

**NO. 44870-0-II**

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

STATE OF WASHINGTON, RESPONDENT

v.

JOSE GERMAN, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable John Hickman

No. 12-1-01472-0

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**Brief of Respondent**

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**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

1. Whether the search, conducted under the authority of an unchallenged search warrant, was lawful? ..... 1

2. Where the facts demonstrate that the firearm in the residence was discovered solely under the authority of a search warrant, is it necessary for the appellate court to consider the exigent circumstances of the initial entry? ..... 1

3. Where the defendant did not challenge the factual or legal basis of the search warrant, is it necessary for the appellate court to consider the exigent circumstances of the initial entry? ..... 1

4. Whether the trial court erred in instructing the jury using the exact language of WPIC 4.01? ..... 1

5. Where the uncontested facts support all but one of the factors in *Dorman v. U.S.* and the additional five factors in *State v. Terranova*, whether the trial court erred in concluding that exigent circumstances existed for a warrantless initial entry? ..... 1

B. STATEMENT OF THE CASE. ..... 2

1. Procedure..... 2

2. Facts ..... 3

C. ARGUMENT..... 5

1. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE..... 5

2. THE TRIAL COURT CORRECTLY INSTRUCTED THE JURY REGARDING THE BURDEN OF PROOF AND REASONABLE DOUBT..... 13

D. CONCLUSION. ..... 16

## Table of Authorities

### State Cases

<i>State v. Acrey</i> , 148 Wn.2d 738, 745, 64 P.3d 594 (2003) .....	9
<i>State v. Allen</i> , -Wn. App. -, 317 P.3d 494 (2014) .....	10
<i>State v. Atchley</i> , 142 Wn. App. 147, 157, 173 P.3d 323 (2007) .....	5
<i>State v. Belieu</i> , 112 Wn.2d 587, 600, 773 P.2d 46 (1989).....	12
<i>State v. Bennett</i> , 161 Wn.2d 303, 318, 165 P.3d 1241 (2007).....	14
<i>State v. Berube</i> , 171 Wn. App. 103, 120-121, 286 P.3d 402 (2012) .....	15
<i>State v. Cardenas</i> , 146 Wn.2d 400, 47 P. 3d 127 (2002).....	10, 12
<i>State v. Castle</i> , 86 Wn. App. 48, 935 P.2d 656 (1997) .....	14
<i>State v. Chenoweth</i> , 160 Wn. 2d 454, 477, 158 P. 3d 595 (2007).....	5
<i>State v. Collins</i> , 121 Wn.2d 166, 173, 847 P.2d 919 (1993).....	12
<i>State v. Costich</i> , 152 Wn.2d 463, 477, 98 P.3d 795 (2004) .....	9
<i>State v. Counts</i> , 99 Wn.2d 54, 60, 659 P.2d 1087 (1983).....	10
<i>State v. Emery</i> , 174 Wn.2d 741, 751, 278 P.3d 653 (2012).....	15
<i>State v. Garvin</i> , 166 Wn. 2d 242, 249, 207 P. 3d 1266 (2009).....	9
<i>State v. Hill</i> , 123 Wn.2d 641, 647, 870 P.2d 313 (1994) .....	13
<i>State v. Hopkins</i> , 113 Wn. App. 954, 958, 55 P.3d 691 (2002).....	5
<i>State v. Lane</i> , 56 Wn. App. 286, 299–301, 786 P.2d 277 (1989) .....	15
<i>State v. Levy</i> , 156 Wn.2d 709, 733, 132 P.3d 1076 (2006).....	9, 13
<i>State v. Mabry</i> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	15

<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	6
<i>State v. O'Neill</i> , 148 Wn.2d 564, 571, 62 P.3d 489 (2003).....	9
<i>State v. Pirtle</i> 127 Wn.2d 628, 658, 904 P.2d 245 (1995) .....	15
<i>State v. Price</i> , 33 Wn. App. 472, 476, 655 P.2d 1191 (1982).....	15
<i>State v. Ruem</i> , 179 Wn.2d 195, 209, 313 P.3d 1156 (2013).....	8
<i>State v. Smith</i> , 165 Wn.2d 511, 515, 199 P.3d 386 (2009).....	7, 10
<i>State v. Smith</i> , 177 Wn.2d 533, 539-540, 303 P.3d 1047 (2013) .....	8
<i>State v. Terrovona</i> , 105 Wn.2d 632, 644, 716 P.2d 295 (1986) .....	1, 6, 9, 10, 12, 13
<i>State v. Winterstein</i> , 167 Wn.2d 620, 633, 220 P.3d 1226 (2009) .....	8

**Federal And Other Jurisdictions**

<i>Dorman v. United States</i> , 435 F.2d 385 (1970).....	1, 10, 11, 12, 13
<i>U.S. v. Leon</i> , 468 U.S. 897, 914-915, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).....	5
<i>Victor v. Nebraska</i> , 511 U.S. 1, 14-15, 114 S. Ct. 1239, 127 L.Ed.2d 583 (1994).....	15

**Rules and Regulations**

CrR 3.6(a) .....	2
RAP 2.5 .....	6

**Other**

WPIC 4.01 .....	1, 14
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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the search, conducted under the authority of an unchallenged search warrant, was lawful?
2. Where the facts demonstrate that the firearm in the residence was discovered solely under the authority of a search warrant, is it necessary for the appellate court to consider the exigent circumstances of the initial entry?
3. Where the defendant did not challenge the factual or legal basis of the search warrant, is it necessary for the appellate court to consider the exigent circumstances of the initial entry?
4. Whether the trial court erred in instructing the jury using the exact language of WPIC 4.01?

Assuming that the Court reviews the exigent circumstances issue:

5. Where the uncontested facts support all but one of the factors in *Dorman v. U.S.* and the additional five factors in *State v. Terranova*, whether the trial court erred in concluding that exigent circumstances existed for a warrantless initial entry?

B. STATEMENT OF THE CASE.

1. Procedure

On April 25, 2012, the Pierce County Prosecuting Attorney (State) charged the defendant, Jose German, with two counts of assault in the second degree (with firearm sentencing enhancements), and two counts of vehicle prowling in the second degree. CP 3-4. The case was assigned to Hon. John Hickman for trial. 1 RP 4. At the beginning of trial, the State filed a second amended Information, which charged the assaults, one count of vehicle prowling, and one count of Unlawful Possession of a Firearm in the first degree (UPF1). 59-61.

Before evidence was presented to the jury, the court conducted a hearing under CrR 3.6 to consider a motion to suppress the firearm discovered in the defendant's residence.<sup>1</sup> 5 RP 112. Because the parties were not contesting facts, the court decided not to have an evidentiary hearing. *See*, CrR 3.6(a). After hearing argument, the court denied the motion to suppress<sup>2</sup>. 5 RP 127-131.

After hearing all the evidence, the jury found the defendant guilty as charged. CP 95-99, 101. The Court later sentenced the defendant to 120

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<sup>1</sup> The Omnibus Order (CP 217) indicates that a suppression motion was contemplated. Although ordered to do so, the defendant never filed a motion to suppress or any legal authority with the court. *See*, CrR 3.6(a). *See* 1 RP 27, 2 RP 71. Although there is a reference to a defense brief, none was ever filed. 4 RP 96.

<sup>2</sup> The court failed to file a written order setting forth its reasons. *See*, CrR 3.6(a). Despite the court's request, the trial DPA did not draft one. 5 RP 131.

months in prison, including the firearm enhancements. CP 143-144. The defendant filed a timely notice of appeal. CP 158.

