

Received  
Washington State Supreme Court

SEP - 8 2015  
E  
Ronald R. Carpenter  
Clerk

Motion for discretionary review.

[Review of trial court decision]; Review of Court of Appeals interlocutory decision];

No. 45694-0-II  
[Appellate court]

92195-4

[SUPREME COURT or COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON]

Clack County Superior

[Title of trial court proceeding with parties designated as in rule 3.4]

\_\_\_\_\_  
Respondent,  
Shawn E. Christopher  
petitioner,  
and  
\_\_\_\_\_  
Defendant.

MOTION FOR DISCRETIONARY REVIEW

PRV

N/A  
[Name of petitioner's attorney]

\_\_\_\_\_  
Signature of Attorney for [petitioner]

\_\_\_\_\_  
[Name of Attorney for Appellant]

\_\_\_\_\_  
[Address] [City] [State] [Zip Code]

\_\_\_\_\_  
[Telephone Number] [Washington State Bar Association Membership No.]

A. IDENTITY OF PETITIONER

Shawn Eric Christopher  
[Petitioner's name]

asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. Please see attachment "B"

[Identify the decision or parts of decision which the party wants reviewed by the type of decision]

Court of Appeals Division II

[Court entering or filing the decision]

[date entered or filed] Aug. 4, 2015

[Description of any order granting or denying motions made after the decision such as a motion for reconsideration].

[date of order granting or denying motions].

A copy of the decision [and the trial court memorandum opinion] is in the appendix at pages A- V through

C. ISSUES PRESENTED FOR REVIEW

[Define the issues which the court is asked to decide if review is granted]. Please see attachment "C"

D. STATEMENT OF THE CASE

[Write a statement of the procedure below and the facts]. Please see attachment "D"

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

[Argument should be short and concise and supported by authority]. Please see attachment "E"

As stated in S C and D and with cases cited and Appendix, the Court of Appeals is in conflict with decisions of the Supreme Court and in conflict with their own and other court of appeals decisions. These issues raise a significant question of law under the Constitution of this State and/or the United States.

F. CONCLUSION

[State the relief sought if review is granted].

*Please see attachment "F"*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Shawn Eric Christopher*  
Respectfully submitted,

*[Signature]*

Signature

*N/A*  
[Name of petitioner's attorney]

APPENDIX

*Please see "Appendix" attachment*

*Shawn E. Christopher*

[Name of Defendant]

*1714 NE 72nd Circle*

[Address]

*Vancouver*

[City]

*WA*

[State]

*98665*

Zip Code]

*(560) 773-2800*

[Telephone Number]

## B. Decision

The Court of Appeals decision is based, in part, on their misunderstanding of the evidence. This trial was a credibility contest as per the prosecutor's closing argument.

The court entering the decision on my appeal was the Court of Appeals Division II. The date filed was August, 4<sup>th</sup> 2015.

They ruled:

- a) I failed to establish that the misconduct by the prosecutor affected the jury
- b) I did not object to the LFO's
- c) That I failed to object to misconduct.
- d) There was multiple misconduct by the prosecutor, again, I failed to object.
- e) The prosecutor did vouch for a witness but again I failed to object.
- f) That counts II and III added two days before my initial readiness did not prejudice me. This is based on the courts misreading of the dates, otherwise, they agreed with me.
- g) That photographs taken by Christina and vouched for by her were then "authenticated."

The decisions by the Court of Appeals were partially based on their misreading of the case

and "evidence". This trial was only a credibility contest as per the prosecutor's closing argument. See Appendix pages 2-3 and footnote.

The Court of Appeals also based their "ample evidence" partially based on a picture of a hickey that they misread to be evidence of a strangulation mark. This misunderstanding came because at first Christina lied to the police and told them that her hickey was a thumb print. Her lie was exposed before trial (because people at our place of employment saw the hickey the day before) and she had to admit, at trial, that it was just a hickey. See states ~~ret~~ closing argument RP 416 Appendix page 9 which states, "It's a hickey. [S]he testified it's a hickey. There was no dispute that the mark here is a hickey. (Shows photo to jury.) And that was a mark that was taken in photo [sic] of that night... that is a mark and it's a hickey." (also see Appendix pgs 15-22)

There was a nondecision on the prosecutors misconduct in closing about my reason for leaving the apartment and running that night. I explained why I did; in closing the prosecutor basically calls me a liar and gave the jury a choice to believe me or him.

And a nondecision on "Jury instructions."

### C. Issues Presented for Review

1) The cumulative effect of all the prosecutorial misconduct affected the jury and denied me of a fair trial.

2) Failure to object should not prevent me from relief because no curative could have cured the cumulative effect of all the misconduct by the prosecutor.

3) Counts II and III being added two days before my initial readiness denied my constitutional rights to a speedy trial.

4) Adding counts II and III late, making me postpone my trial, and the subsequent withholding of the only witness to those charges was extremely prejudicial and denied me of a fair trial.

5) I should be remanded to determine if I can pay the LFO's imposed.

6) That the Court of Appeals erred in believing that my trial was anything but a credibility contest. I.e., it was a credibility contest.

7) That the Court of Appeals erred in basing

their "ample evidence" on their misreading that a hickey was a strangulation mark; a thumb print when it was just a hickey.

8) That photos taken need a new heightened "authentication" standard now that we live in a digital world. Photos can now be easily manipulated with "photoshop" and other like apps.

9) The Court of Appeals did not address whether the prosecutor committed misconduct in closing by stating, "That doesn't make sense. That doesn't make sense. Over unpaid tickets? No. He ran because he knew he was wrong. And he knew he was going to get in trouble, potentially." When I testified that I ran because I thought I had unpaid fines. I had been arrested two times prior to this, once very recently (under 2 months) and I believed that I had another warrant. The prosecutor's statement led the jury to believe that I was lying. The jury cannot be expected to believe that the prosecutor would lie to them. In essence the prosecutor told them that I was lying and they should believe him. The prosecutor knows my arrest record and blatantly led the jury to believe that there was no way that I told the truth.

10) A nondecision on Jury instructions. See Appendix 23-26.

## D. Statement of the Case

This case was a credibility contest. Christina was the aggressor the entire night. See Appendix pg 11. Every time she got violent I tried to get away from her. At one point I thought she was playing when she was kicking me, so I played too. This was the kicking outside, not her initial kick upstairs, which was malicious. Appendix 15-22

After she slammed me into the wall I got up and laid on the bed. She then tried to pull me off the bed, at which point I pushed her away from me. She later called the police and lied, saying that a hickey was a thumb print from me choking her for one minute. There was no other marks on her neck. At trial she had to admit that the mark on her neck was a hickey, not a choke mark. See Appendix pg. 9, 15-22

She then supposedly called the DV. advocate 2-3 days later complaining about "new bruises". She testified that the D.V. advocate told her to take photos herself of the "new bruises". Wouldn't a D.V. advocate advice her to call the authorities? These new photos taken by Christina were later "authenticated" by her alone and she didn't know on what date they were taken i.e., 2-3 days later. These photos should not have been allowed and

were objected to.

The prosecutor then adds counts II and III just two days before my initial readiness to hinder my ability to defend myself against those charges. I was unlawfully forced to post-pone my trial (speedy trial rights). To compound the problem, the prosecutor withheld the only witness to these new charges until the day the witness took the stand. See Appendix pages 12-13. The judge would not sever those counts because we would be able to question him "before he testifies." see Appendix page 14.

The prosecutor commits misconduct multiple times throughout my trial. Some acknowledged as misconduct by the Court of Appeals, some assumed but not decided, and one that was not addressed. The latter was Part D (9) of this request for review.

The cumulative effect of all the prosecutorial misconduct denied me of a fair trial.

The trial court also imposed LFUS without a finding to determine if I would be able to pay them. As stated earlier, I cannot afford them and I've been arrested two times because I couldn't pay them. I have 5 kids and proudly pay child support and

support them financially on top of that.

• And there wasn't an accomplice jury instruction.

E. Argument Why Review Should Be Granted

Photos:

I do not have any case law for the authentication of photos but with the advancements in technology, this should be addressed. Even if it doesn't grant me relief. Photos are easily altered and need a new heightened standard to authenticate them. "Photoshop" has changed the way photos can be altered and this court can address this issue.

Prosecutorial misconduct - Cumulative effect

The Court of Appeals agreed there was misconduct but did not address the cumulative effect in my case. And since the prosecutor vouched for a witness and basically made the jury choose between him or me about my reason for running I present...

State V. Suarez - Bravo 864 P.2d 426 72 Wn. App. 359

Cumulative effect of prosecutor's questions as well as prejudicial nature of prosecutorial misconduct denied defendant fair trial.

The cumulative effect of which relieved defendant of obligation to request curative instruction, and denied defendant fair trial. U.S.C.A. Const. Amend. 14.

[I]t is readily conceivable that a juror could

conclude that an acquittal would reflect adversely upon the honesty and good faith of the police witness. [the same can be said about a prosecutors honesty.]

State V. Case, 49 Wash. 2d 66, 298 P.2d 500 (1956)  
A "fair trial" within implication of constitutional provision guaranteeing speedy and public trial by impartial jury, implies trial in which attorney representing state does not throw prestige of his public office, information from its record, and expression of his own belief of guilt into scales against accused. It is just as essential that one accused of a crime shall have a fair trial as it is that he be tried at all. Const. Art. 1 § 22, as amended, Amend. No. 10 See State V. Susan, 1929, 152 Wash. 365, 278 P. 149  
Cumulative effect of repetitive prejudicial error may become so flagrant that no instruction or series of instructions can erase it and cure the error.

Statements by a prosecutor of his personal beliefs are likely to have damaging impact, said the court, and where those statements are repeatedly made, as here, the damage is compounded because the prosecutor represents the government and the people of the state. Here, the jurors were put in a position in which acquittal of the defendant meant that they had to believe the prosecutor was either exaggerating

or fabricating, and jurors cannot be expected to believe that a prosecutor would exaggerate or lie. *State V. Farrel* (1972) 61 NJ 99, 293 A2d 176.

Finding reversible error in a prosecutor's unobjected-to reference, in final argument to the jury, to his own and to the police's opinions as to the defendant's guilt, on the grounds that the issue of guilt was very close, and the trial judge's general instruction concerning the jurors' duties and the function of argument did not cure the prosecutorial impropriety of its harmful effect, the court, in *People V. Humphreys* (1970) 24 Mich App 411, 180 NW2d 328, reversed the defendant's conviction.

Faced as it was by a very close question of fact [remember, my case was a credibility contest], the jury might well have been led by the prosecutor's remarks, even though it is a truism in all but a very few cases, to suspend its own power of critical analysis and judgment in ~~diff~~ deference to those of the police and the prosecutor, pointed out the court, and if his remark had this effect, it also had the effect of derogating the defendant's right to a trial by jury. Noting that shortly before it began its deliberation the jury was instructed that its duty was to determine the facts from the evidence produced in open court, and that arguments by counsel were intended to help the jurors in

understanding the evidence but were not themselves evidence. It was observed that the defendant's failure to move for a mistrial would not preclude the court from reversing his conviction.

Finding reversible error in a prosecutor's expression, during summation to the jury, of his personal belief in the defendant's guilt, where no objection was made during argument pursuant to a court-approved agreement between opposing counsel [as it was in my case], and notwithstanding the fact that the trial judge gave a general cautionary passage in his charge to the jury, the court, in *Commonwealth v. Joyner* (1976) 469 Pa 333, 365 A2d 1233, overturned the defendant's conviction. Such expressions of personal belief by a prosecutor have often been condemned, observed the court, citing Standard 5.8 (b) of the ABA Standards for Criminal Justice, "the Prosecution Function" in this connection.

The prosecutor violated my constitutional right to confront an adverse witness (himself). And added the probative force and influence of his official position by telling the jury that I ran because I knew I was in trouble and by using his personal belief that that was the reason I ran. And also by vouching for a witness (the only witness to counts II and III and it was also a credibility contest).

Under the Sixth and Fourteenth Amendments to the United States Constitution, an accused in a state criminal prosecution is guaranteed the assistance of counsel, and one of the incidents of this guarantee is defense counsel's right to engage in closing argument. If the prosecutor, in turn, refers to his personal, extrarecord opinion or knowledge as to the guilt or innocence of the accused, it may be contended that the prosecutor has vitiated the foregoing constitutional guarantee, or, alternatively, that he has violated the further federal constitutional right to confrontation of an adverse witness.

In addition to these constitutional contentions, it may be argued that by referring to his belief or knowledge of guilt, the prosecutor is invading the province of the jury and usurping the jurors' function to declare the guilt or innocence of the accused, that the prosecutor is injecting into the case an irrelevant and inadmissible matter or a fact not legally produced in evidence, and that the prosecutor is improperly adding the probative force of the testimony adduced at trial the weight of the prosecutor's personal influence or the influence of his official position.

Even if, in response to adverse objection, they are admonished by the trial judge to disregard the prosecutor's personal beliefs and opinions, the

seeds of prejudice may be irrevocably sown.

Like my case, in an unpublished opinion, Division Two agreed that the prosecutor had exceeded the proper bounds of argument, but concluded that the comments did not deny petitioner a fair trial. This court granted review, and reversed (and I ask the court to do the same in my case) in *State v. Reed*, 35 Wash. App. 1036 (July 29, 1983), petition for review granted, 100 Wash. 2d 1017 (1983). Here, and in my case, no one, not even the prosecutor, questions the impropriety of these comments (see Appendix pg. 1).

The Code of Professional Responsibility, DR 7-106 (c)(4) states unequivocally that an attorney shall not [a]ssert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused....

Applying the predecessor to this rule, this court has noted that it is just as reprehensible for one appearing as a public prosecutor to assert in argument his personal belief in the accused's guilt. *State v. Case*, 49 Wash. 2d 66, 298 P.2d 500 (1956) Here, the prosecutor clearly violated (CPR) DR 7-106 (c)(4) by asserting his personal opinion

of the credibility of the witness and the guilt or innocence of the accused.

The prosecutor's comments struck directly at my defense for running by appealing to a person's belief that only people guilty run from the police. And I was guilty of not paying my LFO's not of assault. The prosecutor is well aware of LFO's, and that failing to pay results in a warrant. There can be no doubt that his comments (see Appendix pg. 10 - RP 392) affected the jury's decision. At the very least, there was a substantial likelihood that they affected the jury. The jury was left with a choice to believe only one of us i.e., the prosecutor or me.

This was compounded by all the rest of his misconduct, including vouching for a witness, and by improperly exposing the jury to propensity evidence. Plus there was no accomplice jury instruction. Also the witness for counts II and III was withheld until the day he took the stand.

Also, see State V. Smith 856 P.2d 415 71 Wn. App. 14 "Even after the trial court issued a strongly worded warning to the jury that any inference of the establishment of probable cause must be ignored. Moreover, the trial court stated that the jury

was only to consider evidence presented in court. We applaud the trial court's effort to blunt the impact of these remarks but, even though the jury is presumed to follow the instructions of the trial court, *State v. Guizzotti*, 60 Wash. App. 289, 296, 803 P.2d 808, review denied, 116 Wash.2d 1026, 812 P.2d 102 (1991), we cannot conclude that these remarks did not result in prejudice. Prosecutorial misconduct can be so prejudicial that it cannot be cured by objection and/or instruction. See *State v. Powell*, 62 Wash. App. 914, ~~918~~ 919, 816 P.2d 86 (1991) review denied, 118 Wash.2d 1013, 824 P.2d 491 (1992). This is such a case. Unlike the earlier remarks at issue, these comments clearly reflect the prosecutor's personal assurances to the jury as to the defendant's guilt. Such comments strike at the very heart of a defendant's right to a fair trial before an impartial jury. Once made, such remarks cannot be cured.

Once the prosecutor in my case told the jury that I ran because I was in trouble, he implied that I ran because I was guilty and no instructions could have cured that. I testified as to my reason for running. He undercut that. And in doing so, struck at the heart of my defense.

A prosecutor may not express his or her personal

belief or opinion as to the truth or falsity of any testimony or evidence or guilt of the defendant. *U. S. V. Certified Environmental Services, Inc.*, 753 F.3d 72 (2d Cir. 2014). New trial was warranted on basis of cumulative prejudice caused by governments misconduct. Also, Prosecutors may not personally vouch for their witnesses' truthfulness. [In my case he vouched for his witness and basically said I was guilty for running - along with other misconduct. Again, the cumulative effect denied me of a fair trial.]

*State V. Alexander* 64 Wn. App. 147, 822 P.2d 1250 held that, "[a]lthough several of alleged errors were not properly preserved for appeal... Court of Appeals would exercise its discretion to review all of defendant's claims based on its belief that cumulative effect of errors denied defendant a fair trial." RAP 2.5(a)

As a preliminary matter, we note that several of the errors alleged on appeal were not properly preserved for appeal. Because we believe, however, that the cumulative effect of all these errors, preserved and not preserved, denied Alexander a fair trial, *State V. Coe*, 101 Wash. 2d 772, 789, 684 P.2d 688 (1984) RAP 2.5(a)(3) to review all claims. See *State V. Curry*, 62 Wash. App. 676, 679, 814 P.2d 1252 (1991); *State V. Noel*, 51 Wash. App. 436, 439, 753 P.2d 1017,

review denied 111 Wash. 2d 1003 (1988).

Finding reversible error in the cumulative effect of two apparently unobjected-to prosecutorial improprieties, in closing argument to the jury, including the prosecutor's improper interjection of his personality into the case, on the ground that the prejudicial effect of the remarks was not cured by an unspecified instruction by the trial judge, the court, in *Thompson v. State* (1970, Fla App) 235 So 2d 354, cert den (Fla) 239 So 2d 828 reversed the defendant's conviction. When considered cumulatively, added the court, the two statements' prejudicial effect must be held not cured by the judge's instruction. Saying it was unable to determine from the record whether the prosecutor's improper argument prejudiced the defendant, the court concluded that the judgment must be reversed.

Canon 15 of the ABA Canons of Professional Ethics states that in closing argument an attorney should never express his personal belief in the defendant's guilt or innocence.

Counts II and III being added two days before readiness and withholding the witness to those charges until trial.

Here, there is a misunderstanding as to when the

prosecutor had all the info for those charges and when he filed them (two days before my initial trial date). So I'm asking this court to either accept my lawyers timeline, or allow me an extension to prove the timeline. I'll be released from prison on 9-8-15 and I'll gladly get the proof that my lawyers timeline is correct. See Appendix pgs 12-14, 29-30

As pointed out in the Court of Appeals decision, page 13, State v. Michielli, 132 Wn.2d 229, 240-43, 957 P.2d 587 (1997) the prosecutor forced the defendant to waive his speedy trial rights by adding charges five days before trial and ruled it was prejudicial.

Almost the exact same thing happen to me, but the prosecutor in my case added counts II and III just two days before my initial readiness, forcing me to waive my speedy trial rights, even though he had all the information for those charges for at least 3 weeks prior to filing the charges.

The prosecutor's comment on pg 14 of the courts decision doesn't even make sense in the timeline. The charges were amended in mid-October yet his statement is that he didn't receive info for those charges until late-October. I believe his was meaning to refer to when he filed the charges. I ask this court to please allow me the small amount of

time that I'll need to prove the timeline, in the interest of justice.

To further prejudice me, the prosecutor also withheld the only witness to counts II and III until the day he testified. And failed to provide discovery. See Appendix pages 12-14 and 30. This was extremely prejudicial.

Please also see Appendix pg 27-28 which is my SAG argument.

To top it off, there was not an "accomplice" jury instruction. This issue was in my SAG but not addressed by the Court of Appeals. I ask that this court rule on it. I will present it to this court in the exact form I did to the Court of Appeals. I.e., the pages from my SAG newly numbered as Appendix pgs 25-26.

This missing jury instruction also adds to the cumulative effect of my trial. When every thing is taken into account as a whole, I did not receive a fair trial.

#### LFO's

And lastly, the court imposed LFO's without making a determination if I would be able to pay them.

I have had LFO's already imposed upon me before this case and it has caused an extreme hardship on me. I've been arrested two prior times because I could not afford them. I have 5 Kids, I pay my child support and also help with all other expenses that come along. E.g., birth days, holidays, school, etc.

Kids are extremely expensive and I'm often forced to chose between providing for them, or paying my LFO's. I always put my Kids first, which leads to failure to pay (LFO's) and a warrant is issued which then fosters a sense of hopelessness. This forces me to try to avoid the police and ultimately led me to run from them, which the prosecutor then mislead the jury to believe that I ran because I was guilty of a crime, when I am not. I've always held a steady job but I'm unskilled so I don't make much money and LFO's is and has been an unjust punishment on me.

Failure to make any findings is grounds for vacation of fines. *United States V. Walker*, 59 F.3d 489, 493 (4th Cir. 1994); *United States V. Francisco*, 35 F.3d 116 (4th Cir. 1994) a determination that a defendant has the present or likely future ability to pay LFO's must be based upon more than a statement of to the fact. *Granados*, supra. Once a defendant has shown his present indigence, the discretion of the Sentencing Court should generally be executed in

favor of waiving fees and restitution. See *United States V. Aregbeven*, 251 F.3d 337 (2001).

It is well settled that LFO's may only be imposed upon those defendants with the foreseeable ability to pay them. *Fuller V. Oregon*, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed. 2d 642 (1974). Also see *Id.* *United States V. Davis*, 117 F.3d 459 (11th Cir. 1997); *United States V. Granados*, 962 F.2d 767, 771 (8th Cir. 1992). And RCW 10.01.160 (3) states: "The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them." *State V. Blank*, 131 Wn.2d 230; 930 P.2d 1213 (1997).

This Court ruled that restitution, and all things related are punishment. See *State V. Tobin*, 132 Wn. App. 161, 174, 130 P.3d 426 (2006); *State V. Kinneman*, 155 Wn.2d 272, 282, 119 P.3d 350 (2005) *State V. Devin*, 158 Wash.2d 157, 142 P.3d 599 (2006).

## F. Conclusion

I'm asking the court to please, in the name of justice, grant me a short extension to prove the timeline that is disputed for counts II and III or accept my lawyers timeline as true.

I'm asking the court to please vacate my convictions and dismiss the charges, or remand for retrial. In the alternative, if the convictions are not reversed, I ask the court to vacate the LFO's.

Or whatever course deemed necessary by this court.

Oath of Petitioner

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Executed this 1<sup>st</sup> day of September, 2015 at  
Washington Corrections Center



Shawn Christopher

Appendix ps 1

**ARGUMENT**

**I. MR. CHRISTOPHER WAS CONVICTED UNDER A STATUTE ENACTED IN VIOLATION OF WASH. CONST. ART. II, § 19.**

Appellant rests on the argument set forth in the Opening Brief.

**II. THE PROSECUTOR COMMITTED MISCONDUCT THAT VIOLATED MR. CHRISTOPHER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS BY IMPROPERLY EXPOSING THE JURY TO PROPENSITY EVIDENCE.**

The trial court ruled *in limine* that the state would not be permitted to introduce any of Mr. Christopher's prior convictions or evidence of prior bad acts. <sup>\*</sup> RP 25-26, 27, 30, 56; CP 18-38. Despite this, the prosecutor asked Officer Bibens if he knew Mr. Christopher, eliciting the response "I've met Shawn before on some previous calls at that same location." RP 234.

The state appears to agree that this was misconduct. See Response Brief, page 15-16.

This agreed misconduct warrants reversal because of its prejudicial nature and cumulative effect. *State v. Boehning*, 127 Wn. App. 511, 518, 111 P.3d 899 (2005). The inquiry examines the misconduct and its impact, not the evidence that was properly admitted. *In re Glasmann*, 175 Wn.2d 696, 711, 286 P.3d 673 (2012).

\* Appendix 4-8

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*Garceau v. Woodford*, 275 F.3d 769 (9th Cir. 2001), *reversed on other grounds at* 538 U.S. 202, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003)... 2, 3

*McKinney v. Rees*, 993 F.2d 1378 (9<sup>th</sup> Cir. 1993)..... 2

*Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)..... 2

**WASHINGTON STATE CASES**

*In re Glasmann*, 175 Wn.2d 696, 286 P.3d 673 (2012)..... 1

*State v. Boehning*, 127 Wn. App. 511, 111 P.3d 899 (2005)..... 1

*State v. Fisher*, 165 Wn.2d 727, 202 P.3d 937 (2009)..... 2

*State v. Lindsay*, 180 Wn.2d 423, 326 P.3d 125 (2014) ..... 3

**CONSTITUTIONAL PROVISIONS**

U.S. Const. Amend. XIV ..... 1, 2

Wash. Const. art. II, § 19 ..... 1

**OTHER AUTHORITIES**

ER 403 ..... 2

ER 404 ..... 2

Appendix pg. 3

contest<sup>1</sup>, jurors were likely to have used propensity evidence to presume guilt.

The evidence was hotly contested, and Gutierrez admitted she suffered from memory problems. RP 170. Gutierrez also acknowledged that she was not bruised from the claimed kick of Mr. Christopher, that her neck was marked with a hickey when the officer saw her, and that her eyes were always red. RP 181, ~~189-190, 191-195.~~

The trial court should have granted Mr. Christopher's mistrial motion, or granted a new trial. RP 235-238; CP 76-79.

The prosecutor committed prejudicial misconduct. There is a substantial likelihood the misconduct affected the verdict. *State v. Lindsay*, 180 Wn.2d 423, 326 P.3d 125 (2014). In addition, jurors used propensity evidence to convict Mr. Christopher. This violated his right to due process. *Garceau*, 275 F.3d at 776, 777-778. His convictions must be reversed and the case remanded for a new trial.

### **III. THE COURT ERRED BY ORDERING MR. CHRISTOPHER TO PAY ATTORNEY FEES.**

Appellant rests on the argument in the Opening Brief.

---

<sup>1</sup> The state argues in their Response Brief that the case was not a credibility contest. But a review of the state's closing argument reveals that the prosecutor told the jury "this really is about credibility", and mentioned "credibility" multiple times in rebuttal closing argument. RP 419.

Appendix pg. 2

Since propensity evidence is by its very nature highly prejudicial, it also can violate due process by rendering a trial unfair, which it did here. U.S. Const. Amend. XIV; *Garceau v. Woodford*, 275 F.3d 769, 775 (9th Cir. 2001), *reversed on other grounds* at 538 U.S. 202, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003); *see also McKinney v. Rees*, 993 F.2d 1378 (9th Cir. 1993); *Garceau*, 275 F.3d at 776, 777-778; *see also Old Chief v. United States*, 519 U.S. 172, 182, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997).

It also violated the rules of evidence. ER 404(b); ER 403; *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009).

The state argues that since the misconduct only occurred once and was not repeated, it did not prejudice the trial. Response Brief, p. 17. But the officer's testimony left jurors with the impression that Mr. Christopher had previously committed acts of domestic violence against Ms. Gutierrez. Defense attempts to add information on the topic and mitigate its impact do not render the misconduct harmless.

As argued earlier, the court's instruction to disregard the officer's remark likely had little impact. Jurors may have unconsciously used propensity as evidence of guilt. In addition, since the case was a credibility

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 to be used for impeachment purposes?

2 MR. FARRA: If he testifies, Your Honor.

3 JUDGE LEWIS: I know. Why should I allow an  
4 assault?

5 MR. FARRA: Under ER 609 --

6 JUDGE LEWIS: Normally an assault wouldn't be  
7 allowed to be used for impeachment purposes because  
8 it doesn't relate to truthfulness.

9 MR. FARRA: Well, it's assault -- I'm sorry, Your  
10 Honor. It's assault in the second degree, felony  
11 conviction within 10 years of the date. And under  
12 609, I'd ask that it be admitted to impeach.

13 JUDGE LEWIS: You wish to be heard on the motion?

14 MS. STAUFFER: Your Honor, basically, it's not  
15 allowable under ER 609. There's no basis for it and  
16 the prejudice to the Defendant is extreme. So we  
17 would ask that Court order that that not be allowed  
18 to be used at trial if Defendant testifies.

19 JUDGE LEWIS: I grant that motion under 609(a)(2).  
20 It's not a crime involving dishonesty or false  
21 statement. As a felony violent offense, its probative  
22 value related to truthfulness is limited and has  
23 substantial prejudicial value, so State will not be  
24  
25

Appendix p5. 5

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-11

1 permitted to use that under 609 for impeachment  
2 purposes if the Defendant takes the stand. And I  
3 think that --

4 MS. STAUFFER: Number 4, just addressed that.

5 JUDGE LEWIS: -- takes care of Number 4 --

6 MS. STAUFFER: Yeah.

7 JUDGE LEWIS: -- as well. Number 5, I don't know  
8 anything about criminal history of the State's  
9 witnesses. Is there any disclosure --

10 MS. STAUFFER: Your Honor, I would indicate that I  
11 have been given a package of -- and then I keep  
12 getting e-mails with more convictions. So, there are  
13 various ones on three State witnesses that I'm aware  
14 of at this point. State has provided -- I don't know  
15 if there's any more, but that --

16  
17 JUDGE LEWIS: Number 6 then, for entry of an order  
18 directing the State to instruct its witnesses to  
19 refrain from attempting to introduce hearsay evidence  
20 in their testimony. Well, State's -- ask questions. I  
21 assume if you're asking questions which elicit  
22 hearsay testimony, then you think there's some good  
23 faith basis for it. The witnesses aren't supposed to  
24 be attempting to introduce anything except what the  
25

Appendix pg. 6

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 question calls for, so.

2 MR. FARRA: Yes, Your Honor, and I think --

3 JUDGE LEWIS: You'll be talking to your witnesses  
4 about the fact that if the question doesn't call for  
5 hearsay evidence, then they shouldn't be trying to  
6 introduce it.

7 MR. FARRA: I will, Your Honor, and I think that'll  
8 get to -- back to the hearsay issue that I want to  
9 clarify a little bit later on.

10 JUDGE LEWIS: Okay. So, Number 7, entry of an order  
11 prohibiting the State's witnesses from making any  
12 statements or reference to alleged convictions. I  
13 think I've already did that, unless you think it's --  
14 under 404(b) the evidence is admissible.

15 MR. FARRA: No, Your Honor. I didn't have any  
16 conviction --

17 JUDGE LEWIS: That's granted.

18 MR. FARRA: -- under the 404 --

19 JUDGE LEWIS: Number 8, order prohibiting the State  
20 from introducing any statements about being a former  
21 gang member in Norte. You plan on bringing that up?  
22

23 MR. FARRA: I don't, Your Honor.

24 JUDGE LEWIS: That's granted then. The co-  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-11

1 conspirator evidence, I've already ruled on.

2 MR. FARRA: Could I -- could I make sure I'm clear  
3 on the ruling, Your Honor, and make sure I  
4 communicate what I would like? Because I think this -  
5 - this leads into the hearsay motion that you just  
6 ruled on. I would like the -- what I seek to do is  
7 have the victim testify to what was told to her over  
8 the phone. Those statements to her were not  
9 testimonial, so we don't have any kind of *Crawford*  
10 issue here. The issue, it seems to me, is one  
11 primarily of hearsay.

12 JUDGE LEWIS: Okay. Right now, I'm just going  
13 through the State -- the Defense motions --

14 MR. FARRA: Okay.

15 JUDGE LEWIS: -- in limine. The Defense asks that  
16 witnesses not attempt to introduce hearsay testimony.  
17 In other words, you ask them, "What did you see?" And  
18 they say, "I didn't see anything, but so-and-so told  
19 me this, this, and this." They're not supposed to do  
20 that under any circumstances and I'm prohibiting them  
21 from doing that here.

22 MR. FARRA: Okay.

23 JUDGE LEWIS: That's not a question of if you're  
24  
25

*Appendix ps. 7*  
State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Right, but also --

2 JUDGE LEWIS: So, why don't you let me go down  
3 through this --

4 MS. STAUFFER: I'm sorry, Your Honor.

5 JUDGE LEWIS: -- list and when --

6 MS. STAUFFER: Okay.

7 JUDGE LEWIS: -- we get there, then you --

8 MS. STAUFFER: That's fine.

9 JUDGE LEWIS: -- can make argument.

10 MS. STAUFFER: Okay.

11 JUDGE LEWIS: As I was saying, Number 9 on the co-  
12 conspirator evidence, I've already ruled that the  
13 alleged victim in the case can testify as to what Mr.  
14 Hausinger said to her that she perceived to be  
15 tampering with her or contact by Mr. Christopher. So,  
16 I've already ruled with regard to that. Number 10, I  
17 think I just ruled that, since the State's saying  
18 they don't have any 404(b) allegations related to  
19 prior bad acts, that that's granted then.

20  
21 MR. FARRA: Um, that I do not intend on introducing  
22 any at this -- at this time.

23 JUDGE LEWIS: Okay. And then Number 11, related to  
24 text messages. So, as I understand it, the State  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 asking them a question that calls for a hearsay  
2 response, whether it's admissible or not. I'd have to  
3 rule on its admissibility separately.

4 MR. FARRA: Okay.

5 MS. STAUFFER: Your Honor, I would -- I don't want  
6 to have a can of worms, though, when we get the jury  
7 in here and they start trying to introduce what's --  
8 supposedly, the alleged victim is claiming she's  
9 getting text messages. In the sense that if she's  
10 going to claim it's somebody, I don't think she has  
11 any identity issue -- I mean, I don't think she has  
12 knowledge of identity, so then we're going to start  
13 getting into what someone told her as to who  
14 supposedly sent these text messages. So, we're going  
15 to have to be very careful as to what, if anything,  
16 the State is allowed to get in. And the other thing I  
17 would just bring up is that there's a bunch of cell  
18 phone photographs that the State has offered, and  
19 we'll get that in one my motions, I think the next --

20 JUDGE LEWIS: Well, isn't that --

21 MS. STAUFFER: -- motion.

22 JUDGE LEWIS: -- hearsay motion -- isn't your  
23 motion 11 about the text messages?  
24  
25

*Appendix p5.8*  
State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 "Please tell the truth," but "please help me get out  
2 of this," so those are the purposes that I'm offering  
3 it for. It's not for proving that he --

4 JUDGE LEWIS: Well, let's do the second part, since  
5 it's somebody else talking about it, I don't find  
6 that that would be a basis for admissibility, but I  
7 agree that, if the allegation is that the person  
8 acting on Mr. Christopher's behalf said certain  
9 things, then the things that he said, in order to try  
10 to induce the person to testify falsely, or in order  
11 to contact the person, are admissible, and I'm not  
12 going to edit them except in very limited  
13 circumstances. And here, as I understand it, the  
14 reference is that he said, "He's in trouble. He has a  
15 second strike, and therefore, he needs you to do  
16 things." So, if that's what she testifies he said,  
17 that's what he said. I'm not going to exclude it. She  
18 can't go on to explain what she thought that he meant  
19 by that, or what she knew in terms of his past record  
20 and all that sort of thing, but she can testify as to  
21 what he said.  
22

23 MR. FARRA: Okay, Your Honor. Do you want to  
24 address the 3.5 or the -- the 911 call first?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 elements of the charge.

2 JUDGE LEWIS: You have anything further on that?

3 MR. FARRA: I do, Your Honor. It is necessary to  
4 prove the tampering. I need to prove that there was  
5 an attempt to induce false testimony. The reference  
6 to -- the statement was basically, "He's in very,  
7 very bad trouble." And that's an emotional appeal.  
8 It's an attempt to induce. I ought to be able to  
9 prove that attempt with the words that were used. If  
10 I'm not allowed to, then any witness tampering, or  
11 anybody planning to do some witness tampering, can  
12 come up with all kinds of horrible things that  
13 they've done in the past and know that that can't be  
14 used against them, even though those might be very  
15 powerful tools in inducing somebody to testify  
16 falsely or withhold information, or something of that  
17 nature. So I think it's very important and very  
18 probative to the jury to see just what type of  
19 persuasive, intimidating effects -- intimidating may  
20 be the wrong word, but, what sort of emotional ties  
21 were attempted to be put on. As well, I -- I -- it's  
22 evidence of consciousness of guilt. Saying, "Please  
23 help me get out of this," basically. Not saying,  
24  
25

Appendix 9

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 was safe.

2 It's a hickey. Let me -- she testified it's a  
3 hickey? There was no dispute that the mark here is a  
4 hickey. (Shows photo to the jury.) And that was a  
5 mark that was taken in photo of that night, and  
6 there's not much more to say about it, that that is a  
7 mark and it's a hickey.

8 Number 3, why didn't Christina tell about all the  
9 other stuff that had been going on since 10:30 the  
10 night before, continuing into the morning? Why didn't  
11 she talk about the -- dropping the cigarettes through  
12 the balcony and getting helped over the balcony rail  
13 and what not? Why didn't she talk about putting her  
14 foot up to keep him from sitting on her? Why didn't  
15 she talk about all of these other things? About the  
16 -- the mirror? Well, she didn't talk about that  
17 because that wasn't what scared her. What scared her  
18 was the fact that the Defendant had just put his  
19 hands on her throat and that's why she called 911,  
20 she didn't call 911 because of all the other stuff.  
21 She called 911 because he put his hands around her  
22 throat and it scared her. So that's why she didn't  
23 go through an entire review of what had happened that  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 -- that evening.

2 Number 4, I believe Ms. Stauffer said that the --  
3 that Christina is five-foot six, I think she  
4 testified that she's five-foot one, please go back  
5 and check your -- your notes on that. I believe the  
6 Defendant testified that he's five-foot six or five-  
7 foot seven, somewhere around there's -- there, so  
8 there's -- there's a decent height difference there  
9 in favor of the Defendant.

