receive from multiple cell towers in an area. They claimed, however, that all of the local cellular networks except T-Mobile are set up so that the only cell tower a cell phone can connect with is the

one providing the strongest signal, and that if the entire capacity of that cell tower is already in use, the call will fail until some capacity is available. 23RP 40, 77; 24RP 14, 81-82, 110-11; 27RP 39, 47-48; 35RP 28-29. A defense expert, however, testified that none of the cellular network companies employ technology that prevent a call being routed through the cell tower with the next strongest signal when the one with the strongest signal is already at capacity, noting such would be "an impossible situation because the implication would be that there would be an enormous amount of dropped calls and/or blocked calls or whatever else, and no company could survive and stay in business for any length of time." 32RP 29-31, 41, 44.

In closing remarks to the jury, the prosecutor argued the cell phone records helped prove it was Connor who killed Lorentson because they provided the geographic location of them and various other people at crucial times from Tuesday, March 6th, through Thursday, March 8th. 36RP 28-37. Conversely, defense counsel argued the cell phone records were not as reliable an indicator of location as the prosecution wanted the jury to conclude, noted that if the technology acted in the way the State's experts said, then Connor managed to get from one location to another in an impossibly short amount of time, and urged the jury to find the cell

phone data more consistent with Connor's innocence than with his guilt.
36RP 65-69, 78.

C. ARGUMENT

THE EVIDENCE WAS INSUFFICIENT TO CONVICT
CONNOR OF PREMEDITATED MURDER.

Due process under the Fourteenth Amendment of the United States Constitution requires the State to prove all necessary facts of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P. 3d 559 (2005). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the State, a rational trier of fact could find each essential element of the crime beyond a reasonable doubt. State v. Chapin, 118 Wn.2d 681, 691, 826 P.2d 194 (1992). In determining the sufficiency of evidence, existence of a fact cannot rest upon guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

The State charged Connor with premeditated first degree under RCW 9A.32.030(1)(a). CP 1. A person is guilty of that offense if, [w]ith a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person[.] RCW

9A.32.030(1)(a).⁸ Premeditation must involve "more than a moment in point of time." RCW 9A.32.020(1).⁹ Mere opportunity to deliberate is insufficient to support a finding of premeditation. State v. Pirtle, 127 Wn.2d 628, 644, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026 (1996); State v. Bingham, 105 Wn.2d 820, 826, 719 P.2d 109 (1986). Rather, premeditation requires "the deliberate formation of and reflection upon the intent to take a human life," and involves the "mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short." State v. Hoffman, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991). There must be some evidence to show reflection apart from the commission of the fatal act itself. Bingham, 105 Wn.2d at 827-28.

⁸ The jury instructions defined murder in the first degree as follows: "A person commits the crime of murder in the first degree when, with a premeditated intent to cause the death of another person, he causes the death of such person." CP 151 (Instruction 11).

⁹ The jury instruction defining "premeditation" provides:

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

CP 154 (Instruction 14).

“[S]tanding alone, multiple wounds and sustained violence cannot support an inference of premeditation.” State v. Ortiz, 119 Wn.2d 294, 312, 831 P.2d 1060 (1992).

Premeditation may be proved with circumstantial evidence, but only where the inferences drawn by the jury are reasonable and the evidence supporting the jury’s finding is substantial. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105, cert. denied, 516 U.S. 843 (1995). In determining whether there is sufficient evidence of premeditation, courts look to evidence of four factors: (1) motive, (2) procurement of a weapon, (3) stealth, and (4) method of killing. Pirtle, 127 Wn.2d at 644.

The State provided no evidence of a plan by Connor to kill Lorentson. Although there was evidence indicating Connor was jealous about Lorentson's sexual promiscuity, that shows only that he might have had a motive, but not that he thought over the act of killing her beforehand.

Regarding the second factor, there is no evidence to support a finding that Connor procured a weapon specifically to kill Lorentson with. To the contrary, the evidence showed Connor routinely carried a knife, and therefore that he may have had one to use against Lorentson is not indicative of a plan to kill.

Third, the killing was not stealthy. In fact, there appeared to be almost no effort to conceal Lorentson's death; her apartment was left unlocked by the killer after fleeing, Connor's DNA was found in Lorentson, and cell phone usage data suggested Connor was in the vicinity of Lorentson's apartment when it is believed she was killed. While there is evidence that Connor, if he did kill Lorentson, made attempts to avoid detection by disposing of the weapon and burning the clothes he wore, these are all after the fact actions and do not support a finding of premeditation.