## 2. Facts

On April 22, 2012, Frank James and Noah Frampton were working security at Charley's Pub in Fircrest, Pierce County, Washington. 5 RP 191. Part of their responsibility was to patrol Charley's parking lot, and the lots of nearby businesses where Charley's evening patrons parked. 5 RP 191, 6 RP 296. The security personnel were focusing on the parking lots because patrons had suffered recent vehicle break-ins. *Id.*

James and Frampton discovered that the window of a blue mini-van had been broken out in an apparent car prowler. 6 RP 297. They found that the dome light was on in a nearby sedan. 6 RP 298. They found the door of the sedan unlocked and purses in the back seat in open view. 6 RP 299. They moved on to another parking lot. *Id.*

When they returned, they saw that two men, later identified as the defendant and Manuel Urrietta, were standing by the sedan they had checked earlier. 6 RP 300. One man was by the open driver-side door. *Id.* The defendant and Urrietta turned and saw James and Frampton staring at them. *Id.* As James and Frampton approached, the defendant and Urrietta walked off. 6 RP 301. James yelled at them to leave and not return. 6 RP 302.

As the defendant walked off, he shouted an obscenity at James and Frampton. 6 RP 302. When the defendant and Urrietta walked under a streetlight, the defendant pulled out a pistol, cocked it, and said "I've got something for you." 6 RP 303, 305. He then pointed the gun in the general direction of James and Frampton. *Id.* James and Frampton put their hands up and backed away. 6 RP 305. They notified their boss and called the police. 6 RP 306.

Police soon arrived. Fircrest Police Officer Christopher Roberts drove in the direction that the defendant and Urrietta were headed, as described by James and Frampton. 5 RP 228. Officer Roberts approached a townhouse complex a block or two away and saw the defendant and Urrietta standing near a car with the hood up. 5 RP 230. When Officer Roberts called out to them, the defendant and Urrietta ran toward a nearby townhouse. 5 RP 233. Officer Roberts chased them. 5 RP 239. The defendant and Urrietta entered the residence and slammed the door. *Id.*

Officer Roberts entered the residence and arrested the defendant and Urrietta. 5 RP 239, 243. During the confrontation inside the residence, Officer Roberts shot the defendant and Urrietta. 5 RP 249. The warrantless entry and the lawfulness of the subsequent discovery of evidence was the subject of the suppression hearing.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.

a. The evidence was seized under authority of an unchallenged search warrant.

A search pursuant to the authority of a warrant is presumed lawful. *See, U.S. v. Leon*, 468 U.S. 897, 914-915, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). Supporting affidavits and their resulting search warrants are presumed valid. *See, State v. Chenoweth*, 160 Wn. 2d 454, 477, 158 P. 3d 595 (2007); *State v. Atchley*, 142 Wn. App. 147, 157, 173 P.3d 323 (2007). Where a search warrant is issued, the defendant bears the burden of challenging the warrant and establishing that the search was unlawful. *See, State v. Hopkins*, 113 Wn. App. 954, 958, 55 P.3d 691 (2002).

The search in the present case was conducted under authority of a search warrant. CP 182. The search did not begin until the search warrant was obtained. CP 178, 182, 185. Specifically, the gun, which was the sole item sought to be suppressed, was discovered and seized during the warrant-authorized search. CP 192.

The defendant did not challenge the search warrant at trial. He does not challenge it on appeal. Indeed, he cannot challenge it for the first time on appeal. Failure to challenge the search warrant before trial

precludes the defendant raising this issue on appeal for the first time, since it does not meet any of the criteria allowing a party to raise an issue for the first time on appeal under RAP 2.5. Because the search warrant was not discussed or examined<sup>3</sup> at the suppression hearing, this Court has no determination by the trial court to review. *See, State v. McFarland*, 127 Wn.2d 322, 333–334, 899 P.2d 1251 (1995).

The distinction between the exigent entry to arrest and a subsequent separate search for evidence with a warrant is significant. *State v. Terrovona*, 105 Wn.2d 632, 644, 716 P.2d 295 (1986) presented a somewhat similar situation as the present case. There, police went to the defendant's residence to make a warrantless arrest for murder. When he answered the door, police entered, arrested him, and checked the residence for other persons present. Police remained in the residence while another officer got a search warrant. The search did not begin until the warrant arrived.

The Supreme Court held that the discovery of evidence was lawful, as it was made under the authority of the search warrant. 105 Wn. 2d at 645. The Court also held that exigent circumstances permitted police to enter the defendant's residence to effect a warrantless arrest. *Id.*, at 644-645. (See further discussion *infra*.)

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<sup>3</sup> The search warrant was not discussed or even made part of the record.

In *State v. Smith*, 165 Wn.2d 511, 515, 199 P.3d 386 (2009), on the other hand, search began without a warrant. Police saw a rifle in the house, which was gone when they looked again. *Id.*, at 515. Exigent circumstances required police to take action to search the property for hazardous materials for the safety of the community. *Id.*, at 519. Police eventually got a search warrant, based upon what they had observed and seized earlier. *Id.*, at 517.

Here, the defendant attempts to shift the burden to the State, arguing that the State needed to prove that police would have sought a search warrant absent the entry. Because the police in this case had a search warrant, it is the defendant who has the burden to show that the warrant was invalid. At trial, the defendant did not challenge the search warrant. He did not show, or even argue, that the entry provided information that was crucial to the finding of probable cause for the search warrant. He did not argue that police lacked probable cause for the search warrant absent the entry.

The defendant is correct when his brief says that the independent source doctrine does not apply. App. Br. at 14. But it is not for the reason that the defendant argues. It does not apply because the defendant never challenged the search warrant or its basis.

Under the independent source rule, there must first be an illegal search or intrusion which discovers evidence. The rule permits a search

warrant obtained with unlawfully seized evidence to still be valid if the information that remains after excluding the improper information independently provides probable cause. See, *State v. Ruem*, 179 Wn.2d 195, 209, 313 P.3d 1156 (2013); *State v. Smith*, 177 Wn.2d 533, 539-540, 303 P.3d 1047 (2013); and *State v. Winterstein*, 167 Wn.2d 620, 633, 220 P.3d 1226 (2009).

In all of these cases, the defendants challenged warrantless discovery or seizure of evidence, which was later used as partial basis of a search warrant. In *Ruem*, although police lacked reason to believe the suspect lived there, they entered a residence to arrest a suspect, and saw marijuana plants. In *Smith*, after an unlawful search of motel records, police went to the defendant's motel room, where they discovered evidence and victims of an unrelated crime. In *Winterstein*, a community corrections officer (CCO) discovered methamphetamine during a warrantless search that was not based on reasonable suspicion.

In all of these cases, the defendants properly raised and preserved their challenges to the warrants and searches. They developed the issues and a record for review. Here, the defendant never filed a motion to suppress outlining his legal basis. He merely argued that exigent circumstances did not exist to enter the residence. Although he presumed that the entry resulted in discovery of evidence (4 RP 98), this was not borne out by the facts. CP 192. There was no such discovery. The defendant never argued, and the court never considered or ruled on, the

probable cause, independent or otherwise, to support the search warrant. He cannot make this argument for the first time on appeal.

Here, as in *Terranova*, police entered to arrest under exigent circumstances. However, their search did not begin until they obtained a search warrant. Therefore, the discovery and seizure of the gun was lawful. Although the trial court did not base its decision on the fact that the search was authorized by a warrant, an appellate court may affirm the superior court on any ground the record supports. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

- b. If the Court wishes to consider the issue; the trial court correctly ruled that Officer Roberts' warrantless entry was permissible because of exigent circumstances.