10 At one point -- or several points, in Ms.  
11 Stauffer's closing, she talks about this continuing  
12 aggressive conduct by Ms. Gutierrez that night. Ms.  
13 Gutierrez did not kick the Defendant when he tried to  
14 sit on her. I don't know how many times there's been  
15 an attempt to portray that as a kick, she was sitting  
16 in the chair and he went to sit on her and she put  
17 her foot up and she's denied it over and over that  
18 she kicked him. Don't fall into that trap just by  
19 saying it was a kick over and over and over doesn't  
20 mean it was a kick. It was a foot up as anybody  
21 would if you're sitting there and you don't want  
22 somebody to sit on top of you because you're having  
23 cramps or even if you're not, if you're just not  
24  
25

Appendix Pg 10

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you today that he ran because he thought he had a  
2 warrant for paying unpaid tickets. But he never told  
3 Officer Bibens anything about that. All he told  
4 Officer Bibens was that it was Christina Gutierrez's  
5 fault, the whole thing was Christina Gutierrez's  
6 fault. As if Officer Bibens wouldn't check, or  
7 somehow that wouldn't have been found out. That  
8 doesn't make sense. That doesn't make sense. He  
9 knew that she was calling 911, she told him she was  
10 calling 911, and he ran out. Over unpaid tickets?  
11 No. He ran because he knew what he'd done was wrong.  
12 And he knew he was going to get in trouble,  
13 potentially.

14 And then he contacts her, or more accurately, he  
15 has somebody else contact her. And think very  
16 carefully about what he tells Jacinto Hausinger to  
17 read to Christina in that letter. He doesn't write  
18 in that letter for Christina to tell the truth. What  
19 he writes in that letter is for Christina to help  
20 him, and he lays out the reasons that she should help  
21 him. Not that she should tell the truth but that she  
22 should help him. Not because it's the right thing to  
23 do, not because it's good for her. And he does this  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 knowing the evidence shows, because he stipulated to  
2 it, knowing that there's a domestic violence contact  
3 order in place that restrains him from contacting  
4 her. It exists just for this reason, just for this  
5 reason, because of the dynamics involved and keeping  
6 people who are charged with a crime from contacting  
7 the other people. He knows that, he knows he  
8 shouldn't do it but he directs Jacinto Hausinger to  
9 do it anyway and Mr. Hausinger does.

10 Now, the Defendant got up on the stand today and  
11 he denied that he told Jacinto Hausinger to do that,  
12 but you saw Mr. Hausinger. The last thing Mr.  
13 Hausinger wanted to do today was stand up on this  
14 stand and testify. He didn't want to admit that the  
15 Defendant told him to contact Ms. Gutierrez. That  
16 was like pulling teeth out of him, but he did because  
17 he was under oath and he was telling the truth." Now  
18 he could have also changed his story, he could have  
19 denied it. He could have wiggled around and he tried  
20 to, he tried to. Well, the -- did -- did -- I asked  
21 him, "Did the Defendant give you a letter?" "Well, he  
22 didn't give it to me but it was on my bed when I came  
23 back to the cell." :Did he write it?" "Well, I  
24  
25

Appendix pg. 11

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 feeling well or you don't want somebody sitting on  
2 top of you, you put your foot up.

3 The evidence shows that Christina has not been  
4 posturing this entire time that she did everything  
5 completely right. She's not posturing that she  
6 didn't follow him to the outside, that she didn't  
7 grab the can, she's not posturing it like that.  
8 She's not saying that she's a completely innocent  
9 person. She's told you that she went and she pushed  
10 him in the chest when he was in front of the mirror.

11 So, that's -- it's inaccurate to paint Christina as  
12 somebody who's trying to say, "I'm the angel here, I  
13 didn't do anything wrong." That's -- Christina's not  
14 the one doing that.

15 Finally, Mr. Hausinger, you can make your own  
16 decisions on his credibility and what he got up here  
17 and -- and said today. We do know, if you look at  
18 these -- if you look at these -- where did we --  
19 where did the ex -- (Addresses the Clerk and then Ms.  
20 Stauffer.) Did you grab the books by some chance?

21 MS. STAUFFER: I don't think it's here. No.

22 MR. FARRA: Did I grab them?

23 CLERK: Which one are you --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: The photos of the text messages? Oh,  
2 I got them right here, sorry. You can see -- you can  
3 see here -- here it is. (Shows photos to the jury.)  
4 Here's the number, 360-773-2514. That's the number  
5 that he testified was his today. And this is a photo  
6 of Christina's cell phone. And the call came from  
7 him. She didn't know him, he didn't know her. They  
8 were cell mates. Then a friend gave him a letter,  
9 that's what he testified to today. Very reluctantly  
10 that he directed -- that the Defendant directed him  
11 to call.

12 And then, finally, the issue of credibility and  
13 that -- and this gets back because that's the first  
14 thing Ms. Stauffer said and she's absolutely right.  
15 This is really about credibility and it gets back to  
16 my initial point. What did Christina Gutierrez have  
17 to overcome to come and testify yesterday and to  
18 stand up and to say that's enough? How easy would it  
19 have been for her to just say, I don't want to deal  
20 with him, it's not worth the trouble, it's not worth  
21 the emotional baggage. It's not worth the fear, it's  
22 not worth whatever it might be. It would have been  
23 very easy for her to do that but she didn't do it.  
24  
25

*Appendix pg. 12*  
State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Okay.

2 JUDGE LEWIS: -- so I need to get jury selection  
3 done so the jurors can be released. So, after the  
4 jury is selected but before the opening, we can deal  
5 with motions in limine. So, we'd only need to deal  
6 with it now if it was something you need to talk to  
7 the jury about during selection.

8 MR. FARRA: No, Your Honor.

9 JUDGE LEWIS: Okay. On the motion to sever counts  
10 or, in the alternative, to dismiss?

11 MS. STAUFFER: Your Honor, I would indicate that I  
12 filed this motion for several reasons. One was the  
13 fact that the rea -- last -- first readiness, which  
14 was on October 17<sup>th</sup>, I com -- basically objected to  
15 the fact that the State failing to provide any  
16 advanced discovery until two days prior to the  
17 readiness, and actually almost 5 o'clock the day of  
18 the -- October 15<sup>th</sup>, of new information relative to  
19 their desire to suddenly amend the information that  
20 afternoon of the readiness hearing on October 17<sup>th</sup>.  
21 Over my objection, the readiness hearing judge,  
22 Stahnke, went ahead and allowed the State to do so.  
23 As a result, my client was forced to basically agree  
24  
25

Appendix pg. 13

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-11

1 to set over the trial to today. And then again, part  
2 of our concern is since the State's had this case, we  
3 needed to interview the main State witness, which is  
4 this Jacinto Hausinger who is the individual that  
5 apparently the State's alleging has attempted to  
6 tamper with a witness. We asked for the interview  
7 with him and nothing was set up. And so then the next  
8 thing that happens is the State files, I guess at the  
9 time of the readiness hearing because I didn't get  
10 any advanced notice again. On November 7<sup>th</sup>, State  
11 files another notice of, I guess, intent to amend the  
12 information to come up with some conspiracy issue and  
13 then to rely on Evidence Rule 801(d)(2). And, again,  
14 I believe that we're basically being sandbagged  
15 somehow, the State continuing to not provide adequate  
16 notice in advance of any decisions or motions that  
17 have relevance as to the charges and/or to the  
18 witnesses. Now, it would appear from the State's  
19 written their motion in reference to Evidence Rule  
20 801(d)(2), that Mr. Hausinger is now not expected to  
21 appear. I don't know what the status is on that. I  
22 had anticipated being allowed to talk to him prior to  
23 his testimony if he's going to show up for trial. If  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 which is what my concerns are, especially now. He's  
2 not even available today and the procedures going to  
3 be the State's going to get those suc -- supposed  
4 statements in without Mr. Hausinger. And -- and then  
5 from there, we're back to a real big issue. So those  
6 are the concerns I have.

7 JUDGE LEWIS: Okay. I deny the motion to sever or -  
8 - and to dismiss at this time. I'm basing that on the  
9 assumption that Mr. Hausinger will be here and will  
10 be available to talk to the Defense before he  
11 testifies. And the statements that are being offer  
12 under whatever theory -- 801(d)(2) -- would be the  
13 type of statements that you would expect and I  
14 believe the police reports were in the -- the file  
15 indicating what it was that Mr. Hausinger was  
16 supposed to have said to the witness that he's  
17 alleged to have tampered with, or that Mr.  
18 Christopher is alleged to have tampered with. So,  
19 there's no surprise that those would be statements  
20 that would be expected to be testified. I thought you  
21 were talking about statements that he made to the  
22 officers or someone else other than the witness, and  
23 those probably would not be admissible. But -- but  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 should have changed her story. I'm not offering them  
2 to prove that the marks on her neck were from a  
3 hickey. I'm not offering for the truth of the matter.  
4 Essentially, they're offered to prove that the  
5 Defendant was involved and the intimate knowledge --  
6 the general content of the communications had  
7 intimate knowledge that had to come from the  
8 Defendant. So, that's argument number one, in terms  
9 of the hearsay. And then the 801 argument, which  
10 maybe we ought to --

11 JUDGE LEWIS: Okay.

12 MR. FARRA: -- wait on can come next.

13 JUDGE LEWIS: Did you have anything in response?

14 MS. STAUFFER: Your Honor, I would just indicate  
15 again I am concerned that if Mr. Hausinger isn't  
16 available, we're back to square one with the issue of  
17 the prejudice and allowing in information that  
18 technically can't come in, that we'll be denied our  
19 ability to cross examine Mr. Hausinger. So, I guess  
20 from that standpoint, I would be asking the Court to  
21 make sure that we don't have any issues relative to  
22 Mr. Hausinger and that the State could -- can't just  
23 try to introduce statements and then not produce him,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 shoes?

2 A. Yes.

3 Q. So, again, after your rendition of events where you  
4 end up running and pushing him so hard that you both  
5 almost fall in the bedroom, his reaction is to just get in  
6 the bed, is that correct? And lay there?

7 A. Yes.

8 Q. Okay. You don't leave, do you?

9 A. No, I stand there.

10 Q. Is there any reason you couldn't leave?

11 A. Yes.

12 Q. Why's that?

13 A. I was protecting the drawing.

14 Q. Okay. Just like you were protecting him, is that  
15 right? So, all your actions are protecting something. Is  
16 that right?

17 A. Yes.

18 Q. Oh, okay. And when he -- when you pushed him in the  
19 mirror area and you almost fall down, did he have to grab  
20 you to keep from falling?

21 A. I think we grabbed each other.

22 Q. Okay. So, you're both grabbing each other at that  
23 point?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 right after work, so he had his red and black shoes on.

2 Q. Well, what kind of shoes are --

3 A. He left them in his locker.

4 Q. Were they tennis shoes?

5 A. Yes.

6 Q. Okay.

7 A. Because I remember he kept his red and black shoes  
8 in his locker and he had his gray and white shoes. His  
9 Jordan's.

10 Q. Had he changed clothes when he got home?

11 A. He took a shower.

12 Q. Did he put different clothes on?

13 A. Yes.

14 Q. So he changed clothes?

15 A. I'm pretty sure, yes. He was walking around in just  
16 a short and no shirt.

17 Q. So, did he change his shoes?

18 A. When I called the police, he put his shoes on --

19 Q. No, no, no, no. I'm talking about when he came home  
20 and when you claim that he kicked you, what kinds of shoes  
21 was he wearing?  
22

23 A. I don't remember.

24 Q. Do you remember saying he was wearing his tennis  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. As we -- as we're falling. That's when he hit the  
2 wall and we kind of just stood up.

3 Q. Okay. So, who is hitting the wall?

4 A. He was.

5 Q. Okay. And where -- how were you guys grabbing each  
6 other at that point?

7 A. I think he grabbed me by the arm and I -- I grabbed  
8 him, like, somehow, like, on his clothing or his arm or --  
9 I don't know.

10 Q. Okay. And did you guys get untangled or get up or -  
11 - ?

12 A. Yeah. He got his footing, I stood up straight.

13 Q. Okay.

14 A. And he said he was going to bed.

15 Q. Okay. And that's what he did, right?

16 A. No. He went on the bed, yes, but he didn't fall  
17 asleep.

18 Q. Well, but he went to bed?

19 A. Yes.

20 Q. Went to bed. Okay. Now, you claim that he kicked  
21 you in the thigh, is that right?

22 A. Yes.

23 Q. Okay. And which thigh are we talking about?  
24  
25

1 A. My left thigh.

2 Q. Now, isn't it true that, of all the pictures that  
3 you have, that you had no bruises on your left thigh, is  
4 that correct?

5 A. Yes.

6 Q. Yes what? No bruise?

7 A. No bruise. I --

8 Q. Okay.

9 A. -- didn't have a bruise.

10 Q. Do you recall making some statements to Shawn that  
11 if he wanted to know what a kick felt like that night or  
12 early morning?

13 A. Yes.

14 Q. What was that about?

15 A. Because he kept saying, "You kicked me" so I said,  
16 "Well, I could show you what a real kick feels like" and  
17 that's when he kicked me.

18 Q. Okay. So, that's when you're claiming he kicked you  
19 in the thigh?

20 A. Yes.

21 Q. Okay. And that's when you're saying you didn't  
22 really kick him, he just kind of fell on your foot and  
23 ended up thinking you kicked him, right?  
24

25

*Appendix pg. 18*

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. Oh, okay. And then he's, at that point, leaving,  
3 right? Trying to leave?

4 A. Yes.

5 Q. Okay. (Pause.) And, apparently, somehow there was  
6 something about a cigarette. Did you knock a cigarette out  
7 of his hand or something happen there?

8 A. I think I went to go hand him one and I accidentally  
9 dropped it. It --

10 Q. What --

11 A. -- was his. Or he handed it to me or something like  
12 that and I dropped it through the balcony cracks.

13 Q. Okay. (Pause.) Now, as far as the pictures that we  
14 have, you indicated that you had a hickey on your neck,  
15 right?

16 A. Yes.

17 Q. Okay. Can you tell me if -- this is Exhibit Number  
18 2 -- is this the hickey, or what are we talking about  
19 here? (Hands photo to the witness.)  
20

21 A. That's the hickey. (Points at the photo.)

22 Q. That's the hickey? Okay.

23 A. Yeah. It was very small.

24 Q. Okay. (Shows picture to the jury.) So then we look  
25

*Appendix pg. 19*

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 at Number -- Exhibit 4. Is that still a hickey? (Hands the  
2 witness a photo.)

3 A. That's the hickey. (Points at the photo.) These are  
4 the red marks, but this is a hickey.

5 Q. Oh, okay. So, the real, so-called bruise that we  
6 see is the hickey mark. Is that what we're talking about  
7 on these pictures?

8 A. No, that wasn't a bruise. That was a hickey.

9 Q. This one is a bruise or a hickey? (Hands the  
10 witness a photo.)

11 A. That one is a hickey. (Points at photo.)

12 Q. Which one? Well, maybe just make sure we know --  
13 kind of to the jury so they know -- .

14 A. That's a hickey. (Holds the photo up and points.)

15 Q. Okay. And that's the same one that's on this one  
16 here?

17 A. Yes.

18 Q. Okay. And then this picture shows your -- your  
19 throat pretty good, right?

20 JUDGE LEWIS: Where did this picture come from?

21 MS. STAUFFER: Number 1.

22 WITNESS: Yes.

23 BY MS. STAUFFER: (Continued.)  
24  
25

*Appendix pg. 20*

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 Q. Okay. And you said there was no marks or bruises on  
2 your throat area, right?

3 A. No. Not that I saw.

4 Q. Then you indicate that several days later -- do you  
5 know exactly when it was that you decided to have more  
6 pictures provided?

7 A. It was like two or three days later.

8 Q. Okay. Did you call the police to ask them to come  
9 over and take some pictures?

10 A. No. I called Amy.

11 Q. Okay. So, did you end up going to any law  
12 enforcement to get the pictures taken?

13 A. No.

14 Q. Okay. So then you're saying that you had Amos take  
15 some pictures?

16 A. Yes.

17 Q. Okay. And so those are the 13, 12, 11 pictures that  
18 you're saying are all ones that you had Amos take, right?

19 A. Yes.

20 Q. Okay. Then you have -- I guess, you could maybe  
21 help me out here because I'm having a hard time figuring  
22 it out. But could you tell me what Exhibit Number 10 is  
23 supposed to show?  
24  
25

Appendix pg. 21

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. My leg.

2 Q. Which one?

3 A. My left leg.

4 Q. And so where -- where -- what are we seeing on that  
5 leg (inaudible).

6 JUDGE LEWIS: All right, Counsel, Exhibit 10 hasn't  
7 been admitted. It shouldn't be displayed to the jury.  
8 prior to its admission.

9 MS. STAUFFER: Excuse me, Your Honor. Well, I --  
10 I'm trying to clarify because I couldn't see what the  
11 Prosecutor was even --

12 JUDGE LEWIS: You can certainly clarify if you  
13 want, but until an exhibit is admitted, it shouldn't  
14 be displayed to the jury.

15 MS. STAUFFER: Oh, okay. I'm sorry, Your Honor.  
16 Okay. I assumed it'd already been offered. I'm sorry.  
17 Well, I'll reserve on those at this point. (Puts  
18 photos back with evidence and looks through other  
19 photos.)

20 BY MS. STAUFFER: (Continued.)

21 Q. Now, you testified that you don't know how long you  
22 -- I guess, Shawn had his hands around your neck. Is that  
23 about right? You don't know how long?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you wrote out? Did you seek medical attention --

2 A. No.

3 Q. -- afterwards? Oh, okay. Okay. So, in addition to  
4 your later injuries that you're claiming are on your leg,  
5 is that right? Where you claiming you had some more  
6 bruises later on, on your feet or legs?

7 A. Yes.

8 Q. Okay. So, what's that from?

9 A. It happened after I got strangled.

10 Q. After what?

11 A. They weren't there before.

12 Q. Excuse me? I'm sorry.

13 A. They weren't there before the strangling.

14 Q. I'm sorry. I can't understand you.

15 A. The bruises that I had were not there before I got  
16 strangled.

17 Q. So, were these bruises from that night?

18 A. I believe so.

19 Q. You don't know?

20 A. I'm not sure.

21 Q. Okay. And do you recall when you spoke with my  
22 investigator, in contrast to your testimony here today  
23 where, basically, you're admitting you did follow Shawn  
24  
25

Appendix 19. 22

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. You do not know, right?

3 A. I do not know --

4 Q. Okay.

5 A. -- how long.

6 Q. And if I understand the -- Exhibit Number 1 shows  
7 your face pretty clearly, is that correct?

8 A. Yes.

9 Q. Okay. And do you have any bloodshot eyes or  
10 anything like that?

11 A. I was also tired.

12 Q. I mean, does that picture show of any --

13 A. It shows redness.

14 Q. Okay. Is that the way your eyes usually look?

15 A. After work? If I stay up late, yes, really tired.

16 Q. Okay. So, nothing out of the ordinary as far as  
17 your eyes go, right?

18 A. No, not that I saw.

19 Q. Okay. So, you're indicating that you felt you  
20 couldn't breathe. Is that right?

21 A. Yes, for a moment.

22 Q. And you said that you had indicated that -- that on  
23 your DV form that you could breathe. Is that right? What  
24

25

## Jury Instructions

An instruction to view the testimony of an accomplice with caution is mandatory when the prosecution relies solely upon the uncorroborated testimony of an accomplice. P.P. 381, 398 they refer to us as accomplices. "Far from being superfluous or objectionable, a cautionary instruction is mandatory if the prosecution relies upon the testimony of an accomplice. A conviction may rest solely upon the uncorroborated testimony of an accomplice only if the jury has been sufficiently cautioned by the court to subject the accomplice's testimony to careful examination and to regard it with great care and caution. We adhere, therefore, to the rule that a ~~proper~~ cautionary instruction is proper where accomplice testimony is relied upon by the prosecution." *State v. Carothers*, 84 Wn.2d 256, 525 P.2d 731 (1974) (citations omitted. Footnote added) (as harmonized in *Harris and Sherwood*) *Carothers*, at 269-70 525 P.2d 731. *Carothers* stresses this court's often repeated concern over accomplice testimony and the need to caution jurors regarding its questionable reliability. *State v. Troiani*, 129 Wash. 228, 224 P. 388 (1924); *State v. Jones*, 53 Wash. 142, 101 P. 708 (1909); *State v. Pearson*, 37 Wash. 405, 79 P. 985 (1905). Where the testimony of an accomplice is uncorroborated, a cautionary instruction must be given.

Failure to give a cautionary instruction is reversible error when such testimony is wholly uncorroborated see e.g., *United States v. Bernard*, 625 F.2d 854 (9th Cir. 1980); cf. *United States v. Slocum*, 691 F.2d 650 (2d Cir. 1982), cert. denied, 460 U.S. 1015, 103 S.Ct. 1260, 75 L.Ed.2d 487 (1983). Some federal courts look to whether the accomplice testimony supplied the only strong evidence of guilt, *United States v. Moore*, 700 F.2d 535 (9th Cir. 1983), while others are satisfied if aspects of testimony are corroborated, *United States v. Wright*, 573 F.2d 681 (1st Cir.), cert. denied, 436 U.S. 949, 98 S.Ct. 2857, 56 L.Ed.2d 792 (1978), and one court broadly stated that it is reversible error not to give a requested accomplice instruction even where substantial corroboration

exists. *United States v. Leonard*, 494 F.2d 955 (D.C. Cir. 1974).

The Alaska courts will reverse for failure to instruct if they determine the conviction was substantially obtained through the use of accomplice testimony. The [102 Wn.2d 155] persuasiveness of corroborating evidence is scrutinized more carefully under this approach. *Anthony v. State*, 521 P.2d 486 (Alaska 1974); *Price v. State*, 647 P.2d 611 (Cl. App. Alaska 1982).

*Moore*, 229 Kan. at 81, 622 P.2d 631 "We hold: (1) it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced; (2) failure to give this instruction is always reversible error when the prosecution relies solely on accomplice testimony; and (3) whether failure to give this instruction constitutes reversible error when the accomplice testimony is corroborated by independent evidence depends upon the extent of corroboration. If the accomplice testimony was substantially corroborated by testimonial, documentary or circumstantial evidence, the trial court did not commit reversible error by failing to give the instructions.

A cautionary instruction is required only if the accomplice's testimony is uncorroborated. *State v. Willoughby*, 29 Wn. App. 828, 650 P.2d 1387 (1981). When substantial corroborating evidence exists, the instruction need not be given, although "it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced." *State v. Harris*, 102 Wn.2d 148, 155, 685 P.2d 584 (1984) (whether the instruction is needed depends on the extent of the corroborating evidence; harmless error is not committed if the corroborating evidence is substantial.), overruled on other grounds in *State v. Brown*, 113 Wn.2d 520, 782 P.2d 1013 (1989); see *State v. Sherwood*, 71 Wn. App. 481, 860 P.2d 407 (1993).

Under *Harris*, two tests are available for determining whether error is harmless beyond a reasonable doubt; under "Contribution

test, "appellate court looks only at tainted evidence and determines whether it might have influenced the fact finder's verdict; under "overwhelming evidence test," appellate court considers all the evidence against defendant and determines whether it is so overwhelming that it necessarily leads to a guilty finding.

As an exception to the general rule, the court may instruct the jury to evaluate the testimony of an accomplice with caution. Such an instruction is mandatory if the State's case rests solely upon the uncorroborated testimony of an accomplice.

W.P.I.C. 6.05 instruction was cited and approved in *State v. Murphy*, 98 Wn. App. 42, 47 n.5, 988 P.2d 1018 (1999).

W.P.I.C. 6.05 provides: The testimony of an accomplice, given on behalf of the plaintiff, should be subject to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

In this case, under the Harris "contribution test," it is indisputable that the tainted "evidence" influenced the jury's verdict. Not only for counts 2 and 3, but for count 1 as well. There can be no doubt that the added effect of counts 2 and 3 played a significant contribution in finding me guilty on count 1. Under the "overwhelming evidence test," there was no physical evidence against me. There wasn't any physical marks on Christin except for a hickey that she - at first - tried to pass off as a strangulation mark. There was no letter (that he conveniently said he destroyed) to corroborate Mr. Hausinger's testimony. In fact, Mr. Hausinger was impeached (RP 281, 282, 283, 284) as to the fact that I told him to contact Christina. These instructions

would have played a major role in the outcome of my trial as a whole. Specifically, "You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied ~~but~~ beyond a reasonable doubt of its truth. Here there was more than a reasonable doubt of its truth, but Mr. Farra vouched for Mr. Hausinger in his closing ~~our~~ argument.

I'm not arguing to the fact that Mr. Hausinger contacted Christina multiple times and that he tampered with a witness. My argument is that I never told him to do that, and he did it on his own. He even said he did it on his own; to help out a friend. He changes his statement to avoid being charged with a crime after he is coerced to do so. He then claims that he destroyed any evidence that would have corroborated his new statement. The prosecution relied on his testimony, and his testimony alone to "prove" that I had him tamper with a witness and break a no contact order, which in turn made me look guilty of count 1.

### Witness coercion

Franklin v. State, 94 Nev. 220, 577 P.2d 860 (1978), People v. Medina, 41 Cal. App. 3d 438, 116 Cal. Rptr. 133 (1974) the court held that an immunity agreement conditioned upon witnesses "not material or substantially" changing their testimony from a prior tape-recorded statement placed the witness under a "strong compulsion" to testify in a particular fashion, thereby depriving the defendants of any meaningful cross examination and, consequently, of their right to a fair trial. Medina at 146. In Franklin, the prosecution plea-bargained with an accomplice to murder in order to obtain specific testimony implicating the defendant and then withheld the benefit of

the jury. Rule 608

Secreting of witness and failing to provide any advanced discovery for counts 2 and 3. (RP 11, 12, 13, 14, 15)

The prosecution kept Mr. Hausinger from my defense attorney until the day that Mr. Hausinger testified. Plus the prosecution had Officer Skeeter's report for counts 2 and 3 on September 27<sup>th</sup> and, "did not give it to the Defense until October 15<sup>th</sup> and since then we have not been able to interview Mr. Hausinger because the State's somehow saying things aren't working out or we can't set it up and the scheduler aren't working." (RP 15). That was on November 12<sup>th</sup>, so the prosecution had ample time to provide us with an interview. As for discovery, (RP 11) "... State failing to provide any advanced discovery until two days prior to the readiness (which was objected to), and actually almost 5 o'clock the day of -- October 15<sup>th</sup>, of new information relative to their desire to suddenly amend the information relative to their desire to suddenly that afternoon of the readiness hearing on October 17<sup>th</sup>. Over my objection..." It was allowed and I was forced to agree to set over trial. On RP 12, "... the State continuing to not provide adequate notice in advance of any decisions or motions that have relevance as to the charges and/or to the witnesses."

Canon 39 of Canons of Professional Ethics of the American Bar Association provides, in part, that a lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without consent of opposing counsel or party. Disciplinary Rule 7-103(B) of the ABC Code of Professional Responsibility specifies that a public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to defense counsel or to the defendant if he has no attorney, of the existence of evidence known to such public official that tends to negate

the guilt of the accused, mitigate the degree of the offense or reduce the punishment; and Disciplinary Rule 7-109(A, B) provides that a lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce, and shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness. Moreover, Section 3.1 (c) of the ABC Standards for Criminal Justice, "The Prosecution Function," provides that a prosecutor should not discourage or obstruct communications between prospective witnesses and defense counsel, and that it is unprofessional conduct for a prosecutor to advise any person to decline to give to the defense information which the person has the right to give. Defense counsel has the right to interview witnesses before trial without interference by the prosecution.

Appendix pg. 29

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 extensive on that than the motion to sever, but  
2 that's on Page 2. Because one of the issues with Mr.  
3 Hausinger as set forth in the reports that have been  
4 provided, is that he indicates on his first contact  
5 with Officer Skeeter that "It was my idea. Shawn had  
6 nothing to do with it. I wanted to help him out." She  
7 then leaves him a message on his phone after she  
8 talks with him saying, "Well, I'm going to be  
9 charging you with (inaudible) charges of tampering."  
10 And the next conversation or two that she has,  
11 suddenly he's now claiming, "Oh, yeah. Shawn knew  
12 about it. Shawn did this and that." So there's  
13 contradictory evidence coming in from this witness  
14 that bears on his credibility in terms of the State's  
15 attempt to charge my client with somehow -- some  
16 involvement with the alleged violation of the no  
17 contact order and the tampering of the witness. So, I  
18 am very concerned with what the State's attempting to  
19 do, a kind of back door, getting basically  
20 prejudicial information out before the jury and then  
21 suddenly not having any information or any evidence  
22 to prove it. And so, given that, we need to have some  
23 rulings from the Court. We're asking basically, first  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 he's not showing up for trial, I don't believe the  
2 State has a case to proceed to trial without Mr.  
3 Hausinger, as the conspiracy theory isn't really on  
4 the table, given the evidence that we do know of and  
5 that the State fails to provide the Court with. So, I  
6 guess, first of all, we need to know whether or not  
7 the State is expecting Mr. Hausinger to show up or  
8 not. And, secondly, our concern is that the State  
9 gets into the voir dire and the Court indicates what  
10 Mr. Christopher is charged with, including Counts 2  
11 and 3, that basically smears him for the rest of the  
12 trial and the State doesn't come forward with the  
13 evidence, then basically we're left hanging with  
14 basically a very prejudicial information that  
15 includes counts that the State knows it cannot prove.  
16 So, I would be asking for some rulings, Your Honor,  
17 prior to voir dire to determine exactly where the  
18 State's planning to go and rulings in terms of the  
19 State's motion of Evidence Rule 801(d)(2) as my  
20 reading of the rule does not apply to this particular  
21 case because of the facts that I'll get into further.  
22 But I just wanted to, and as I stated in my motion,  
23 there's -- and the motions in limine, a little more  
24  
25

Appendix pg. 30

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 of all, because of the extreme prejudice of the  
2 Counts 2 and 3 and the fact that the State had had  
3 the initial report from Officer Skeeter on November  
4 20 -- excuse me -- on September 27<sup>th</sup>, did not give it  
5 to the Defense until October 15<sup>th</sup> and since then, we  
6 have not been able to interview Mr. Hausinger because  
7 the State's somehow saying things aren't working out  
8 or we can't set it up and the schedules aren't  
9 working. And so here we are today, again, with that  
10 issue. So, I am re-raising it, Your Honor, and would  
11 ask the Court to grant our motion to sever Counts 2  
12 and 3 or, in the alternative, dismiss those two  
13 counts. The State really has no evidence to go  
14 forward here today at trial. Thank you.

15  
16 JUDGE LEWIS: Your response?

17 MR. FARRA: Yes, Your Honor. Well, the burden is on  
18 the Defense, in terms of the motion to sever, to  
19 prove manifest error -- or, manifest prejudice,  
20 excuse me. And the preference is for judicial  
21 economy. In this case, the tampering and the no  
22 contact order violations came to the State's  
23 attention about a month after the assault. The State  
24 moved to join and consolidate and that was -- that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 motion was granted, Your Honor. I haven't heard what  
2 the material prejudice is from the joining of those  
3 offenses. Clearly, they're related. The assault --  
4 the alleged Assault 2 led to a no contact order.  
5 After that, we've got an alleged domestic violence  
6 contact order violation and witness tampering. So,  
7 those are Counts 2 and 3. They derive directly from  
8 the original charge. The case was called ready last  
9 Thursday. We should proceed. There's no evidence of  
10 manifest prejudice here.

11 In terms of the witness, Jacinto Hausinger. The  
12 State received a request from Defense to interview  
13 Mr. Hausinger last Monday, leaving three days prior  
14 to readiness for us to try to arrange that interview.  
15 We haven't been able to do to -- do so in three days.  
16 I heard from Mr. Hausinger this morning, and I was  
17 going to raise this as well with the Court. Mr.  
18 Hausinger said that his son -- he will be here. He  
19 says he cannot make it until tomorrow morning. The  
20 reason is this: he was subpoenaed to be here today.  
21 His son was scheduled for a hernia surgery at  
22 Doernbecher's Hospital for tomorrow, the 12 -- the  
23 13<sup>th</sup>, excuse me. The surgeon who was going to perform  
24  
25

A

FILED  
COURT OF APPEALS  
DIVISION II

2015 AUG -4 AM 9:58

STATE OF WASHINGTON

BY  
DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

No. 45694-0-II

Respondent,

v.

SHAWN ERIC CHRISTOPHER,

UNPUBLISHED OPINION

Appellant.

SUTTON, J. — Shawn E. Christopher appeals his conviction and sentence for second degree assault, violation of a domestic violence no contact order, and witness tampering. He argues that (1) Substitute House Bill 1188 (SHB), Laws of 2011, chapter 166, section 1, violated the single-subject and subject-in-title requirements of article II, section 19 of the Washington Constitution, (2) the prosecutor committed prosecutorial misconduct, and (3) the trial court erred by failing to consider his current or future ability to pay legal financial obligations (LFOs). In addition, Christopher asserts additional claims in his statement of additional grounds (SAG).

We hold that Christopher (1) does not have standing to challenge the constitutionality of SHB 1188 because he was convicted of second degree assault by *strangulation*, and SHB 1188 addressed only second degree assault by *suffocation*; (2) cannot establish prejudice based on a claim of prosecutorial misconduct; and (3) cannot challenge his LFOs because he waived this issue under RAP 2.5(a) by failing to object at sentencing. We reject Christopher's additional claims in his SAG. We affirm his conviction and sentence.

B

No. 45694-0-II

## FACTS

On August 22, 2013, Christopher and his girlfriend, Christina Gutierrez, were drinking with friends in their apartment. Christopher accused Gutierrez of staring at their mutual friends, and they started to argue. Christopher put his hands around Gutierrez's neck and choked her for about a minute. When Christopher let her go, Gutierrez called 911. Christopher left the apartment and the police later apprehended him.

The next day, the trial court issued a no contact order against Christopher, which prohibited him from contacting Gutierrez in person or through others. Later that month, Gutierrez received a call from an unfamiliar number. When she called the number back the caller identified himself as a friend of Christopher's from jail, but refused to state his name. The caller read Gutierrez a letter from Christopher, which asked Gutierrez to go to the police and tell them she was lying about Christopher strangling her. The caller told Gutierrez that Christopher was looking at a second strike. A few days later, Gutierrez received texts from the same number asking questions about their "mutual friend." Report of Proceedings (RP) (Nov. 12, 2013) at 166. Following this second exchange, Gutierrez called the police and told them about the communications.

The police later identified Jacinto Hausinger as the caller and text messenger. He and Christopher met when they shared the same jail cell in late August 2013. Hausinger admitted that Christopher asked him to contact Gutierrez and read her the letter. He also admitted to trying to persuade Gutierrez to change her story.

The State charged Christopher with assault in the second degree, violation of a domestic violence no contact order, and tampering with a witness. At trial, Gutierrez testified and identified

C

No. 45694-0-II

a number of pictures taken of her neck following the assault. She identified the red lines of handprints, a hickey, bruising, and Christopher's thumbprint on her neck.

Officer Therman Bibens, who responded to Gutierrez's 911 call, also testified. During his direct testimony, the prosecutor asked Bibens if he knew Christopher. Bibens responded, "I've met [Christopher] before on some previous calls at that same location." RP (Nov. 13, 2013) at 234. Christopher objected to the testimony, which the trial court sustained and ordered the jury to "disregard the last remarks." RP (Nov. 13, 2013) at 234-35.

Christopher then moved for a mistrial on the basis that Bibens' testimony regarding his pre-arrest contacts with Christopher was especially prejudicial to his case. The trial court denied the motion for a mistrial ruling that the "sustaining of the objection and the order for the jury to disregard the comment is sufficient in the circumstance." RP (Nov. 13, 2013) at 238. The trial court later instructed the jury that "[i]f evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict." Clerk's Papers at 53 (quoting Jury Instruction 1). The instruction also stated that if the trial court had "asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict." CP at 53-54 (quoting Jury Instruction 1).

The jury found Christopher guilty as charged of second degree assault, violation of a domestic violence no contact order, and witness tampering. The trial court denied Christopher's post-trial motion for arrest of judgment and for new trial. The trial court sentenced Christopher to 26 months, imposed discretionary LFOs totaling \$1,409.25, and did not inquire into his current or future ability to pay LFOs. Christopher did not object to the imposition of LFOs. Christopher appeals.

D

No. 45694-0-II

## ANALYSIS

Christopher argues that (1) SHB 1188 violated the single-subject and subject-in-title requirements of article II, section 19 of the Washington Constitution, (2) the prosecutor committed prosecutorial misconduct by eliciting impermissible propensity evidence, and (3) the trial court erred by failing to consider his current or future ability to pay LFOs.. In addition, Christopher asserts a number of additional claims in his SAG. We hold that Christopher (1) does not have standing to challenge the constitutionality of SHB 1188 because he was convicted of second degree assault by strangulation, and SHB 1188 addressed only second degree assault by suffocation, (2) cannot establish that the prosecutor’s conduct in eliciting testimony was prejudicial, and (3) cannot challenge his LFOs because he waived this issue under RAP 2.5(a) by failing to object at sentencing. We reject Christopher’s additional SAG claims. We affirm his conviction and sentence.