Finally, the evidence did not reveal a prolonged, and therefore premeditated, process of causing Lorentson's death. In fact, the lack of any defensive wounds at least implies Lorentson died quickly. Although it is impossible to conclusively establish the exact course of events, even the prosecution's theory was that Connor acted in a fit of rage in killing Lorentson after they had sex (there was not suggestion that Connor raped her), presumably over his uncontrollable jealousy that Lorentson was also having sex with others despite being pregnant with his child, or so he believed. 36RP 24; Ex. 107 at 12. And if inmate Gonzalez is to be believed, Connor admitted he was high on drugs at the time of the incident and that he simply "lost his emotion and he just started stabbing her."

30RP 58. This combined evidence is more indicative of a spontaneous and uncontrollable act of killing rather than planned acted of murder.

The State's evidence of premeditation is insufficient. It falls well short of the evidence deemed sufficient by the Washington Supreme Court in other case. In each of those cases, it was apparent the killing was truly the product of deliberation and reflection. See, e.g., State v. Gregory, 158 Wn.2d 759, 811-812, 817, 147 P.3d 1201 (2006) (victim stabbed multiple times, hands tied behind her back, raped, and throat slashed multiple times); Pirtle, 127 Wn.2d at 644-45 (multiple motives, taking weapon to scene, waiting for opportunity, rendering victims unconscious, cutting victims' throats, and then cutting one victim's throat a second time to finish her off); State v. Ollens, 107 Wn.2d 848, 849-853, 733 P.2d 984 (1987) (robbery motive, use of knife brought to scene, evidence victim struck from behind, numerous defensive wounds, multiple stab wounds, and subsequent slashing of throat).

In State v. Gentry, 125 Wn.2d at 598-599, the Supreme Court summarized the evidence in several Court of Appeals cases where the evidence also was found sufficient to support premeditation. These cases similarly bear little resemblance to the established facts at Connor's trial because of their obvious evidence of deliberation and reflection. See State v. Rehak, 67 Wn. App. 157, 834 P.2d 651 (1992) (victim shot three times

in the head, two times after he had fallen on the floor), review denied, 120 Wn.2d 1022 (1993); State v. Massey, 60 Wn. App. 131, 803 P.2d 340 (defendant brought a gun to murder site), review denied, 115 Wn.2d 1021 (1990); State v. Woldegiorgis, 53 Wn. App. 92, 765 P.2d 920 (1988) (victim had gone to bed prior to the attack, was stabbed multiple times, had defensive wounds), review denied, 112 Wn.2d 1012 (1989); State v. Longworth, 52 Wn. App. 453, 761 P.2d 67 (1988) (weapon procured and victim stabbed in back while being held by another to keep her from reporting a burglary), review denied, 112 Wn.2d 1006 (1989); State v. Gibson, 47 Wn. App. 309, 734 P.2d 32 (lapse of time between beating and strangling of victim), review denied, 108 Wn.2d 1025 (1987); State v. Bushey, 46 Wn. App. 579, 731 P.2d 553 (victim tied, strangled, and received blunt injuries to her face), review denied, 108 Wn.2d 1014 (1987); State v. Giffing, 45 Wn. App. 369, 725 P.2d 445 (victim transported some distance to an isolated spot and killed; defendant approached her from behind and slit her throat after stabilizing her), review denied, 107 Wn. 2d 1015 (1986); State v. Sargent, 40 Wn. App. 340, 698 P.2d 598 (1985) (victim struck by two blows to the head, with some interval passing between the blows, while she was lying face down).

No evidence of premeditation appears here, such as prior threats, evidence of planning, or a method of death proving deliberation.

Evidence of premeditation was insufficient to support the jury's verdict. Accordingly, Connor's conviction for first-degree premeditated murder should be reversed.

D. CONCLUSION

For the reason presented, this Court should reverse Connor's conviction for premeditated murder.

DATED this 14th day of April 2012.

Respectfully submitted,

Nielsen, Broman & Koch

A handwritten signature in black ink, appearing to be 'C. Gibson', written over a horizontal line.

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Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 67142-1-I
)	
RANDALL CONNOR,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 11TH DAY OF APRIL 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RANDALL CONNOR
DOC NO. 349507
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 11TH DAY OF APRIL 2012.

x Patrick Mayovsky

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