In reviewing the denial of a motion to suppress, the Court determines whether substantial evidence supports the trial court's findings of fact and whether those findings support the trial court's conclusions of law. *State v. Garvin*, 166 Wn. 2d 242, 249, 207 P. 3d 1266 (2009). Substantial evidence exists if sufficient to persuade a fair-minded, rational person of the truth of the matter asserted. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). The Court reviews conclusions of law de novo. *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). Unchallenged findings of fact are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

The Court of Appeals determines whether the evidence supports a finding of exigent circumstances by looking at the totality of the situation. *State v. Allen*, -Wn. App. -, 317 P.3d 494 (2014), citing *State v. Smith*, 165 Wn.2d 511, 518, 199 P.3d 386 (2009). In *State v. Cardenas*, 146 Wn.2d 400, 47 P. 3d 127 (2002), the Supreme Court laid out six factors to consider in determining whether exigent circumstances justify a warrantless entry:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is reasonably trustworthy information that the suspect is guilty; (4) there is strong reason to believe that the suspect is on the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the entry is made peaceably.

146 Wn.2d at 406; *Smith*, 165 Wn.2d at 518. Circumstances may be “exigent” even if they do not satisfy every one of the six listed elements. *Smith*, at 518.

In addition, the court considers:

(7) the police are in hot pursuit; (8) the suspect is fleeing; (9) the arresting officer or the public are in danger; (10) the suspect has access to a vehicle; and (11) there is a risk that the police will lose evidence.

*State v. Terrovona*, 105 Wn.2d 632, 644, 716 P.2d 295 (1986) (citing *Dorman v. United States*, 435 F.2d 385, 392–393 (1970), and *State v. Counts*, 99 Wn.2d 54, 60, 659 P.2d 1087 (1983)).

All parties desire a peaceful, nonviolent investigative contact, including a peaceful entry in the circumstances of the present case. But a peaceful entry is not a required element. In *Dorman*, the court explained why peaceful entry was a proper consideration: “the fact that entry was not forcible aids in showing reasonableness of police attitude and conduct. The police, by identifying their mission, give the person an opportunity to surrender ... without a struggle and ... avoid the invasion of privacy involved in entry into the home.” *Dorman*, 435 F.2d at 393. The investigation of crime and the apprehension of suspects sometimes requires the use of force. Here, Officer Roberts was in uniform, driving a marked patrol car when he contacted the suspects outside the residence. CP 196, 208-209.<sup>4</sup> The suspects immediately fled to the residence and slammed the door. CP 200, 204. As he chased them, Officer Roberts ordered the suspects to stop. CP 201. Unfortunately, damage to property and violence did occur in this case. However, Officer Roberts began the contact peaceably and gave the suspects an “opportunity to surrender” without violence.

No hard and fast rule governs the use of force in such circumstances. The court must look at the nature of the crime under investigation, the degree of suspicion, the location of the contact, the time

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<sup>4</sup> The transcript of Officer Roberts' statement to investigators, considered by the trial court, is attached as an Appendix to this brief.

of day and the reaction of the suspect to the police, all of which bear on the issue of reasonableness. *State v. Belieu*, 112 Wn.2d 587, 600, 773 P.2d 46 (1989). In such circumstances, courts are reluctant to substitute their judgment for that of police officers in the field. *Id.*, at 601; *State v. Collins*, 121 Wn.2d 166, 173, 847 P.2d 919 (1993).

Here, the trial court went through each of the *Dorman* factors which were discussed by our Supreme Court in *Terranova* and *Cardenas*. The court found that (1) police were investigating a grave offense -assault with a firearm (5 RP 128); (2) the suspects were reasonably believed to be armed (*Id.*); (3) police had reasonably trustworthy information, based upon eyewitness statements (5 RP 128); (4) there was a strong reason to believe the suspects were still on the property (*Id.*); (5) the suspects were likely to escape if not apprehended (5 RP 129-130); (6) the court acknowledged that the entry was not peaceable, but was justified (5 RP 130); (7) entry was at night (*Id.*); (8) the investigation was not part of planned operation or ongoing investigation (*Id.*).

All of these findings of fact are supported by Officer Roberts' statement to investigators. CP 195-213. The defendant agreed that the court could base its facts on the written police reports, which included Officer Roberts' statement. 4 RP 97-98.

While the defendant now disagrees with the facts found by the trial court, he does not assign error to them. App. Br. at 1. The appellate court only reviews those findings to which error is assigned. *See, State v. Hill*,

123 Wn.2d 641, 647, 870 P.2d 313 (1994). The suppression hearing had no contested facts. The defendant agreed that the issue could be determined from the facts in the police reports. 4 RP 97-98, 5 RP 115. Uncontested facts are verities on appeal. *See, State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). The hearing did not require testimony because the issue was strictly a legal one; namely whether these facts supported the legal conclusion of exigent circumstances. 5 RP 118.

The facts in this case support not only the *Dorman* factors, but also the additional five *Terranova* factors. It was not error for the trial court to conclude that exigent circumstances permitted the warrantless entry to arrest the defendant.

2. THE TRIAL COURT CORRECTLY  
INSTRUCTED THE JURY REGARDING THE  
BURDEN OF PROOF AND REASONABLE DOUBT.

The defendant contests the "abiding belief" language in instruction 3 (CP 107). App. Br. at 15-17. He contends that it confused the jury's role, because it impermissibly suggested that the jury's job is to search for the truth. App. Br. at 16. The defendant proposed the same instruction, without the "abiding belief" language. CP 83. The defendant argues that the instruction minimized and misstated the prosecution's burden. App. Br. at 18.

The language of Instruction 3 and of the defendant's proposed instruction is taken verbatim from WPIC 4.01. The challenged language is at the end of the instruction, in brackets as optional:

[The] [Each] defendant has entered a plea of not guilty. That plea puts in issue every element of [the] [each] crime charged. The [State] [City] [County] is the plaintiff and has the burden of proving each element of [the] [each] crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists [as to these elements].

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. [*If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.*]

WPIC 4.01 (emphasis added).

The Supreme Court specifically directed the use of WPIC 4.01 in *State v. Bennett*, 161 Wn.2d 303, 318, 165 P.3d 1241 (2007), in order to standardize the reasonable doubt instruction. There, the Supreme Court criticized, but did not overrule, the use of a non-standard instruction which originated with *State v. Castle*, 86 Wn. App. 48, 935 P.2d 656 (1997). *Bennett* specifically refers to WPIC 4.01 as "the abiding belief" instruction. *Bennett*, at 308. The Court did not criticize or question the use of the "abiding belief" language.

Multiple cases have upheld the use of the "abiding belief" language. *State v. Pirtle* 127 Wn.2d 628, 658, 904 P.2d 245 (1995) upheld the same language of the instruction given. The Court found that the language was "unnecessary but was not an error." *Id.* The Courts of Appeal have found that it "adequately instructs the jury," *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988), and "could not have misled or confused" it. *State v. Price*, 33 Wn. App. 472, 476, 655 P.2d 1191 (1982). *See, also, State v. Lane*, 56 Wn. App. 286, 299–301, 786 P.2d 277 (1989). The U.S. Supreme Court has also upheld the use of traditional "abiding belief" instructions. *See, Victor v. Nebraska*, 511 U.S. 1, 14-15, 114 S. Ct. 1239, 127 L.Ed.2d 583 (1994).

The defendant asserts that the recent case of *State v. Emery*, 174 Wn.2d 741, 751, 278 P.3d 653 (2012) supports his argument that the language was improper. But *Emery* discusses and criticizes the prosecutor's argument, not the trial court's instruction. There, the prosecutor told the jury to "speak the truth by holding these men accountable for what they did." *Id.*, at 751. The Court found the remark improper and explained that the jury's job is to determine not the truth of what happened, but whether the State proved the charged offenses beyond a reasonable doubt. *Id.* at 760. Similarly, in *State v. Berube*, 171 Wn. App. 103, 120-121, 286 P.3d 402 (2012), the Court criticized the prosecuting attorney's "search for truth" argument, not the jury instruction.