### A. Standing

We review whether a party has standing to assert a constitutional violation de novo. *State v. A.W.*, 181 Wn. App. 400, 409, 326 P.3d 737 (2014). Christopher argues that SHB 1188, which amended RCW 9A.36.021, is unconstitutional because it violates the single-subject and subject-in-title requirements of article II, section 19 of the Washington State Constitution.<sup>1</sup> Because SHB

---

<sup>1</sup> Article II, section 19 of the Washington State Constitution provides that: “[n]o bill shall embrace more than one subject, and that shall be expressed in the title.” Article II, section 19 established two specific requirements: (1) the single-subject rule and (2) the subject-in-title rule. *State v. Haviland*, 186 Wn. App. 214, 218, 345 P.3d 831 (2015). A violation of either the single-subject or the subject-in-title requirement renders the relevant provisions of the bill unconstitutional. *See id.* at 220.

E

1188 amended RCW 9A.36.021 to add “suffocation” to the definition of second degree assault,<sup>2</sup> which Christopher was not convicted for, we hold that Christopher lacks standing to make this argument.<sup>3</sup>

To prove standing, Christopher must show (1) “a personal injury fairly traceable to the challenged conduct and likely to be redressed by the requested relief” and (2) that his claim falls within the zone of interests protected by the statute or constitution provision at issue. *State v. Johnson*, 179 Wn.2d 534, 552, 315 P.3d 1090 (2014) (quoting *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986)). If a party lacks standing for a claim, we cannot reach the merits of that claim. *Johnson*, 179 Wn.2d at 552. A defendant may not challenge the constitutionality of a statute unless he or she is harmed by the unconstitutional feature of the challenged statute. *State v. Jendrey*, 46 Wn. App. 379, 384, 730 P.2d 1374 (1986); *State v. Lundquist*, 60 Wn.2d 397, 401, 374 P.2d 246 (1962).

SHB 1188 amended the definition of second degree assault by adding “assault by suffocation” in RCW 9A.36.021(1)(g). LAWS of 2011, ch. 166, § 1. But Christopher was convicted of assault by strangulation under RCW 9A.36.021(1)(g). Therefore, the amendment to SHB 1188 did not affect him and he cannot show harm from the statutory amendments to SHB

---

<sup>2</sup> The other amendments made by SHB 1188 are not implicated by Christopher’s case. LAWS of 2011, ch. 166.

<sup>3</sup> The State contends that Christopher may not challenge the constitutionality of SHB 1188 for the first time on appeal because Christopher failed to assert this argument on appeal. Because we hold that Christopher lacks standing to make this argument, we do not address the merits of the State’s argument. *See, e.g., State v. Johnson*, 179 Wn.2d 534, 555, 315 P.3d 1090 (declining to reach the merits of a defendant’s claim when the defendant lacked standing to raise the claim), *cert. denied*, 135 S. Ct. 139 (2014).

1188. We hold that Christopher lacks standing to challenge the constitutionality of SHB 1188. We decline to address further his constitutional challenge to SHB 1188.

B. “Prior Acts” Statement by Prosecution Witness

Christopher argues that the prosecutor committed misconduct by eliciting testimony that Bibens had been previously dispatched to the defendant’s residence for a related offense. Assuming without deciding that the prosecutor did commit misconduct, we hold that Christopher fails to show that Bibens’ testimony prejudiced him.

When a defendant objects to alleged prosecutorial misconduct at trial, a defendant must show that the prosecutor’s misconduct resulted in prejudice that had a substantial likelihood of affecting the jury’s verdict. *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012). Misconduct is prejudicial if there is a substantial likelihood that it affected the jury verdict. *Emery*, 174 Wn.2d at 760.

At trial, the prosecutor asked Bibens if he knew “Shawn Christopher.” RP (Nov. 13, 2013) at 234. The officer responded, “I’ve met [Christopher] before on some previous calls at that same location.” RP (Nov. 13, 2013) at 234. Christopher objected, and the trial court sustained his objection. The trial court also told the jury to disregard the officer’s statement.

Assuming without deciding that the prosecutor committed misconduct by eliciting this testimony, Christopher fails to show that Bibens’ statement had a substantial likelihood of affecting the jury verdict. *See Emery*, 174 Wn.2d at 760. Bibens’ testimony would not have led the jury to convict based on alleged propensity evidence because ample evidence established both the second degree assault and witness tampering charges without relying on Bibens’ statement. For the assault charge, the State produced Gutierrez’s testimony, which was corroborated by her

G

No. 45694-0-II

False

statements to Bibens, her 911 call, and the photographs showing thumb print marks on her neck. For the tampering with a witness charge, the State produced Gutierrez's and Hausinger's testimony, as well as the photographs of Hausinger's text messages to Gutierrez. Thus, even without Bibens' allegedly improper testimony, a reasonable jury had ample evidence to convict Christopher as charged.

Moreover, the trial court informed the jury to disregard Bibens' statement. Before deliberating, the trial court instructed the jury again to disregard any evidence that the court had either not admitted or had stricken. We presume the jury followed these instructions. *See State v. Swan*, 114 Wn.2d 613, 661-62, 790 P.2d 610 (1990). Accordingly, we hold that if any misconduct occurred, Christopher fails to establish that it was so prejudicial that there was a substantial likelihood it affected the verdict.<sup>4</sup>

C. LFOs

Christopher argues that the trial court erroneously imposed discretionary LFOs in the amount of \$1,409.25 without first determining that he had the current or future ability to pay them. He raises this issue for the time on appeal, as he did not object at sentencing.

---

<sup>4</sup> Christopher argues that the trial court should have granted his motion for a mistrial and post-trial motion for a new trial because the State violated the motion in limine, which prohibited the State from introducing ER 404(b) allegations with regard to Christopher. Aside from the assertion that the trial court should have granted Christopher's mistrial motion and motion for a new trial, Christopher cites no legal authority and offers no legal analysis in support of his contention. We will not consider assignments of error unsupported by citation to authority. RAP 10.3(a)(6), *State v. Bello*, 142 Wn. App. 930, 932 n.3, 176 P.3d 554 (2008). Because Christopher fails to argue this point, Christopher waived this assignment of error and we do not consider it further.

14

No. 45694-0-II

When an appellant fails to raise an issue below, this court may refuse to review it. RAP 2.5(a).<sup>5</sup> A party's objection or argument preserves an issue only if the party actually raises that particular issue before the trial court. *See Cotton v. Kronenberg*, 111 Wn. App. 258, 273, 44 P.3d 878 (2002). In *State v. Blazina*, 182 Wn.2d 827, 832-33, 344 P.3d 680 (2015), our Supreme Court reaffirmed that appellate courts in this state may decline to review the imposition of discretionary LFOs where the defendant failed to object to the imposition of LFOs at sentencing. *Blazina*, 182 Wn.2d at 681. Here, the court sentenced Christopher after our decision in *Blazina*, wherein we declined to review the trial court's imposition of discretionary LFOs because the defendant did not object at sentencing. *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492, *remanded by* 182 Wn.2d 827 (2015). Because Christopher did not object to the trial court's imposition of LFOs at sentencing, we decline Christopher's invitation to review this issue for the first time on appeal.

#### D. SAG Claims

In his SAG, Christopher claims prosecutorial misconduct (a) in eliciting four statements during Bibens' testimony, (b) in eliciting second-strike offense evidence during Bibens' testimony, (c) in misrepresenting the evidence during closing argument, (d) in filing of amended charges one month before trial, (e) in withholding a witness and withholding discovery, (f) in coercing a witness, (g) in failing to call an available witness, and (h) in vouching for a witness's credibility.

---

<sup>5</sup> In *State v. Jones*, 182 Wn.2d 1, 6, 338 P.3d 278 (2014), our Supreme Court recognized that unpreserved sentencing errors "may be raised for the first time upon appeal because sentencing can implicate fundamental principles of due process if the sentence is based on information that is false, lacks a minimum indicia of reliability, or is unsupported in the record." (Citation omitted.) But in *State v. Blazina*, 182 Wn.2d 827, 832-33, 344 P.3d 680 (2015), our Supreme Court declined to apply this exception in the context of LFOs. We follow our Supreme Court's lead and decline to apply this exception.

I

No. 45694-0-II

He also claims that the trial court abused its discretion in admitting evidence of photographs and evidence of his ethnicity in the 911 call. We disagree.

1. Prosecutorial Misconduct Claim

a. Bibens' Testimony

Christopher identifies four statements elicited by the prosecutor in Bibens' testimony that he alleges constitute prosecutorial misconduct and are prejudicial: (1) that the neighbor's call about Christopher and Gutierrez's fight "was a 911 call of a – a disturbance, a neighbor had called and basically said my neighbors are arguing again," SAG at 1; (2) that "I start to walk up to the – the building, I had been there two, three times before so I knew where it was," SAG at 1; (3) that he recognized Christopher at the scene and then later in the courtroom, and (4) that Bibens used Christopher's, Gutierrez's, and their roommate's first names. Christopher did not object to any of these four statements at trial.

When a defendant fails to object to prosecutorial misconduct at trial, we apply a different, heightened standard of review. *Emery*, 174 Wn.2d at 760-61. Under this heightened standard of review, the defendant is deemed to have waived any error unless he establishes that the prosecuting attorney's misconduct "was so flagrant and ill intentioned that an instruction could not have cured the resulting prejudice." *Emery*, 174 Wn.2d at 760-61. This heightened standard of review requires the defendant to show that "(1) 'no curative instruction would have obviated any prejudicial effect on the jury' and (2) the misconduct resulted in prejudice that 'had a substantial likelihood of affecting the jury verdict.'" *Emery*, 174 Wn.2d at 761 (quoting *State v. Thorgeron*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011)). We focus "more on whether the resulting prejudice

No. 45694-0-II

could have been cured,” rather than the flagrant of ill intentioned nature of the remark. *Emery*, 174 Wn.2d at 762.

Assuming, without deciding, that the elicitation of this testimony by Bibens was improper, Christopher fails to meet his burden to show prejudice. And if Christopher had objected, which he did not, the court could have instructed the jury to disregard Bibens’ testimony, and a limiting instruction could have cured any prejudice. We assume that juries follow the court’s instructions. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). This claim fails.

b. Second Strike Offense

Christopher claims that the prosecutor violated the trial court’s ruling precluding Gutierrez from testifying to the significance of Christopher getting a second strike offense.<sup>6</sup>

The trial court stated,

And here, as I understand it, the reference is that [Hausinger] said, “He’s in trouble. He has a second strike, and therefore, he needs you to do things.” So, if that’s what [Gutierrez] testifie[d] he said, that’s what he said. I’m not going to exclude it. She can’t go on to explain what she thought that he meant by that, or what she knew in terms of his past record and all that sort of thing, but she can testify as to what he said.

RP (Nov. 12, 2013) at 56. The trial court ruled that Gutierrez could testify as to what Hausinger told her, but that she could not explain the significance of Christopher getting a second strike if convicted of violating the domestic violence no contact order.

Christopher points to the following exchange as evidence that the prosecutor violated the trial court’s ruling.

---

<sup>6</sup> The charge of second degree assault against Christopher would be a “second strike” offense under the persistent offender accountability act, RCW 9.94A.555, .010, .030(32)(b).

K

No. 45694-0-II

[State]: What did [Hausinger] tell you?  
[Gutierrez]: That [Christopher] loves me and wants to be with me.  
[State]: Did the caller tell you anything else about the Defendant?  
[Gutierrez]: That he's looking at a second strike.  
[State]: What's – what does that mean?  
[Gutierrez]: That –  
[State]: Or, why did the caller tell you that? Strike that. Why did the caller – what was the significance of that?  
[Gutierrez]: To me, it meant something bad.

RP (Nov. 12, 2013) at 159. Christopher did not object to the prosecutor's questioning.

The prosecutor expressly asked Gutierrez about the significance of Christopher getting a second strike offense. The prosecutor's question to Gutierrez violated the trial court's ruling and was misconduct. However, because Christopher did not object to this testimony at trial, he waived this issue unless he can establish that the prosecutor's misconduct was so flagrant and ill intentioned that it caused an enduring prejudice that could not have been cured with an instruction to the jury and the misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *Emery*, 174 Wn.2d at 761.

Bibens did not actually explain the significance of Christopher getting a second strike. There is no evidence that the prosecutor's questioning was so prejudicial that it could not be cured by a limiting instruction, which was not requested. Moreover, in light of the evidence presented, there is no showing that this misconduct had a substantial likelihood of affecting the jury's verdict. Christopher failed to meet his burden. This claim fails.

### c. Closing Argument

Christopher claims that the prosecutor misrepresented evidence during closing argument by telling the jury (1) that Christopher had been drinking malt liquor the night of the assault and (2) that Christopher and Gutierrez had been dating for five years. Christopher must demonstrate

C

No. 45694-0-II

that these statements resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *Emery*, 174 Wn.2d at 760. He fails to show any prejudice.

Gutierrez testified that on the night of the incident she and Christopher were drinking "juice and, like and actual alcoholic beverage[s], and there was also Bud Light." RP (Nov. 12, 2013) at 110. She went on to explain that the "juice" came in a tall can and was "like malt liquor." RP (Nov. 12, 2013) at 111. During the State's closing argument, the prosecutor indicated that the case was "about a Defendant who was intoxicated that night, been drinking beer, some malt liquor." RP (Nov. 13, 2013) at 385. The prosecutor presented evidence that Christopher was drinking beer and another beverage like a malt liquor. The inference that the jury would have taken from these facts was that Christopher was intoxicated. The jury would have made the same inference had the prosecutor clarified his statement and stated that the beverage was *like* a malt liquor. Christopher fails to demonstrate that the malt liquor statement in closing argument had a substantial likelihood of affecting the jury's verdict.

The prosecutor also indicated in closing argument that Gutierrez had "to overcome the emotional ties of a five-year relationship that she thought was love at first sight." RP (Nov. 13, 2013) at 387. Both Gutierrez and Christopher testified to knowing each other or dating for only six months before the assault. The prosecutor's comment about the parties' five-year relationship would not have negated the other ample evidence produced establishing Christopher's guilt on the charges of second degree assault, violation of a domestic violence no contact order, and witness tampering. Christopher fails to demonstrate that the reference to the five-year relationship in closing argument had a substantial likelihood of affecting the jury's verdict. This claim fails.

d. Filing Amended Charges

Christopher claims that the State erred by waiting “until the last moment” to add the charges of violation of a domestic violence order and tampering with a witness. SAG at 8. We disagree.

The Washington Supreme Court has held that where prosecutorial misconduct results in prejudice to the defendant, dismissal is required pursuant to CrR 8.3(b). *State v. Michielli*, 132 Wn.2d 229, 240-43, 937 P.2d 587 (1997). In *Michielli*, the prosecutor inexplicably decided to file four additional charges five days before trial, thereby forcing the defendant to waive his speedy trial rights in order to prepare a defense to the new charges. *Michielli*, 132 Wn.2d at 243-44. The State admitted it possessed all the information necessary to file all of the charges when it filed the initial information, and it did not obtain more discovery or add witnesses for trial. *Michielli*, 132 Wn.2d at 244. The court noted that the only reasonable explanation for the prosecutor’s delay appeared to be harassment of the defendant and the court termed the delay as “governmental mismanagement.” *Michielli*, 132 Wn.2d at 243. Further, the court held that the defendant was prejudiced when the prosecutor delayed adding four serious charges until just days before trial, thereby giving the defendant the choice of going to trial unprepared or waiving his right to a speedy trial and asking for a continuance. *Michielli*, 132 Wn.2d at 244.

Here, unlike in *Michielli*, the prosecutor did not possess the information to support the State’s additional charges at the time it filed the initial information against Christopher. Gutierrez notified the police that Christopher had contacted her through Hausinger from jail and attempted to get her to alter her testimony in late September 2013—at least three weeks after the State filed its initial information against Christopher. Conflicting testimony exists as to whether the

prosecutor actually became aware of the facts underlying the State's amended information in late September or early to mid October. Christopher's defense counsel asserted that the prosecutor learned of these facts on or around September 27, 2013, but did not provide the defense with notice of its intent to amend the information until October 15, 2013. However, the prosecutor told the trial court that he did not receive the information supporting the charges of violating a domestic violence no contact order and tampering with a witness until "towards the end of October." RP (Nov. 7, 2013) at 4. It is Christopher's burden to show the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *Emery*, 174 Wn.2d at 760. Based on this record, we hold that Christopher fails to show prosecutorial misconduct.

Moreover, even assuming misconduct, which we do not find, Christopher fails to show prejudice. There is no evidence in the record that the prosecutor's act of filing to amend charges on October 17, 2013 placed Christopher in the untenable situation of going to trial unprepared or waiving his speedy trial right and asking for a continuance. See *Michielli*, 132 Wn.2d at 244. The State filed its original information on August 26, 2013, charging Christopher with second degree assault. On October 17, 2013, the State moved to amend the information to add count 2, charging Christopher with a violation of a domestic violence protection order and count 3, charging Christopher with tampering with a witness. Christopher objected. Christopher's trial began on November 12, 2013. Therefore, Christopher had exactly four weeks from October 15, 2013 to November 12, 2013 to prepare a defense to the amended charges. The record does not show that Christopher was prejudiced in preparing a defense.

e. Withholding Exculpatory Evidence

Christopher claims that the State committed a *Brady*<sup>7</sup> violation by withholding exculpatory evidence by not showing the jury a police car video recording that showed him asking for pictures of Gutierrez's injuries, which would have impeached Bibens' and Gutierrez's testimony. We disagree.

The State has a duty to disclose material evidence favorable to the defendant. *See Brady*, 373 U.S. at 87. *Brady* states that the suppression of evidence favorable to an accused violates due process "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith" of the State. *Brady*, 373 U.S. at 87. The State has a duty to learn of any favorable evidence "known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

The evidence that Christopher claims the State withheld from him, however, is not included or referenced in the record on review. On direct appeal, we do not consider matters outside the record. *State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995). We do not consider this issue further.

f. Withholding a Witness/Discovery

Christopher claims the State did not allow his defense counsel to interview Hausinger until the day of trial. But there is no evidence in the record that the State prevented Christopher's defense counsel from interviewing Hausinger. Christopher's claim relies on evidence outside of

---

<sup>7</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

9

the record. On direct appeal, we do not consider matters outside the record. *McFarland*, 127 Wn.2d at 338 n.5. We do not consider this claim further.

Christopher also claims that the State failed to provide Officer Skeeter's<sup>8</sup> initial report to his defense counsel for three weeks. The only reference to this report in the record is Christopher's counsel's argument before the trial court that the prosecution had this report as of September 27, but failed to provide it to her until October 15. However, Christopher fails to demonstrate how the State's delay in providing Skeeter's report resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *Emery*, 174 Wn.2d at 760. He had the opportunity to admit the report at trial and make any admissible arguments beneficial to his position. Therefore, this claim fails.

g. Coercing Hausinger

Christopher claims that the State coerced Hausinger into testifying against Christopher by threatening him with charges for tampering with a witness and gave Hausinger improper preferential treatment to testify against him. But the record contains no evidence to support Christopher's claim of coercion or that the State gave Hausinger preferential treatment for testifying. *McFarland*, 127 Wn.2d at 338 n.5. We do not consider this claim further.

h. Failure to Call Available Witness

Christopher claims that the State's failure to call Skeeter, when she was an available witness, was a deliberate ploy to hide exculpatory evidence and constitutes prosecutorial misconduct. But there is no information in the record that Skeeter was an available witness. Under

---

<sup>8</sup> Officer Skeeter's first name is not contained in the record on appeal.

Q

RAP 10.3(a)(5), Christopher must cite to the record for every factual statement he presents for review. Without such citation and evidence in the record supporting Christopher's contention, we do not consider this issue further. *McFarland*, 127 Wn.2d at 338 n.5.

i. Vouching for a Witness's Credibility

Christopher claims that the prosecutor impermissibly vouched for Hausinger's credibility as a witness during closing argument. We agree that the prosecutor vouched for Hausinger's credibility, but we hold that Christopher waived this claim by failing to show that an admonition to the jury, which he failed to request, would not have cured the error.

A prosecutor commits improper vouching by expressing a personal opinion as to a witness's veracity. *Thorgerson*, 172 Wn.2d at 443. Whether a witness testifies truthfully is an issue entirely within the province of the trier of fact. *Thorgerson*, 172 Wn.2d at 443. But a prosecutor's wide latitude to argue inferences from the evidence includes arguing inferences regarding witness credibility. *Thorgerson*, 172 Wn.2d at 448. In addition, the "failure to object to an improper remark constitutes a waiver of error unless the remark is so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." *Thorgerson*, 172 Wn.2d at 443 (quoting *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994)).

Christopher cites to the following section of the prosecutor's closing argument discussing Hausinger's demeanor while testifying:

Now, the Defendant got up on the stand today and he denied that he told Jacinto Hausinger to do that, but you saw Mr. Hausinger. The last thing Mr. Hausinger wanted to do today was stand up on this stand and testify. He didn't want to admit that the Defendant told him to contact Ms. Gutierrez. That was like pulling teeth out of him, but he did because he was under oath and *he was telling*

*the truth*. Now he could have also changed his story, he could have denied it. . . .  
But he finally came clean and said, “Yes.”

RP (Nov. 14, 2013) at 393-94 (emphasis added). During rebuttal, the prosecutor told the jury, “Mr. Hausinger, you can make your own decisions on his credibility and what he got up here and – and said today.” RP (Nov. 14, 2013) at 418.

In *State v. Jackson*, 150 Wn. App. 877, 883-84, 209 P.3d 553 (2009), one of the key issues was whether to believe the police officers or a defense witness. During closing arguments, the prosecutor stated twice that the police testified accurately. *Jackson*, 150 Wn. App. at 884. We held that the prosecutor did not vouch for the officers’ credibility because, looking at the argument in context, the prosecutor reminded the jury that it was the sole judge of credibility and then outlined the evidence, which could support the jury’s conclusion that the officers were credible. *Jackson*, 150 Wn. App. at 884-85.

Here, one of the key trial issues was whether to believe Hausinger or Christopher regarding whether Christopher directed Hausinger to call Gutierrez to persuade her to change her story. During closing argument, the prosecutor expressly told the jury that Hausinger “was under oath and *he was telling the truth*.” RP (Nov. 14, 2013) at 393-94 (emphasis added). In this context, the prosecutor engaged in impermissible vouching because it directly commented on Hausinger’s veracity. These statements constitute prosecutorial misconduct.

But because Christopher did not object to the prosecutor’s statements, he waived any error. He has not shown that any misconduct was so flagrant and ill intentioned that it “cause[d] an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury.” *Thorgerson*, 172 Wn.2d at 443. Here, an admonition to the jury to disregard the

5

prosecutor's argument would have likely neutralized any prejudice arising from the prosecutor's misconduct. This claim fails.

2. Photographic Evidence

Christopher claims that the trial court's admission of photos taken by Gutierrez's roommate was improper because Gutierrez was not a credible source for the pictures and they could have been altered. We disagree.

We review a trial court's decision to admit or exclude evidence for abuse of discretion. *Diaz v. State*, 175 Wn.2d 457, 462, 285 P.3d 873 (2012). A trial court abuses its discretion when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The proponent of photographic evidence must authenticate the photographs before the trial court may admit it. ER 901(a). To do so, the proponent must introduce "evidence sufficient to support a finding that the matter in question is what its proponent claims." *State v. Bradford*, 175 Wn. App. 912, 928, 308 P.3d 736 (2013) (quoting ER 901(a)), *review denied*, 179 Wn.2d 1010 (2014).

At trial, Gutierrez testified that she and Christopher's roommate, Amos Carpenter, took the three photographs of Gutierrez's neck two to three days after the assault. Gutierrez identified the three photographs and testified that the photographs were an accurate depiction of what her neck looked like. Gutierrez's testimony was sufficient to demonstrate that the photographs were actual photographs taken of her neck and were properly authenticated as required under ER 901(a).

T

3. Christopher's Ethnicity

Christopher also claims that the State should have edited Gutierrez's 911 call in which she identifies him as a Native American, so that the jury was not informed that he was a Native American. He claims that segments of the population believe Native Americans become violent when drinking liquor. But he did not object based on his ethnicity; Christopher objected only to admitting the 911 call as an excited utterance or a present sense impression under ER 803(a)(2). Because Christopher did not object to the testimony that he now complains of on appeal and does not assert that the alleged error was a "manifest error affecting a constitutional right," we decline to address this issue further under RAP 2.5(a).

CONCLUSION

We hold that Christopher (1) does not have standing to challenge the constitutionality of SHB 1188 because he was convicted of second degree assault by *strangulation*, and SHB 1188 addressed only second degree assault by *suffocation*; (2) cannot establish a claim of prosecutorial misconduct or prejudice from any claimed misconduct; and (3) waived his challenge to the trial court's imposition of LFOs under RAP 2.5(a). We reject Christopher's additional SAG claims.

No. 45694-0-II

u

We affirm Christopher's conviction and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
SUTTON, J.

I concur:

  
LEE, J.

✓

No. 45694-0-II

BJORGEN, J. (concurring) — For the reasons set out in my dissent in *State v. Lyle*, \_\_\_ P.3d \_\_\_, No. 46101-3-II, 2015 WL 4156773 (Wash. Ct. App. July 10, 2015), I would reach Shawn Christopher’s legal financial obligations’ challenge, even though he did not raise it during sentencing. However, the majority in *Lyle*, a published decision, reached a contrary conclusion. *Lyle*, \_\_\_ P.3d \_\_\_, No. 46101-3-II, 2015 WL 4156773 (Wash. Ct. App. July 10, 2015). Unless *Lyle* is overturned or its bases questioned by subsequent case law, I shall observe its result under principles of stare decisis. Therefore, I concur in this decision with the reservation here expressed.

  
BJORGEN, J.

~~Pg 136 (4-5) CG says she could breathe - RP 214 CG assaulted her daughter?~~

~~As to the possibility that an agreement with a witness might be unduly coerce the witness into testifying favorably for the State, thus rendering the witness's testimony inadmissible altogether, see the discussion in State v. Clark, 48 Wash. App. 850, 753 P.2d 822 (Div. 1 1987) (argument rejected on facts present, but court left open the possibility that a witness's testimony could be rendered inadmissible.)~~

~~In a credibility contest on a case, all evidence is probative, including prior bad acts of state witnesses. Hudlow 99 Wn.2d at 13 see Davis v. Alaska 415 U.S. 308, 319, 94 S.Ct. 1105, 392 Ed.2d 347 (1974) Holding that whatever temporary embarrassment the witness might have suffered was outweighed by the defendant's right to probe the witness's credibility.~~

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, )

Respondent, )

vs. )

SHAWN ERIC CHRISTOPHER, )

Appellant. )

) Clark County No. 13-1-01577-3

) Court of Appeals No. 45694-0-II

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington, for the County of Clark, Vancouver, Washington,

BEFORE: THE HONORABLE ROBERT LEWIS, Judge on:  
November 7, 2013 & November 12, 2013.

APPEARANCES: Mr. John R. Farra; Deputy Prosecuting Attorney,  
on behalf of the State of Washington; and

Ms. B. Renee Alsept and Ms. Susan Stauffer, Attorneys at Law,  
on behalf of the Defendant.

Sharon A. Ball  
Court Transcriptionist  
107 Birch Street  
Lakeview, OR 9763-1259  
(360) 751-0199

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, )

Respondent, )

vs. )

SHAWN ERIC CHRISTOPHER, )

Appellant. )

---

) Clark County No. 13-1-01577-3

) Court of Appeals No. 45694-0-II

VERBATIM REPORT OF PROCEEDINGS

Volume 1



November 7, 2013  
November 12, 2013

*Sharon A. Ball  
Court Transcriptionist  
107 Birch Street  
Lakeview, OR 9763-1259  
(360) 751-0199*

## VOLUME 1

## INDEX

**State of Washington v. Shawn Eric Christopher**

November 7, 2013	1 - 9
November 12, 2013	10 - 199

**3.5 HEARING TESTIMONY**

<b>SPEAKER</b>	<b>State / Defense</b>	<b>D</b>	<b>X</b>	<b>ReD</b>	<b>ReX</b>	<b>Re-ReD</b>	<b>R-ReX</b>
Officer Therman Bibens	S	57-61	62-63	64-67			

**TRIAL TESTIMONY**

<b>SPEAKER</b>	<b>State / Defense</b>	<b>D</b>	<b>X</b>	<b>ReD</b>	<b>ReX</b>	<b>Re-ReD</b>	<b>R-ReX</b>
Christian A. Gutierrez Offer of Proof	S	71-74	75-79	80	81	82-88	89-90
Christina A. Gutierrez	S	104-168	169-199				

**EXHIBITS**

Exhibits 1 through 5 - Offered and Admitted	144
Exhibits 11 through 13 - Offered and Admitted	148
Exhibits 16, 17, 18 & 20 - Offered and Admitted	165

**EVENTS**

3.5 Argument - State	68
3.5 Argument - Defense	69
3.5 Ruling	69
911 Recording	82

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 (Court convenes on this matter at 3:25:44 PM on  
November 7<sup>th</sup>, 2013.)

2 DOCKET PROSECUTOR: Number 16, Shawn Christopher.

3 MR. FARRA: Good afternoon, Your Honor.

4 JUDGE LEWIS: Afternoon.

5 JUDGE LEWIS: Are you standing in for Ms. Stauffer?

6 MS. ALSEPT: Yes, I am, Your Honor. She needed to  
7 be in another town.

8 JUDGE LEWIS: Okay.

9 MR. FARRA: We're on for readiness today, Your  
10 Honor, and the State is ready.

11 MS. ALSEPT: And Ms. Stauffer and her client are  
12 also ready to proceed to trial.

13 MR. FARRA: I do have a few matters that I'd like  
14 to bring before the Court real quick just to clear  
15 some things up.

16 JUDGE LEWIS: All right.

17 MR. FARRA: I have, number one, a motion ex parte,  
18 but obviously not at this point; motion and order  
19 authorizing -- authorizing dissemination of non-  
20 conviction data. This is data related to criminal  
21 histories of witnesses that I need the order to --

22 JUDGE LEWIS: Okay.

23 MR. FARRA: -- allow dissemination of.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 DEFENDANT: What is that?

2 MS. ALSEPT: (Whispers to Defendant.) So that they  
3 can give your attorney (inaudible).

4 JUDGE LEWIS: I'll sign that order.

5 MR. FARRA: Okay. Second, Your Honor, I would move  
6 to amend the information -- Count 3 of the  
7 information, which is a witness tampering charge.  
8 Currently, it is charged under the prong of falsely  
9 testifying. That is the only prong that's charged  
10 right now, to testify falsely. I would like to amend  
11 Count 3 -- move to amend to also include withholding  
12 from a law enforcement agent information relevant to  
13 the investigation.

14 JUDGE LEWIS: Oh --

15 MS. ALSEPT: And I unders --

16 JUDGE LEWIS: Or, wait. Hang on just a second.

17 MS. ALSEPT: Oh, sorry.

18 JUDGE LEWIS: So, it looks like on October 17<sup>th</sup>, the  
19 State moved to amend Count 2 and Count 3, and the  
20 Court --

21 MR. FARRA: That is correct.

22 JUDGE LEWIS: -- permitted that. And now you're  
23 saying you want to amend it again?  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: I want to amend Count 3, Your Honor,  
2 just to add that -- that additional prong. The -- as  
3 originally charged in Count 3, it was just testify  
4 falsely. Reviewing the reports a little bit more,  
5 considering the testimony that I anticipate might  
6 occur, I think that it could either come out as  
7 testify falsely or it could either come out as  
8 withhold from law enforcement agent --

9 DEFENDANT: He's --

10 MR. FARRA: -- material to investigation.

11 DEFENDANT: He's test --

12 MS. ALSEPT: (To Defendant.) No, don't say  
13 anything. (To the Court.) And, Your Honor --

14 JUDGE LEWIS: Was that one of the original charges?

15 MR. FARRA: No, it -- well --

16 JUDGE LEWIS: It looks like August 26<sup>th</sup>, he was just  
17 charged with assault.  
18

19 MR. FARRA: He was. And then information in a -- in  
20 a subsequent and separate investigation, Vancouver  
21 police discovered that -- allegedly that the -- that  
22 the Defendant had had a former inmate of his contact  
23 the victim and allegedly tamper with her. So, the  
24 first amendment was a response to that new report  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that was received towards the end of October.

2 JUDGE LEWIS: Okay. And are you saying that you  
3 came into some new information after October 17<sup>th</sup>? Or  
4 just that you looked at the same information and --

5 MR. FARRA: I did not come into new information,  
6 Your Honor.

7 JUDGE LEWIS: Go ahead then.

8 MS. ALSEPT: Your Honor, I understand that Ms.  
9 Stauffer wasn't -- was notified by this of e-mail  
10 today, so -- and I have -- so, the -- the -- what she  
11 had given me with regard to what say to the Court did  
12 not incorporate any of this. And so, I would object  
13 at this time and just ask that if -- you know, that -  
14 - I mean, I'll put the paperwork in her box and e-  
15 mail her that this has occurred, but that if there's  
16 any -- that if she has any grounds, you know, to  
17 object further, that that --

18 JUDGE LEWIS: Yeah, I'm going to deny the motion to  
19 amend at this time.

20 MS. ALSEPT: Okay. Perfect.

21 JUDGE LEWIS: But if you want to renew it again  
22 when Ms. Stauffer is here and --

23 MR. FARRA: Okay.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: But at least initially it seems --

2 DEFENDANT: (Whispers to Ms. Alsept.) What was he  
3 trying?

4 JUDGE LEWIS: -- like it's a little late.

5 MS. ALSEPT: (Whispers to Defendant.) He's just  
6 trying to go under --

7 MR. FARRA: Thank you, Your Honor.

8 MS. ALSEPT: -- a different prong for the tampering  
9 with the witness.

10 MR. FARRA: A few more --

11 JUDGE LEWIS: Okay --

12 MR. FARRA: Oop, a few more. I'm sorry.

13 JUDGE LEWIS: Oh, I'm sorry. Go ahead.

14 MR. FARRA: Also, Your Honor, at this point, I'd  
15 like to provide notice of intent to rely on evidence  
16 Rule 801(d)(2), statements of co-conspirators. I  
17 don't know that notice is required, and I'm -- and  
18 I'm handing a copy to Counsel now, but I do want to  
19 provide that notice because it looks from the case  
20 law like it may be required, so.

21 JUDGE LEWIS: Who is the co-conspirator?

22 MR. FARRA: The co-conspirator would be the  
23 gentleman alleged to be the former inmate of the  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Defendant who contacted --

2 JUDGE LEWIS: Oh.

3 MR. FARRA: -- the alleged victim.

4 MS. ALSEPT: And, Your Honor, again I would, for  
5 the record, object for Ms. Stauffer. I -- it may be  
6 that he's completely within the rule of law here, but  
7 if there's a timeline by which he needed to have  
8 complied with, I would -- I would hold that objection  
9 for her and -- so that she --

10 JUDGE LEWIS: Okay. Any objections --

11 MS. ALSEPT: -- can further argue it.

12 JUDGE LEWIS: -- are preserved. I'll indicate the  
13 material was filed.

14 MR. FARRA: And, finally, Your Honor, this is --  
15 this is a notice of potentially favorable evidence  
16 that I'd like to file and I'll pass the file to the  
17 Court. (Hands up a document.) I e-mailed Ms. Stauffer  
18 a copy of this on November 6<sup>th</sup>. It relates to a party  
19 that was involved in the investigation, but is not on  
20 our witness list and I will not be calling her.  
21 Again, it's -- it's -- I don't know that it is  
22 required that I give this notice, but I am, to be on  
23 the safe side --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 DEFENDANT: Who is this?

2 MS. ALSEPT: (Inaudible.)

3 MR. FARRA: -- because it appears that there may be  
4 some unresolved claims regarding dishonesty.

5 JUDGE LEWIS: I see. And Officer Skeeter is not one  
6 of your witnesses?

7 MR. FARRA: No, she is not. She's not on the  
8 witness list, I will not be calling her.

9 JUDGE LEWIS: But this is the person you have the  
10 information about?

11 MR. FARRA: That's correct.

12 MS. ALSEPT: And, again, just for the record, if  
13 Ms. Stauffer has any basis to object or to need  
14 further, you know --

15 JUDGE LEWIS: That's fine.

16 MS. ALSEPT: -- look at this witness, if they had  
17 an impact on the investigation in any way, I would  
18 just reserve that, for the record, for her.

19 JUDGE LEWIS: Okay.

20 DEFENDANT: (Inaudible.)

21 MS. ALSEPT: (Whispers to Defendant.) It's an  
22 officer that's been involved in some sort --

23 JUDGE LEWIS: Okay. So, I have the State's --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. ALSEPT: -- of dishonest behavior.

2 JUDGE LEWIS: -- second amended witness list --

3 MS. ALSEPT: (Continues whispering to Defendant.)

4 I don't know how they're involved in your case  
5 (inaudible).

6 JUDGE LEWIS: -- which is October 16, 2013 --

7 DEFENDANT: (Whispers to Ms. Alsept.) She's  
8 involved in dishonest behavior? Why are they  
9 (inaudible).

10 JUDGE LEWIS: -- listed eight witnesses. Is that  
11 still accurate?

12 (Ms. Alsept and Defendant continue conferring.)

13 MR. FARRA: Your Honor, I -- there should be  
14 another listing 11, Your Honor. It should have been  
15 filed November 5<sup>th</sup>, 2013.

16 JUDGE LEWIS: November 5<sup>th</sup>?

17 MS. ALSEPT: Sorry, what was that?

18 JUDGE LEWIS: Well, the last thing that was filed  
19 there --  
20

21 MR. FARRA: We're talking about the witness list.

22 JUDGE LEWIS: Wait a minute. Maybe it's down here.  
23 (Flips through pages.) Oh, there it is. November 5<sup>th</sup>,  
24 eleven witnesses.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Um --

2 DEFENDANT: Who are those people?

3 MR. FARRA: -- there are several people --

4 JUDGE LEWIS: Even Ms. Bartlett. Do you have any  
5 dirt on her that you want to share with the rest of  
6 us? (Laughter.)