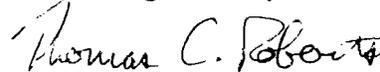
Here, the challenged instruction does not direct jurors to find the truth themselves. It merely elaborates on what it means to be “satisfied beyond a reasonable doubt.” The instruction was proper.

D. CONCLUSION.

In this case, police entered the defendant's residence under exigent circumstances to effect a warrantless arrest. The gun sought to be suppressed was not discovered or seized in the initial entry and arrest. Police did not rely on exigent circumstances as the basis to search. Police obtained a warrant for the search, which the defendant did not and does not challenge. The court correctly instructed the jury regarding the burden of proof and reasonable doubt. The State respectfully requests that the judgment be affirmed.

DATED: April 8, 2014.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney



Thomas C. Roberts  
Deputy Prosecuting Attorney  
WSB # 17442

Certificate of Service:

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

4.9.14 Therese Kal  
Date Signature

## **APPENDIX “A”**

10-029

## PIERCE COUNTY SHERIFF'S DEPARTMENT

STATE OF WASHINGTON  
County of Pierce

Case Number 12-113-0055 Date 04/22/12 Beginning Time 0423 Hours Ending Time 0513 Hours

Location FIRCREST PD HEADQUARTERS Officer DET. JOHN JIMENEZ, #209/84-017

Name of Subject CHRIS ROBERTS Date of Birth 02/28/69

- Q Testing, 1, 2, 3, 4, testing. This is Detective John Jimenez, unit number 209, with a tape recorded statement to be taken from Chris Roberts. Our case number is 12-113-0055. It's in reference to Fircrest call number 12-00278. Time now is 0423 hours on Sunday, April 22<sup>nd</sup>, 2012. Present with me is Chris Roberts, Detective Sergeant Kobel, Keith Barnes, Investigator for the Prosecutor's Office, and Dan Bordel, who is Peer Support, works for TPD, is present in the room. We're in the conference room at Fircrest PD Headquarters. Chris, do we have your permission to record our conversation?
- A Yes sir, you do.
- Q Chris, for the record, would you state your full name and spell your last name, please.
- A Christopher O, or O'Neil Roberts, R-O-B-E-R-T-S.
- Q And you're employed where?
- A With the City of Fircrest Police Department.
- Q And how long have you been employed with them?
- A Just over, about six years three months.
- Q And how much total years of law enforcement do you have?
- A Approximately ten years full time and about a year and a half of some reserve work prior to that.
- Q Ten years total law enforcement?
- A Total full time commissioned officer, and about a year and a half of reserve work.
- Q (D/Sgt. Tim Kobel) Who'd you work for previously?
- A The, prior to coming to Fircrest I was an officer with the City of Seward, Alaska. And I was also an officer in Yakutat, Alaska, and Sand Point, Alaska, and was a reserve officer in Normandy Park, Washington and Long Beach, Washington. And that started in, my initial, first foray into law enforcement was in '95 as a reserve officer in Long Beach.

195

Q Would you describe your uniform to us, Chris?

A I've got my winter weight Bratwear jumpsuit with my patches that are issued to me and my cloth Fircrest badge. It's dark blue in color and it's got police written across the back in reflective material. I'm wearing a baseball cap that has a Fircrest patch on the, on the brim, or the bill, no brim, sorry, my regular web type gear duty belt, thigh Taser holster, black Danner boots, wristwatch.

Q And there's shoulder patches on both shoulders that indicate the City of Fircrest Police Department?

A Yes, sir.

Q And your name is on your right chest?

A Yes, sir.

Q Would it be fair to say that when you step out of a car and somebody sees you, it's obvious that you're, you are a police officer?

A Yes, sir.

Q And you were working this evening?

A Yes sir, I was.

Q What time did your shift start?

A 2100 hours, would've been last night since we're into the 23<sup>rd</sup>, or 22<sup>nd</sup> now, it was nine P.M. or 2100 on the 21<sup>st</sup> I came to work.

Q And what time would your shift normally end?

A 0700 this morning, the 22<sup>nd</sup>.

Q Did you have anybody working with you tonight?

A I had a civilian rider, Alan McMillan. He came out, he lives up in Seattle and came down to ride with me tonight. Tonight was gonna be my last weekend shift for the rest of the year, so he thought he'd come out and ride with me since he's off weekends. Normally he wouldn't get much of a chance to come out and, and ride, so he came down, I think it was around 9:30. I put it in my CAD when he came in and started riding with me.

Q Talk us through when you got the initial, excuse me, the initial call...

Q (D/Sgt. Tim Kobel) John...

196

Q regarding...

Q (D/Sgt. Tim Kobel) Before we get into that point, just before we forget, just ask him about his duty weapon and...

Q Okay.

Q (D/Sgt. Tim Kobel) and guns and stuff...

Q Okay. What type of weapon do you carry for your normal duty sidearm?

A A Glock 22 .40 caliber semi-automatic pistol.

Q And how many magazines do you carry with that?

A Two magazines on, on my pouch in my belt, one magazine in the weapon.

Q How, what's the capacity on those mags?

A Fifteen rounds for each magazine fully loaded, which they were all fully loaded. And then the gun itself, I usually put an additional round in the barrel, then I top the mag back off and put it back in the gun so there'd be fifteen in the magazine, one in the chamber for, for the gun that's in my holster. And then the two additional magazines both had fifteen rounds.

Q Total of forty-six.

A So it'd be a total a forty-six, yes sir.

Q Do you carry any backup weapons?

A Yes, I carry a Glock model 27 .40 caliber. I have one magazine that's in that gun. It's got a ten round capacity. And I have one mag, one round in the chamber, so should be eleven rounds in that, in that gun.

Q And where do you carry that gun at?

A In a holster that's attached to my vest, so inside my uniform on the exterior of my vest on my, on my left hand side. It's, it's just like a nylon sewn holster that it goes into.

Q Any other weapons?

A Aside of Taser or knives that's, so I carry a Taser and I carry two pocket knives, a Leatherman.

Q (D/Sgt. Tim Kobel) Chris, are those department issued weapons or are those personally owned?

197

A The two firearms are personally owned, the knives are personally owned, the Leatherman's personally owned, the Taser's department.

Q (D/Sgt. Tim Kobel) And the last time you qualified for those weapons?

A Would've been within the last six months, I couldn't give you an exact date.

Q (D/Sgt. Tim Kobel) Okay. So, are you indicating that your firearm qualifications are up to date?

A Yes, sir. We're required to go at least twice a year.

Q (D/Sgt. Tim Kobel) The only weapon that came into action tonight was the Glock 22?

A Yes, sir.

Q Let's talk about your training, Chris.

A Okay.

Q Which academy did you attend?

A I attended the Interior Alaska Law Enforcement Academy in Fairbanks, Alaska. I was an officer in Alaska when I went through my full time academy. That was in, I wanna say, August of 2004 I went to that academy, which is when I got my full time police certificate. Prior to that I had been in, August of 2003 went through the Fife Bonney Lake Reserve Academy for the State of Washington, which is when I got my reserve off, my actual reserve officer certification and also had to, once I came back down from Alaska to Washington, had to attend my two week equivalency academy with the Washington State Criminal Justice Training Center in Burien, and that was in 2006. I got hired in January, probably March of 2006 I had to attend that academy to get my Washington certificate.

Q How long is the academy in Alaska?

A Four months I believe, three months, three and a half, four months, somewhere in that vicinity, honestly I couldn't give you an exact timeframe, but full time you're there, you know, you're five days a week in, in the, at, at the academy. Reserve academy was like two hundred and fifty hours that I attended.

Q Okay. Any advanced training after that?

A I've been through like crisis, or intervention and response to suicide bombing incidents and technical emergency response training for suicide bombing stuff, so two different federal classes that are, were a week apiece. One of 'em was in Anniston, Alabama, the other one was in Las Playas, New Mexico. But those were pertaining to suicide bombing stuff, chemical, radiological, biological warfare, like response to those type of incidents. Beyond that, normal driving stuff, normal firearms qualification, defensive tactics training, we train with Pierce County for our defensive tactics and that kind of stuff, so we attend that, I think, at least once a year. So my standard courses, we go through, seems like

about once a year we go through simulated firearms training, the, not FATS, it's not called FATS anymore, but that type of video interactive firearm training, shoot, don't shoot stuff. I've been to that at least four times since I've been down here, if I'm not, that's an approximation.

Q (Mr. Keith Barnes) You have any special assignments on department here?

A I take care of our SECTOR stuff, which is the new electronic ticketing system. I'm kind of the, I can't think of the name of it right now, the, I'm the liaison more or less, to help make sure that the officers' stuffs working properly. If they have a problem they get a hold of me before they have to try to go to outside stuff for helping them resolve issues with SECTOR.

Q All right, Chris, let's go back to the call that brings us all together.

A Okay.

Q What were you initially responding to?

A We were responding to an intimidation with a weapon call, myself and Officer Norling, Fircrest 7, were dispatched to an in-progress call at Charlie's Bar, which is 6520 19<sup>th</sup> Street West, on a male waving a weapon around, a pistol, a firearm, was waving a firearm around in the parking lot at Charlie's. As we were going we were getting updates that it was an interrupted vehicle prowler, that the suspects were a white male and a Hispanic male wearing white shirts, blue jeans, had been interrupted while prowling a vehicle, and once interrupted, they, one of them at least, produced a firearm and was waving the firearm around, that witnesses had seen a gun in his hand, brandishing a weapon. That they then left on foot from Charlie's down 65<sup>th</sup>, I believe they said southbound down 65<sup>th</sup>. Myself and Officer Norling arrived in the area relatively quickly. I was coming from like 44<sup>th</sup> and 67<sup>th</sup> Ave and Norling, I think, pulled out in front of me off of 40<sup>th</sup>, or Emerson and 67<sup>th</sup>, so we both followed each other to the call. When we first got there we communicated, Norling said he was gonna go down 65<sup>th</sup>, and I was gonna go down 64<sup>th</sup>, which the streets parallel each other a block away, and would have access if, if maybe suspects were gonna leave in a vehicle or cut down one street and cut over. So we paralleled each other down that street. Twentieth Street is down at the end of those two, or 60, 65<sup>th</sup> dead ends and becomes 20<sup>th</sup>, 64<sup>th</sup> you could go past it, but both of us came down 20<sup>th</sup> and met there. I pull up into another parking lot to see if the suspects were in visible sight, you know, maybe hiding behind a building or anything like that, didn't see them. Norling was gonna go back and contact the vic, or the RP. I then proceeded then to the Fircrest Family Townhomes apartment complex, which is right at the end of 64<sup>th</sup>. Like if you went straight down 64<sup>th</sup>, it dead ends into those apartments, which is, Charlie's the 6500 block of 19<sup>th</sup>, this is 6400 block of, you know, roughly 20<sup>th</sup> about that far back, about one block over, one block back. The apartments, you can go right or left when you get into the apartments, I just drove right and did a drive around the entire group of apartments, so I went westbound, southbound, eastbound across the back, and then turned and was going northbound up the back side of the apartments. When I made it clear past the end of the building, one of the buildings, I need to draw it real quick. You've got 64<sup>th</sup> comes in, and we'll just say this is the driveway that goes around all these buildings. And you've got buildings and some of 'em sit like this, some of 'em will sit like this, some like this, and there's even a few that sit with them like this. You've got several buildings that sit like that, and a building here, and I wanna say at least two like that. And that's an estimation of the buildings that were in there. I came in, drove through the parking lot, and this is all

either back yards or like walkways and stuff. Your driveway and parking areas are all along the outside of the property. So I drove in, went this way, went this way, came around the corner here, this is the, this is the front of this building, this is the side. And then there's the front of another building here, this, they might be actually two buildings, it might be 6470 and 6468, so this could be two buildings. So as I came around this side of the building there's fencing that kinda fences off some of the yards. Then you've got parking garages here, parking spots underneath awnings. I came around the building get to about this area, and see two males, they looked Hispanic, one light skin, one maybe a little bit darker skin. They were underneath the awning of this covered parking area. And there's a, kind of a funny color car, kinda this color on this marker, maybe an old Dodge, or a Colt or something like that that these males were standing...

Q (D/Sgt. Tim Kobel) Chris, let, let me interrupt you here a minute. For the purpose of the tape, Officer Roberts has been drawing a diagram on a dry eraser board. That diagram will be persevered via photograph. Chris, could you put north, south, east, and west there?

A Yes, sir. North, south, east...

Q (D/Sgt. Tim Kobel) And could you also put some arrows so we have a direction of travel so it's clear. Okay, thank you.

A Yes, sir. So, I came around the, the edge of the building, there's the vehicle, this vehicle parked there, the hood of the vehicle's up, the passenger door is open, and the males, one was standing up underneath the hood and the other male was standing in like the doorway of the car by the time I noticed it. Actually my rider says hey, look at that and that's when I looked over and, and seen the guys so, he, he caught it before I did. I looked over, the two males that were standing there, look at me with this deer in the headlight look. I park the car immediately, open my door, they immediately take off running away from me, so ran back this direction. There's, there's like little storage units that are underneath this, underneath the deals, there's only a couple spaces to go between those like, you have these little garage storage unit out there in the parking area. So they ran around behind that. I jumped out of my patrol car that would've been maybe a little bit further this way 'cause I was looking back at them at this angle. So I exit my car, I'm running back at a slight angle toward where they were at. They ran between the storage deals and went to this end apartment unit, I believe, I believe it would be apartment A, it's the one at the very end of the building. I, I yelled out immediately, as soon as they started to run I said police, stop, you know, yelled at 'em. They continued to run away. These, these two match the description of the two males that were just involved with the incident from, you know, from what I could see and the call, and what I was looking at at this point in time. Knowing that they were listed as, as being armed with a handgun at the time, they meaning one of these two potential suspects were listed as armed at the time, they take off running in towards this building. There's fencing too to prevent you from just like, you can't just run around behind the building, there's, there's tall fences there. They're at least six feet, if not taller, that prevent you from you just running around the edges of the building. So, they went towards this apartment, gained access to the apartment. Didn't see the first person that got there, you know, they were, they ran, they got to the door, they went inside the house. And I remember seeing the second person, he slammed the door behind him. And I didn't know if this was their apartment, if they'd just ran to get away from me and that was the first place they got to and that door was open. This is Fircrest, people leave their doors open all the time. And I was concerned these armed people had just ran in this house, 'cause my brain, when I saw