7 DOCKET PROSECUTOR: It's not the time or place.  
8 (Laughs.)

9 MR. FARRA: Yeah. (Laughs.)

10 JUDGE LEWIS: And I had the Defense witness list. I  
11 think they had three witnesses on it. Is that -- I  
12 know you're standing in. Do you --

13 DEFENDANT: I don't know who those people are.

14 JUDGE LEWIS: -- know if that's still accurate?

15 MS. ALSEPT: I understood she had already put in a  
16 witness list. I don't know what it says.

17 JUDGE LEWIS: Okay. All right.

18 MR. FARRA: Okay.

19 MS. ALSEPT: Okay.

20 JUDGE LEWIS: I'll see you on Tuesday.

21 MR. FARRA: Thank you.

22 MS. ALSEPT: Thank you, Your Honor.

23 (Court recesses on this matter at 3:33:06 PM.)  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 (Court reconvenes on this matter at 9:08:39 AM on  
November 12<sup>th</sup>, 2013.)

2 JUDGE LEWIS: All right. This is the State of  
3 Washington v. Shawn Christopher, 13-1-01577-3. Here  
4 for the trial today. Are the parties ready to  
5 proceed?

6 MR. FARRA: Yes, Your Honor.

7 JUDGE LEWIS: All right. Well, I've received this  
8 morning a memorandum from the State and some motions  
9 in limine and a motion to sever counts or, in the  
10 alternative, to dismiss Counts 2 and 3, and an  
11 amended witness list from the Defense. And I assume  
12 we need to deal with the motion to sever counts. Is  
13 there any -- before the jury comes up, is there  
14 anything else that we need to deal with before the  
15 jury comes up?  
16

17 MR. FARRA: Well, Your Honor, I've got a few  
18 evidence -- evidentiary motions that I think would --  
19 should be cleared up before opening. I don't know if  
20 we need to do that before the jury comes up or not.

21 JUDGE LEWIS: I wouldn't think so.

22 MR. FARRA: Okay.

23 JUDGE LEWIS: And, plus we have a department  
24 pooling --  
25

VOLUME 1

HEARING INDEX

**State of Washington v. Shawn Eric Christopher**

November 12, 2013

10 - 199

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 that procedure has a wife who just went into labor.  
2 The surgeon called Mr. Hausinger yesterday and said,  
3 "We're going to have to do this surgery today." So,  
4 at 9 o'clock today, his son was in surgery. He said  
5 he could be here tomorrow at 9:00 AM. I spoke with  
6 him about this at 8:15 this morning, he called quite  
7 timely. So, we will produce Mr. Hausinger, he will be  
8 present, he is the basis for the Counts 2 and 3. They  
9 should not be severed because they are closely  
10 related, judicial economy is served by trying these  
11 cases together, and the jury should hear this  
12 information. The evidence is cross-admissible between  
13 the assault and the alleged contacts with the victim.  
14 The Court should proceed forward. I'm not --

15  
16 JUDGE LEWIS: So, in terms of the -- out of the  
17 Evidence Rule 801(d)(2) evidence --

18 MR. FARRA: Yes.

19 JUDGE LEWIS: -- the evidence you're seeking to  
20 admit there is Mr. Hausinger's statements to the  
21 witness?

22 MR. FARRA: Yes. The allegations --

23 JUDGE LEWIS: You're not moving to ask that his out  
24 of court statements to officers or other people?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: No, Your Honor.

2 JUDGE LEWIS: Just what he said to the witness?

3 MR. FARRA: What he said to the alleged victim.

4 Yes, Your Honor. So, the allegation is that -- and  
5 these are based on police reports -- is that the  
6 Defendant instructed Mr. Hausinger to contact the  
7 victim, he -- Mr. Hausinger did that, and he said  
8 certain things to the victim. What I want to  
9 introduce is -- are those statements and I'd like the  
10 victim to be able to testify that "This is what was  
11 said to me." And the nature of those statements are,  
12 "You need to change your story. You weren't hurt by  
13 choking, it was a hickey" or something along those  
14 lines, and then some other statements as well. First,  
15 I want to offer those not for the truth of the matter  
16 asserted. So my first argument in terms of the  
17 admissibility is that they're -- they're not for the  
18 truth of the matter asserted. They are offered to  
19 prove that there was a contact through Mr. Hausinger,  
20 an indirect contact by the Defendant, and they're  
21 offered to prove that that contact was about the top  
22 -- the case generally. The facts of the case. I'm not  
23 offering those statements to prove that the victim  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 since he's going to be here to testify as to what  
2 he's -- or, what he believed was happening and  
3 because the witness can -- alleged victim can testify  
4 about it, then I don't see any prejudice. So,  
5 assuming those things are correct, I will deny the  
6 motion. All right. And I see that there's -- the  
7 amended Defense witness list adds Detect -- or,  
8 Officer Skeeter. Other than that, I think had all the  
9 other names down. Anything else we need to deal with  
10 before we bring the jury up?

11 MR. FARRA: Your Honor, I would object, I guess, to  
12 the late addition of Officer Skeeter. The case was  
13 called ready, and I can't remember off the top of my  
14 head -- my mind -- my head, if Keon Price was also in  
15 the -- a prior --

16 JUDGE LEWIS: Keon Price --

17 MR. FARRA: -- Defense witness list.

18 JUDGE LEWIS: -- was on the prior Defense --

19 MR. FARRA: Okay.

20 JUDGE LEWIS: -- witness list.

21 MR. FARRA: And Detective Andy Hamlin? I don't --

22 JUDGE LEWIS: On your list.

23 MR. FARRA: He's on my list. So, I would object to  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Skeeter, Your Honor.

2 MS. STAUFFER: Your Honor, I would note that, first  
3 of all, the State apparently files their new amended  
4 inform -- amended witness list on November 5<sup>th</sup>. I  
5 don't get it until November 7<sup>th</sup> because they put it in  
6 the mail. They didn't bother to fax it or to e-mail  
7 it to me. Then I hear the Prosecutor at the last  
8 minute saying, "Oh, by the way, I'm not going to be  
9 calling --

10 JUDGE LEWIS: Was an omnibus --

11 MS. STAUFFER: -- Skeeter."

12 JUDGE LEWIS: Was an omnibus done with deadlines  
13 set?

14 MR. FARRA: No, Your Honor.

15 JUDGE LEWIS: All right. I'm not excluding any  
16 witnesses based on failure to disclose them since no  
17 deadline was set. If you have other bases, you can  
18 bring them up before Officer Skeeter testifies.  
19 Anything else before we bring in the jury?

20 MS. STAUFFER: No, Your Honor.

21 MR. FARRA: Nothing further. No, uh-huh, not before  
22 the jury.

23 JUDGE LEWIS: All right. Bring them up.  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 CLERK: All rise, please.

2 (Court recesses on this matter at 9:23:27 AM.)

3 (Court reconvenes on this matter at 9:36:31 AM.)

4 (Voir dire commences, a twelve-member jury panel  
5 plus one alternate is selected, sworn, instructed and  
released until 1:00 PM.)

6 JUDGE LEWIS: All right. Counsel, we're going to  
7 take about five minutes and then we'll resume with  
8 some motions in limine that you folks have filed. I  
9 saw there was a request for a 3.5. Does the State  
10 intend to offer statements of the Defendant?

11 MR. FARRA: Yes, Your Honor.

12 JUDGE LEWIS: So we do need a 3.5 hearing. I'm not  
13 sure if we'll be able to do that before lunch, but  
14 we'll take a break and see where we're at.

15 MS. STAUFFER: Thank you, Your Honor.

16 CLERK: All rise, please. Court is in recess.

17 (Court recesses on this matter at 11:38:00 AM.)

18 (Court reconvenes on this matter at 11:54:22 AM.)

19 CLERK: All rise, please.

20 JUDGE LEWIS: All right. The 3.5 hearing, about how  
21 long do you think it'll take?

22 MR. FARRA: Not very long, Your Honor.

23 JUDGE LEWIS: Well --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Five -- five, six minutes, maybe.

2 MS. STAUFFER: Okay. Well, I need clarification.

3 There was several interviews of my client by various  
4 officers, so I don't know --

5 JUDGE LEWIS: Okay. We'll do 3.5 after we get back  
6 at 1 o'clock.

7 MR. FARRA: (To Ms. Stauffer.) Officer Bibens would  
8 be the only -- .

9 JUDGE LEWIS: Okay. And severance, I've already  
10 dealt with. I'm going through the Defense motions in  
11 limine now. Do you have prior acts you intend -- or,  
12 convictions you intend to introduce if the Defendant  
13 chooses to testify?

14 MR. FARRA: I do, Your Honor.

15 JUDGE LEWIS: What are they?

16 MR. FARRA: It's a felony conviction, Assault 2,  
17 Your Honor. I believe that's the only one.

18 JUDGE LEWIS: What year?

19 MR. FARRA: Uh, 2009? (Flips through a document.)  
20 Yeah. Entry in 2009.

21 JUDGE LEWIS: Is that the only one?

22 MR. FARRA: That's the only one, Your Honor.

23 JUDGE LEWIS: And why should I allow an Assault 2  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 wants to introduce evidence that the alleged victim  
2 in the case received -- will testify that she  
3 received messages and they said certain things. Is  
4 that right?

5 MR. FARRA: That's essentially correct, Your Honor.

6 JUDGE LEWIS: It apparently said, "Shawn 30 day  
7 inmate friend violation of DV."

8 MS. STAUFFER: That was added on by the victim,  
9 Your Honor. That's my concern. The photos have that  
10 that she put on the text messages, so I am concerned  
11 that we are prejudicing -- we're basically creating  
12 evidence by the victim tampering with her text  
13 messages, so.

14 JUDGE LEWIS: Are you planning on introducing the  
15 text messages themselves, or just have her testify as  
16 to what she received?  
17

18 MR. FARRA: Both, Your Honor. So the photos -- I  
19 have -- Off -- police took photos. And, if may, Your  
20 Honor, we have the photos right here. (Approaches  
21 Clerk for evidence.) Police took photos of the  
22 alleged victim's cell phone. The alleged victim had  
23 received a phone call from a number that she didn't  
24 have in her contact list. So she then labeled that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 contact, that phone number "30-Day Inmate Friend  
2 Violation". So every time -- and then she received a  
3 series of texts from that phone number.

4 JUDGE LEWIS: Oh.

5 MR. FARRA: And so --

6 MS. STAUFFER: I'd ask -- okay.

7 MR. FARRA: So every time she received that text --  
8 a text from that phone number, it would pop up on her  
9 screen as you can see here, basically. (Hands up a  
10 photo.)

11 MS. STAUFFER: We don't know that, Your Honor.  
12 That's the problem. She's manipulated her -- her cell  
13 phone.

14 JUDGE LEWIS: Okay. I'll hear argument from the  
15 State --

16 MS. STAUFFER: Yeah, okay.

17 JUDGE LEWIS: -- and then you'll have an  
18 opportunity to respond.

19 MS. STAUFFER: I'm sorry, Your Honor.

20 MR. FARRA: So, Your Honor, I anticipate that she  
21 will testify to the events that I just described,  
22 basically. That she received a number from a -- a  
23 call from an unknown number, she then labeled that  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 number in her contact list, what it's labeled there,  
2 and that when she later received texts, that that  
3 name popped up, that label popped up with that  
4 number.

5 JUDGE LEWIS: Uh-huh.

6 MR. FARRA: So, she'll testify that's her phone,  
7 she'll testify that's what she labeled the number,  
8 and she'll testify that those are the text messages  
9 she received on her phone and that these are the  
10 pictures of them.

11 MS. STAUFFER: Basically -- okay.

12 JUDGE LEWIS: Go ahead.

13 MS. STAUFFER: Your Honor, she's basically  
14 destroyed evidence and then has put something else in  
15 there that is extremely prejudicial to my client that  
16 had nothing to do with whoever supposedly is sending  
17 her these text messages. We have no way of  
18 identifying where these text messages came from  
19 because she has labeled them. We don't know when and  
20 if -- what she did there, but that's my concern.  
21 There's not going to be any proper foundation for  
22 these text messages, given the changes to the  
23 supposed original text messages, if any, because we  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 don't know who sent those, whether she did them, or  
2 what and, you know, at this point. So, unless there  
3 is a foundation first, I am objecting that the State  
4 not be allowed to start chattering away about text  
5 messages and then try to introduce those photos. So,  
6 that's my concern, Your Honor.

7 MR. FARRA: The --

8 JUDGE LEWIS: Anything else?

9 MR. FARRA: -- foundation, Your Honor, in terms --  
10 there's several sources for a foundation, Your Honor.  
11 The first is the content of the text messages. Or,  
12 I'm sorry. The first is the content of the initial  
13 phone call from that telephone number. The caller  
14 indicated that he knew the Defendant, indicated  
15 through the content of what he told the victim that  
16 he knew the Defendant, he -- he described a number of  
17 details and aspects of their relationship in the  
18 alleged incident that -- that would come from the  
19 Defendant, he said he knew the Defendant because he  
20 was an inmate with him in Clark County Jail a few  
21 days before or a week before. The, as you can see  
22 from the text messages, the text messages from that  
23 same phone number that followed a few days later are  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 speaking code, basically. So, there's the internal  
2 authentication that we would offer --

3 JUDGE LEWIS: So, is Mr. Hausinger going to be  
4 testifying he's the person sending these then?

5 MR. FARRA: And I anticipate that Mr. Hausinger  
6 will testify tomorrow that he sent those at -- yes.  
7 So, the answer is yes. And that his phone number is  
8 that phone number there on the -- on the photos.

9 JUDGE LEWIS: Okay. Well, assuming Mr. Hausinger  
10 testifies he sent the messages and assuming that she  
11 says she received them, then they can be presented  
12 both orally and visually to -- or audibly and  
13 visually to the -- to the jury. However, the  
14 reference that she placed on there will need to be  
15 deleted or else covered up on some way.

16 MR. FARRA: Okay.

17 JUDGE LEWIS: Since that's not something she  
18 received, it's something she put on there, I wouldn't  
19 allow that even if, you know, somebody put a --  
20 received a written letter, I wouldn't allow them to  
21 put a bunch of editorial comments on it and then  
22 present it to the jury, so.

23 MR. FARRA: I guess, Your Honor, that's -- that is  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 what allows me to show the jury that those text  
2 messages came from the same phone number. Because the  
3 alleged victim will say -- she'll say, "I labeled the  
4 phone number a certain name --

5 JUDGE LEWIS: Okay.

6 MR. FARRA: -- and then when --

7 JUDGE LEWIS: She can say that. "I marked it."

8 MR. FARRA: Okay. "And then when the text messages  
9 came, that name popped up and that's how I knew," she  
10 will testify or can testify --

11 JUDGE LEWIS: I understand what she's doing.

12 MR. FARRA: Okay.

13 JUDGE LEWIS: However, if she had decided to label  
14 it text-from-friend-of-guy-who-beats-me-every-other-  
15 day, then I wouldn't allow it --

16 MR. FARRA: Okay.

17 JUDGE LEWIS: -- just because that's how she marked  
18 it. So she can testify that she marked texts she was  
19 receiving from a particular number and that she  
20 received a number of them and say what they were.

21 MR. FARRA: Okay.

22 JUDGE LEWIS: She is not permitted to have this  
23 particular marking testified to or displayed to the  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 jury.

2 MR. FARRA: Okay, Your Honor. So I'll take those.

3 MS. STAUFFER: Your Honor, for clarification, is  
4 the Court still going to require the foundation of  
5 Mr. Hausinger in this picture? Because in my  
6 understanding, he's not available today to testify.  
7 He may or may not be showing up tomorrow. So --

8 JUDGE LEWIS: My ruling is based on the  
9 understanding that the State's offer of proof is  
10 correct, that they are presenting the testimony that  
11 they're presenting. If they -- that's different, then  
12 that's a different story, but.

13 MR. FARRA: I guess, I'm --

14 JUDGE LEWIS: Based on the understanding that she's  
15 going to testify she received it and he's going to  
16 testify that he sent it to her, then -- .

17 MR. FARRA: That is my good faith hope at this  
18 moment. Yes, Your Honor.

19 JUDGE LEWIS: Okay.

20 MS. STAUFFER: And, Your Honor, I would indicate  
21 that --

22 JUDGE LEWIS: All right. The remainder of the  
23 motions in limine will be heard after 1 o'clock.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Thank you, Your Honor.

2 MR. FARRA: Thank you.

3 JUDGE LEWIS: We're in recess.

4 CLERK: All rise, please.

5 MR. FARRA: (To the Clerk.) So, can I -- I'll have  
6 to use a marker on that.

7 CLERK: Because we talked about it, I will need to  
8 send it back, so if you're reprinting it and we're  
9 marking a new exhibit, but because we --

10 (Court recesses on this matter at 12:07:37 AM.)

11 (Court reconvenes on this matter at 1:10:16 PM.)

12 JUDGE LEWIS: Thank you. Please be seated. Okay.  
13 So, Number 12, then, on the Defense motions in limine  
14 was an order providing -- prohibiting providing  
15 transcripts of 911 calls. Do you plan to provide  
16 transcripts of 911 calls?

17  
18 MR. FARRA: I do, Your Honor. As an aid to the jury  
19 in following the call and understanding what's being  
20 said. I don't believe --

21 JUDGE LEWIS: Do you plan to introduce the calls  
22 themselves as evidence and use the others as  
23 illustrative purposes?

24 MR. FARRA: Yes, Your Honor. What I've done is I've  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 prepared a CD with -- there were two 911 calls made.  
2 I'm only seeking to introduce one. I've prepared a CD  
3 with just that one call on it and I've got a  
4 transcript of that one call.

5 JUDGE LEWIS: Okay. Why shouldn't he be allowed to  
6 do that?

7 MS. STAUFFER: Well, Your Honor, if I get any  
8 clarification, I'm assuming what he's indicating he  
9 is only -- only going to be offering the one from the  
10 alleged victim. And one of the conce -- one concern  
11 is we did our own transcript and we differ on some  
12 areas of what was said. So, I think the best evidence  
13 would be the 911 call itself and leave it alone. The  
14 second thing is, is that whether or not the Court is  
15 going to admit the 911 calls when, according to the  
16 interviews with the alleged victim, the so-called  
17 strangulation incident occurred at least an hour  
18 before she ever called 911. So, that's the other  
19 issue, as far as it being a, you know, basically, a -  
20 - an excited utterance versus simply being a  
21 controlled call of calling up the cops and saying  
22 this is what happened when, indeed, she says in the  
23 interview it happens an hour earlier.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Is that how you're planning to offer  
2 them, as an excited utterance?

3 MR. FARRA: Yes. And a present sense impression,  
4 but I did not -- don't agree with the statement that  
5 the victim made them -- the call an hour after. It's  
6 my recollection from the interview she said right  
7 after the incident, she ran to the balcony and called  
8 911.

9 MS. STAUFFER: That's not what she said in the  
10 interview with my investigator, Your Honor.

11 JUDGE LEWIS: All right. Well, we'll have a hearing  
12 outside the presence of the jury. You can make an  
13 offer of proof as to -- as to the --

14 MR. FARRA: Okay.

15 JUDGE LEWIS: -- 911 tape. If I admit, then if  
16 there is some dispute between the transcripts, I  
17 would pre -- how long is the tape?

18 MR. FARRA: The 911 call, Your Honor? Five minutes,  
19 I believe. There is also, and I was going to get to  
20 this when we got to the State's motion, but there is  
21 also a mention in that 911 call of a prior incident  
22 that I, at this point, had redacted out. So, we can  
23 get to that, I guess, when we get to my motions, if  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you'd like.

2 JUDGE LEWIS: Uh-huh. So, how long is the call?

3 MR. FARRA: The call is, I believe it's seven  
4 minutes, Your Honor.

5 JUDGE LEWIS: All right. Well, if there's truly a  
6 dispute between the parties as to what the -- which  
7 transcript is more accurate, then if necess -- if I  
8 admit the 911 call, then I guess I'll have to sit and  
9 listen and --

10 MR. FARRA: Okay.

11 JUDGE LEWIS: -- and deal with the issues and try  
12 to resolve them. So, an order to prohibit the State  
13 from using the term "domestic violence" at all. Well,  
14 it seems like it would be difficult not to since one  
15 of the charges is violation of a domestic violence  
16 court order.

17 MS. STAUFFER: Right. I think the main concern,  
18 Your Honor, is to keep saying domestic violence,  
19 domestic violence, domestic violence when we're --  
20 making allegations of an assault and so, I guess at  
21 this point, I did want to just have some caution as  
22 to how we make it as a conclusion of determination by  
23 arguments or questions. So that's my -- and we've  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 already decided this is domestic violence, so I guess  
2 my concern.

3 JUDGE LEWIS: Okay. Well, I deny the request to  
4 prohibit the State from using the term "domestic  
5 violence" at all. If you think in a particular  
6 question or remark that it's being used  
7 inappropriately, you can raise your objection.

8 MS. STAUFFER: Your Honor, I guess the issue that  
9 has been raised on the 911 call, I would -- there,  
10 that if there is references again to some supposed,  
11 some prior contacts or prior acts, we would ask that  
12 those parts of the 911 call not be part of it,  
13 because, again, it's not relevant to whatever the  
14 State's trying to offer it for.

15 JUDGE LEWIS: My understanding is the State's  
16 willing to redact it. That's what they said.

17 MS. STAUFFER: (To Mr. Farra.) Is that correct?

18 MR. FARRA: And I have.

19 MS. STAUFFER: Okay.

20 MR. FARRA: And so we can get to that. Yeah.

21 MS. STAUFFER: Okay.

22 MR. FARRA: When we look at that, why don't we be  
23 sure.  
24

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: Okay. So that takes care of the  
2 Defendant's motions in limine. Does the State have  
3 motions in limine in the trial memorandum?

4 MR. FARRA: I do, Your Honor.

5 JUDGE LEWIS: (Inaudible.)

6 MR. FARRA: The first --

7 JUDGE LEWIS: I've ruled with regard to Mr.  
8 Hausinger and Ms. Gutierrez's statements.

9 MR. FARRA: Correct. The second large issue that I  
10 highlight is victim's prior bad acts or other  
11 character evidence. The victim in the interview  
12 indicated that she had some mental health issues of  
13 various sorts. She also was asked and talked a little  
14 bit about prior drug use, along those lines. So, my  
15 motion is to ensure that we don't have any mention of  
16 that. I think it would just be prejudicial, it's  
17 basically character evidence, and it would require an  
18 expert to explain to the jury any sort of relevance  
19 and I don't -- haven't received any kind of notice  
20 that that's going to occur.

21  
22 JUDGE LEWIS: Is there prior bad acts or character  
23 evidence you plan to bring up in terms of the victim?

24 MS. STAUFFER: Your Honor, I think it depends on  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 how the testimony. I -- at this point, part of it  
2 depends on what doors are opened. I would note the  
3 victim indicates she has a bunch of mental health  
4 issues, supposed to be taking medication. So, I think  
5 that's all relevant just as if someone is using  
6 alcohol or not using alcohol during an event. So  
7 those are, I think, the two issues the State's  
8 concerned about and I think we should be allowed to  
9 bring in the nature of her mental state at the time.

10 MR. FARRA: Your Honor, alcohol -- the analogy  
11 between alcohol and mental health issues is -- is not  
12 an accurate one. And expert would be required to  
13 explain to the jury what -- whatever the diagnosis  
14 is, how that diagnosis would affect her behavior and  
15 whether or not it was present that night and we don't  
16 have any -- any notice of an expert or any indication  
17 that an expert is going to be called to do that. The  
18 mere fact that somebody may have depression or may  
19 have something -- other mental issue is so  
20 speculative in terms of its relationship to behavior  
21 that it shouldn't be allowed.

23 MS. STAUFFER: This is what --

24 JUDGE LEWIS: Well -- I'm sorry, I don't need  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 additional argument. The -- it's always permissible  
2 to ask a witness who is describing an event whether,  
3 at the time of the event, they were taking  
4 medications, using alcohol, using drugs, whether, in  
5 their opinion that affected their ability to  
6 perceive. And how much they'd had, and whether  
7 they've taken it or not taken it, so on the day of  
8 the incident, if the alleged victim in the case says,  
9 "I was taking medication. I was drinking. I was using  
10 drugs. Or I was in the midst of some depressive  
11 episode or some manic episode," then it's possible --  
12 it's permissible in cross examination to explore  
13 those things, with or without an expert. Just as a  
14 witness can testify that, on the date of -- when  
15 there -- an incident they're describing, that in  
16 their opinion, they weren't having problems. And,  
17 it's also permissible, if you think there's some good  
18 faith basis for it, to ask people on the day they're  
19 testifying, if they are currently under the influence  
20 of any of those things. Other than that, I agree it  
21 doesn't have anything to do with the case. So  
22 whether, in the past she had mental health problems,  
23 or used drugs or alcohol, on any date other than the  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 incident, and whether she's sitting on the stand, is  
2 irrelevant. So, I'll exclude it.

3 MS. STAUFFER: But the day of incident, we can ask  
4 about?

5 JUDGE LEWIS: That's what I just said.

6 MS. STAUFFER: That's right. Mm-hmm.

7 JUDGE LEWIS: And in terms of on Page 9, motions in  
8 limine, we've already gotten past voir dire, so I  
9 don't need to worry about that. Are you planning on  
10 bringing up potential sentences?

11 MS. STAUFFER: About what, Your Honor. Which one  
12 are we on now?

13 JUDGE LEWIS: Page 9, motions in limine.

14 MS. STAUFFER: Yes. Yes.

15 JUDGE LEWIS: Number one, prohibit any mention of  
16 potential sentence. You plan on bringing that up?

17 MS. STAUFFER: No, Your Honor.

18 JUDGE LEWIS: I'll grant that motion then. Number  
19 two, we're past voir dire.

20 MS. STAUFFER: Okay.

21 JUDGE LEWIS: Number three, attorneys shouldn't  
22 convey their personal beliefs.

23 MS. STAUFFER: I agree with that, Your Honor.  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: In general, they should make proper  
2 objections.

3 MS. STAUFFER: I agree with that, Your Honor.

4 JUDGE LEWIS: Witnesses --

5 MS. STAUFFER: That's agreed.

6 JUDGE LEWIS: -- are excluded other than the  
7 Defendant and the assisting officer.

8 MS. STAUFFER: That's agreed.

9 JUDGE LEWIS: Are you -- we talking about, when the  
10 Defendant that gets on the stand that testifies to  
11 his lack of prior convictions?

12 MR. FARRA: Correct, Your Honor.

13 JUDGE LEWIS: Well, since he had a prior  
14 conviction, I can't imagine why he'd testify to that,  
15 but. I assume you're not planning on bringing that  
16 up?  
17

18 MS. STAUFFER: Well, Your Honor, if we open doors,  
19 then I guess we're in trouble, so I think our  
20 position would be simply that, if my client  
21 testifies, I don't think he's going to start  
22 chattering about whether he has a criminal history or  
23 not, and we would ask that the State obviously be  
24 prohibited from asking about it, unless the -- some -  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 - a -- doors are open.

2 JUDGE LEWIS: So domestic violence, I already  
3 talked about that. 911 call, I've already talked  
4 about that.

5 MS. STAUFFER: Okay.

6 JUDGE LEWIS: Let's not to have a hearing about it.

7 MR. FARRA: Okay.

8 JUDGE LEWIS: Appears to be all the motions in  
9 limine.

10 MS. STAUFFER: Your Honor, I would indicate that I  
11 have reviewed the Court on Thursday of last week, I  
12 received the State's new witness list. And on the  
13 State's new witness list, there's various court  
14 personnel, jail personnel, and all sorts of folks.  
15 So, what I indicated to Counsel is, it makes the most  
16 sense to prevent -- prevent undue prejudice to my  
17 client, and also to speed this along, is that we're  
18 willing to introduce some stipulations in reference  
19 to certain evidence. One would be simply the  
20 existence of a no contact order that was entered in  
21 this case in reference to the alleged victim. And  
22 they already have a certified copy of it, and we're  
23 willing to stipulate to that, and not have to bring  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 in court personnel, and do whatever, or have CD's of  
2 court proceedings. So that's one. The second one  
3 would be, we'd be stipulating that during whatever  
4 time frame work that the jail records show, that Mr.  
5 Hausinger was apparently also in the same pod as my  
6 client, although I guess again, I want to be careful  
7 that we don't prejudice my client with the idea that  
8 he's currently in jail, or was in jail, but that at  
9 some point in time, a limited point in time, that  
10 they were in the same area of the jail, and then we  
11 don't have to talk about why he was there or  
12 whatever. So, those are the two stipulations I  
13 proposed to Counsel.

14 MR. FARRA: Your Honor, I -- I need to prove that  
15 the Defendant knew of the no contact order, and knew  
16 the terms of it -- excuse me -- and knowingly  
17 violated it. So I need -- want to prove that  
18 knowledge by showing a video of the entry and the  
19 reading of those terms to him. So, I -- the  
20 stipulation is fine, but I still want to present that  
21 video to show the jury that he did know of it and he  
22 was instructed of the specific terms of it. In terms  
23 of the information about Mr. Hausinger, the evidence  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that I want to present is that he was in the same  
2 cell, and I want to present documentary evidence that  
3 he was in the same cell as the Defendant for a period  
4 of time, and -- so again, that's fine with the  
5 stipulation, but I should still be able to prove my  
6 case the way that I'd like to prove it, and -- with  
7 the most credible evidence, including video and  
8 business records.

9 JUDGE LEWIS: Okay, well let's do the first --  
10 first, in general -- I -- if people want to enter  
11 into stipulations, that's fine. I'll -- I'll -- if  
12 you have proposed stipulations the parties sign off  
13 on, I'll bring it up and read it and follow the  
14 normal procedure. You're asking me to force a  
15 stipulation on the State, then the normal rules would  
16 apply. And as to the second thing, it's certainly  
17 permissible to ask Mr. Hausinger if he was housed in  
18 the same cell with Mr. Christopher, and it's okay if  
19 they want to stipulate that he was in the same cell.  
20 If those two things happen, then why you would need  
21 to introduce documents about it, I guess I would need  
22 to know what it is about the documents that they  
23 should be able to introduce. Sometimes documents say  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 things like the length of incarceration, the charges  
2 involved, things of that nature, that aren't  
3 necessarily needed for the jury, so, if you have the  
4 stipulation, I'm not sure why you'd need the rest of  
5 it, but.

6 MR. FARRA: Your Honor, the -- to the -- the  
7 documents are marked as it should be (inaudible) the  
8 jail. Housing documents, is that?

9 MS. STAUFFER: Number 23.

10 MR. FARRA: Correct. Number 23, Your Honor.

11 MS. STAUFFER: Your Honor, these stipulations are  
12 based on the fact that Mr. Hausinger actually shows  
13 up, in reference to that. But yeah, there's going to  
14 have to be a whole lot of redaction, Your Honor, on  
15 that paperwork. So I don't know what Counsel is  
16 wanting to introduce, but.

17 MR. FARRA: I don't --

18 JUDGE LEWIS: Okay, I'll reserve ruling on it until  
19 I know whether there's actually a stipulation or not.  
20 My ruling was based on the idea that stipulation. If  
21 parties aren't stipulating, then the State may need  
22 to try to prove its case, so.

23 MS. STAUFFER: That's fine, Your Honor.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: All right. If you have stipulations,  
2 put them in written form and get them in the proper  
3 order so that the -- the Court can go over them with  
4 Mr. Christopher and deal with them properly. Anything  
5 else, before we start the 3.5 hearing?

6 MR. FARRA: Before we start the 3.5 hearing, I do  
7 want to alert the Court to the 404(b), which -- which  
8 Defense had raised in their motion, and as I thought  
9 about it over lunch, there's two -- there's two  
10 instances where it may come into play here, that I  
11 want to make the Court aware of. The first involves a  
12 911 call that I discussed briefly, and sounds like  
13 we'll deal with that in a separate -- separate  
14 hearing here. The second is that in the alleged  
15 victim's smith affidavit, regarding the witness  
16 tampering incident or investigation, she wrote that  
17 the caller told her Shawn was really hurting, he was  
18 facing a second strike, and he needed -- Shawn being  
19 the Defendant -- and he needed the victim to help him  
20 out by going to police. So, as I thought about it,  
21 that second strike certainly refers to 404(b)  
22 evidence I wanted to bring before the Court so we  
23 could make sure we're on the same footing here.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: Are you planning on introducing this  
2 affidavit? Are you expecting the --

3 MR. FARRA: I think she'll testify to that. I think  
4 -- I expect that she might testify that that's what  
5 the caller told me.

6 MS. STAUFFER: Your Honor, I thought we already had  
7 a ruling that no -- State witnesses can't be  
8 chattering away about 404(b) evidence.

9 JUDGE LEWIS: But I ruled --

10 MS. STAUFFER: Right.

11 JUDGE LEWIS: -- what I ruled was that they're not  
12 introducing 404(b) evidence, which means they can't  
13 introduce prior bad acts to prove character. That  
14 doesn't necessarily mean that all references to prior  
15 bad acts are automatically excluded as a result, and  
16 as I understand it, the -- the State is attempting to  
17 introduce evidence of the conversation which they are  
18 arguing was tampering with a witness, and contacting  
19 the alleged victim. So they're not offering it to  
20 prove character in the past, as proof of something  
21 here. They're offering it to prove what was said,  
22 which in their indication is the elements of the  
23 crime.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Yeah, Your Honor, I'm trying to prove  
2 the elements of the crime.

3 JUDGE LEWIS: That's a different thing altogether.  
4 Why shouldn't they be allowed to do that?

5 MS. STAUFFER: Your Honor, my concern would be the  
6 prejudice to the Defendant when that information is  
7 not necessary if you're going to look at the entire -  
8 - entirety of what the State has to present in terms  
9 of the so-called tampering. Given the types of  
10 statements that particular part of it is not  
11 necessary for the State to carry forward on their  
12 theory of the case with the tampering charge. That's  
13 one -- one area. The other is I don't think they're  
14 accurate on what the so-called conviction even is, if  
15 I understand it there may have been an attempted  
16 Assault 2, and then they are going to try to  
17 introduce a somebody saying, "Well, it's an assault  
18 two, blah, blah, blah." So, again, that -- that's  
19 something that I'm not going to be -- you know, I  
20 shouldn't have to be forced into a position to say,  
21 "Oh gee, jury, now they got the charge wrong." So, I  
22 think that -- I don't think it -- it's necessary for  
23 the State, in terms of -- of establishing the  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Whatever will move things along so we  
2 can get to the jury that's already been waiting half-  
3 an-hour to deal with these issues. So, 3.5, you have  
4 opening statements?

5 **3.5 HEARING**

6 MR. FARRA: For the 3.5, Your Honor, the only  
7 officer I'll be calling is Officer Bibens. He's the  
8 only source of the statements that I'll be seeking to  
9 introduce. So, I'll call Officer Bibens.

10 JUDGE LEWIS: Okay. Come up. Raise your right hand.

11 **OFFICER THERMAN BIBENS**

12 was thereupon called as a witness and, having been  
13 duly sworn on oath, was examined and testified as  
14 follows:  
15

16 **DIRECT EXAMINATION**

17 JUDGE LEWIS: Please be seated here then.

18 (Witness is seated.) Now that you're seated, please  
19 state your name in full, then spell your last name  
20 for the Court's record.

21 WITNESS: Therman Charles Bibens, III. The last  
22 name is B-I-B-as-in-boy-E-N-S.

23 JUDGE LEWIS: Go ahead.

24 BY MR. FARRA:  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Officer Bibens, do you know the Defendant?

2 A. Yes, sir.

3 Q. Okay. Did you come in contact with him on August  
4 22<sup>nd</sup>, 2013?

5 A. Yes, sir.

6 Q. Early morning hours?

7 A. Yeah, I believe so.

8 Q. Where did you come in contact with him?

9 A. At Evergreen Park Apartments, roughly 112<sup>th</sup> and 49<sup>th</sup>  
10 Street.

11 Q. Okay. Can you describe for the Court just a brief  
12 description of how you actually came to -- let me ask --  
13 just strike that. Did you end up speaking with the  
14 Defendant?

15 A. Yes, sir.

16 Q. Can you give just a brief summary of how you came  
17 about to speak with the Defendant?  
18

19 A. He was handcuffed in a police car. I went down,  
20 mirandized him, he stated he understood his rights, I  
21 began speaking with him.

22 Q. Okay. So, were you at that location to investigate  
23 a criminal report?

24 A. Yes, sir.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Okay. Where -- where was the police car where you  
2 found the Defendant?

3 A. The Defendant was located about 100 yards to the  
4 east of the -- the apartment building. When I contacted  
5 him, he was in a patrol car right at the -- near the steps  
6 of the patrol -- of the apartment building.

7 Q. And you said he was handcuffed?

8 A. Yes, sir.

9 Q. And where was he seated?

10 A. In the rear seat of the patrol vehicle.

11 Q. What did you do when you first encountered him?

12 A. Read him his *Miranda* warnings.

13 Q. Do you have -- did you read those warnings from a  
14 card or from any assistance?

15 A. Yes, sir.

16 Q. Do you have that card with you today?

17 A. Yes.

18 Q. Could you get it out, please? (Witness pulls out a  
19 card.) Could you tell us what you read to him?

20 A. This is a card I carry with me on patrol. It says,  
21 "Miranda Warnings. You have the right to remain silent.  
22 Anything you say can be used against you in a court of  
23 law. You have the right at this time to talk to a lawyer  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 and have him present with you while being questioned. If  
2 you cannot afford to hire a lawyer, one will be appointed  
3 to represent you before any questioning, if you wish. You  
4 can decide at any time to exercise these rights and not  
5 answer any questions or make any statements. Do you  
6 understand each of these rights as I have explained them  
7 to you?"