them under the hood of that car and in the passenger side that these might be our suspects from this vehicle prowl and, and, and intimidation with weapon, and maybe they're trying to steal a car, get out of the area, those were the things that my, that my brain was going to when I first saw them. Yell at 'em to stop, they fled in towards this house. I get to the front door, I don't recall checking the door, but remember thinking these guys are in this house and these, you know, whoever lives here is in danger. I kicked the door one time, it didn't come open. I kicked it a second time, the door came open, immediately pull my gun, go in. They, I can see them through the apartment now, towards the back of the apartment and I'm yelling at 'em, as loud as I can, let me see your hands, let me see your hands. Both males, it's kind of a narrow, you've got a little living room in the front but for the most part you can see from the front door straight towards the back door. Both males, and I've been to these apartments, like not that one maybe specifically, but all the apartments are very similar. I've been in them too before, you know, whatever calls over the years. They're at the back sliding glass door and I'm running into the, into the apartment and I've got my weapon out and yelling, you know, let me see your hands, let me see your hands. Both of the males are not showing me their hands, it's like they're in the backdoor and they're trying to get out is what I'm looking at, but my, my perception of it at the time is thinking is there a stick in the door? It's a sliding glass door. People put sticks, so I'm thinking, you know, they're, they're trapped, they're not getting out, and I'm yelling at 'em to let me see their hands. Both males like face away from me and I see their hands like, their hands are both down in front of 'em, so when I'm getting, I see the back of them and they're like this. And I see 'em by the door and I'm yelling to see their hands and they're both looking at me like this. And as I'm getting closer to them I become, you know, just, think most the hairs on the back of my neck stand up, they're not complying, they're not showing me their hands, they are both now standing at the doorway and it's, and they're right by each other. They're both standing at the doorway, neither shows me their hands. They're both like digging, it's like their, their hands are down in front of 'em. Both people's hands are both down in front of their bodies and I mean I can't, I don't know, obviously I'm, I, I got my hands sitting in my, front of my pants, but I don't know what their hands are doing. Neither one of 'em were showing me their hands. And I yelled at 'em loudly, several times, let me see your hands. They wouldn't let me see their hands. They're both looking back and me and I, I pictured that they were about to pull a weapon out, the weapon that was from this call earlier, and that I was in imminent danger of getting shot. I mean I, I can't picture why else they wouldn't let me see their hands, I mean that's a pretty simple move. And I've also them, from my recollection of it, they were stuck, that door wasn't opening, that they couldn't get out the door and that now they are, they have no choice, that this is it, this is gonna be the standoff. They wouldn't let me see their hands. They're digging, they're digging. I pull my gun up and I fired three rounds at them. Just after that, I didn't continue to fire 'cause just after that the door opens up and they spill out the back door. It's got those hanging kind of blinds, you know, the ones you can move out of the way or you can turn and shutter. They went out the back door. I slowed up a little bit not wanting to, I don't know if I hit them or not, not wanting to chase 'em out the backdoor and go through now this blind door that I don't know if they're right out the door waiting for me or whatever else. I held back for a moment and then I could hear 'em outside saying oh, you shot me, I've been shot, I've been shot. So I eased up out there and found, found 'em and they were both short distance outside the doorway and you could see blood on one guy's shirt. His hand was still underneath his body, so he was laying on the ground, blood on his side. He was down like this and his hand's still underneath his, his body like this, and I'm still yelling at him let me see your hands, let me see your hands. He wouldn't let me see his hands. Eventually, what I ended up doing was just going over there and kinda standing on this guy's arm. That guy I'm keeping an eye on. I could see this, the first guy's left hand is out to the side of his body, but he still has his hand

201

tucked underneath him. I'm the only officer there and I can't still see what he's got going on in his waistband. This guy's standing there and saying, you know, he'd been shot. So I'm standing on this guy's arm, I think, with my left leg, or left foot, and watching the other guy, then trying to get the other officers into the, into the area to be able to get back there to where I'm at.

Q Okay. Let's, let's break this down a little bit, Chris. If you'd take that red marker there...

A Yes, sir.

Q And put an X on the end of the building that this incident occurred at so when we photograph it later...

A Um-hm. This, and this is not to scale obviously. This is approximately where that car was at...

Q Okay.

A where I first saw them. These little areas here are those like, you know, the, they're the...

Q Right.

A structures. They go into this unit, which the units are kind of just long, rectangular boxes. They're two stories.

Q Okay. Just put an X on that box.

A Okay. I was standing, or I was standing about to here, when I shot they would've been in the back of the apartment. They were standing...

Q Okay.

A by the sliding glass door, it was straight through the apartment.

Q All right. Okay. That was quite a bit of information to go over, so come up close to the table so we can get it all on tape.

A Yes, sir.

Q Who was with you when you noticed the two people at the car?

A Alan McMillan, the civilian rider that I had with me.

Q Were there any other patrol cars in the complex yet?

A Not, not in that immediate area, no sir.

Q So, you see these two people matching the description.

202

A Yes, sir.

Q What were they wearing?

A They were wearing like a white like t-shirt or maybe like a polo shirt type shirts, both of 'em same color shirt, real bright white shirts, and dark blue jeans, kinda like blue jeans you might wear to go out, from my recollection.

Q Either one of 'em have any hats on?

A No sir, not that I saw.

Q Okay.

A Both, I don't think, they were both like, don't think either one of 'em had much hair, maybe they had their head shaved.

Q I may digress a moment here. When the call first came out for people in the parking lot with a weapon...

A Um-hm.

Q Did the call, did you have information, or did you talk to any of the witnesses at Charlie's to get a description of the suspects, updated description, and a description of the weapon?

A No, sir. No, we'd first gotten to the scene and I was, we were out looking right, right immediately for the, the suspects in the area.

Q Okay. So you spot 'em in a parking space at the, at the apartments?

A Yep, underneath the hood of the car and in the passenger side of the car, so they were like inside the, the one guy was standing in the doorway of the passenger side of the car. When I first rolled by I don't, I couldn't tell you where he was when I first, but when I first noticed him he had now stood up, passenger was wide open, and the hood of the car was...

Q Up?

A was up. And when I called out to 'em the, the little arm must not have been up to hold the hood up, 'cause when I first called out and they started running, the hood immediately slammed shut. The door stayed open 'cause, 'cause it was open, but the hood slammed shut, which also was like, if you're working on a car, you know, usually you put that little arm up, so.

Q They took off running?

A Immediately, spun around one eighty and both ran through the same location around that little storage unit, and then towards what I believe is apartment A.

Q You physically, you, you gave chase.

A Yes, sir. Yeah, I ran...

Q When you came around the corner of the storage unit, did you have eyes on the front door of the apartment?

A Saw the back suspect, and I don't know which, what their names are, which one, the guy that was in the back, the door was just slamming as, you know, you could, I could see the white shirt, him going in the apartment, the door slamming behind him, heard the door slam. So, assumed both of 'em, 'cause again there's a, it's at least a six, if not six and a half foot fence right, right by the apartments, so you know, for somebody to clamber over a fence like that is, would've been a pretty good leap.

Q You knocked on the door?

A No sir, I went to the door and kicked it one time and it didn't come open, so...

Q Okay.

A it was a solid thud. It didn't come open, then I kicked it a second time and it came open. And as soon as the door flung open, I had my flashlight out and got my gun out and I could see the, the same two gentlemen that were standing out in front of the deal, they were at the back of the apartment.

Q From the front door where you were standing to the rear, rear of the apartment, how far was it?

A Twenty-five to thirty feet. I think it's about the approximate depth of that, those apartments. It's not, you know, they're not big apartments.

Q Um-hm.

A So, that wouldn't be that much, very front door maybe, maybe twenty-five at best from the very, very front edge of the apartment to the back slider. And I advanced into the house several feet, sort of what would be the living room area, but didn't go into, there's kind of a hallway that starts...

Q Um-hm.

A a short distance past that and I'd stopped short of the hallway, I guess not wanting to be in a position where I was standing in the hallway, you know, that there's still latitude that I might be able to move.

Q Okay. And they both were at the back sliding door?

A Yes, sir.

Q And they had their back to you?

204

A Yes, sir.

Q What were your first commands you yelled at them?

A Let me see your hands, so, several times yelled it out. And I've got a big voice, so I screamed it.

Q And what was their response?

A No response to it. There was whatever frantic motion they were doing back there...

Q Reaching into their waistband, is what you...

A They're both...

Q indicated.

A Yes sir, they were, both their hands were, you could, like this motion, you can tell it wasn't pockets, it didn't see, it, it wasn't this kind of motion like you were, they were trying to get a door open. It was, their hands were in this, I, I saw basically this kind of, I don't know how to, how to really describe it outside of the angle of the elbows and whatnot would be that it would indicate to me that their hands were, were going somewhere down towards their lower abdomen, groin area of what I could see of, of both persons. I could see the guy in the back, both of 'em, the guy in the front, his left hand was definitely down on that side. His right hand would've been more obscured from the, the guy behind him.

Q Okay. And they were both wearing a bright white shirt you said?

A Yes, sir.

Q Short sleeve?

A Yes, sir.

Q And jeans?

A With jeans.

Q Both of them?

A Yes, sir.

Q See any bandanas hanging out of the back pockets or tied around a belt, as a belt, anything like that?

A The shirts, if I'm not mistaken, were untucked.

Q Okay.

705

A So I didn't see anything else.

Q And how long were they at that back door and you were giving commands?

A It was only a few seconds. I couldn't give you an exact time, you know, it was, it was, it was a few seconds. My thought process was, though, they're stuck, the back door's blocked somehow and they're not, 'cause if they're fleeing, they would continue to just open the door and flee. They opened the front door and got into the place. I don't know if they even lived there, I have no idea whose apartment that is. My brain was going that these guys are stuck in this apartment and that I'm gonna get shot. They're gonna turn around in a second and produce this firearm and shoot me. And the fact that they're not showing me their hands is exactly what I'm thinking is that they're getting the gun, getting it into battery, into position, whatever it is, and are going to turn around in a second and, and open fire on me.

Q Did they ever turn around?

A No, sir. After I fired, I fired several, well three rounds. Right after I fired my rounds, the door must've, they must've gotten the door open and they spilled out the back door. And then because of the blinds that were there, it obscured them after the door, so I don't know what they did after they went out the door, did not immediately fly down the, the hallway after them 'cause, you know, now definitely if they're gonna start shooting back through this, through these blinds, but I could then hear them just after they went out the backdoor you could hear like oh, oh, you shot me, you shot me, those kinda things. And you know, that's when I quickly but cautiously went down that, the, the hallway through the kitchen, flashlight out, flashlited 'em both and saw them laying out in the, and just off, there's a little concrete patio just off the back porch, and just past that patio is, is where they were laying on the grass behind, one just ahead of the other one.

Q I'm gonna back you up again.

A Yes, sir.

Q You're standing in the doorway there at the slider.

A Yes, sir.

Q Correct? I think what you're describing is you're kind of in a hallway?

A Prior...

Q Narrow?

A Yeah, prior to going, when I walked in the front, is that what you're saying?

Q Yes.

- A I could draw a quick diagram from, from memory here. We'll just put it in, say and this is the apartment, there's like a doorway here, think once in the apartment there's a set of stairs that go up here. You have like a living room area, there would be like a bathroom here. There's the stairs on one side, living room. You go in the front door and there's a, there's a hallway that starts right here, so you have the bathroom entrance there. Then you've got, past the (unintelligible) there might be, I don't know what's underneath the stairs if there's a storage closet, something like that, but this would be like the, the little dining room and this is the kitchen. And there's a sliding glass door right back here. So in the front door, living area...
- Q So it was open to your left?
- A The living area is open to my left.
- Q Okay.
- A Kitchen area, and I can't tell you how the cabinets are laid out in the kitchen.
- Q Sure, that's fine.
- A There was, there was like a dining room table, I believe. I was only in the apartment for seconds. I mean it was in, approximately here, I did not advance any further past that prior to where my, where my shots were from were from right here. 'Cause they were both at this back door, both males, like I say, male one, male two, they were like in that kinda stacked up motion there. And I, I just, again, totally...
- Q So you were to the...
- A I was about right here.
- Q You're prior to the bathroom.
- A Yes, sir.
- Q Okay.
- A And stopped in that area, and I mean I don't know that I was hundred percent making a conscious choice, but I saw the hallway and I didn't wanna go in the hallway 'cause I just, you know, in, that gives me zero options for backing up or moving to the left or right. But ordering them to let me see their hands and when they didn't, and it looked like they were stuck in the apartment, I expected, and there's, there's furniture and that kinda stuff here, I can't tell you if there's, there was something here to my left, it might've been a couch. I don't know if there's like, you know, a couch sitting there. So there's, there's stuff in the house, I mean there's furniture and that kinda stuff in the house, you know, maybe an end table, whatever else. But when they would not show me their hands, I fully expected that any moment, you know, one of 'em was gonna turn around, or both were gonna turn around with, with guns. I assumed they were both armed. I, 'cause I didn't know which one from the, from the call would've had the gun. Both...

207

Q (D/Sgt. Tim Kobel) Chris...

A men matched the same description.

Q (D/Sgt. Tim Kobel) Prior to the shooting did you, did you see a gun, any of these individuals with a gun?

A No, sir.

Q (D/Sgt. Tim Kobel) After the shooting, did you see a gun laying on the ground or on their persons?

A Not that I was able to cursory locate. I tried to check the, the suspect that was, that I had my arm on his, or my foot sitting on his arm. And it was just sitting there, I mean I wasn't standing on it. It was a pressure on his arm to make sure it wasn't something that he could move back this way. Did not find a weapon immediately like in their waistband, advised the officers, the first officers that came out, which was 528 OleOle and Officer Norling that, I said I haven't checked them yet or found their, found a gun. You know, I mean I wasn't gonna start doing body searches of these guys with being the only officer there. I was waiting to get other officers there with me.

Q (D/Sgt. Tim Kobel) Okay. As I understand, my interpretation, the way you're telling me, was that their unwillingness to follow your verbal commands and the motion and behavior in which they were keeping their hands out of your sight and kind of glancing back at you, gave you the impression that they were going to probably turn and fire on you.

A Yes, sir.

Q (D/Sgt. Tim Kobel) Okay.

Q For the record, Officer Roberts drew an additional sketch on the white erase board in the room with a not to scale, or floor plan of the apartment he entered. He placed an X in the hallway where he stood and there are two zeros indicating where the two suspects were standing at the back sliding door to the rear of the kitchen.

Q (D/Sgt. Tim Kobel) And Chris, have you ever had any contact with these two guys before?

A No. I don't even know their names at this point in time. I don't believe I have so, I didn't recognize 'em as anybody I've dealt with or seen like at those apartments before. You...

Q (Mr. Keith Barnes) You, you described your, your vehicle as your patrol vehicle. Can you describe that vehicle for me?..

A Yes, sir. It's our, we have five fully marked patrol vehicles that the City of Fircrest utilizes in day to day patrol. They've got City of Fircrest, or Fircrest Police written down the side, across the back, white Crown Victoria's, light bars on top, spot light, fully marked police cars, I guess, for lack of a better...

204

Q (Mr. Keith Barnes) Were, it probably looks like a police car then?

A Yes, sir.

Q (Mr. Keith Barnes) And did, did you have your search light, or did you use your (unintelligible) lights or anything like that on the...

A At that point I don't believe my search light was on, no sir. I came around the corner, the, there are parking lot lights there. It's a fairly well illuminated area, like large, you know, aerial sort of parking lot lights. And it's a solid white car that says police on the side.

Q (Mr. Keith Barnes) Okay. And then when you entered the apartment, were there any lights on?

A No, sir.

Q (Mr. Keith Barnes) It was all dark?

A Yes, sir.

Q (Mr. Keith Barnes) Did you have your flashlight out or...

A Yes, sir.

Q (Mr. Keith Barnes) Okay. Were you using your flashlight?

A I did use my flashlight, you know, let me play that back. I can't tell you if I had my flashlight out when I was, but I mean I could see them clear as day so I could've had my flashlight in my hand.