8 Q. And did you read those to the Defendant on that  
9 night?

10 A. Yes, sir.

11 Q. What did he do in response?

12 A. I quoted in my report, what he said, he said  
13 something to the effect of "Yes, I do" or "Yes". He  
14 alluded to -- that he understood his rights and he  
15 expressed no confusion and we began speaking.

16 Q. Did you -- and he began speaking?

17 A. Yes.

18 Q. What statements did he make?

19 A. He let me know that -- I asked him what happened in  
20 the apartment -- can I look at my report, or do you just  
21 want to know a summary of what he said?

22 Q. I think a summary is fine --

23 A. Okay.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. -- just for these purposes.

2 A. He denied assaulting Christina. He told me she was  
3 crazy and she actually put her hands on him and he knocked  
4 her hands away and that was what happened.

5 Q. Was that the substance of his statement right  
6 there?

7 A. Yeah. And I asked him why he ran. He said he ran  
8 because his boy said the police were coming.

9 Q. Did you have any reason to believe the Defendant  
10 did not understand the rights that you'd read to him?

11 A. Oh, no. He -- he understood them. He told me he  
12 understood them.

13 Q. Did he have any questions for you?

14 A. No, sir.

15 Q. Okay. Did he ask for an attorney?

16 A. No, sir.

17 Q. Did he say that he wanted to remain silent and not  
18 speak to you?  
19

20 A. No, sir.

21 Q. Did he agree to speak to you?

22 A. Yes, sir.

23 MR. FARRA: No further questions at this time.

24 JUDGE LEWIS: Cross examination?  
25

CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. STAUFFER:

Q. Mr. Bibens, you prepared a report on your contact with Mr. Christopher, right?

A. Yes, ma'am.

Q. Okay. In that report, do you recall indicating that you could smell a small -- you could smell a strong odor of an alcoholic beverage coming from his breath and person?

A. Yes, ma'am.

Q. And that he slurred his words and that his eyes were watery?

A. Yes, ma'am.

Q. Okay. And then you indicated that you had read him his rights. Is that correct?

A. Mm-hmm.

Q. And isn't it true that he told you he didn't want to talk to you?

A. No, he didn't tell me anything like that that I can recall.

DEFENDANT: Really?

MS. STAUFFER: (To Defendant.) It's okay.

BY MS. STAUFFER: (Continued.)

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Did you keep asking him about what happened and  
2 then he finally spoke with you?

3 A. He -- he spoke with me, yes. Even if he --

4 Q. Immediately?

5 A. -- even -- if he would have invoked for an attorney  
6 or something, that stops it right there, but in the point  
7 where he comes around and wants to speak to somebody, he -  
8 - he spoke to me. I -- he did not say he didn't want to  
9 speak to me, he didn't say he wanted an attorney or  
10 anything like that.

11 JUDGE LEWIS: Andrea, could you step out?

12 BY MS. STAUFFER: (Continued.)

13 Q. Okay. And then as far as -- (pauses to read  
14 something.)

15 JUDGE LEWIS: I need the rule book.

16 BY MS. STAUFFER: (Continued.)

17 Q. -- your contact with Mr. Christopher is that you  
18 didn't feel that he was under the influence of alcohol  
19 then at the time. Is that correct?  
20

21 A. Say -- say again? I'm sorry.

22 Q. You didn't feel he was under the influence of any  
23 alcohol at the time?

24 A. Oh, he -- he definitely had odor of alcohol coming  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 off him. He had drank some alcohol. But at no point did he  
2 express any confusion with his rights. That's why I put  
3 that sentence in there when I also allude to somebody that  
4 may or may or not be under the influence that I can smell  
5 the odor and different things like that. That's why both  
6 those statements are in there.

7 Q. Okay. And did he ask you to take pictures?

8 A. Did he ask me to take pictures?

9 Q. Yes.

10 A. I can't recall. Of Christina or him?

11 Q. Both. Both of them.

12 A. Okay. I -- I know I took I pictures of Christina.

13 (Defendant confers with Defense Counsel.)

14 MS. STAUFFER: I have no further questions, Your  
15 Honor.

16 JUDGE LEWIS: Re-direct?

17 **RE-DIRECT EXAMINATION**

18 BY MR. FARRA:

19 Q. Did you anything -- do anything -- did you threaten  
20 the Defendant? To speak?

21 A. No. No, sir.

22 Q. Did you tell him he had to speak?

23 A. No, sir.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Did you do anything to force him in any way to tell  
2 you what he said?

3 A. No, sir.

4 Q. Were his words making sense?

5 A. Yes, sir.

6 Q. Was he able to string sentences together and  
7 communicate like a normal person?

8 A. Yes, sir.

9 MR. FARRA: No further questions.

10 JUDGE LEWIS: Re-cross?

11 MS. STAUFFER: No questions, Your Honor.

12 JUDGE LEWIS: Okay. You can step down.

13 WITNESS: Thank you, sir.

14 JUDGE LEWIS: Do you have additional witnesses?

15 MR. FARRA: No, not for a 3.5, Your Honor.

16 (Defendant confers with Counsel.)

17 JUDGE LEWIS: All right, Mr. Christopher, I'll  
18 advise you at this time that we're in the middle of a  
19 Criminal Rule 3.5 hearing. The purpose of that  
20 hearing is for me to determine that -- whether you  
21 statements are admissible. I have two things I have  
22 to decide. First, whether your statements were made  
23 voluntarily without any trick or coercion. And,  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 second, if you were in custody, whether you were  
2 properly advised of your constitutional rights and  
3 whether you voluntarily gave up those rights to speak  
4 to the officer. I will advise you at this time that  
5 you may, but need not testify at this hearing on the  
6 circumstances surrounding the statement. If you  
7 testify at the hearing, you will be subject to cross  
8 examination with respect to the circumstances  
9 surrounding the statement and with respect to your  
10 credibility. If you testify at the hearing, you do  
11 not by so testifying waive or give up your right to  
12 remain silent during the trial. And if you testify at  
13 the hearing, neither the fact that you testified nor  
14 the substance of your testimony at the hearing will  
15 be mentioned to the jury unless you testify  
16 concerning the statement at the trial. Do you  
17 understand all of that?  
18

19 DEFENDANT: Yeah.

20 JUDGE LEWIS: Do you need additional time to talk  
21 to your attorney or are you ready to proceed?

22 DEFENDANT: (To Ms. Stauffer.) So, just basically,  
23 what he's saying is what -- when I told him that  
24 she'd pushed me out -- or, grabbed me, I pushed  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 (inaudible):

2 MS. STAUFFER: Yeah.

3 DEFENDANT: Yeah, that's fine. That's what  
4 happened.

5 MS. STAUFFER: Okay. But the issue is whether or  
6 not you (inaudible).

7 DEFENDANT: That's when I first --

8 MS. STAUFFER: He asked you to talk --

9 DEFENDANT: -- told him I didn't want to talk to  
10 him.

11 MS. STAUFFER: -- so you talked to him. So, if you  
12 want to indicate that he forced you --

13 DEFENDANT: He didn't force me. He just kept  
14 talking and I told him --

15 MS. STAUFFER: Oh, okay. So, the issue is the Judge  
16 has to make a decision whether you voluntarily talked  
17 to him.

18 DEFENDANT: Well, I -- let it in. It's fine.

19 MS. STAUFFER: Okay. Then you don't want to testify  
20 now, right?

21 DEFENDANT: No.

22 MS. STAUFFER: You want (inaudible). (To the  
23 Court.) Your Honor, my client indicates that he  
24  
25

1 doesn't want to testify in this stage of the  
2 proceedings in this hearing.

3 JUDGE LEWIS: All right. Do you have any other  
4 witnesses you wish to call?

5 MS. STAUFFER: No, Your Honor.

6 JUDGE LEWIS: State's argument?

7 **3.5 ARGUMENT - STATE**

8 MR. FARRA: Your argument -- Your Honor, when  
9 there's custodial interrogation, the Defendant needs  
10 to be read *Miranda* rights and waive those. Waiver is  
11 done by -- determined through totality of the  
12 circumstances to demonstrate a knowing, intelligent,  
13 and voluntary relinquishment of a known right.  
14 Custody, for purposes of *Miranda*, is when freedom is  
15 curtailed to the degree associated with arrest.

16 We heard testimony today from Officer Bibens that  
17 the Defendant was handcuffed in the back of a police  
18 car, which would most likely qualify for custody. We  
19 also heard testimony from Officer Bibens that he read  
20 the *Miranda* rights. He read those rights to us. They  
21 were a complete description of the Defendant's rights  
22 in that regard. And the -- Officer Bibens also  
23 testified that the Defendant understood those,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 appeared to understand them, expressed no confusion,  
2 had no questions, was able to communicate coherently  
3 in the English language, and began to speak, and  
4 wanted to speak. So, given that, there has been both  
5 *Miranda* and those rights were waived and the  
6 statements that he made were done so voluntarily and  
7 should be admitted.

8 JUDGE LEWIS: Defense argument?

9 **3.5 ARGUMENT - DEFENSE**

10 MS. STAUFFER: Your Honor, I'd just indicate that  
11 we don't have any evidence or reference to the PBT  
12 test or anything like that being given, so I think  
13 there may be some question as to the level of  
14 intoxication of the Defendant at the time. So, I  
15 don't think the State's carried the burden forward of  
16 showing that the statements were voluntarily made,  
17 given the issue of alcohol.

18 **3.5 RULING**

19 JUDGE LEWIS: Okay. Well, it's not clear to me why  
20 the State would want to introduce in its case in  
21 chief exculpatory statements by the Defendant, but it  
22 -- that's not before me at this time. The question I  
23 have to answer is whether the -- made voluntarily and  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 whether they were statements were the product of  
2 custodial interrogation after proper advisement of  
3 rights. I do find that, at the time that the officer  
4 contact Mr. Christopher, that he was custody. He was  
5 handcuffed in the back of a patrol car. He was  
6 properly advised of his constitutional rights. He  
7 indicated he understood those rights and he waived  
8 those rights and agreed to speak to the officer. The  
9 officer did not trick or coerce him into speaking  
10 and, although he may have consumed alcohol on the  
11 date in question, there is no evidence from which I  
12 could find that his ability to understand or to make  
13 a voluntary choice was impaired by any alcohol that  
14 he consumed. I find, therefore, that his statements  
15 are voluntary and that they are admissible for  
16 constitutional purposes under Criminal Rule 3.5.

17  
18 And did you wish to be heard on the 911 tapes now?  
19 Is that what you're saying? You want me to have a  
20 hearing now about them? You're going to call  
21 witnesses and authenticate them and --

22 MR. FARRA: Well, I would prefer --

23 JUDGE LEWIS: -- all that?

24 MR. FARRA: Your Honor, I don't know that it needs  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 to be done now or whatnot, but the victim will -- the  
2 alleged victim will be my first witness. And so I  
3 would --

4 JUDGE LEWIS: Okay. Have her come in.

5 MR. FARRA: -- introduce the 911 call then.

6 (Mr. Farra exits the courtroom and returns with  
7 the witness.)

8 JUDGE LEWIS: Please come forward. Right up here to  
9 the front. Then stop and raise your right hand.

10 **CHRISTINA ANGEL GUTIERREZ**

11 was thereupon called as a witness and, having been  
12 duly sworn on oath, was examined and testified as  
13 follows:

14 **DIRECT EXAMINATION - OFFER OF PROOF**

15 JUDGE LEWIS: Please be seated here then. (Witness  
16 is seated.) Move forward so you're close to the  
17 microphone. Now that you're seated, please state your  
18 name in full, then spell your last name for the  
19 Court's records.

20 WITNESS: Christina Angel Gutierrez. G-U-T-I-E-R-R-  
21 E-Z.

22 JUDGE LEWIS: Go ahead, Counsel.

23 MR. FARRA: Thank you, Your Honor.

24 BY MR. FARRA:  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Good afternoon, Ms. Gutierrez. Do you recognize the  
2 Defendant seated over here to my right?

3 A. Yes.

4 Q. Who is he?

5 A. Shawn Christopher.

6 Q. Were you with him on August -- early morning of  
7 August 22<sup>nd</sup>, 2013?

8 A. Yes.

9 Q. Were you with him at one point in your bedroom?

10 A. Yes.

11 Q. All right. I'd like to focus our questions just now  
12 on what happened in the bedroom and what happened after,  
13 okay?

14 A. Okay.

15 Q. What happened when were -- when you were in the  
16 bedroom?

17 A. We had an argument.

18 Q. What were you arguing about?

19 A. He was jealous.

20 Q. Okay. And who else was in the room?

21 A. No one.

22 Q. Okay. Where was Mr. Christopher?

23 A. He was laying on the bed.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. And where were you?

2 A. Standing in the corner of the room across from the  
3 bed.

4 Q. What happened as he was laying on the bed and you  
5 were standing in that corner?

6 A. He was arguing with me about me staring at our  
7 roommate and his friend.

8 Q. Okay. What happened next?

9 A. We were continuing the argument, and then he jumped  
10 up and put his hands around my neck.

11 Q. What did he do once he put his hands around your  
12 neck?

13 A. He squeezed my neck.

14 Q. How did that affect you?

15 A. What do you mean?

16 Q. Did it hurt?

17 A. Yes.

18 Q. Did it affect your breathing?

19 A. Yes.

20 Q. Did you expect him to do this?

21 A. No.

22 Q. How long did he have his hands around your neck,  
23 about?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Maybe a minute.

2 Q. What happened after that minute?

3 A. He let go.

4 Q. Now, let's focus on what happened after he let go.  
5 What happened after he let go?

6 A. I'm -- saw him walk away and I grabbed my phone and  
7 I started calling 911.

8 Q. Okay. How soon after he let go from your neck do  
9 you think it was before you grabbed your phone?

10 A. How soon what?

11 Q. How much time between him releasing -- taking his  
12 hands off your neck and you grabbing your phone?

13 A. I grabbed my phone, I don't know how much time.

14 Q. Right away?

15 A. Yeah, it was right away. And then I went outside.

16 Q. Where did you go when you went outside?

17 A. I went on the balcony.

18 Q. And what did you do once you got to the balcony?

19 A. That's when I dialed 911.

20 Q. And did you complete the call to 911?

21 A. Yes.

22 Q. Did you stay on the line with 911?

23 A. Yes.

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Where was the Defendant when you were calling 911?

2 A. He was running back and forth in the house.

3 Q. Did you know what he was doing?

4 A. He was trying to get his sweater -- his shirt and  
5 sweater on.

6 Q. Did you know what he was going to do once he got  
7 his shirt and sweater on, or -- ?

8 A. Run.

9 Q. Were you upset when he strangled you?

10 A. Yes.

11 Q. And were you still upset when you called 911?

12 A. Yes.

13 Q. Were you scared?

14 A. Yes.

15 Q. What were you scared of?

16 A. I was afraid that I would pass out.

17 Q. Thank you. No further questions.

18 JUDGE LEWIS: Any questions related to the --

19 MS. STAUFFER: Yes, Your Honor.

20 JUDGE LEWIS: -- offer of proof?

21 **CROSS EXAMINATION - OFFER OF PROOF**

22 BY MS. STAUFFER:

23 Q. Ms. Gutierrez, there were quite a few events that  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 evening, is that correct?

2 A. Yes.

3 Q. Or early morning hours. Is that what we're talking  
4 about? Early morning, like 1:00, 2:00, 3:00 in the  
5 morning, is this kind of the timeframe we're talking  
6 about?

7 A. Yes.

8 Q. So, what time did you and Mr. Christopher start  
9 arguing that day?

10 A. It was right -- a little bit after work, I don't  
11 know what time.

12 Q. And in your discussions with the police, you left  
13 out quite a few of the situations where you basically were  
14 shoving and grabbing at Mr. Christopher that night, is  
15 that correct?

16 A. No.

17 Q. You told him all about the other instances besides  
18 this one that you've alleged?

19 A. I told them that I shoved him.

20 Q. And did you tell them that you tried to grab a beer  
21 can out of his hand --

22 A. Yes.

23 Q. -- at some point? And that you kicked him at some  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 point?

2 A. I never kicked him.

3 Q. And do you recall having an interview with John  
4 Viser, Defense investigator at the Prosecutor's Office on  
5 September 18<sup>th</sup>, 2013?

6 A. No, I don't remember.

7 Q. Okay. You don't remember that? Why not?

8 A. I have a bad memory.

9 Q. Okay. So, if I were to tell you at that time that  
10 you had answered a question from Mr. Viser that he  
11 indicated what time did this incident you were claiming  
12 that somehow that Mr. Christopher grabbed your neck, you  
13 indicated it was around two o'clock. Do you recall that at  
14 all?

15 A. I know it was in the middle of the night. I just  
16 don't remember what time.

17 Q. Do you recall telling Mr. Viser that it was around  
18 two o'clock?  
19

20 A. Who is Mr. Viser?

21 Q. The investigator that interviewed you at the  
22 Prosecutor's Office on September 18<sup>th</sup>, 2013. Do you have a  
23 recollection or not?

24 A. No.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-11

1 Q. You don't remember?

2 A. September 18<sup>th</sup>, no. I don't remember the dates. I  
3 just remember what happened.

4 Q. I'm asking you about an interview. Not the date of  
5 this incident, but an interview asking you questions about  
6 the incident. Do you remember being interviewed? By Mr.  
7 Viser.

8 A. The night that it happened?

9 Q. Excuse me?

10 A. The night that it happened?

11 Q. No. After the incident.

12 A. I remember being interviewed after the incident.

13 Q. So you remember that?

14 A. Yes.

15 Q. Okay. You just told me you didn't a few minutes  
16 ago. So now you remember?

17 A. I thought you meant the night that it happened.

18 Q. I said September 18<sup>th</sup>. Is that the night it  
19 happened?  
20

21 A. No.

22 Q. Do you have memory problems?

23 A. Yes, I do.

24 Q. And is that because some mental health issues or  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 brain injuries, or what's -- what's the cause of that? Do  
2 you know?

3 A. I don't know.

4 Q. How old are you?

5 A. Twenty-six.

6 Q. How long have you had these memory problems?

7 A. A while. Like years.

8 Q. So, if you -- you now remember, somehow, having an  
9 interview with Mr. Viser, is that correct?

10 A. Yes.

11 Q. Do you recall telling him -- that you told him when  
12 the incident of Mr. Christopher, in addition to all these  
13 other things that were going on that night, that you said  
14 it was around two o'clock?

15 A. Yes.

16 Q. Okay. And that was like an hour before the police  
17 were dispatched. Is that correct?

18 A. About that night? You're kind of confusing. Just a  
19 little bit.

20 Q. Is this at 1:00 or 2:00 or 3:00 in the morning?

21 A. I believe it was 2:00. I know it was the middle of  
22 the night, I just don't remember what time. I don't  
23 remember putting a face to a Mr. Viser. I don't recognize  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 the name or who it is.

2 Q. Well, my question, though, really focuses on you  
3 indicating that the incident with Mr. Christopher wherein  
4 you allege that he grabbed you by the throat occurred an  
5 hour before the police were dispatched. And then you said,  
6 "Yes, it happened at two o'clock."

7 A. Yes.

8 Q. Okay. Thank you.

9 MS. STAUFFER: I have no further questions, Your  
10 Honor.

11 JUDGE LEWIS: You have further questions?

12 **RE-DIRECT EXAMINATION - OFFER OF PROOF**

13 BY MR. FARRA:

14 Q. Christina, did this happen late at night?

15 A. Yes.

16 Q. Do you know exactly what time this happened at?

17 A. No.

18 Q. What -- what did you do after he strangled -- after  
19 he had his hands around your throat and let go?

20 A. I grabbed my phone and went outside.

21 Q. Was that next thing you did was call 911 then?

22 A. Yes.

23 MR. FARRA: No further questions.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

JUDGE LEWIS: Re-cross?

RE-CROSS EXAMINATION - OFFER OF PROOF

BY MS. STAUFFER:

Q. So, do you remember that for sure? Or is this just something you're saying yes to?

A. No, I remember that for sure.

Q. How do you remember that and don't remember the other?

A. Because you're asking me about a specific time. I don't know the specific time.

Q. You said the specific time to my investigator.

A. But I don't remember the conversation.

MS. STAUFFER: I have no further questions, Your Honor.

JUDGE LEWIS: You have additional questions?

MR. FARRA: No, I don't, Your Honor.

JUDGE LEWIS: All right. You can step down. Don't discuss your testimony with other potential witnesses.

MR. FARRA: Well, actually, Your Honor --

JUDGE LEWIS: Go ahead and wait outside the courtroom, then.

MR. FARRA: Actually, Your Honor, before she steps

1 down, I'm sorry, I do have a question.

2 JUDGE LEWIS: I guess you need to resume the stand.

3 **RE-DIRECT EXAMINATION - OFFER OF PROOF**

4 BY MR. FARRA:

5 Q. Christina, I'd like you to listen -- (Picks up a  
6 CD.) -- I'd like you to listen to this CD.

7 JUDGE LEWIS: Does it have an exhibit number?

8 MR. FARRA: (Inaudible.) I'm sorry. I guess, Your  
9 Honor, at this point, this is a copy of -- I believe  
10 it's a copy that has redacted out the 404(b). So,  
11 it's not exactly the call that she made, but it is in  
12 all res -- in every respect, except for this 404(b)  
13 part.

14 JUDGE LEWIS: And does it have an exhibit number?

15 MR. FARRA: No. We'll get you one.

16 (Mr. Farra presents the CD to the Clerk.)

17 CLERK: Twenty-four.

18 BY MR. FARRA:

19 Q. All right. I'd like to play for you what's been  
20 marked as Exhibit 24. Okay? This CD.

21 (Prosecutor begins playback of 911 call.)

22 DISPATCHER: 911, how can I help you?

23 MS. GUTIERREZ: Hi, I'm in an emergency.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           DISPATCHER: Okay. What's the address, ma'am? I'll  
2 (inaudible).

3           MS. GUTIERREZ: It's 4649 Northeast 112<sup>th</sup> Avenue.

4           DISPATCHER: You got an apartment number?

5           MS. GUTIERREZ: Two-zero-four.

6           DISPATCHER: J, like John, 2-0-4?

7           MS. GUTIERREZ: Yes.

8           DISPATCHER: Okay. And how can I help you?

9           MS. GUTIERREZ: My boyfriend is drunk and he just  
10 put his around my neck.

11          DISPATCHER: Okay. Is he still there?

12          MS. GUTIERREZ: Yes, I told him to leave, but he  
13 won't leave. He doesn't -- he's not on the lease or  
14 anything. It's my apartment.

15          DISPATCHER: Okay. What's his name, hon?

16          MS. GUTIERREZ: It's Shawn Christopher.

17          (Background noise on the phone.)

18          DISPATCHER: Are you okay? Are you there?

19          MS. GUTIERREZ: Yeah, I'm okay. I'm --

20          DISPATCHER: Do you need an ambulance?

21          MS. GUTIERREZ: No.

22          DISPATCHER: Okay. What's your name?

23          MS. GUTIERREZ: Christina.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 DISPATCHER: Okay. What is the Shawn -- is his name  
2 Shawn Christopher, or is Christopher his middle name?

3 MS. GUTIERREZ: It's Shawn Christopher.

4 DISPATCHER: Oh, your cell phone cut out. What's  
5 his date of birth?

6 MS. GUTIERREZ: February 1<sup>st</sup>.

7 DISPATCHER: February 1<sup>st</sup>. Okay.

8 MS. GUTIERREZ: I don't remember the year.

9 DISPATCHER: Okay. Is Shawn S-E-A-N or S-H-A-W-N?

10 MS. GUTIERREZ: S-H-A-W-N.

11 DISPATCHER: Okay. How old is he?

12 MS. GUTIERREZ: Thirty-four.

13 DISPATCHER: Is he a white male?

14 MS. GUTIERREZ: No. He's Native American.

15 DISPATCHER: Okay. Are you -- where is he  
16 currently?

17 MS. GUTIERREZ: In the house.

18 DISPATCHER: Okay. Where are you at?

19 MS. GUTIERREZ: Outside.

20 DISPATCHER: Okay. And, Christina, what's your last  
21 name?

22 MS. GUTIERREZ: Gutierrez.

23 DISPATCHER: G-U-T-I-R-R-E-Z?  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 MS. GUTIERREZ: G-U-T-I-E-R-R-E-Z, yes.

2 DISPATCHER: Okay. And you don't want an ambulance?

3 MS. GUTIERREZ: No, I'm okay. I just --

4 DISPATCHER: (Inaudible.)

5 MS. GUTIERREZ: No. I'm okay.

6 DISPATCHER: Could you breathe?

7 MS. GUTIERREZ: Yes. Kind of.

8 DISPATCHER: Did he assault you in any other way?

9 MS. GUTIERREZ: No, he was looking at me and --

10 DISPATCHER: Okay.

11 MS. GUTIERREZ: I think he's leaving.

12 DISPATCHER: Okay. What type of vehicle is he in?

13 MS. GUTIERREZ: He's not in a vehicle. He's wearing  
14 white shorts --

15 DISPATCHER: Okay. I need a full description on  
16 him. You said he's a Native American male, he's 34.  
17 How tall -- how big is he?

18 MS. GUTIERREZ: Um, 5'7", he's bald. He's  
19 (inaudible) going around with a hoodie on and red and  
20 black on the border.  
21

22 DISPATCHER: Is he still in the apartment or did he  
23 come out? (Pause.) Christina?

24 MS. GUTIERREZ: Yes.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 DISPATCHER: Is he still in the apartment or did  
2 you see him come out and leave?

3 MS. GUTIERREZ: (Pause.) He's still in the  
4 apartment.

5 DISPATCHER: Okay.

6 MS. GUTIERREZ: He's on foot. He's wearing a  
7 (inaudible).

8 DISPATCHER: Okay. I'm confused. You said he's in  
9 the apartment but then you said he's on foot. So, is  
10 he --

11 MS. GUTIERREZ: No. Now he's leaving.

12 DISPATCHER: -- leaving? Okay. Which direction?

13 MS. GUTIERREZ: He went left from my apartment.

14 DISPATCHER: I mean which direction? Okay. Is that  
15 toward West Falls or towards 49<sup>th</sup> Street?

16 MS. GUTIERREZ: I think it's towards 49<sup>th</sup>. But  
17 that's -- 112<sup>th</sup> is right in front of me.

18 DISPATCHER: Okay. Are there any children in the  
19 residence?

20 MS. GUTIERREZ: No.

21 DISPATCHER: Okay. Just the two of you live there?

22 MS. GUTIERREZ: Yes.

23 DISPATCHER: I'd like you to stay on the line. Do  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you know where he might be going?

2 MS. GUTIERREZ: No, I have no idea.

3 DISPATCHER: Does he know anyone in the area there?

4 MS. GUTIERREZ: (Inaudible) yes.

5 DISPATCHER: Okay.

6 MS. GUTIERREZ: His -- he has friends that live  
7 close by, but I don't know --

8 DISPATCHER: Is it in a house or an apartment?

9 MS. GUTIERREZ: It's in a house

10 DISPATCHER: And you don't know where (inaudible)--  
11 is it off of 49<sup>th</sup> Street?

12 MS. GUTIERREZ: Yeah, I have no idea.

13 DISPATCHER: Okay. Is he carrying any weapons,  
14 Christina?

15 MS. GUTIERREZ: A knife.

16 DISPATCHER: He has it on him now, or?

17 MS. GUTIERREZ: Yeah, I'm pretty sure he does.

18 DISPATCHER: Okay. Did he have --

19 MS. GUTIERREZ: (Inaudible) two blocks away.

20 DISPATCHER: Can you still see him or no?

21 MS. GUTIERREZ: No. We were arguing and he had  
22 kicked me earlier.

23 DISPATCHER: Okay.

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. GUTIERREZ: But he said that he was just  
2 playing, but that kick did not feel like he was  
3 playing.

4 DISPATCHER: Okay.

5 MS. GUTIERREZ: He was mad.

6 DISPATCHER: Did something specific set him off, or  
7 was he just drunk and (inaudible) he gets angry.

8 MS. GUTIERREZ: He was drunk -- he was drunk.

9 DISPATCHER: Okay.

10 MS. GUTIERREZ: He's an alcoholic and he -- it's  
11 really doubtful he believes -- and my roommate had a  
12 friend over or something, but they were sleeping and  
13 he just got upset and he decided that he just wanted  
14 to be angry. That's how he is.

15 DISPATCHER: Okay. Did he disrupt your roommates'  
16 sleeping?

17 MS. GUTIERREZ: Just one, actually. (Inaudible.)  
18 The police are here.

19 DISPATCHER: Just let me know when they see you.

20 MS. GUTIERREZ: They're looking right at me. That's  
21 the first time he ever put his hands around my  
22 throat, so I'm kind of freaked out.

23 DISPATCHER: I know and I think you should be. It's  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 scary. Did he (inaudible) you were calling us?

2 MS. GUTIERREZ: Yes, I told I was if he wouldn't  
3 leave and he wasn't believe it.

4 DISPATCHER: Okay.

5 MS. GUTIERREZ: I'm sure he's running right now.

6 DISPATCHER: They just said over the radio he's  
7 running. (Pause.) Okay, honey, they're going to try  
8 and get him, so I want you to stay there and they'll  
9 contact you there as soon as they can, okay?

10 MS. GUTIERREZ: Okay.

11 DISPATCHER: All right. Bye-bye.

12 BY MR. FARRA: (Continued.)

13 Q. Christina, is that the call that you made to 911

14 A. Yes.

15 Q. Is that an accurate recording of that call?

16 A. Yes.

17 Q. Fair and accurate? Thank you.

18 JUDGE LEWIS: Do you have any more questions of the  
19 witness?  
20

21 **RE-CROSS EXAMINATION - OFFER OF PROOF**

22 BY MS. STAUFFER:

23 Q. Do you remember?

24 A. Yes, I do.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay. Do you remember saying every one of those  
2 things that we just heard?

3 A. Yes.

4 MS. STAUFFER: So, I have no further questions.

5 JUDGE LEWIS: Can the witness step down?

6 MR. FARRA: She may, Your Honor.

7 JUDGE LEWIS: Okay, you can step down. Wait  
8 outside. Don't discuss your case, or the testimony  
9 with anyone else. All right. Your argument then on  
10 the admissibility?

11 MR. FARRA: Yes, Your Honor, I'd argue that the 911  
12 call is admissible under a number of hearsay  
13 exceptions. One is excited utterance. One would be  
14 present sense impression. Those would be the two main  
15 ones. As you heard, the call lasts just over six  
16 minutes. In the beginning of the call, Ms. Gutierrez  
17 gets on, says within about 30 seconds that her  
18 boyfriend is drunk and has just put her hands around  
19 her neck, that she told him to leave. She can be  
20 heard getting a little tearful at that point. She's  
21 speaking in a rapid, more rapid pace other -- than  
22 she would otherwise. She -- voice again gets shaky  
23 when asked what's the name of the person who did this  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 to her. She described Shawn Christopher. She's  
2 identifying who it was. Her present sense impression,  
3 which then generally carries through what happens for  
4 the next several minutes, where she's describing  
5 where he is, and what he's doing, as he's running  
6 around the house, and what he looks like. On that  
7 basis, Your Honor, I'd ask to admit the 911 call in  
8 its entirety. I think it's important for the jury to  
9 hear the entire call, get the context of what  
10 happened. It's the basis for my argument.

11 JUDGE LEWIS: All right, your argument?

12 MS. STAUFFER: Well, Your Honor, I'm not exactly  
13 sure what theory the State's contending here. We have  
14 some issues with this witness, obviously, at this  
15 point, in terms of her memory or selective memory.  
16 So, I guess, in terms of excited utterances, I don't  
17 hear this on this particular tape, and there are some  
18 contradictions in what she's indicating when  
19 something happens, so we would ask the Court to  
20 exclude it at this point. I don't know what the  
21 relevancy is, actually.

22 JUDGE LEWIS: All right, with regard to the tape,  
23 the issue I'm faced with right now is authentication,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 which was done by the witness, and admissibility  
2 under the hearsay rule. The evidence that I have, if  
3 testified to, would indicate that the call occurred  
4 fairly quickly after the startling event, therefore,  
5 an excited utterance. She was also describe things  
6 that are happening while the person's on the line.  
7 Therefore, present sense impression. The challenges  
8 that were brought up go to the weight of the evidence  
9 rather than its admissibility, so the -- the 911  
10 call, as indicated on 24 is admissible. Apparently  
11 the portion that was of some concern was redacted. I  
12 would also indicate that the reference by Ms.  
13 Gutierrez to the fact that, in her opinion, Mr.  
14 Christopher is a drunk and an alcoholic, should be  
15 redacted. That doesn't have anything to do with this  
16 case. It is prejudicial. So that should be redacted  
17 as well. In addition, you said there were some  
18 concerns about the accuracy of the transcripts. Are  
19 you planning on introducing this tape through this  
20 witness?  
21

22 MR. FARRA: I am, Your Honor.

23 JUDGE LEWIS: Okay, then I guess I need both your  
24 transcripts up here, so I can determine the accuracy  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 of the transcripts and resolve those issues.

2 MR. FARRA: Your Honor, in terms of the portion of  
3 that recording, that is about the alcoholic part --

4 JUDGE LEWIS: Uh-huh.

5 MR. FARRA: I guess I propose, Your Honor, to play  
6 it for the jury and just turn the volume down when we  
7 get to that part, or off.

8 JUDGE LEWIS: Well, that may be somewhat difficult.

9 MS. STAUFFER: (Inaudible.)

10 MR. FARRA: Agreed. I could -- I could stop the  
11 recording and skip ahead.

12 JUDGE LEWIS: You'll need to figure something out,  
13 so.

14 MR. FARRA: Okay. (Pause.) And would Your -- Your  
15 Honor then propose just not admitting it as evidence?  
16 I just want to make sure.

17 JUDGE LEWIS: What?

18 MR. FARRA: The 911 call. Just playing it into the  
19 record as opposed to admitting the --

20 JUDGE LEWIS: Well, you admitted the exhibit, so, I  
21 don't normally send a tape back -- player back to the  
22 jury --  
23

24 MR. FARRA: Okay.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: -- so if you admit it and it has  
2 portions that are admissible and inadmissible, then  
3 if the jury wants to hear it again during  
4 deliberations, then I'll have to bring them back out  
5 and play it to them in the courtroom.

6 MR. FARRA: Okay, thank you.

7 JUDGE LEWIS: Okay, so are they -- looking at the  
8 transcripts, what's the first place -- you have your  
9 transcripts?

10 MS. STAUFFER: Your Honor, I gave you my only copy  
11 at this point, so I -- you know --

12 JUDGE LEWIS: Take a brief recess while you go down  
13 and get yourself a copy so that we can all talk along  
14 about it?

15 CLERK: All rise, please. Court's in recess.

16 (Court recesses on this matter at 2:09:61 PM)

17 (Court reconvenes on this matter at 2:19:05 PM.)

18 CLERK: All rise, please. Court is again in  
19 session.

20 JUDGE LEWIS: Thank you, please be seated.

21 MR. FARRA: Your Honor, I have the original  
22 transcript if you'd rather work off of that, or the  
23 copy you have in front of you.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: I'll actually, Counsel, after having  
2 had the opportunity to review Exhibit 24 by listening  
3 to it in its entirety, at least the portion you want  
4 to play, it appears to me that it's of -- it's short  
5 enough, and clear enough that the jury does not need  
6 a transcript as a listening aid, so.

7 MR. FARRA: Okay. Okay.

8 JUDGE LEWIS: We won't use a transcript and then I  
9 won't have to resolve issues related to the  
10 transcript. But you will need to figure out some way  
11 to cut that one portion of it.

12 MR. FARRA: Well I could --

13 JUDGE LEWIS: Anything else that we need to do  
14 before the jury comes in?

15 MS. STAUFFER: Your Honor, there's a couple areas  
16 where she's claiming he's drunk, not just that -- so  
17 I just want to make sure we're going to get all of  
18 them and there are a couple areas on that. Right at  
19 the beginning and then one, two, she says, "My  
20 boyfriend's drunk," and then "He's drunk," and in  
21 addition to him being an alcoholic, so.

22 JUDGE LEWIS: I didn't -- I did not say that she  
23 could not say that he was drunk.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Okay.

2 JUDGE LEWIS: I said he could not -- there's one  
3 section where she doesn't say he's drunk on this  
4 particular day, she said he is a drunk; an alcoholic.  
5 That's the portion that I'm excising. But if she says  
6 on the -- in describing what's going on on that day,  
7 that he's drunk, then that part is not being excised.

8 MS. STAUFFER: Okay.

9 JUDGE LEWIS: Anything else before we bring in the  
10 jury?

11 MR. FARRA: Your Honor, if I could just pinpoint,  
12 real quick, and I'll be good to go on the -- what I'm  
13 not going to play.

14 MS. STAUFFER: I guess I'm still back to foundation  
15 on the 911 call, Your Honor. I don't know if there's  
16 a witness.

17 JUDGE LEWIS: I assume that he's going to be  
18 calling her and asking her to identify it again, that  
19 -- in the presence of the jury, so.

20 MR. FARRA: Yes, Your Honor.

21 JUDGE LEWIS: Assuming that she does that, then I  
22 already found that the authentication is appropriate.  
23 Do you have additional arguments regarding authen --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 authentication?