Q I believe earlier in our interview, Chris, you said you came in drew your weapon and had your flashlight out.

A Okay. And you know, and I know for a fact when I went out the back of the apartment I remember spotting with my flashlight. I can't honestly tell you about getting my flashlight out. I would imagine the, the fact that the apartment was dark, I don't recall any other lights, like no other house lights being on, that I wouldn't have just spilled into a dark apartment, so I would believe I had my flashlight out at the time and was flashighting them, because I, I could see both of them, I remember their white shirts being very bright, which would probably be a result of my flashlight being on the...

Q (Mr. Keith Barnes) Do, do you have any idea where, where you shot 'em or...

A I remember after they, when they were outside on the ground, the one suspect had somewhere back in his lower back area, like the meaty part of his back, there was blood on his shirt and coming out of that area. And then the gentleman that was in the front, so they were both on the ground just askew of each other, the one that was in the front was saying he was shot in the face. I remember looking over one

209

time trying to kinda see the side of his body, see if I could see a weapon on him, that I saw something here somewhere in his jaw area.

Q (Mr. Keith Barnes) To the left side of his jaw?

A To the left side of his jaw, but I don't know if that was blood for something else or, you know, I, I couldn't readily identify that as, as like an entry wound of where I shot them or, you know, shot him. I remember fire, firing three rounds. I remember walking back out from outside and seeing in the doorjamb to the left of the slider door there appeared to be a bullet hole there as well, so I think out of the three bullets I fired, one hit one suspect, one hit the second suspect, and the third was in the doorjamb of the, of the slider to the left.

Q (Mr. Keith Barnes) You, you said they were both talking?

A Outside?

Q (Mr. Keith Barnes) Yeah.

A Outside they were talking and they started talking in Spanish, so they were talking in English and then they started talking in Spanish to each other, and that made me nervous 'cause I didn't know if, I don't speak Spanish, so I was concerned that, at that time still that they might've been formulating some sort of plan.

Q (Mr. Keith Barnes) But they did say something to you in English, or said something to each other in English?

A They did say stuff in English and knew what it was about, you know, I've been shot, that kinda stuff. I don't recall them talking to each other like conversing to one another in, in English, but they did, they were specifically talking to each other in Spanish 'cause they weren't talking to me and one would say something and the other one responded. I couldn't even tell you, I couldn't even like remember even some of the words.

Q (Mr. Keith Barnes) Did you give 'em any other commands, or did you, could you tell if they understood what you were saying?

A Yeah, I, when I was telling 'em let me see your hands, the one guy said I can't move my hand. The guy in the back said he couldn't move his hand. I said let me see your hands, you know, let me see your hands, and he goes I can't move my hand. The guy in the front, 'cause where he was laying he was saying he was shot in the face, it was very legible, you know, both of 'em I could hear 'em when they were outside after they had spilled out into the backyard, you know, like they were saying you shot me, I, I've been shot, that stuff, it was all in English.

Q (Mr. Keith Barnes) Okay. Thank you.

A Yes, sir.

Q How long after you shot did the first back up officers arrive?

A It felt, it felt like a long time, two minutes, maybe less, minute and a half. It seemed, it, it felt like longer so I'm, I'm trying to adjust for that time shift that I would've, I've never been involved in an incident like this, but I, I know time seems to, it changes your perception of times, I would imagine changes, so it seemed like a long while while I was standing out there for anybody to know where I was. 'Cause when I went flying into the apartment, I didn't get the building number on the outside of which actual unit I was in, so I was trying to convey to them, you know, out behind the apartment, I assume because my patrol's car parked out front, and I also knew I had that rider with me that, you know, they would find the car sitting there and my door was wide open. If you look, you know, they can see an apartment door open and whatnot, and they did piece that together, so. It would be an approximation and I think it was about a minute and a half to two minutes from when I first got in the backyard with them after having shot them, until the first officers, Officer Norling and Officer OleOle arrived.

Q At any time did your civilian rider leave the patrol car...

A Not that I'm...

Q and come to the scene?

A No sir, no. He, he never got out. He was...

Q (D/Sgt. Tim Kobel) Did you discuss the shooting with him?

A Not, I mean I, I went back out and I said, you know, hey, you know, are you okay? I was involved in a shooting, you know, kinda thing. I didn't give him the details of what went on inside. He started talking and I said, tried to basically say let's not talk about it, whatever you remember, you remember, think about it. And, and wasn't in my car for much time, I tried to stay out of my car. I did sit down in my car, but don't recall specifically discussing anything, definitely did say, remembered to tell him, you know, like just remember what you remember, you know. They'll tell, you know, you'll be talking to people about whatever happened tonight.

Q Was there anybody else in the apartment when you entered besides the two people that were at the back door?

A I did not see anybody else, so I think they checked the apartment afterwards and didn't find any other people in the house, so. But I didn't see anybody when I went in, just these two guys. There wasn't like family members sitting around the room or anything like that, just...

Q (Mr. Keith Barnes) After the shooting, did you get on your radio at all?

A Yes, sir.

Q (Mr. Keith Barnes) What, what did you report on the radio?

- A I reported shots fired, two suspects down. I think I called out when they, when I first saw, first saw them going I might've called out and said I got two running and definitely recall, though, putting out over the air that shots fired and two suspects down.
- Q Did you make any phone calls to anybody...
- A I called...
- Q shortly after that?
- A I called my wife. Officer Norling was standing by, he could only hear one side of the conversation. I was on my Blue Tooth and it was out in the parking lot near my (unintelligible) and we can grab my phone and I can look at the time. I called her to tell her I was involved in a shooting, if you happen to, she's up at Guemes Island at her cousin's house. She and our, my step-daughters are up there for the weekend. And I said if you, you know, see the news tomorrow, whatever else, I'm fine, I'm not injured, and you know, that's where it was. I said I can't talk about it anymore, but Officer Norling was standing there. I asked him specifically to stand by just so, you know, one side of the conversation did at least get heard that it wasn't, I wasn't discussing it with her or anything like that. The, after I got back to the station, 'cause nobody here really knows about shootings, you know, about officer involved shootings to speak of, I don't know if, we have guild attorneys that represent the police guild, so I did call Sid Venegi's cell phone, he's our guild attorney, just to say hey, I was involved in an officer involved shooting, didn't give him any details. I left him a voice message so I can give you guys his telephone number.
- Q (D/Sgt. Tim Kobel) Oh, so you didn't talk to him specifically.
- A No, sir. I left a voice message on his, on his cell phone voice mail saying I'm not sure if you guys, you know, represent us or if there's anything I need to talk to you about kinda thing but, you know, just trying to, I guess, you know, be conscientious of need to make sure that if we need things in place I have something in place, so. That's, that's the only people I, I've called on my phone tonight. And the only other people I talked to about anything would've been the guys that were there at the scene with me. I think I, I gave Sergeant Berry, is it Mark Berry? You know, a quick synopsis of, of what happened 'cause he said he was the sergeant on the scene that was gonna take care of stuff, so I tried to give him a quick idea of what happened, you know, so when they were looking at things in the apartment I could make sense.
- Q (D/Sgt. Tim Kobel) Okay.
- Q Does anybody have any more questions?
- Q (Mr. Keith Barnes) I don't have anything else.
- Q (Off. Dan Bordel) I don't either.
- Q Is everything you've told us the truth?

2/2

A Yes sir, it is.

Q Have we made any threats or promises to you?

A No sir, you haven't.

Q This will end the taped statement. The time now is 0513.

213

# PIERCE COUNTY PROSECUTOR

**April 09, 2014 - 1:53 PM**

## Transmittal Letter

Document Uploaded: 448700-Respondent's Brief.pdf

Case Name: St. v. German

Court of Appeals Case Number: 44870-0

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)

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