2 MS. STAUFFER: No, Your Honor, I just wanted to  
3 clarify that issue. Thank you.

4 MR. FARRA: Your Honor, if I could just play that  
5 part, the sensitive part here, about, "He's an  
6 alcoholic," so I'm absolutely sure what it is you --  
7 you don't want in there.

8 JUDGE LEWIS: All right.

9 (Prosecutor begins playback of 911 recording.)

10 MS. GUTIERREZ: He's drunk. He's a drunk. He's an  
11 alcoholic, and --

12 (Prosecutor stops playback.)

13 MR. FARRA: Let me start it a little bit earlier  
14 than that, so we can hear the lead in.

15 (Prosecutor begins playback.)

16 DISPATCHER: Did something specific set him off, or  
17 is he just drunk and then he gets angry?

18 MS. GUTIERREZ: He's drunk. He's a drunk. He's an  
19 alcoholic. And, he gets really jealous really easily.  
20

21 MR. FARRA: Is the "He gets really jealous really  
22 easily" permissible, Your Honor?

23 (Prosecutor stops playback.)

24 JUDGE LEWIS: Okay. Exhibit 9 -- Page 5, line 95,  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 through 98. Do you want to start it where it says,  
2 "My roommate had a" well, actually, I don't -- I  
3 think you just need to knock out 95 through 99.

4 MR. FARRA: Okay. Let me locate where that is and -

5 -  
6 JUDGE LEWIS: 95 through 99 on page five, and that  
7 will take care of it.

8 MR. FARRA: Okay, let me --

9 (Prosecutor begins playback.)

10 DISPATCHER: -- set him off, or is he just drunk  
11 and then he gets angry?

12 MS. GUTIERREZ: He's drunk. He's a drunk. He's an  
13 alcoholic. And, he gets really jealous really easily.  
14 And my roommate had a friend over or something, but  
15 they're sleeping and he just got upset and he decided  
16 that he could (inaudible)angry. That's how he is.

17 DISPATCHER: Okay.

18 (Prosecutor stops playback.)

19 MR. FARRA: Okay. I've got it, Your Honor. Thank  
20 you.  
21

22 JUDGE LEWIS: All right. Anything else before we  
23 bring in the jury? Mr. Christopher ready to go, or  
24 does he need a break before we get there, because I  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 plan to go to the end of my instructions, and opening  
2 statement, start with a witness, since the jury's  
3 been waiting for the period of time that they have,  
4 so if he needs to take a break, now is the time to  
5 take one. Does he need one?

6 DEFENDANT: Okay.

7 MS. STAUFFER: Okay.

8 JUDGE LEWIS: All right? Okay. Bring in the jury.

9 (Jury enters courtroom.)

10 JUDGE LEWIS: Welcome back. Physics and law have a  
11 lot in common. Time is a relative concept in both of  
12 them, so (laughter). Close to one as we can,  
13 sometimes means different things to different people,  
14 but. Unfortunately, when it comes to a -- back from a  
15 three-day weekend, sometimes there are more legal and  
16 -- and administrative matters I need to deal with  
17 than I anticipated. That's what happens here and I  
18 appreciate your patience in waiting for us to be  
19 ready to proceed. I'm going to read you some  
20 additional instructions and then we'll have opening  
21 statement.  
22

23 I will now explain the duties of jurors and the  
24 Court and the lawyers and the procedure to be  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 followed during the trial.

2 The lawyers' remarks, statements, and arguments  
3 are intended to help you understand the evidence and  
4 apply the law. They are not evidence, however, and  
5 you should disregard any remarks, statements, or  
6 arguments, which are not supported by the evidence or  
7 by the law as I give it to you. The law does not  
8 permit me to comment on the evidence in any way and I  
9 will not intentionally do so during the trial. By a  
10 comment on the evidence, I mean some expression or  
11 indication from me as to my personal opinion on the  
12 value of the evidence or the weight of it. You are  
13 the sole judges of the credibility of witnesses and  
14 evidence and of what weight is to be assigned to a  
15 particular piece of evidence. I have nothing to do  
16 with that. If it appears to you that I do comment on  
17 the evidence, you are to disregard such apparent  
18 comment entirely.

19  
20 The lawyers may make objections to questions and  
21 evidence. They have the right and the duty to make  
22 any objections, which they deem appropriate. Such  
23 objections should not influence you and you should  
24 make no presumptions because of their objections.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           The evidence you are to consider consists of the  
2 testimony of the witnesses and the exhibits admitted  
3 in evidence. It will be my duty to rule on the  
4 admissibility of evidence. You must not concern  
5 yourselves with the reasons for these rulings. You  
6 will disregard any evidence, which either is not  
7 admitted or which may be stricken by me.

8           The case will proceed in the following order.  
9 First, the Prosecutor may make an opening statement,  
10 outlining the evidence to be presented in the State's  
11 case. The Defense lawyer, may make an opening  
12 statement outlining the Defendant's case immediately  
13 after the Prosecutor's opening statement, or may  
14 reserve opening statement until the end of the  
15 State's case. Second, the State will introduce  
16 evidence. At the conclusion of the State's evidence,  
17 the Defendant may introduce evidence. Rebuttal  
18 evidence may also be introduced by either side.  
19 Third, at the conclusion of all the evidence, further  
20 instructions will be given to you after which the  
21 lawyers will have the opportunity to make closing  
22 arguments. Then you will select a presiding juror and  
23 deliberate on your verdict.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 You are now officers of the Court and you must act  
2 judiciously with an earnest desire to determine and  
3 declare a proper verdict. Throughout the trial, you  
4 should be impartial and permit neither sympathy nor  
5 prejudice to influence you.

6 Each of you have been provided with a notepad and  
7 something to write with. During the course of this  
8 trial, you are permitted to take notes if you wish.  
9 By permitting you to take notes, I am not instructing  
10 you to do so. I caution you that you should not let  
11 note taking interfere with your opportunity to  
12 observe the demeanor of witnesses and other events of  
13 the trial. Do not disclose or discuss your notes with  
14 any other juror until the jury actually begins its  
15 deliberations at the end of the case. At that time,  
16 you may disclose and discuss your notes with the  
17 other jurors if you feel that will help you to reach  
18 a verdict. When we recess during the trial and at the  
19 end of each day, close your notepad and leave it on  
20 your seat. Notepads are not permitted to be taken out  
21 of the courtroom or into the jury room at any time  
22 during the trial. And please only take notes on the  
23 paper provided in the notepads, not on other paper.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 After you've reached a verdict, the Bailiff will  
2 collect your notepads. The notes you took will then  
3 be destroyed and no one will be allowed to read your  
4 notes.

5 Finally, I caution you not to assume that any  
6 particular note you may have taken is necessarily  
7 more accurate than your own memory or the notes or  
8 memories of your fellow jurors. At all times during  
9 deliberations, keep your minds open to the notes or  
10 memories of your fellow jurors.

11 Now please give your attention to Mr. Farra who  
12 will make opening statement on behalf of the  
13 Prosecution.

14 (State presents opening statement.)

15 (Defense reserves opening statement.)

16 JUDGE LEWIS: All right. Reserved opening. First  
17 witness, then, for the State?

18 MR. FARRA: Christina Gutierrez, Your Honor.

19 (Mr. Farra exits courtroom and returns with  
20 witness.)

21 JUDGE LEWIS: Come forward, please. Then stop and  
22 raise your right hand.

23 **CHRISTINA GUTIERREZ**

24 was thereupon called as a witness and, having been  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1           duly sworn on oath, was examined and testified as  
2 follows:

3                           **DIRECT EXAMINATION**

4           JUDGE LEWIS: Please be seated here then.

5           (Mr. Farra hands the witness a glass of water.)

6           WITNESS: Thank you.

7           JUDGE LEWIS: Now that you're seated, please state  
8 your name in full, then spell your last name for the  
9 Court's record.

10           WITNESS: Christina Angel Gutierrez. G-U-T-I-E-R-R-  
11 E-Z.

12           JUDGE LEWIS: Go ahead, Counsel.

13           MR. FARRA: Thank you, Your Honor.

14 BY MR. FARRA:

15 Q.       Good afternoon, Christina, how are you?  
16

17 A.       I'm okay.

18 Q.       Are you a little nervous today?

19 A.       Yes.

20 Q.       Okay.

21           MS. STAUFFER: Objection, Your Honor.

22           JUDGE LEWIS: Overruled.

23 BY MR. FARRA: (Continued.)

24 Q.       Could you tell the jury please, how old you are?  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. Twenty-six.

Q. And where are you from?

A. From California.

Q. When did you come to move up to Vancouver?

A. From California? I went to Oregon first.

Q. Okay. And how long were you in Oregon?

A. Until I was nine.

Q. Okay. And what did you do -- where -- how'd you  
move on from there?

A. We moved -- actually, my parents stayed in Oregon  
and I moved up here in February, 2009.

Q. So, been up here, living here -- living here, being  
in Vancouver, since February, 2009?

A. Yes.

Q. And, do you work right now?

A. Yes.

Q. Where do you work at?

A. At Pacific Nutritional.

Q. Is that where you worked back in August of 2013?

A. Yes.

Q. And do you have any children?

A. Yes.

Q. What are their names?

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Taylor and Trinity.

2 Q. Okay. Now where were you living on August -- in  
3 August of 2013?

4 A. Where I live now, at Evergreen Park Apartments.

5 Q. Okay, could you tell the jury what address that is,  
6 please?

7 A. It's 4619 Northeast 112<sup>th</sup> Ave.

8 Q. And is that in Vancouver, Washington?

9 A. Yes.

10 Q. In Clark County?

11 A. Yes.

12 Q. Now, do you recognize the gentleman seated at the  
13 table over here to my right?

14 A. Yes.

15 Q. Could you tell the jury who that is?

16 A. Shawn Christopher.

17 Q. How long have you known Shawn Christopher?

18 A. Since February.

19 Q. Of 2013?

20 A. Yes.

21 Q. Can you tell the jury where you met and -- and how  
22 your relationship first started, please?

23 A. I met him at work, on grave -- no, when I was on  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 day shift.

2 Q. Okay. And how did the relationship start off?

3 A. What do you mean, like?

4 Q. Were you friends at first, just co-workers, how did  
5 that --

6 A. Friends at -- we started talking.

7 Q. Mm-hmm. And at some point, did you start to date  
8 Shawn?

9 A. Yes.

10 Q. When did that happen?

11 A. March 2<sup>nd</sup>.

12 Q. Sounds like you remember that day pretty  
13 specifically.

14 A. Yes.

15 Q. Can you tell the jury why that is? (Pause.) Is that  
16 an important date for you or a -- a good date for you?

17 A. We went out.

18 Q. How was the relationship in the first part, when  
19 you started dating?

20 A. It was okay.

21 Q. Okay. And at some point did you decide to move in  
22 together?

23 A. June 15<sup>th</sup>.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Tell the jury where you moved in and how that --  
2 how that decision was made, please.

3 A. We moved into Evergreen Park Apartments, because I  
4 had chosen somewhere else, but Shawn didn't want to live  
5 there.

6 Q. All right. Who rented the apartment?

7 A. Me and Amos.

8 Q. Explain to the jury please, who Amos is.

9 A. Amos is Shawn's brother.

10 Q. Are they biological brothers?

11 A. No.

12 Q. Okay. So what -- what do you -- tell the jury what  
13 you mean by the term.

14 A. They grew up together.

15 Q. Where does Amos work?

16 A. He's not working right now.

17 Q. Where did he work at the time?

18 A. Pacific Nutritional.

19 Q. So, were the three of you all working together at  
20 Pacific Nutritional when you and --  
21

22 A. Yes.

23 Q. -- Shawn started dating? All right. You may have  
24 mentioned this, but when did you move in with Shawn?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. June 15<sup>th</sup>.

2 Q. Now, were you and Amos and Shawn living together at  
3 the apartment on August 22<sup>nd</sup>, 2013?

4 A. Yes.

5 Q. Do you remember the day before, August 21<sup>st</sup>, 2013?

6 A. Yes.

7 Q. Why don't you tell the -- the jury -- why don't we  
8 pick up while you were at -- at work, and tell the jury  
9 what happened from then on.

10 A. I -- we all had gone to work because we work swing  
11 shift at that time, and I had decided I wanted to go home  
12 early because I wasn't feeling well.

13 Q. What are the -- what were the hours of swing shift  
14 -- shift at the time you were working?

15 A. 2 PM to 10:30.

16 Q. Okay. So what time did you go home?

17 A. I went home around three.

18 Q. All right. What happened after that?

19 A. That's when Shawn started to act jealous.

20 Q. Well, what time -- let's -- let's back up a little  
21 bit. You -- you went home at three?

22 A. Yes.

23 Q. What time did Shawn get home?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. He got home after work at 10:30, or a little after  
2 10:30.

3 Q. A little bit after 10:30. Was he with anybody?

4 A. With Amos.

5 Q. All right. Anybody else along with them?

6 A. Amos' friend showed up.

7 Q. Did you remember what his name was?

8 A. Bobby.

9 Q. Had you met Bobby before?

10 A. No.

11 Q. First time you --

12 A. Yes.

13 Q. -- had ever seen him? So, it's -- it's yourself and  
14 three men, correct?

15 A. Yes.

16 Q. What happens next?

17 A. Amos, Shawn, and Bobby wanted to drink. I think, if  
18 I can remember, there was still beer in the fridge, but  
19 they wanted to go back to the store for more, so they did.  
20 I stayed home.

21 Q. What were -- what were they drinking?

22 A. There was juice and, like and actual alcoholic  
23 beverage, and there was also Bud Light.  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. So, regular beer, the Bud Light, is that right?  
2 Well, what's -- and so juice is a -- we're not talking  
3 about fruit juice?

4 A. No.

5 Q. Okay.

6 A. It's a tall can. It's like malt liquor.

7 Q. A malt liquor, in a -- in a taller can, then.

8 A. It's like, I think, 8% or 12% alcohol.

9 Q. Okay. Higher alcohol than a regular can of beer  
10 then?

11 A. Yes.

12 Q. How was the night -- how was the night going?

13 A. It was okay. Everything was fine.

14 Q. And then what happened as the night went on?

15 A. Amos was talking, telling a story, and that's when  
16 Shawn started getting jealous, thinking I was staring at  
17 them.

18 Q. Describe for the jury a little bit what you mean by  
19 Shawn getting jealous. What was he jealous about?  
20

21 A. He thought that I was staring at him. He asked me  
22 not to stare at them so much because it making him  
23 uncomfortable. But I was just listening to Amos talk.

24 Q. Okay. So not to -- when you said not to stare at  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 them, who did --

2 A. Bobby and Amos.

3 Q. Bobby and Amos. How was -- it -- it sounds like the  
4 Defendant had been drinking to this point.

5 A. Yes.

6 Q. How -- how was he at this point, in terms of his  
7 alcohol consumption, as far as you could tell?

8 A. I'm sure he was -- he had a buzz.

9 MS. STAUFFER: Objection, Your Honor. Speculation  
10 at this point. There's no foundation.

11 JUDGE LEWIS: Sustained as the way the answer is  
12 phrased. If you restate the question, listen to that  
13 question and answer it if you know. If you don't  
14 know, then don't assume or guess things, just  
15 indicate you don't know.

16 BY MR. FARRA: (Continued.)

17 Q. Have you seen Mr. Christopher drink before?

18 A. Yes.

19 Q. Are you familiar with how much --

20 MS. STAUFFER: Objection, Your Honor. We're --  
21 we're asking about this night, and he's going off in  
22 generalities. So, I, again, on the belief what's  
23 relevant to this particular time frame.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Overruled. I'll allow a couple  
2 questions as to the basis for knowledge for what she  
3 observed this night.

4 BY MR. FARRA: (Continued.)

5 Q. So back up. Have -- have you seen Mr. Christopher  
6 drink before?

7 A. Yes.

8 Q. Are you familiar, generally familiar with the  
9 amount of alcohol that he can drink and --

10 MS. STAUFFER: Objection, Your Honor. There's no  
11 relevancy to this particular --

12 JUDGE LEWIS: Sustained as to that question.

13 BY MR. FARRA: (Continued.)

14 Q. Based on your observations in the past, how much  
15 did it appear to you that Mr. Christopher had drunk?  
16

17 MS. STAUFFER: Objection, Your Honor, pure  
18 speculation. There's no foundation for knowledge.

19 JUDGE LEWIS: Overruled. She can answer if she can.

20 WITNESS: Can you please ask again?

21 BY MR. FARRA: (Continued.)

22 Q. Let me just -- did it seem like -- did it seem to  
23 you, from your experience that he had --

24 MS. STAUFFER: Objection, Your Honor. It's a  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 leading question.

2 JUDGE LEWIS: Well, I'll have to hear the question  
3 before I can decide whether it's leading or not. So,  
4 after your -- he asks the question, don't answer,  
5 while I'll see whether the objection is renewed.

6 MR. FARRA: Thank you, Your Honor.

7 BY MR. FARRA: (Continued.)

8 Q. Can you tell the jury, from your experience, how  
9 much it seemed -- how intox -- if Shawn appeared  
10 intoxicated to you, or how intoxicated he was?

11 MS. STAUFFER: Objection, Your Honor. Again,  
12 speculation. There's no foundation. This particular  
13 night. It's pure speculation. It's not relevant.

14 JUDGE LEWIS: Overruled.

15 BY MR. FARRA: (Continued.)

16 Q. Did he appear intoxicated to you?

17 A. Yes.

18 Q. So he tells you he doesn't want you staring at Amos  
19 or Bobby any more. It makes him uncomfortable.

20 A. Yes.

21 Q. What happens next?

22 A. He -- we were upstairs at that point, because when  
23 he asked me not to, we were downstairs, outside, below the  
24

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 balcony, because I had dropped his cigarette there. But  
2 then we went back upstairs, and I guess Amos was still  
3 talking, and so was Bobby, and so was Shawn, and Shawn  
4 just continued to get jealous.

5 Q. Okay. Now let me stop you there for a second. Let's  
6 talk about your apartment just a little bit. How many  
7 stories?

8 A. It's two.

9 Q. Two stories. How many bedrooms?

10 A. Two.

11 Q. Where are the bedrooms, on the second or bottom  
12 story?

13 A. Well, it's just, my level of the apartment. I live  
14 upstairs and there's someone downstairs. So it's two  
15 separate apartments.

16 Q. Oh, it's two separate apartments.

17 A. Yes.

18 Q. Are they connected by stairs, or some --

19 A. Yes.

20 Q. -- something along those lines?

21 A. There's just the stairs that go to -- to my door.

22 Q. All right, so your door, if I go into your  
23 apartment, and we're talking about the same apartment you  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 were living in on August 22<sup>nd</sup>, correct?

2 A. Yes.

3 Q. Okay. If I go into that apartment, is that just a  
4 one-story apartment?

5 A. Yes.

6 Q. Okay. And it's on the second story?

7 A. Yes.

8 Q. Of an apartment complex, it sounds like?

9 A. Yes.

10 Q. All right. So, where we left off, sounds like Amos  
11 and Bobby and Mr. Christopher were still talking, correct?

12 A. Yes.

13 Q. All right. What happened -- and where were they  
14 talking?

15 A. They were talking outside on the balcony.

16 Q. What happened next?

17 A. Shawn continued to get jealous and so I just walked  
18 inside and I grabbed my headphones and everything. And  
19 that's when he wanted -- he wanted more beer, so he went  
20 inside to grab another beer.

21 Q. Okay.

22 A. When I grabbed my headphones, I walked back outside  
23 and sat in the chair.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Chair on -- where's the chair?

2 A. On the balcony.

3 Q. Okay.

4 A. My stomach was feeling upset, but I was okay just  
5 sitting there --

6 Q. Mm-hmm.

7 A. -- just listening to music. And Shawn kept  
8 forgetting that my stomach was upset, so he went to go sit  
9 on me, but I put my foot up.

10 Q. Okay. So, let's stop and just grab a -- so, you're  
11 sitting in a chair, and I'm showing you this chair here.  
12 (Stands behind his own chair at Counsel table.) But you're  
13 sitting in a lawn chair or patio --

14 A. Yes.

15 Q. -- furniture, is that correct?

16 A. Yes.

17 Q. Okay. And just -- just a regular chair?

18 A. Mm-hmm.

19 Q. And why did the -- why did the -- why did Mr.  
20 Christopher want to sit down on you?

21 A. Play around.

22 Q. Okay. And how did -- what was your response to  
23 that?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. I reminded him that I didn't -- that my stomach was  
2 upset.

3 Q. Okay. And what did you do?

4 A. I put my foot up.

5 Q. Can you scoot back a little bit and just kind of  
6 give us an idea if you can of what you did?

7 A. (Witness scoots her chair back. Court camera  
8 changes view before witness demonstrates.)

9 Q. All right. Now, what -- did he continue to sit back  
10 down on you, or what -- what happened?

11 A. Kind of did, but then he walked back, like walked  
12 forward and turned around and said, "You kicked me."

13 Q. Did you kick him?

14 A. No.

15 Q. What -- what did you say in response?

16 A. I told him that I didn't kick him and that's when  
17 he grabbed his beer and walked through the house towards  
18 the front door and then outside.

19 Q. Did he -- did you know where he was going?

20 A. No, but I didn't want him walking outside with --  
21 with the alcohol.

22 Q. Why not?

23 A. Because I was protecting him.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Could you explain that a little bit?

2 A. Because I thought it was illegal to have beer  
3 outside, walking around. Because he said he was going on a  
4 walk.

5 Q. All right. So, what did you do as -- he walks -- he  
6 starts to walk outside, what did you do?

7 A. I followed him down the stairs, right below the  
8 balcony where I tried to grab his beer can and told him he  
9 can go on a walk without it.

10 Q. Mm-hmm.

11 A. Of course, the beer can spilled because we were  
12 fighting over it.

13 Q. Did you end up -- eventually get it from his hands?

14 A. No. - Lie

15 Q. He kept a hold of it? And you were arguing?

16 A. Yes.

17 Q. What were you arguing about at this point?

18 A. He kept saying that I kicked him and I told him,  
19 "No, I could show you what a kick feels like." And then  
20 that's when he was like, "Oh, yeah" and then he backs up  
21 and then kicks me in the thigh.

22 Q. Okay. Which -- can you stand up and point to the  
23 jury where he kicked you?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. (Witness stands.) He kicked me in my left thigh.

2 Q. Did he kick you hard?

3 A. Yes.

4 Q. Did it hurt?

5 A. Yes.

6 Q. What did you do next?

7 A. I ran away, upstairs, back inside, towards the  
8 room.

9 Q. What did Mr. Christopher do?

10 A. He ran after me and told me he was sorry be -- he  
11 thought we were just playing. I let it go.

12 Q. What do you mean you let it go?

13 A. I just forgave him. It was okay.

14 Q. Were you playing? Or did it feel -- did it seem  
15 like to you --

16 A. Didn't --

17 Q. -- you were playing (inaudible)?

18 A. It didn't feel like it, but I just didn't want to  
19 keep arguing.

20 Q. He apologized to you. What happened after he  
21 apologized?

22 A. We went back outside on the balcony where everybody  
23 was having fun talking. And then he started getting  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 jealous again and he said, "Really? Really?" and thought  
2 that I was staring at them.

3 Q. "Them" being Amos and Bobby?

4 A. Yes. And so, I guess, from somewhere, we, like, got  
5 the argument inside and walked towards the room. And I  
6 walked in the room for a second and then I remember  
7 walking back out. And I went to grab something, I think my  
8 phone or something, and then I went to go check on him and  
9 he was standing next to our closet doors.

10 Q. Okay. So, let's talk about that for a moment. You  
11 said earlier you had two kids?

12 A. Yes.

13 Q. Tell the jury about the closet doors and what was  
14 on them.

15 A. The closet doors were something that me and my --  
16 my daughter Trinity -- Taylor isn't -- is not in the  
17 picture, but me and her both draw on. There was a picture  
18 of an outline of my two year old's body and we had our  
19 names on it. (Witness begins to cry.) It was mine and then  
20 Taylor and Trinity. He tried to erase it.

22 Q. So, let me -- so, just to make sure we got the  
23 facts clear here. Taylor and Trinity are your daughters?

24 A. Yes.

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Who is the two year old?  
2 A. She's Trinity.  
3 Q. And --  
4 A. She's now three.  
5 Q. Okay. Trinity was two at the time and Taylor is the  
6 six?  
7 A. Yes.  
8 Q. And what was on the mirror? It was an outline of --  
9 A. Of all three of us.  
10 Q. Did -- did the Defendant know that that was there?  
11 A. Yes.  
12 Q. And was that an important thing to you?  
13 A. It meant a lot to me.  
14 Q. Why is that?  
15 A. Because it was my kids and I don't have them.  
16 (Tears up.)  
17 Q. So, it sounds like you saw -- are you okay?  
18 A. Yes.  
19 Q. Are you sure?  
20 A. Yes. (Wipes her eyes.)  
21 Q. So, the Defendant was standing next to the mirror  
22 on which there was this drawing. What -- what was the  
23 drawing -- what was used to make the drawing?  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 A. Dry erase marker.

2 Q. What did you think was going to happen?

3 A. I had a feeling he was going to erase it and I saw  
4 him try to.

5 Q. What did he do? What did you see him do that made  
6 you think that?

7 A. He had a rag or shirt in his hand and he was about  
8 to wipe the top part. He -- he barely, like, missed the  
9 top part of my six year old's outline of her head.

10 Q. Was he -- was he aware of how important this was to  
11 you?

12 A. Yes.

13 Q. What did you do then?

14 A. I ran over and I shoved him.

15 Q. All right. Now, can you show the jury what you did,  
16 with your hands, to shove him?

17 A. (Witness stands and thrusts her hands, palms out,  
18 away from her.) I just shoved him.

19 Q. And you're showing us, it looks like, a two-handed  
20 shove?

21 A. Yes.

22 Q. Where did you shove him?

23 A. I shoved him -- if this is the mirror (puts a hand  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 up to her right), there's a wall right here, I shoved him  
2 right into the wall. And he was drunk, so he's, kind of  
3 tripped over, like, clothing behind him and hit the wall.

4 Q. Where did you contact him on his body?

5 A. It was right here. (Witness puts hands on her  
6 chest.)

7 Q. In the chest?

8 A. Yes.

9 Q. What'd you do after that?

10 A. After that I stood there telling him that he knew  
11 how much that meant to me. (Tears up.)

12 Q. Were you telling this to him, or -- ?

13 A. Yes.

14 Q. Okay. Were you angry?

15 A. Yes.

16 Q. What tone of voice were you using in?

17 A. A very mad, upset tone of voice.

18 Q. Say anything in response, or did he respond?

19 A. He just said, "I'm going to bed" and then walked  
20 towards the -- the bed and laid -- laid there.

21 Q. What did you do?

22 A. I stood in front of the mirror.

23 Q. What happened after he laid on the bed?  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           A.     He just kept saying stuff about how I'm always  
2           staring at other guys and I'm always flirting and I'm  
3           bouncing around everywhere.

4           Q.     Okay.

5           A.     Like, just being my bouncy self --

6           Q.     Okay.

7           A.     -- I guess.

8           Q.     And then what happened?

9           A.     It -- we kept arguing back and forth and I would  
10          tell him that I'm not and he just -- he's acting too  
11          jealous. He thinks that -- that I'm doing all these  
12          things, but I'm not. And then -- I don't know how it came  
13          to the point where he just jumped up and put his hands  
14          around my throat.

15          Q.     So, let's focus on this for a little bit. How far  
16          away were you from him when he jumped up and came at you?

17          A.     From that table to, like, right over here on the  
18          other side.

19          Q.     Okay. How -- can you show the jury how he came at  
20          you? What did it -- what did he look like as he was coming  
21          at you?  
22          at you?

23          A.     Angry. He just had his -- just jumped up off the  
24          bed, like, really fast and just ran towards me and then  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 put his hands on my throat.

2 Q. Were his hands -- as he ran towards you, were his  
3 hands in a fist -- in fists, or --

4 A. No. They were just like at his sides like this  
5 (holds hands down by her side) and then he put his hands  
6 up.

7 Q. Did you see him coming?

8 A. No.

9 Q. Did you expect it? What he did?

10 A. No.

11 Q. Could you see it in his face?

12 A. I saw nothing in his face, except his -- he looked  
13 mad. Like, his eyebrows were furrowed up.

14 Q. Furrowed together?

15 A. Yes.

16 Q. Where did he put his hands on you?

17 A. Right here. (Puts both hands on her neck.)

18 Q. Now --

19  
20 MR. FARRA: Permission to approach her, Your Honor?

21 JUDGE LEWIS: You have permission.

22 BY MR. FARRA: (Continued.)

23 Q. So, I don't want you to try to do it to yourself  
24 because that gets your hands all twisted up. So, if you

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 were Shawn and I'm you, can you just kind of reach your  
2 hands out and show us how his hands were? And where were  
3 his thumbs?

4 A. They were like -- I have a small neck, so they were  
5 around, like, around (puts her hands on her own neck with  
6 thumbs on either side of the front part of her neck.)

7 Q. Were they overlapping? Did it feel like --

8 A. Yes.

9 Q. -- they were overlapping on the bottom of your  
10 neck? Okay. How far did his -- ?

11 A. All the way to the back of the line, where your  
12 spine is.

13 Q. Feel like his hands wrapped all the way around your  
14 neck, then?

15 A. Yes.

16 Q. Is that correct? What did he do once he had his  
17 hands around your neck?

18 A. He started to squeeze.

19 Q. Okay. Did his expression change in his face?

20 A. No. (Cries.)

21 Q. Where were you looking?

22 A. At him.

23 Q. Did he say anything?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. No. (Witness continues to cry.)

2 Q. How close was he to you?

3 A. Really close.

4 Q. Let me ask that again. How close was his face to  
5 you?

6 A. It was like this. (Holds her hand about a foot-and-  
7 a-half away from her face.)

8 Q. Could you smell him?

9 A. Yes.

10 Q. What did it smell like?

11 A. Beer. (Continues crying.)

12 Q. You want to take a second?

13 A. Yeah. (Pulls some Kleenex from the box.) (Pause.)

14 JUDGE LEWIS: Are you able to proceed then?

15 WITNESS: Yes.

16 JUDGE LEWIS: Next question.

17 BY MR. FARRA: (Continued.)

18 Q. What did you do when he put his hands around your  
19 throat?  
20

21 A. I was trying to yell at him, telling him to stop.

22 Q. Were you able to yell?

23 A. For a minute, no. And then, finally, he started to  
24 release his hands and he just stared at me, and I told him  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 to get out or I was going to call the cops.

2 Q. Do you know how long he had his hands around your  
3 throat?

4 A. I don't know how long. I just know what it felt  
5 like. It felt like a while.

6 MS. STAUFFER: Objection, Your Honor. It's not  
7 responsive.

8 JUDGE LEWIS: Next question.

9 BY MR. FARRA: (Continued.)

10 Q. You had mentioned that you tried to yell.

11 A. Yes.

12 Q. Were you -- were you able to -- to get something  
13 out, or -- or -- and for how long?

14 A. Not at first.

15 Q. Why not?

16 A. Because he was squeezing.

17 Q. Eventually you were, it sounds like?

18 A. Yes.

19 Q. What do you remember yelling?

20 A. To get your f-ing hands off my throat.

21 Q. Did it hurt?

22 A. Yes.

23 Q. Were you doing anything with your hands at this  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 point?

2 A. No.

3 Q. Were you trying to get him off you?

4 A. No.

5 Q. Was it -- tell the jury about your breathing. Did  
6 it affect your breathing?

7 A. Yes.

8 Q. How did it affect your breathing?

9 A. I couldn't breathe, right at the beginning.

10 Q. Do you know for how long you couldn't breathe?

11 A. No.

12 Q. Did the Defendant ever say anything, while he was  
13 choking you?

14 A. No.

15 Q. Were you looking -- where were you looking while he  
16 was doing this?

17 A. Straight at him.

18 Q. What did you --

19 A. At his face.

20 Q. What did you see?

21 A. Just this angry look, that's it. I didn't -- it was  
22 like he didn't feel anything.

23 Q. Were his -- did you see anything with his muscles?  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Did it --

2 A. No.

3 Q. -- feel like he was struggling? (Witness grabs  
4 Kleenex from box.) You okay?

5 A. Yes.

6 Q. Eventually, he let go, is that right?

7 A. Yes.

8 Q. Do you know why he let go? Was there any  
9 indication?

10 A. No.

11 Q. What -- what did you do once he let go?

12 A. I told him to leave, or I was calling the police.  
13 He wasn't going to, so I grabbed my phone and I walked out  
14 of the room, to the balcony, and I started calling.

15 Q. Why did you go to the balcony?

16 A. I felt safe outside.

17 Q. What did he do once you went to the balcer --  
18 balcony, excuse me?

19 A. I think he yelled, I'm pretty sure, "Are you  
20 calling the cops?" So, I just nodded my head yes. And  
21 that's when he started running back and forth with Amos.  
22 Amos was helping him get his clothes on.

23 Q. All right. Now, I should have asked you this  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 earlier, when -- did you see Amos while -- strike that.

2 Where had Amos been, so far as you know?

3 A. He was on the balcony when we -- when me and Shawn  
4 were in the room arguing, and then he moved to his room  
5 with Bobby.

6 Q. Did you see anybody else while you and the  
7 Defendant were in the bedroom?

8 A. No.

9 Q. So did you call 911?

10 A. Yes.

11 Q. What did the Defendant do, as you were doing this?

12 A. He was running back and forth in the house.

13 Q. What was he trying to do as he was running back and  
14 forth?

15 A. Find his shoes, his shirt, and his sweater.

16 Q. What happened next?

17 A. Amos helped him put his shirt on, and his sweater.  
18 He had already had his shoes. He was trying to find his  
19 knife, but then -- I just remember him being ready to go,  
20 and then he walked out.

21 Q. What happened after that?

22 A. He ran.

23 Q. Did you see him run?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. I saw him from the balcony run off in the opposite  
2 direction of where I was.

3 Q. Okay. Did I play for you earlier, Exhibit -- what's  
4 been marked as Exhibit Number 24?

5 A. Yes.

6 Q. What was on this CD?

7 A. The 911 phone call that I made.

8 Q. Was it a fair and accurate recording of the call  
9 that you made that night?

10 A. Yes.

11 MR. FARRA: Your Honor, I move to admit, Exhibit  
12 24.

13 JUDGE LEWIS: Any objection other than those --

14 MS. STAUFFER: Just my earlier objections, Your  
15 Honor.

16 JUDGE LEWIS: Twenty-four is admitted.

17 MR. FARRA: Permission to publish the -- play for  
18 the jury, Your Honor?

19 JUDGE LEWIS: Granted.

20 (Prosecutor begins playback of 911 recording.)

21 DISPATCHER: 911, how can I help you?

22 MS. GUTIERREZ: Hi, I'm in an emergency.

23 DISPATCHER: Okay. What's the address, ma'am? I'll  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

(inaudible).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. GUTIERREZ: It's 4649 Northeast 112<sup>th</sup> Avenue.

DISPATCHER: Is that an apartment number?

MS. GUTIERREZ: Six-four-four.

DISPATCHER: J, like John, 2-0-4?

MS. GUTIERREZ: Yes.

DISPATCHER: Okay. And how can I help you?

MS. GUTIERREZ: My boyfriend is drunk and he just  
put his hands around my neck.

DISPATCHER: Okay. Is he still there?

MS. GUTIERREZ: Yes, I told him to leave, but he  
won't leave. He doesn't -- he's not on the lease or  
anything. It's my home.

DISPATCHER: Okay. What's his name, hon?

MS. GUTIERREZ: It's Shawn Christopher.

(Background noise on the phone.)

DISPATCHER: Are you okay? Are you there?

MS. GUTIERREZ: Yeah, I'm okay. I'm --

DISPATCHER: Do you need an ambulance?

MS. GUTIERREZ: No.

DISPATCHER: Okay. What's your name?

MS. GUTIERREZ: Christina.

DISPATCHER: Okay. What is the Shawn -- is his name

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Shawn Christopher, or is Christopher his middle name?

2 MS. GUTIERREZ: It's Shawn Christopher.

3 DISPATCHER: Oh, your cell phone cut out. What's  
4 his date of birth?

5 MS. GUTIERREZ: February 1<sup>st</sup>.

6 DISPATCHER: February 1<sup>st</sup>. Okay.

7 MS. GUTIERREZ: I don't remember the year.

8 DISPATCHER: Okay. It's Shawn S-E-A-N or S-H-A-W-N?

9 MS. GUTIERREZ: S-H-A-W-N.

10 DISPATCHER: Okay. How old is he?

11 MS. GUTIERREZ: Thirty-four.

12 DISPATCHER: Is he a white male?

13 MS. GUTIERREZ: No. He's Native American.

14 DISPATCHER: Okay. Where is he currently?

15 MS. GUTIERREZ: In the house.

16 DISPATCHER: Okay. Where are you at?

17 MS. GUTIERREZ: Outside.

18 DISPATCHER: Okay. And, Christina, what's your last  
19 name?  
20

21 MS. GUTIERREZ: Gutierrez.

22 DISPATCHER: G-U-T-I-R-R-E-Z?

23 MS. GUTIERREZ: G-U-T-I-E-R-R-E-Z, yes.

24 DISPATCHER: Okay. And you don't want an ambulance?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. GUTIERREZ: No, I'm okay. I just --

2 DISPATCHER: (Inaudible.)

3 MS. GUTIERREZ: No. I'm okay.

4 DISPATCHER: Could you breathe?

5 MS. GUTIERREZ: Yes. Kind of.

6 DISPATCHER: Did he -- did he assault you in any  
7 other way?

8 MS. GUTIERREZ: No, he was looking at me and --

9 DISPATCHER: Okay.

10 MS. GUTIERREZ: I think he's leaving.

11 DISPATCHER: Okay. What type of vehicle is he in?

12 MS. GUTIERREZ: Not in a vehicle. He's wearing  
13 white shorts --

14 DISPATCHER: Okay. I need a full description on  
15 him. You said he's a Native American male, he's 34.  
16 How tall -- how big is he?

17 MS. GUTIERREZ: Um, 5'7", he's bald. He's going  
18 around like a -- a hoodie on, with a red one, and red  
19 and black on the border.

20 DISPATCHER: Is he still in the apartment or did he  
21 come out? (Pause.) Christina?

22 MS. GUTIERREZ: Yes.

23 DISPATCHER: Is he still in the apartment or did  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you see him come out and leave?

2 MS. GUTIERREZ: (Pause.) He's still in the  
3 apartment.

4 DISPATCHER: Okay.

5 MS. GUTIERREZ: He's on foot. He's wearing a  
6 (inaudible).

7 DISPATCHER: Okay. I'm confused. You said he's in  
8 the apartment but then you said he's on foot. So, is  
9 he --

10 MS. GUTIERREZ: No. He's now leaving.

11 DISPATCHER: -- leaving? Okay. Which direction?

12 MS. GUTIERREZ: He went left from my apartment.

13 DISPATCHER: I mean which direction? Okay. Is that  
14 toward West Falls or towards 49<sup>th</sup> Street?

15 MS. GUTIERREZ: I think it's towards 49<sup>th</sup>. But  
16 that's -- 112<sup>th</sup> is right in front of me.

17 DISPATCHER: Okay. Are there any children in the  
18 residence?

19 MS. GUTIERREZ: No.

20 DISPATCHER: Okay. Just the two of you live there?

21 MS. GUTIERREZ: Yes.

22 DISPATCHER: Okay. I'm going to keep you on the  
23 line. Do you know where he might be going?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. GUTIERREZ: No, I have no idea.

2 DISPATCHER: Does he know anyone in the area there?

3 MS. GUTIERREZ: I -- yes.

4 DISPATCHER: Okay.

5 MS. GUTIERREZ: His -- he has a friend that lives  
6 close by, but I don't know --

7 DISPATCHER: Is it in a house or an apartment?

8 MS. GUTIERREZ: It's in a house.

9 DISPATCHER: And you don't know where it's at. Is  
10 it off of 49<sup>th</sup> Street?

11 MS. GUTIERREZ: Yeah, I have no idea.

12 DISPATCHER: Okay. Is he carrying any weapons,  
13 Christina?

14 MS. GUTIERREZ: A knife.

15 DISPATCHER: He has it on him now?

16 MS. GUTIERREZ: Or -- yeah, I'm pretty sure he  
17 does.

18 DISPATCHER: Okay. Did he have --

19 MS. GUTIERREZ: (Inaudible) two blocks away.

20 DISPATCHER: Can you still see him or no?

21 MS. GUTIERREZ: No. We were arguing and he had  
22 kicked me earlier.

23 DISPATCHER: Okay.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 MS. GUTIERREZ: But he said that he was just  
2 playing, but that kick did not feel like he was  
3 playing.

4 DISPATCHER: Okay.

5 MS. GUTIERREZ: He was mad.

6 DISPATCHER: Okay. Did he disrupt your roommates'  
7 sleeping?

8 MS. GUTIERREZ: Just one, actually. (Inaudible.)  
9 The police are here.

10 DISPATCHER: Just let me know when they see you.

11 MS. GUTIERREZ: They're looking right at me. That's  
12 the first time he ever put his hands around my  
13 throat, so I'm kind of freaked out.

14 DISPATCHER: I know and I think you should be. It's  
15 scary. Did he understand that you were calling us?

16 MS. GUTIERREZ: Yes, I told I was if he would leave  
17 and he won't believe me.

18 DISPATCHER: Okay.

19 MS. GUTIERREZ: I'm sure he's running right now.

20 DISPATCHER: They just said over the radio they saw  
21 him run. (Pause.) Okay, honey, they're going to try  
22 and get him, so I want you to stay there and they'll  
23 contact you there as soon as they can, okay?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. GUTIERREZ: Okay.

2 DISPATCHER: All right. Bye-bye.

3 (Playback of 911 recording concludes.)

4 BY MR. FARRA: (Continued.)

5 Q. All right. So, eventually -- did you eventually  
6 speak with a police officer that night?

7 A. Yes.

8 Q. All right. Tell the -- tell the jury what you  
9 remember in terms of the officer arriving.

10 A. They came to the door and they asked if they could  
11 come in, so they -- I let them come in and they wanted me  
12 to wait by the hallway before I had actually come out in  
13 the living room area.

14 Q. Okay.

15 A. Because they wanted to make sure that he was put  
16 into a car.

17 Q. Okay. He referring to --

18 A. Shawn.

19 Q. -- Mr. Christopher. Did you eventually speak with  
20 the officers?  
21

22 A. Yes.

23 Q. Did you tell them what happened?

24 A. Yes.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Did you tell them about the incident where -- well,  
2 did you tell them everything that happened that night?

3 A. Yes.

4 Q. Did they ask you -- well, first off, do you  
5 recognize the officer?

6 MS. STAUFFER: Objection, Your Honor. Leading  
7 questions.

8 JUDGE LEWIS: I think he was switching to a non-  
9 leading one when you objected, so why don't you  
10 finish the question you want to ask, and we'll see if  
11 there's still an objection?

12 BY MR. FARRA: (Continued.)

13 Q. Did they ask you to do anything other than make a  
14 written state -- excuse me -- than other to make an oral  
15 statement? Did they ask you to do anything other than to  
16 just tell them what happened?

17 A. Yes.

18 Q. What did they ask you to do?

19 A. They wanted to know if I wanted to fill out a  
20 statement.

21 Q. Did you do that?

22 A. Yes.

23 Q. Why did you fill it out?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

- 1 A. Because I wanted to.
- 2 Q. Okay. Did the officers do anything else with you?
- 3 A. They took pictures.
- 4 Q. What did they take pictures of?
- 5 A. My neck.
- 6 Q. I'll show you what's been marked as Exhibit 1, 2,
- 7 3, 4, and 5. Showing you Number 1 now. Do you recognize
- 8 what that is?
- 9 A. That's me.
- 10 Q. Is that picture taken of you that night?
- 11 A. Yes.
- 12 Q. (Inaudible) that night? Recognize Exhibit 2?
- 13 A. Yes.
- 14 Q. Tell the jury what that is.
- 15 A. That's me.
- 16 Q. Again.
- 17 A. That's the side of me.
- 18 Q. Side view of you that night? Can you see in this
- 19 photo -- well, I'll come back to that. Strike that. Show
- 20 you Number 3. Do you recognize that?
- 21 A. Yes.
- 22 Q. Can you tell the jury what it is?
- 23 A. That's my neck.
- 24
- 25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q. Side --

A. A side view.

Q. -- of your neck? Taken that night?

A. Yes.

Q. Okay. Exhibit Number 4. Tell the jury what that is.

A. That's the side view of my neck.

Q. From that night?

A. Yes.

Q. August 22<sup>nd</sup>, or early morning? And Exhibit number

5. Tell the jury what that is.

A. That's the right side of my neck.

Q. Taken that early morning, August 22<sup>nd</sup>?

A. Yes.

Q. Are these pictures accurate of what your neck was like, and your -- what you looked like that night?

A. Yes.

MR. FARRA: Your Honor, I move to admit Exhibits 1, 2, 3, 4, and 5.

JUDGE LEWIS: Any objection?

MS. STAUFFER: Can I ask a question?

JUDGE LEWIS: In aid of objection? Yes.

MS. STAUFFER: Did you take those pictures?

WITNESS: No.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: I have no objection, Your Honor.

2 JUDGE LEWIS: One through five is admitted.

3 MR. FARRA: Permission to publish these as we go  
4 along, Your Honor?

5 JUDGE LEWIS: What do you mean by publish?

6 MR. FARRA: Show the jury.

7 JUDGE LEWIS: You want to show it as part of the  
8 witness's testimony, that's fine.

9 MR. FARRA: Thank you.

10 BY MR. FARRA: (Continued.)

11 Q. Let's start with Exhibits Number 1 and 2. You said  
12 these were pictures of your -- of you that night?

13 A. Yes.

14 Q. Okay. Now, when Mr. Christopher was choking you,  
15 did it hurt?

16 A. Yes.

17 Q. And, how did your neck feel afterwards?

18 A. Sore.

19 Q. Where was it sore?

20 A. Just around here (holds hand to front of neck.)

21 JUDGE LEWIS: Although the Counsel's closer to you,  
22 You need to keep your voice up, because I'm recording  
23 the proceedings.  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 BY MR. FARRA: (Continued.)

2 Q. Around here, could you --

3 A. On the sides of my neck (holds both hands to sides  
4 of neck).

5 Q. On the sides of you neck. Okay. So these are shots,  
6 at least Number 1 is a shot of you straight on. And Number  
7 2 appears to be of your side, correct?

8 A. Yes.

9 Q. Okay. (Pause.)

10 JUDGE LEWIS: Ladies and gentlemen, I will advise  
11 you that all exhibits that are admitted will go into  
12 the jury room with you during your deliberations, so  
13 while you are certainly free to look at exhibits  
14 during the course of presentation, you need not  
15 memorize them. They'll be there for your examination.  
16

17 BY MR. FARRA: (Continued.)

18 Q. I'll show you what's been marked as Exhibits 3 and  
19 4. Can you point to where on your body this is a photo of?

20 A. My neck (holding left hand to the front of her  
21 neck).

22 Q. Okay. On the front of your neck or the side?

23 A. Side.

24 Q. Okay. Now, do you see anything on these photos?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. From that night? Can you point to them, to what  
3 you're seeing in the photos, from that night?

4 A. This one's hard to tell, but here and here.

5 Q. What about those areas?

6 A. They're hand prints.

7 Q. Did those areas hurt?

8 A. Yes.

9 Q. Okay. And it looks like there's a dark mark in  
10 these photos.

11 A. That was not a -- it didn't -- it wasn't a -- a  
12 mark from --

13 Q. This night.

14 A. No.

15 Q. What was it a mark from?

16 A. It was a hickey from him.

17 Q. Okay. So the dark mark is a hickey.

18 A. Yes.

19 Q. But, you felt that underneath the dark mark was  
20 what?  
21

22 A. Marks from his hands around my neck.

23 Q. Okay. (Pause for jury to look at photos.) And then,  
24 lastly, just for this moment, I'll show you Number 5. Is  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that the other side of your neck?

2 A. Yes, that's the right side.

3 Q. Did you experience any pain or injury on that side  
4 of your neck?

5 A. Yes.

6 Q. Can you point on yourself and on the picture where  
7 you think that pain and injury was?

8 A. Right here. (Points to the right side of her neck.)  
9 And then here. (Points to the picture.)

10 Q. Okay. What -- what are you pointing to there?

11 A. These are marks from his hands on my neck. The red  
12 lines.

13 Q. (Pause as the jury views the picture.) Are these  
14 the only photos that were taken of your neck around this  
15 time?

16 A. There was photos taken after.

17 Q. Who took those photos?

18 A. Amos did.

19 Q. When were they taken?

20 A. Like two or three days after.

21 Q. Okay. What did he take photos of?

22 A. My neck.

23 Q. (Gives photos to Ms. Stauffer to view.) I'll show  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you what's been marked as Exhibits 11, 12, and 13. I'm  
2 showing you Exhibit Number 11. What is that?

3 A. That's this part of my neck.

4 Q. When was that photo taken?

5 A. Two or three days af -- after.

6 Q. Exhibit Number 12. Can you tell the jury what that  
7 is?

8 A. That's this part of my neck?

9 Q. And where was that taken?

10 A. Two or three days after.

11 Q. And, finally, 13.

12 A. That's the back of my neck.

13 Q. Was that also taken two or three days later?

14 A. Yes.

15 MR. FARRA: Your Honor, I move to admit 11, 12, and  
16 13.

17 MS. STAUFFER: I'm going to object, Your Honor,  
18 lack of foundation. Time and she didn't take the  
19 pictures, so I don't believe it's been authenticated  
20 or established the foundation.

21 JUDGE LEWIS: I'll overrule the objection. They're  
22 admitted.

23 MR. FARRA: Thank you.  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: And the numbers again?

2 MR. FARRA: The numbers, Your Honor, were 11, 12,  
3 and 13.

4 JUDGE LEWIS: Eleven, twelve, and thirteen are  
5 admitted.

6 BY MR. FARRA: (Continued.)

7 Q. So, let's start with Number 13. What are we looking  
8 at in Number 13?

9 A. The back of my neck.

10 Q. Okay. And are there marks on the back of your neck  
11 that you believe are from this?

12 A. Right here. (Points at the picture.)

13 Q. What was -- what was contacting you on the back of  
14 the neck right there?

15 A. It felt like his -- his fingers. (Witness cries.)

16 Q. Tips of his fingers?

17 A. Yes.

18 Q. Now, I'll show you 11 -- 11 and 12. These are  
19 photos of the sides of your neck, correct?

20 A. Yes.

21 Q. What are we seeing there?

22 A. It was here (points at picture) --

23 Q. What -- what's "it"?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. It was bruising.

2 Q. Bruising.

3 A. And then right here was his thumbprint.

4 Q. Okay. What do you mean by "thumbprint"?

5 A. From his thumb.

6 Q. All right. (Pause as the jury views the pictures.)

7 JUDGE LEWIS: All right, ladies and gentlemen,  
8 we're going to take our afternoon recess. Please  
9 close your notepads and leave them there on your  
10 chairs. It'll be about 15 minutes. During that time,  
11 don't discuss the case among yourselves or with  
12 anyone else.

13 (Jury exits the courtroom.)

14 JUDGE LEWIS: You can step down during the break.  
15 We'll be about 15 minutes.

16 MR. FARRA: Thank you.

17 MS. STAUFFER: Thank you, Your Honor.

18 CLERK: All rise, please.

19 (Court recesses on this matter at 3:39:19 PM.)

20 (Court reconvenes on this matter at 3:54:10 PM.)

21 JUDGE LEWIS: Thank you. Please be seated. Ready  
22 for the jury then, Counsel?

23 MR. FARRA: I am, Your Honor, yeah.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Bring in the jury.

2 (Jury is escorted into the courtroom.)

3 JUDGE LEWIS: All right. Welcome back. Resume your  
4 examination.

5 MR. FARRA: Thank you, Your Honor.

6 DIRECT EXAMINATION - CONTINUED

7 BY MR. FARRA:

8 Q. Christina, if we could go back, just a little bit.  
9 Back to the bedroom again. I'd like to talk a little bit  
10 about your attempt or your ability to scream or yell out.  
11 When -- when he first put his hands on your throat, were --  
12 -- did you try to scream or were you able to? Could you  
13 tell the jury about that a little?

14 A. I was kind of surprised because I didn't expect him  
15 to do that.

16 Q. Okay.

17 A. So I didn't say anything, like, right away, but I  
18 tried to yell out. And then --

19 Q. You said you tried. Were you successful?

20 A. Kind of. It was like half and half. Like it  
21 stopped.

22 Q. Why.

23 A. Like it cut out.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Why?

2 A. Because that's when he squeezed tighter.

3 Q. Were you -- was his squeezing you tight preventing  
4 you from yelling out?

5 A. Yes.

6 Q. How was your breathing at that point?

7 A. I couldn't breathe in that moment.

8 Q. And eventually, it sounds like, you were able to  
9 scream?

10 A. Yes.

11 Q. Or --

12 A. I was yelling.

13 Q. -- to use your word "yell". Yell. Okay. Do you know  
14 how long you were trying to yell or scream before you were  
15 able to do it?

16 A. No.

17 Q. Do you know how long it seem -- did you continue to  
18 try to yell and scream?

19 A. Yes.

20 Q. And was -- were you unsuccessful for some time and  
21 then you were --

22 MS. STAUFFER: Objection, Your Honor --

23 MR. FARRA: -- able to do it?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: -- this is asked and answered.

2 JUDGE LEWIS: Overruled.

3 BY MR. FARRA: (Continued.)

4 Q. You tried to scream and yell for a period of time,  
5 correct?

6 A. Yes. And nothing would come out.

7 Q. And nothing would come out. Do you have any idea  
8 how long you were trying to scream or yell?

9 A. No.

10 Q. Thank you. All right. Now let's go back to -- go  
11 back to the police were at your apartment. Photos were  
12 taken, correct?

13 A. Yes.

14 Q. And could you describe for the jury, just before we  
15 move on, the physical impact of his hands choking you on  
16 the throat? Like bruising, can you --

17 A. There were red marks on my neck and it was kind of  
18 sore. But that was it, physically.

19 Q. Was there any bruising?

20 A. Just the red marks. It didn't bruise. Not yet.

21 Q. Where were the red marks? Can you point?

22 A. Right here. (Puts her hands on either side of the  
23 upper part of her neck.) And then here. (Pulls her hair up  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 and touches the back of her neck.)

2 Q. Okay. Did those red marks -- were they -- did they  
3 appear immediately, or -- ?

4 A. Yes.

5 Q. Okay. Now, any other affect that this has had on  
6 you, whether physical or not? Any other impact on your  
7 life?

8 MS. STAUFFER: Objection, Your Honor. It's not  
9 specific. It's general it's not relevant.

10 JUDGE LEWIS: I'll sustain this. You can rephrase  
11 if you wish.

12 BY MR. FARRA: (Continued.)

13 Q. Those are physical injuries that you -- you  
14 suffered from this?

15 A. Yes.

16 Q. Has it affected you in any other way?

17 MS. STAUFFER: Objection, Your Honor, relevancy.

18 JUDGE LEWIS: It's irrelevant. I'll sustain the  
19 objection.  
20

21 MR. FARRA: All right. Thank you.

22 BY MR. FARRA: (Continued.)

23 Q. Let's skip ahead now, can we, to September. Okay?  
24 Did you receive a call while you were at work?

25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 A. Yes.

2 Q. Talking about September 23<sup>rd</sup>/24<sup>th</sup>. Do you remember  
3 that period?

4 A. Yes.

5 Q. And do you remember receiving a call at work?

6 A. Yes.

7 Q. From a number that you didn't recognize?

8 A. Yes.

9 Q. All right. I'd like to talk to you a little bit  
10 about -- about that experience. Tell the jury what you  
11 were doing when you -- when you got the call.

12 A. I was working on the kit line.

13 Q. And when did you realize that you'd received a  
14 call?

15 A. I felt my phone vibrating.

16 Q. What'd you do?

17 A. I answered it.

18 Q. And where is your work located?

19 A. It's on 131<sup>st</sup> Avenue in Vancouver, Washington.

20 Q. Is that in Clark County?

21 A. Yes.

22 Q. Did you recognize the number?

23 A. No.

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Or, let me ask you this: did you receive it on a  
2 cell phone?

3 A. Yes.

4 Q. And when you receive a call, what happens on that -  
5 - ?

6 A. It shows up on my caller ID.

7 Q. Okay. "It" being?

8 A. The number.

9 Q. The phone number. Did you look at that number that  
10 showed up?

11 A. Yes.

12 Q. Did you recognize the number?

13 A. I only knew that 3-6-0 was Washington, but I didn't  
14 know the number.

15 Q. Did it pop up as one of your contacts that you had  
16 had before?

17 A. No.

18 Q. What'd you do next?

19 A. I answered it and the person on the other line had  
20 said my name and I said "Yes". And I asked who it was and,  
21 because their voice -- I didn't recognize their voice. He  
22 sounded young.

23 Q. It was a male?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. All right. Go ahead.

3 A. And he said that he was a friend of Shawn's from  
4 jail.

5 Q. How did he say he knew Shawn?

6 A. He spent 30 days in jail with him.

7 Q. Okay. Were you expecting that call?

8 A. No.

9 Q. What did he say after he told you -- and did you  
10 ask him to tell you who he was?

11 A. Yes.

12 Q. And what'd he say?

13 A. He said that he couldn't say that because he didn't  
14 want to, like, get in trouble or put himself in the  
15 middle.

16 Q. Okay. What happened next?

17 A. He said that he wanted to read me a letter from  
18 Shawn.

19 Q. Okay. Did he say why he wanted you to read that  
20 letter -- or, why -- excuse me. Did he say why he wanted  
21 to read you that letter?  
22

23 A. Yes.

24 Q. Why?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Because Shawn asked him to.

2 Q. What happened next?

3 A. He told me some of the things that he sai -- that -  
4 - that was on the letter.

5 Q. Let's -- Christina, can we -- can we say "the  
6 caller" just so we don't get confused about who "he" is,  
7 okay? So --

8 A. The caller read out loud some of the things that  
9 Shawn had written on there, but he told me that he wasn't  
10 going to read the other half of it until I was ready.

11 Q. The caller told you that he -- the caller was not  
12 going to read the other half until you were ready?

13 A. Yes.

14 Q. What -- what did he say -- what did the caller say  
15 in the part that he -- the caller read?

16 A. The caller asked me what I was going to do. If I  
17 was going to press charges or tell the police anything.  
18

19 Q. Okay. What else did the caller tell you?

20 A. He told me that Shawn talked to his attorney and  
21 had said that if I go to the police and tell them that I  
22 was lying that I wouldn't get in trouble.

23 Q. Did the caller ask you to go to the police?

24 A. Yes.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. What did the caller ask you to do?

2 A. To go to the police and tell them that I was lying  
3 so Shawn could be set free.

4 Q. Did the caller tell you anything about Shawn?

5 A. Yes.

6 Q. What did he tell you?

7 A. That Shawn loves me and wants to be with me.

8 Q. Did the caller tell you anything else about the  
9 Defendant?

10 A. That he's looking at a second strike.

11 Q. What's -- what does that mean?

12 A. That --

13 Q. Or, why did the caller tell you that? Strike that.  
14 Why did the caller -- what was the significance of that?

15 A. To me, it meant something bad.

16 Q. Okay.

17 A. And he said -- the caller had said that that means  
18 he could be going to prison for a long time.

19 Q. All right. And so, what did -- did the caller want  
20 you to do something because of that?

21 A. What do you mean?

22 Q. Because he was fa -- because the Defendant was --

23 A. Yes.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. -- facing a second strike. What did the caller ask  
2 you to do?

3 A. To go to the police to recant my story.

4 Q. What do you mean by recant?

5 A. Tell them I was lying about Shawn strangling me.

6 Q. Did the caller mention something about a debit  
7 card?

8 A. Yes.

9 Q. What did the caller mention?

10 A. He said that Shawn had told him that his attorney  
11 is trying to get me for blackmail.

12 Q. Okay. What's that have to do with the credit card -  
13 - or, the debit card? Excuse me.

14 A. Because Shawn had given me permission to hold onto  
15 and use it for me and him.

16 Q. Did you have his debit card, in fact?

17 A. Not at that time.

18 Q. Did -- did you -- in general, though, did you have  
19 the Defendant's debit card?  
20

21 A. Yes.

22 Q. Why did you have it?

23 A. Because Shawn gave it to me to hold onto and use.

24 Q. Did the topic of your neck or a mark on your neck  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 come up?

2 A. Yes.

3 Q. What did the caller say about that?

4 A. He said that he was Shawn's friend and that he was  
5 in jail with him for 30 days. And I asked him, I said, "Do  
6 you realize what you just said? You've only been his  
7 friend for 30 days. That doesn't mean that you know him."

8 Q. Mm-hmm.

9 A. And, "Do you know what he did?" And he said,  
10 "That's neither" -- the caller said, "That's neither here  
11 nor there."

12 Q. Did he mention the -- a neck or a mark on your neck  
13 at any point?

14 A. Yes. I told him that he strangled me.

15 Q. And what did the caller say?

16 A. That that's neither here nor there. It didn't  
17 matter. That -- that obviously -- that I love him, but  
18 that didn't make sense to me.

19 Q. So, how did you respond to this call? How did you  
20 take it?

21 A. It stressed me out.

22 Q. Did you think it was a serious call?

23 A. Yes.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Did you think the caller knew the Defendant?

2 A. Yes.

3 Q. Why -- why did you think that?

4 A. Because he knew his name, and the way that he  
5 talked about Shawn. His -- the way -- he said that the way  
6 that Shawn felt about me, how he's in -- in jail, sitting  
7 there waiting, wondering what I'm going to do, and that he  
8 loved me, and he wanted to be with me.

9 Q. Had Shawn said those things to you before?

10 A. Yes.

11 Q. What did you do then -- what did you do after  
12 receiving the call?

13 A. I told him that I had to get back to work and to  
14 leave me alone.

15 Q. Did you do anything with the phone number?

16 A. I saved it.

17 Q. Did you label that phone number --

18 A. Yes.

19 Q. -- so that you -- okay. What happened next?

20 A. I went back to work and I told my friend, Celine,  
21 and she told me to call the police, so I did.

22 Q. Did you call the police right away with the call?

23 A. Yes.

24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Did you ever receive some text messages from that  
2 phone number?

3 A. Yes.

4 Q. When did you receive those text messages?

5 A. September.

6 Q. After the phone call?

7 A. Yes.

8 Q. Tell the -- tell the jury about how those texts  
9 came to you, where you were when you received them.

10 A. I was at work.

11 Q. Okay. How was the first text -- or, what did you  
12 get?

13 A. He said, "Hey, how's it" -- like, how -- how am I  
14 or something --

15 Q. Mm-hmm.

16 A. -- and then I just told him that I was working and  
17 then he wanted to talk about Shawn more, but he was  
18 speaking in code.

19 Q. Okay. How did you know -- did you think that the  
20 person texting you was the same person that had called  
21 you?  
22

23 A. Yes.

24 Q. Okay. Why did you think that?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Because when I saved his number, it was still in my  
2 phone.

3 Q. Okay. And did the label that you gave that number  
4 previously come up when this text came in?

5 A. Yes.

6 Q. All right. I'm going to show you -- (Retrieves  
7 photos from evidence and shows to Ms. Stauffer.)

8 CLERK: There's two of them. (Inaudible.)

9 MR. FARRA: Okay.

10 BY MR. FARRA: (Continued.)

11 Q. Okay. I'll show you what's been marked as Exhibit  
12 Number 20 first. Can you tell the jury what this is?

13 A. That's the caller's phone number.

14 Q. All right. Is this is a -- and it's a photograph,  
15 is what this is, correct?

16 A. Yes.

17 Q. What is it a photograph of?

18 A. Phone number of the caller, incoming call.

19 Q. Is it a -- is it a photo of the screen of your cell  
20 phone?  
21

22 A. Yes.

23 Q. And there's a phone number here. It says "Mobile  
24 360-773. What's that phone number?  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1           A.       That's the caller. That's Shawn's friend.

2           Q.       Okay. That's the -- the phone number that the call  
3 came in from?

4           A.       Yes.

5           Q.       Okay. And that is Exhibit Number 20. I will show  
6 you Exhibits Number 16, 17, and 18. (Lays photos out for  
7 the witness.) Can you tell the jury what we're looking at  
8 here?

9           A.       This was a conversation that we had had. Me and the  
10 caller.

11          Q.       Okay. Is this a record of the text exchange that  
12 went back and forth?

13          A.       Yes, that's a picture of my phone.

14          Q.       This is a photo of your phone? Okay. The phone that  
15 you received those text messages on?

16          A.       Yes.

17          Q.       Okay.

18                   MR. FARRA: Your Honor, I move to admit Exhibits  
19 16, 17, 18, and 20.

20                   JUDGE LEWIS: Any objection?

21                   MS. STAUFFER: Just the earlier arguments, Your  
22 Honor.

23                   JUDGE LEWIS: They're admitted. Sixteen, seventeen,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1           eighteen, and twenty are admitted.

2           MR. FARRA: Thank you.

3           BY MR. FARRA: (Continued.)

4           Q.       So, could you read, please, to the jury the texts  
5 that you received beginning right here? (Points at photo.)

6           A.       Back and forth?

7           Q.       Yep.

8           A.       The caller said, "What's up?" I said, "Working."  
9 Caller said, "Got any update for our mutual friend, James,  
10 in Kansas?"

11          Q.       Now, let me ask you this: do you have a friend in  
12 Kansas?

13          A.       No.

14          Q.       Okay. Do you know -- did you have any idea who he  
15 was refer -- this texter was referring to here?

16          A.       No, I was confused.

17          Q.       All right. Now, you're -- you're texting back next,  
18 correct?

19          A.       Yes.

20          Q.       And your text is in the white?

21          A.       Yes.

22          Q.       All right. And what did you text back?

23          A.       We don't have a mutual friend in Kansas.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

- 1 Q. All right. And what comes next?
- 2 A. I said, "Do you know who you're talking to?"
- 3 Q. And the response?
- 4 A. He said, "We spoke before."
- 5 Q. Okay.
- 6 A. And he said after that, "We have a mutual friend."
- 7 Q. All right. And your response?
- 8 A. I said, "He's not my friend and he's not in
- 9 Kansas." That's when I knew what he -- who he was talking
- 10 about?
- 11 Q. And who was he -- who did you believe he was
- 12 talking about?
- 13 A. Shawn.
- 14 Q. Okay. And what was his response -- the texter's
- 15 response?
- 16 A. He said, "So I take it the story doesn't end well
- 17 for the character in that book you are reading."
- 18 Q. And what did you text back?
- 19 A. "Just stop texting or calling me. It's upsetting."
- 20 Q. (Pauses to let the jury look at the pictures.) What
- 21 did you think after receiving those texts?
- 22 A. I thought that he -- the caller was trying to get
- 23 me to say something about Shawn. Say that I was going to
- 24
- 25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 change my mind.

2 Q. Change your story?

3 A. Yes.

4 Q. And what did you do after receiving those texts?

5 A. I called the police.

6 Q. And did the police come out and investigate?

7 A. Yes.

8 Q. Why did you decide to call police?

9 A. Because every time this person called me, it  
10 stressed me out more. It hurt me more.

11 Q. So you testified today that the Defendant choked  
12 you with his hands, correct?

13 A. Yes.

14 Q. Given the phone call and the texts that you  
15 received -- or, let me -- let me back up and ask you this:  
16 is that the truth?

17 A. Yes, that's the truth.

18 Q. Given the texts and the phone calls that you  
19 received, do you think he wants you to testify to that  
20 today?

21 A. No.

22 Q. Why not?

23 A. Because he doesn't want to be in jail.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. What does he want you to say today?

2 A. That none of it is true.

3 Q. Would that be correct, if you said none of it is  
4 true?

5 A. No. (Witness begins to cry.)

6 Q. No further questions. Thank you.

7 JUDGE LEWIS: Cross examination?

8 MS. STAUFFER: Thank you, Your Honor.

9 **CROSS EXAMINATION**

10 BY MS. STAUFFER:

11 Q. Okay. I'm a little confused. Are you indicating  
12 that you had called the police the day you received that  
13 first phone call?

14 A. No. I didn't call the police the first time. I  
15 called them the second time.

16 Q. So, it was the second phone call?

17 A. No. The first time they called, I didn't call the  
18 police. I called after I received the texts.

19 Q. Okay. So, how many days or what -- what date did  
20 you receive the -- so the text messages did not come on  
21 the same day of this phone call. Is that what you're  
22 saying?  
23

24 A. No.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

- 1 Q. Then the phone call came first?
- 2 A. Yes.
- 3 Q. And you didn't call the police?
- 4 A. No.
- 5 Q. And then you got some text messages -- do you know  
6 when?
- 7 A. In September.
- 8 Q. Well, was it --
- 9 A. On the 24<sup>th</sup>, I believe.
- 10 Q. The 24<sup>th</sup> is when you got the text messages?
- 11 A. I think so.
- 12 Q. And do you have memory problems?
- 13 A. Yes.
- 14 Q. And do you have difficulty remembering things?
- 15 A. Sometimes.
- 16 Q. How long have you had this problem?
- 17 A. Four years.
- 18 Q. Now, you indicate you have two children?
- 19 A. Yes.
- 20 Q. How old are they?
- 21 A. Six and three.
- 22 Q. Okay. What's the name of your six year old?
- 23 A. Taylor.
- 24
- 25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Do you have custody of her?  
2 A. No.  
3 Q. What's the age of your other child?  
4 A. Three.  
5 Q. And she -- what's her name?  
6 A. Trinity.  
7 Q. Do you have custody of her?  
8 A. No.  
9 Q. Do you have visitation with either?  
10 MR. FARRA: Objection, Your Honor, relevance.  
11 JUDGE LEWIS: Sustained.  
12 BY MS. STAUFFER: (Continued.)  
13 Q. When you have your -- which daughter do you have  
14 for visits?  
15 A. Trinity.  
16 Q. Is that the daughter we're talking about on this  
17 mirror?  
18 A. Yes.  
19 Q. And she's -- how old was she in August?  
20 A. She was two.  
21 Q. Two. Okay. And so you described some type of  
22 picture on a mirror or some --  
23 A. It was the outlining of her body.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. It was what?

2 A. The outlining of her body.

3 Q. And this is in the bedroom that you shared with  
4 Shawn?

5 A. Yes.

6 Q. Now, you've indicated that you work, is that  
7 correct?

8 A. Yes.

9 Q. Okay. And how long have you worked at your present  
10 employment?

11 A. A year.

12 Q. And what do you actually do there?

13 A. Right now I'm in production.

14 Q. Okay. What were you doing in August of 2013?

15 A. I was in bottling.

16 Q. You were what?

17 A. In bottling.

18 Q. And what's that?

19 A. That's where they actually put the vitamins into  
20 bottles.

21 Q. And do you do any physical labor as part of your  
22 employment?

23 A. Yes.

24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

- 1 Q. What do you do?
- 2 A. Just heavy lifting and --
- 3 Q. You do what?
- 4 A. Lifting.
- 5 Q. Lifting? Like --
- 6 A. Like --
- 7 Q. -- what?
- 8 A. -- heavy lifting. Like pallets, boxes.
- 9 Q. So what do they usually weigh, about?
- 10 A. The boxes or the pallets?
- 11 Q. Both. Each one.
- 12 A. Well, they're kind of light for me. So, the pallet
- 13 could weigh, like, I guess, 45 pounds.
- 14 Q. Okay. And you lift those?
- 15 A. Yes.
- 16 Q. Okay. And then the boxes are -- ?
- 17 A. The boxes are like this small. (Holds hands about a
- 18 foot-and-a-half apart.) So --
- 19
- 20 Q. Just with --
- 21 A. -- they're light.
- 22 Q. -- vitamins in them or something?
- 23 A. Yes.
- 24 Q. So, they're --
- 25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. They're, like, maybe, five --

2 Q. Okay.

3 A. -- five pounds.

4 Q. So would you consider yourself fairly strong?

5 A. No.

6 Q. But you can lift a 45-pound pallet?

7 A. Yes.

8 Q. And you're indicating that when this alleged  
9 incident occurred where you're indicating that Shawn put  
10 his hands around his throat, if I understand correctly,  
11 you're indicating you didn't do anything.

12 A. No.

13 Q. Now, your testimony here today is that you called  
14 911 on August 23<sup>rd</sup> right after the alleged incident  
15 occurred. Is that correct?

16 A. Yes.

17 Q. Okay. And the 911 tape today, you're indicating,  
18 was your -- you calling at that point within, what, a  
19 minute or two of the incident, according to your  
20 testimony?  
21

22 A. Yes.

23 Q. Okay. And do you recall talking to my investigator  
24 on September 18<sup>th</sup> of this year regarding the time framework  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 of your call?

2 A. Yes.

3 Q. Did you earlier tell me you didn't remember?

4 A. No. Well, yes, I did tell you that.

5 Q. Okay. So, earlier you said you never remembered  
6 that. Is that correct?

7 A. Yes.

8 Q. And now you're saying you do remember it?

9 A. Yes.

10 Q. And why is that?

11 A. Because the day that I was inves -- I was talked to  
12 by your investigator was the day that I was with --

13 Q. Now, my question is why did you earlier indicate  
14 you never remembered talking to my investigator and today  
15 you -- now, you're telling me you suddenly remember. Can  
16 you tell me why that is?

17 A. Because you were enquiring about a specific date. I  
18 didn't know the date and you kept saying "Mr. Viser". His  
19 name is not Mr. Viser. It's Mr. Visser.

20 Q. Mr. Visser?

21 A. That's how he introduced himself.

22 Q. Well, you remember he's my investigator. And that  
23 didn't ring a bell?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. No.

2 Q. Oh, okay. And you remember saying you didn't even  
3 remember being interviewed?

4 A. Yes.

5 Q. And now you remember being interviewed?

6 A. Yes.

7 Q. Okay. So, in terms of that interview with my  
8 investigator on September 18<sup>th</sup>, do you now recall telling  
9 him that the alleged incident when Shawn supposedly  
10 grabbed you by your neck occurred at 2:00 AM?

11 A. Yes.

12 Q. Okay. And that the police weren't even called until  
13 after 3:00 AM. Is that correct?

14 A. I don't know.

15 Q. Do you recall Mr. Viser asking you -- specifically  
16 that he asked you, "I know the cops were dispatched at  
17 about three o'clock AM." He asked you, "Can you remember  
18 about what time it was that this happened?" meaning this  
19 incident in the bedroom with the alleged strangulation.  
20 Your answer was, "Then it was probably, like, around 2  
21 o'clock." Is that right?

22 A. Well, yes. I knew it happened before I had called  
23 the police.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. The question is, did you tell my investigator that  
2 it happened at two o'clock when the cops weren't even  
3 called until an hour later, according to your indications  
4 to my investigator?

5 A. Yes, I remember saying that.

6 Q. You remember saying that?

7 A. Yes.

8 Q. Okay. Do you recall sending a letter to Mr.  
9 Christopher after this incident?

10 A. Yes.

11 Q. You testified here today that you told the police,  
12 which would be Officer Bibens here -- is that correct? Is  
13 that the officer you talked to on -- in the August 23<sup>rd</sup>  
14 contact? Do you remember?

15 A. Yes.

16 Q. And the Prosecutor asked you earlier, did you tell  
17 him about all those instances of you pushing and shoving  
18 Mr. Christopher that night, and you said yes.

19 A. Yes. I remember --

20 Q. You did?

21 A. -- telling him --

22 Q. You did?

23 A. -- that I shoved him.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. So you told Mr. -- the officer here today about  
2 trying to -- and grabbing a beer from Christopher -- Mr.  
3 Christopher's hand? Did you tell him that?

4 A. I don't know if I told him about the beer can.

5 Q. Okay. Did you tell him about you kicking him when  
6 you tried to sit on your lap?

7 MR. FARRA: Objection, Your Honor. It's a  
8 characterization that's not consistent with her  
9 testimony.

10 JUDGE LEWIS: Overruled.

11 BY MS. STAUFFER: (Continued.)

12 Q. Did you the Officer Bibens about that?

13 A. No.

14 Q. Did you explain to Officer Bibens that at some  
15 point prior to your claiming that he -- that Shawn had  
16 supposedly put hands around your neck, that you had pushed  
17 Shawn with such force that he almost fell down? (Pause.)  
18 You told him that? You're saying you told Off --  
19

20 A. You're asking --

21 Q. Okay.

22 A. -- if I told him that I shoved him? Yes.

23 Q. Did you explain to him about the picture and this  
24 mirror that we're -- you were talking about as to why you  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 shoved and pushed Shawn?

2 A. I don't remember.

3 Q. Did you tell Officer Bibens that the mark was a  
4 hickey?

5 A. Yes.

6 Q. Do you have a conviction for a theft charge?

7 A. From when I was 18.

8 Q. Do you have a conviction? You do? Yes?

9 A. I don't think so. I think that was wiped off.

10 Q. A theft charge?

11 A. Yes. It was a misdemeanor.

12 Q. Now, you indicated that you met Shawn at your place  
13 of employment, is that correct?

14 A. Yes.

15 Q. And what was Shawn's job position?

16 A. He was a lead on graveyard.

17 Q. What does that mean?

18 A. He was the lead of the manual line. He was in  
19 charge.  
20

21 Q. So was he more like a supervisor of other people --

22 A. No.

23 Q. -- or what?

24 A. Like, just a lead of other people -- well, I guess  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you could say, in a way, supervisor of his line. The  
2 people on his line.

3 Q. So he was responsible?

4 A. Yes.

5 Q. Like a leader of the line kind of a deal? Is that  
6 kind of -- I don't --

7 A. Yes.

8 Q. Okay. So he had a fairly responsible position?

9 A. Yes.

10 Q. Okay. (Pause.) Okay. Did you complain of any  
11 injuries to your legs or any other bruising that day of  
12 the incident?

13 A. Yes, I did.

14 Q. You did? And was that to Officer Bibens here?

15 A. I don't remember if it was him.

16 Q. Well, who did you talk to?

17 A. I talked to Amy.

18 Q. Who?

19 A. Amy.

20 Q. Who is Amy?

21 A. Amy Harlett. She works with DV. She's right there.

22 (Points into the audience.)

23 Q. Okay. Well, my question is, on the day of the  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 incident when the officer arrived, was this the officer

2 you spoke with? (Gestures toward Officer Bibens.)

3 A. Yes.

4 Q. Did you tell him that you had injuries to or

5 bruises to your legs that night --

6 A. No.

7 Q. -- or morning? You did not tell him?

8 A. No.

9 Q. Okay. So, several days later, you take pictures

10 claiming now you've also got bruises on your legs. Is that

11 correct?

12 A. That -- yes.

13 Q. Okay. And when you spoke with the -- Officer Bibens

14 here, were you able to talk with him?

15 A. What do you mean?

16 Q. Can you talk, did you talk?

17 A. Yes, I talk.

18 Q. Okay. Just like you talked on the 911 call?

19 A. Yes.

20 Q. And you indicated to the Prosecutor that apparently

21 thumbs were pushed up against your throat like this. (Puts

22 her hands to her neck with both thumbs at the front.) Is

23 that what you're describing happened?

24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. No. It was like this. (Puts her hands to her neck  
2 with the thumbs along either side.)

3 Q. This? (Mimics the witness.) Okay. Do you recall,  
4 again, my investigator talking to you and --

5 MR. FARRA: I'm sorry. Was there an answer to that  
6 question? I didn't -- .

7 JUDGE LEWIS: Well, we're waiting for the end of  
8 the question, then we'll --

9 MR. FARRA: Okay.

10 JUDGE LEWIS: -- see if you have an objection --

11 MS. STAUFFER: I'm getting to the question.

12 JUDGE LEWIS: -- to it.

13 MR. FARRA: Sorry.

14 MS. STAUFFER: I'm getting to the question. Just  
15 give me a moment here (inaudible).  
16

17 BY MS. STAUFFER: (Continued.)

18 Q. He asked you, "The backs of his fingers were on the  
19 back part of your neck and his thumbs were at your Adam's  
20 apple area?" and you said, "Yes".

21 A. This is how it was. (Puts her hand to her neck.)

22 Q. The question I'm asking you, do you recall this  
23 question and answer in the interview with my investigator  
24 when he asked, "So, the backs of his fingers were on the  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 back part of your neck and his thumbs were at your Adam's  
2 apple area," and you responded, "Yeah".

3 A. Yes, I recall. But that --

4 Q. Okay, so you said --

5 A. -- doesn't make sense.

6 Q. So you told him that?

7 A. Yes.

8 Q. Okay. Do you have any marks on your Adam's apple?

9 A. No.

10 Q. Okay. So, if I recall correctly, you're indicating  
11 that Shawn gets home around 10:30, I guess, August 22<sup>nd</sup>. Is  
12 that right?

13 A. After 10:30.

14 Q. Pardon me?

15 A. He gets off work at 10:30.

16 Q. Okay. So, he got home about what? Eleven?

17 A. Around there. Like --

18 Q. Okay.

19 A. -- in between.

20 Q. Does he have a car?

21 A. No.

22 Q. And then are the two of you together pretty much  
23 from the time he gets home up until you call 911,  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 somewhere after 3:00 AM?

2 A. Yes.

3 Q. So you're both with each other that whole entire  
4 time?

5 A. Except for about, like, maybe three seconds.

6 Q. When were the -- when was the three seconds?

7 A. When I walked -- he -- when we were both in the  
8 room at one point and I walked out to go grab something  
9 and then I walked back in and that's when I saw him at the  
10 mirror trying to erase it.

11 Q. Okay. So, as far as the situation involving him  
12 trying to leave with the beer can, is that what he had?

13 A. Yes.

14 Q. He was just going to leave, right?

15 A. Yes.

16 Q. Okay. And you go and grab it and you physically  
17 grab it out of his hand, is that right?

18 A. Yes.

19 Q. Okay. He wasn't going out the door to get in a car,  
20 was he?

21 A. No.

22 Q. And isn't it true that that incident occurred after  
23 you kicked him? When you were in the chair?  
24

25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1           A.     I didn't kick him.

2           Q.     Well, you put your foot up, right?

3           A.     Yes.

4           Q.     Did you hit him?

5           A.     I didn't hit him.

6           Q.     You missed him?

7           A.     No.

8           Q.     What -- what happened?

9           A.     He backed up into my foot trying to sit on my lap.

10          Q.     Ah. Okay. Okay.

11          A.     So I put my foot out to stop him. That's when he

12          thought I kicked him.

13          Q.     Okay. So you did make contact with your foot?

14          A.     Yes.

15          Q.     Okay. On what part of his body?

16          A.     On his bottom.

17          Q.     Okay. And then that's when he kind of decided to

18          leave --

19          A.     Yes.

20          Q.     -- right? Okay. And then, you're saying that later,

21          he's going to the bedroom and you're following him into

22          the bedroom, is that right?

23          A.     Yes.

24          A.     Yes.

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. So, wherever Shawn goes, you're following him, is  
2 that right?

3 A. Yes.

4 Q. Okay. And then, that's where you end up getting mad  
5 at him because you think he's somehow doing something with  
6 this message or whatever, right? Trying to erase something  
7 in your bedroom?

8 A. Yes.

9 Q. Okay. And that time, you go and shove him so hard  
10 that you both almost fall. Isn't that right?

11 A. Yes.

12 Q. Okay. And, again, he wasn't walking towards you,  
13 right? I mean, you're coming after him in all these  
14 instances, is that correct?

15 A. In two, yes.

16 Q. Well, we have three. We have the beer can, we've  
17 got him trying to do, I guess, the usual sitting with you,  
18 sitting on you, right? And we've got this shoving and the  
19 mirror routine. Is that right? Three times?

20 A. Two.

21 Q. Okay. What kind of shoes was Shawn wearing that  
22 night?

23 A. He was wearing his gray and -- no. Because it was  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 around that night.

2 JUDGE LEWIS: Sorry, Counsel. Do you have a  
3 question?

4 MS. STAUFFER: Okay.

5 JUDGE LEWIS: You shouldn't make comments. If you  
6 have --

7 MS. STAUFFER: That --

8 JUDGE LEWIS: -- questions, ask questions.

9 BY MS. STAUFFER: (Continued.)

10 Q. -- you told him that, "I didn't follow Shawn  
11 around. He followed me." Do you recall telling him that?

12 A. Yes.

13 Q. Okay.

14 A. He followed me up the stairs when I ran away from  
15 him.

16 Q. Okay. So --

17  
18 JUDGE LEWIS: All right, Counsel, we've reached the  
19 five o'clock hour. Apparently we're not going to  
20 complete the witness today, so we'll resume again in  
21 the morning. (To the jury.) I need you to close your  
22 notepads there and leave them there on your chairs.  
23 In a minute or two, the Bailiff will take you to the  
24 jury room, give you some additional instruction to  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 release you for the evening. Once you have been  
2 released, you need to leave the floor and stay off  
3 the floor until at least 8:30 tomorrow morning. So,  
4 the earliest you can come back up here is 8:30  
5 tomorrow morning. The latest you can come back is  
6 9:00 AM. Reassemble in the jury room between 8:30 and  
7 9:00 AM and then we'll get started as close to 9:00  
8 AM as we can. Now, in the meantime, remember my prior  
9 admonitions. You're not to discuss this case among  
10 yourselves or with anyone else. You're not to permit  
11 others to comment about it in your presence. You are  
12 not to go to any scene that was described and you're  
13 not to seek out information, either factual or legal,  
14 from any other source. In other words, have a good  
15 evening. (Laughter.)

16  
17 (Jury exits the courtroom.)

18 JUDGE LEWIS: All right, Counsel, we'll resume  
19 again at nine o'clock tomorrow morning and I would  
20 suggest that you have your proposed jury instructions  
21 at that time. In the meantime, make sure that you  
22 leave all exhibits with the Clerk prior to leaving.  
23 (To the witness.) You can go ahead and step down.

24 MR. FARRA: Your Honor, would you like my jury  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 instructions now, or just wait until --

2 JUDGE LEWIS: If you have them.

3 MR. FARRA: I have some with and without. Would you  
4 like a copy of each? Is that -- ?

5 JUDGE LEWIS: That's correct. You file a copy with  
6 the Clerk, then provide a copy to Counsel.

7 (Mr. Farra gives jury instructions to Ms.  
8 Stauffer.)

9 MS. STAUFFER: Thank you.

10 CLERK: (Inaudible) the Judge's?

11 MR. FARRA: Uh?

12 CLERK: There's --

13 MR. FARRA: I've got it. I've got more.

14 (Court recesses on this matter at 5:00:38 PM.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,	)	
	)	Clark County No. 13-1-01577-3
Respondent,	)	
	)	Court of Appeals No. 45694-0-II
vs.	)	
	)	
SHAWN ERIC CHRISTOPHER,	)	
	)	
Appellant.	)	
	)	
	)	
	)	

---

VERBATIM REPORT OF PROCEEDINGS

Volume 2A



November 13, 2013 - Part A

*Sharon A. Ball*  
*Court Transcriptionist*  
*107 Birch Street*  
*Lakeview, OR 9763-1259*  
*(360) 751-0199*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,	)	
	)	Clark County No. 13-1-01577-3
Respondent,	)	
	)	Court of Appeals No. 45694-0-II
vs.	)	
	)	
SHAWN ERIC CHRISTOPHER,	)	
	)	
Appellant.	)	
	)	
	)	
	)	

---

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington, for the County of Clark, Vancouver, Washington,

BEFORE: THE HONORABLE ROBERT LEWIS, Judge on:  
November 13, 2013.

APPEARANCES: Mr. John R. Farra; Deputy Prosecuting Attorney,  
on behalf of the State of Washington; and

Ms. Susan Stauffer, Attorney at Law, on behalf of the  
Defendant.

*Sharon A. Ball*  
*Court Transcriptionist*  
*107 Birch Street*  
*Lakeview, OR 9763-1259*  
*(360) 751-0199*

## VOLUME 2A

## INDEX

**State of Washington v. Shawn Eric Christopher**

November 13 2013 - Part A.	200 - 348
----------------------------	-----------

**TRIAL TESTIMONY**

<b>SPEAKER</b>	<b>State / Defense</b>	<b>D</b>	<b>X</b>	<b>ReD</b>	<b>ReX</b>	<b>Re-ReD</b>	<b>R-ReX</b>
Christina Gutierrez	S		214-220	221-228			
Officer Therman Bibens	S	229-244 258-267	268-274				
Officer Therman Bibens Offer of Proof	S	245-247	248-249	250-257			
Jacinto E. Hausinger	S	275-280	281-284	285			
Nancy Campbell	S	292-299					
Abigail Bartlett	S	300-307					
Shawn E. Christopher	D	319-341	342-346	347	347		

**EXHIBITS**

Exhibit 23 - Offered and Admitted	299
-----------------------------------	-----

**EVENTS**

State Rests	312
Defense Rests	348

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 (Court reconvenes on this matter at 9:32:09 AM,  
November 13, 2013.)

2 JUDGE LEWIS: Please be seated. We ready for the  
3 jury then in the Christopher matter?

4 MR. FARRA: I just have two, I think, brief  
5 matters, Your Honor. One of which I'd just like to  
6 lay a record on, it has to do with Officer Skeeter  
7 who is on the Defendant's witness list. As you know,  
8 Your Honor, I gave notice of potential exculp -- or,  
9 excuse me, potential impeachment evidence involving  
10 Officer Skeeter. We are not calling her as a  
11 witness, she's never been on our list. For abundant  
12 -- for an abundance of caution we provided that  
13 notice. The Defense -- Defendant to this point has  
14 not asked for the information, the potentially --  
15 potential impeachment information to this point. If  
16 Officer Skeeter had been one of our witnesses, we  
17 would have provided it but we still would have argued  
18 that it's inadmissible. I spoke with Ms. Stauffer  
19 today and she said she wasn't going to get into the  
20 impeachment material, but I wanted to make that  
21 record that if -- if she did want to get into it we  
22 have it. We have an order for her to sign. We would  
23 still, however, want to argue that that information  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 is not admissible but I just want to make that  
2 record.

3 JUDGE LEWIS: All right. Want to (inaudible)?

4 MS. STAUFFER: Sure. (Addresses Mr. Farra.) Go  
5 ahead.

6 MR. FARRA: Yes, nothing.

7 MS. STAUFFER: Your Honor, the other -- the other  
8 thing that's going on here is that -- as the Court  
9 may recall, Mr. Hausinger has been unavailable for  
10 Defense interviews, and yesterday when we left,  
11 Counsel indicated they were making arrangements for  
12 him to be here at 8:30. I said, well I don't know if  
13 I could do it but I'd try to get my investigator if I  
14 couldn't do it. So, I did come here early today at  
15 8:30 in the hopes of trying to talk to Mr. Hausinger.  
16 He failed to show up and as of this time, I believe  
17 9:30, he's still not here and I'll defer to Counsel  
18 as to his whereabouts. And in the process of that I  
19 had talked to Officer Skeeter who I had subpoenaed  
20 for this morning, not knowing where timing was going  
21 to be when I issued the subpoena. And informed her  
22 that depending on what Mr. Hausinger told me I could  
23 either -- needed her or didn't need her. At this  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 point that's still unknown. So, because of that I  
2 informed Counsel that I don't know how long trial's  
3 going to go, I'd anticipate it's going to go most of  
4 the day. So then I want to be able to cut her loose  
5 and be -- have her come back tomorrow at 9:00 in the  
6 event I need her. So, Counsel indicated that was  
7 acceptable. My dilemma is I don't want Officer  
8 Skeeter hanging around all day when she's got the day  
9 off without knowing if I even need her because of the  
10 fact I can't talk to Mr. Hausinger. So, that is the  
11 information and again I'm still concerned if we don't  
12 have Mr. Hausinger here we've got a major issue with  
13 this trial. So, those are kind of the updates I  
14 think from this morning.

15 JUDGE LEWIS: Well, since we're still on the  
16 State's first witness it seems unlikely we'll get to  
17 the Defense case this morning, so if you want to  
18 advise Defense witnesses that they don't need to be  
19 here this morning then --

20 MS. STAUFFER: But I'm just letting the Court  
21 know, I -- you know, in case we did get done earlier  
22 this afternoon, I -- just not in a position to know  
23 the timing much less whether I'm going to need her,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 so that was my concern. I just wanted to let the  
2 Court know that.

3 JUDGE LEWIS: Okay.

4 MR. FARRA: Then a last point, Your Honor,  
5 involves a juror. It's come to my attention that Amy  
6 Harlan, who's our victims advocate, in the DV unit  
7 knows one of the jurors. She doesn't know her last  
8 name. Her first name, the juror's first name is  
9 Edie, apparently? Ms. Harlan informed me that she  
10 knows Edie through church and that Edie is the  
11 grandmother to one of Ms. Harlan's daughter's good  
12 friends. So, Ms. Harlan has daughters -- one of the  
13 daughter's friends and then Edie apparently is the  
14 grandmother to that -- to that daughter. Um, I  
15 wanted to make the Court aware of that. Ms. Harlan  
16 didn't indicate that there had been any kind of  
17 communication or any sort of -- anything improper  
18 going on at all but I did want to --

19  
20 JUDGE LEWIS: Juror Number 4?

21 MR. FARRA: I don't know --

22 JUDGE LEWIS: The only person I would think might  
23 be called Edie?

24 MR. FARRA: Okay.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: That would be --

2 MR. FARRA: I didn't have that jury list in front  
3 of me, I'm sorry Your Honor.

4 JUDGE LEWIS: (Inaudible).

5 MR. FARRA: So, I wanted to make the Court aware  
6 of it. Ms. Harlan didn't think it was an issue, she  
7 hasn't --

8 JUDGE LEWIS: Well, did Ms. Harlan indicate she  
9 knew her in the sense like she has a relationship  
10 with her? Spoke to her, that sort of thing or just  
11 knew of her because of other people that she knows?

12 MR. FARRA: My impression, it's more that she knew  
13 of her. I don't think she even knows her last name.

14 JUDGE LEWIS: Well, I might just -- okay.

15 MS. STAUFFER: Well, Your Honor, I am concerned  
16 because Ms. Harlan has been sitting in here  
17 periodically and the victim's mentioned her name  
18 several times. And so, I -- I am concerned if there  
19 could be some issues relative to this juror. Perhaps  
20 we need to ask some questions. I -- I -- I don't  
21 know without knowing from Ms. Harlan as to what the  
22 exact relationship is? Maybe we can start with Ms.  
23 Harlan and then go from there, but, my -- my concern  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 is that, you know, this is a -- too close of a  
2 contact in a sense that the victim and the victim's  
3 advocate and the Prosecutor's office and now we've  
4 got this disclosure today, I don't know why it wasn't  
5 disclosed yesterday to tell you the truth? Ms.

6 Harlan was in here in the morning hours. So, I am  
7 concerned about that. So, I -- you know, this point  
8 --

9 JUDGE LEWIS: What are you asking me to do? What  
10 are you asking me to do?

11 MS. STAUFFER: I guess we need to maybe voir dire  
12 this juror further to find out if she connects the  
13 names to anybody and --

14 JUDGE LEWIS: Andrea, could you bring in Ms.  
15 Cotton?

16 MS. STAUFFER: (Addresses Mr. Christopher.) What?

17 DEFENDANT: (Addresses Ms. Stauffer.) Can we just  
18 get rid of her?

19 MS. STAUFFER: What?

20 DEFENDANT: Can we just get rid of her?

21 MS. STAUFFER: Just a minute.

22 DEFENDANT: It's prejudicial, isn't it? (Ms.  
23 Stauffer and Mr. Christopher confer quietly.)  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Is Ms. Harlan here?

2 MR. FARRA: Yes.

3 (Juror is escorted into the courtroom.)

4 JUDGE LEWIS: Hi, if you could just go ahead and  
5 have a seat right there in the front? Near the  
6 microphone?

7 JUROR #4: Here?

8 JUDGE LEWIS: Yes, right there is fine.

9 JUROR #4: Okay. Okay.

10 JUDGE LEWIS: Just go ahead and have a seat.

11 JUROR #4: Okay. Thank you.

12 JUDGE LEWIS: And good morning, how you doing?

13 JUROR #4: Fine, thank you.

14 JUDGE LEWIS: Okay. Well, Ms. Cotton, the reason  
15 I brought you in is because there's been some concern  
16 that perhaps you may have known someone from the  
17 Prosecutor's office that you didn't realize they  
18 worked there, I guess for the Prosecutor's office.  
19 Have you seen anyone in the courtroom that you  
20 recognize over the course of the trial?  
21

22 JUROR #4: Um, yesterday I heard the name, Amy  
23 Harlan, and --

24 JUDGE LEWIS: Uh-huh?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUROR #4: She is a friend of my daughter's, but  
2 attended the same church the two of us, Amy and  
3 myself, attended a church together for about a year  
4 and we have since both left, but, I wasn't aware of  
5 her official role. I knew she, you know, had done  
6 some things with the county but I -- my daughter  
7 knows more about this so I was kind of --

8 JUDGE LEWIS: So, how often have you seen -- you  
9 say you -- have you seen Ms. Harlan the last year,  
10 you --

11 JUROR #4: Yeah, because we just left that church.  
12 It would have been, gosh, I want to say early fall.

13 JUDGE LEWIS: Okay. Is she somebody that you  
14 have, I mean, other than through church and through -  
15 - you said somebody -- a friend of your daughter's?

16 JUROR #4: Um, yeah, they -- they do some things  
17 socially but I don't. But I was just, you know, you  
18 had asked the question early on of the jurors if we  
19 knew anyone in here? And I didn't until I heard the  
20 name and I couldn't even see her from the jurors' box  
21 but I wanted to -- I had spoken with the Bailiff that  
22 I was sort of concerned about that.

23 JUDGE LEWIS: Okay. Okay.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUROR #4: That I wanted to be up front.

2 JUDGE LEWIS: Have you ever, to your recollection,  
3 ever spoken to Ms. Harlan about what she does for a  
4 living?

5 JUROR #4: I haven't. We just had, kind of church  
6 things and children -- grandchildren and children  
7 things that we talked about.

8 JUDGE LEWIS: How about your daughter, did she  
9 ever indicate to you that -- what Ms. Harlan did or  
10 talked about cases (inaudible)?

11 JUROR #4: No, I think -- I think she told me  
12 something but it wasn't something that stuck,  
13 obviously. So, in all fairness though, I wanted to  
14 let the Bailiff know that and you as well.

15 JUDGE LEWIS: Uh-huh. Is there anything about  
16 that contact which -- think -- you think would  
17 influence your ability to be fair in this case?  
18

19 JUROR #4: No.

20 JUDGE LEWIS: Okay. Prosecutor, do you have any  
21 additional questions?

22 MR. FARRA: So just to confirm, you think you can  
23 listen to the evidence fairly and impartially?

24 JUROR #4: I do.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: And apply it to the law that the Judge  
2 gives you?

3 JUROR #4: Absolutely.

4 MR. FARRA: No further questions, Your Honor.

5 JUDGE LEWIS: You have any questions you wish to  
6 ask of her?

7 MS. STAUFFER: Uh, briefly.

8 JUDGE LEWIS: On this issue?

9 MS. STAUFFER: So -- so you're indicating you have  
10 had social interaction with this woman you knew?

11 JUROR #4: Just related to church. I, you know,  
12 the Harlan's -- Core Harlan is noted for his role, a  
13 television personality as far as local news, and his  
14 wife -- I don't know much more about the -- them as a  
15 couple or family other than their children go to the  
16 same elementary school as our daughter's.

17 MS. STAUFFER: Uh-huh.

18 JUROR #4: Our granddaughters do.

19 MS. STAUFFER: Okay.

20 JUROR #4: And -- but we have not really socially  
21 hung out or anything, it's just that church  
22 connection that I knew her, but, I hadn't -- you  
23 know, as I say, I hadn't seen her in the capacity of  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 this room until I heard her name, and she was  
2 referred to and I was sitting back here. Of course,  
3 I couldn't see her, but, I thought I should say  
4 something and I didn't say anything to the jurors --  
5 other jurors, but, I thought I should say something  
6 to the Bailiff last night and I did.

7 MS. STAUFFER: Okay. Okay. So, you're indicating  
8 that just because somebody that you know, kind of, is  
9 not going to bias you, is that --

10 JUROR #4: That is the gist, yes.

11 MS. STAUFFER: Are you sure (inaudible)?

12 JUROR #4: Yeah, I just -- but I thought, you  
13 know, we were supposed to answer honestly and I -- I  
14 didn't realize her connections to the -- this  
15 particular case nor the -- the court properly, so.

16 MS. STAUFFER: Uh-huh. I have no further  
17 questions, Your Honor.

18 JUDGE LEWIS: All right. Thank you very much for  
19 letting us know and I do ask that you not -- you've  
20 already indicated you haven't spoken to any other  
21 jurors about this and you shouldn't speak to them  
22 about it and you also shouldn't discuss the fact that  
23 we questioned you here today.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUROR #4: Absolutely.

2 JUDGE LEWIS: So -- okay.

3 JUROR #4: Thank you.

4 (Juror is escorted out of the courtroom.)

5 JUDGE LEWIS: Do either of you have additional --  
6 a motion -- motions based on the information?

7 MR. FARRA: I do not, Your Honor.

8 (Ms. Stauffer and Mr. Christopher confer quietly.)

9 MS. STAUFFER: Your Honor, I would indicate I'd  
10 ask that that juror be excused and I guess we need to  
11 either substitute in the alternate in her place. My  
12 client isn't comfortable with her remaining on the  
13 jury and I think, again, we have this kind of a snafu  
14 where it's little too close for comfort from my  
15 standpoint in the sense that we've got a victim  
16 talking and we've got the person here and she knows  
17 of her. Maybe she didn't have that big of a  
18 relationship but it sounds like it was a pretty long  
19 term church thing and her daughter -- so I -- given  
20 the closeness of that type of association and her  
21 daughter I think that raises the concerns of her  
22 ability, will it be fair and really put that aside,  
23 given the nature of this case. So I'd ask the Court  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 to excuse her.

2 JUDGE LEWIS: I -- I deny the request to excuse  
3 the juror. I base that on the information that I  
4 have. There's no indication that -- first of all,  
5 Ms. Harlan is not a witness in the case, so, she's  
6 not going to be having to judge Ms. Harlan's  
7 credibility. She is somebody who's working with --  
8 bringing witnesses, I guess, to and from the  
9 courtroom and supporting them. And it's fairly  
10 obvious from the juror's recitation of knowledge that  
11 she has not really ever spoken to Ms. Harlan about  
12 her employment. The things that she does, she's  
13 never spoken to her about this case or any case in  
14 particular as far as I can tell, nor have others  
15 spoken to her about her work except the fact  
16 mentioned that she worked for an attorney, so, there  
17 isn't anything in the information I've received that  
18 leads me to believe that Ms. Cotton could not be fair  
19 and impartial. And therefore I deny the request to  
20 excuse her. All right. Are we ready then for the  
21 jury?  
22

23 MR. FARRA: I am, Your Honor.

24 JUDGE LEWIS: Has your wit -- first, the witness  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 back?

2 MR. FARRA: Yes, they're back.

3 (Prosecutor leaves the courtroom to retrieve the  
4 witness.)

5 (Ms. Stauffer and Mr. Christopher confer quietly.)

6 BAILIFF: Can I bring the jury in now? Or wait  
7 until he's --

8 JUDGE LEWIS: I'd just hang on a second until we  
9 get the witness in. (Pause.) If you could go ahead  
10 and resume the witness stand, you're still under  
11 oath. And if you could bring in the jury please?

12 (Mr. Christopher and Ms. Stauffer confer quietly.)

13 (Jury is escorted into the courtroom.)

14 JUDGE LEWIS: All right. Good morning, everyone.

15 JURORS: Good morning.

16 JUDGE LEWIS: Thank you for your being so prompt  
17 as to be here at nine. Unfortunately, I had an 8:30  
18 hearing that ran longer than I thought it would, so,  
19 but I guess we started closer to the time I said than  
20 yesterday, so things are looking up. We're ready  
21 then to begin with the cross examination, or resume  
22 the cross examination.

23 MS. STAUFFER: Thank you, Your Honor.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. STAUFFER:

Q. Good morning.

A. Good morning.

Q. Okay. Have a few more questions for you today.

Basically, you've indicated that you have some mem --  
memory issues, is that correct?

A. Yes.

Q. Okay. Do you have some mental health issues?

MR. FARRA: Objection, Your Honor. Relevance?

JUDGE LEWIS: (Inaudible).

MS. STAUFFER: Excuse me, Your Honor?

JUDGE LEWIS: Sustained.

MS. STAUFFER: Okay.

BY MS. STAUFFER: (Continued.)

Q. On the -- August 22<sup>nd</sup> and 23<sup>rd</sup>, were you taking any  
medications?

A. No.

Q. Had you been prescribed medications?

A. No.

Q. And in addition to your theft charge, had you also  
had some issues relative to an assault regarding your  
daughter? Your child?

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 MR. FARRA: Objection, Your Honor.

2 JUDGE LEWIS: Sustained.

3 BY MS. STAUFFER: (Continued.)

4 Q. Are you jealous of Shawn?

5 A. No.

6 Q. So you've never expressed any jealousy of him?

7 A. Of him? No.

8 Q. Okay. And during these arguments that you've  
9 described on August 22<sup>nd</sup> and 23<sup>rd</sup>, were you yelling?

10 A. Yes.

11 Q. Okay. Was Shawn yelling?

12 A. Yes.

13 Q. Did Shawn ask for a timeout?

14 A. When he was going to go outside.

15 Q. Okay. So what do we mean by a timeout, what was he  
16 indicating to you at that point?

17 A. That he was going to go for a walk, but I told him I  
18 didn't want him to take the beer can.

19 Q. Okay. And that's when you grabbed a beer can and  
20 kept him from leaving?

21 A. When he was outside.

22 Q. Okay. (Mr. Christopher confers quietly with Ms.  
23 Stauffer.) Now, you indicated that you came home early, I  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 believe, on the August 22<sup>nd</sup>, 2013 day because you didn't  
2 feel well?

3 A. Yes.

4 Q. And your stomach hurt?

5 A. I had cramps.

6 Q. Okay. And how did you get home?

7 A. I walked home.

8 Q. Okay. How long does it take you to get home?

9 A. Like 40 minutes, 45 minutes.

10 Q. And when you got home did you clean the house?

11 A. No. I actually laid down, I did pick up but I did  
12 lay down afterwards.

13 Q. So did you clean the house or --

14 A. I laid down first then I picked up.

15 Q. Okay. And when you went to get the burning  
16 cigarette did you jump over a balcony to do that?

17 A. Jump over the balcony?

18 Q. How did you get over the balcony, is there a  
19 balcony?

20 A. Shawn lifted me up.

21 Q. Okay. And how did you go over?

22 A. I hopped over.

23 Q. Okay. So is hopping different from jumping?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes, because he actually lifted my foot up so I was  
2 at the level --

3 Q. Okay.

4 A. The -- the -- the other person's level, the balcony  
5 level.

6 Q. Okay. And did you -- how'd you get back up?

7 A. I had to hop, like, hop over.

8 Q. So -- what, you're down below, is that right? So  
9 how do you hop back up?

10 A. Yes. So, I lifted -- I pushed up, my stomach was on  
11 the -- what do you call this? (Rubs railing of witness  
12 stand.) Like the --

13 Q. The rail or -- or what?

14 A. It was like a wooden thing.

15 Q. Okay.

16 A. So my stomach was on it and I just pushed up with  
17 the -- my feet and then hopped over.

18 Q. Okay. So did you lean like over with -- on your  
19 stomach and then lift -- flip your legs over, or --

20 A. No, I put my foot up on and then hopped down. (Cell  
21 phone starts to ring in courtroom.)  
22

23 JUDGE LEWIS: Okay. This is the one and only  
24 opportunity I'll give everybody in the courtroom to  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 turn things off. The next time, whatever de --  
2 device goes off will be confiscated. If you're too  
3 important to have your electronic devices turned off  
4 then you need to leave the courtroom, because we  
5 can't have that sort of important people here.

6 Resume your examination.

7 BY MS. STAUFFER: (Continued.)

8 Q. Now, as far as Shawn's debit card, you mentioned  
9 something about you had permission to use it, is that  
10 correct?

11 A. Yes.

12 Q. Did you use it after this date event of August 23<sup>rd</sup>,  
13 2 -- 2013?

14 A. Yes, I used it that night.

15 Q. So you continued to use it? *multiple times*

16 A. Just once, yes.

17  
18 Q. Okay. Did you provide the officer with Shawn's  
19 wallet that night, or morning?

20 A. I gave him his ID.

21 Q. Did you give him his wallet? The officer?

22 A. No.

23 Q. And was the debit card in the wallet?

24 A. Yes.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay. Was there any money in the wallet?  
2 A. No.  
3 Q. Okay. Was there any money in the house?  
4 A. Yes.  
5 Q. Whose money?  
6 A. It was mine.  
7 Q. Pardon me?  
8 A. It was mine.  
9 Q. Okay. (Mr. Christopher confers with Ms. Stauffer  
10 quietly.) Was there a black box that belonged to Shawn in  
11 the house?  
12 A. Yes.  
13 Q. Was there money in there that he was saving?  
14 A. No, he actually gave that to me. The money was in  
15 there but he gave it to me. *Lie*  
16 Q. Okay. So when did he give it to you?  
17 A. He gave it to me before that night.  
18 Q. Okay.  
19 A. So that he wouldn't use it for other things.  
20 *This doesn't even make sense -*  
21 Q. Why -- okay. Why -- what did you use the money for?  
22 A. For food.  
23 Q. Okay. Now isn't it true that Shawn would train  
24 people at the -- his work place?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. Would train new temporary employees or employees,  
3 that's what you're indicating?

4 A. Yes.

5 Q. And that would include male and females?

6 A. Yes.

7 Q. Okay. And so you're indicating you never got upset  
8 with him when he was at work and -- and inter --  
9 interacting with various other employees, is that correct?

10 A. Interacting? How?

11 Q. You weren't -- did you -- were you mad at him or got  
12 angry at him for some of the things that happened at work?

13 A. I guess it depends on the situation.

14 Q. What do you -- ex -- what do you mean?

15 A. Because I was only mad at the times that I actually  
16 should have been mad at. That I had reason to be. At  
17 times when he was actually just training, no, because  
18 that's his job.

19 Q. So you're indicating that you are in control and --  
20 and you never were jealous, is that correct?

21 A. I have been jealous but only for good reason.

22 Q. Okay. So -- but you've never been jealous of Shawn,  
23 right?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Not of him, like, because I'm female, why would I be  
2 jealous of him?

3 Q. Okay.

4 A. I need you to be sp -- specific.

5 Q. Now, would you -- I'll strike that.

6 MS. STAUFFER: I have no further questions, Your  
7 Honor, at this time.

8 JUDGE LEWIS: Redirect?

9 MR. FARRA: Thank you, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. FARRA:

12 Q. Christina, I'd just like to talk to you about your  
13 memory for a second. In speaking of August 22<sup>nd</sup> in the  
14 early morning, up until the Defendant attacked you, was  
15 there anything unusual -- particularly unusual about that  
16 night?

17 A. You mean starting from the morning time?

18 Q. No, just thinking of the events leading up to --  
19 when he put his hands around your throat? Was there  
20 anything particularly unusual about those events?

21 A. Yes.

22 Q. What's that?

23 A. I just had a feeling that we were going to fight.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Why did you have that feeling?

2 A. Because of what he said earlier.

3 MS. STAUFFER: Ob -- objection, Your Honor, this  
4 is all speculation and I -- I believe that basically  
5 she's already testified as to what happened that  
6 night, so I -- this is --

7 JUDGE LEWIS: I'll overrule the objection.

8 BY MR. FARRA: (Continued.)

9 Q. Did you think it was a night that you would need to  
10 remember?

11 A. No.

12 Q. Is it a good memory for you?

13 A. No.

14 Q. Is it something that you want to remember?

15 A. No.

16 Q. Is it something you've tried to think about a lot?

17 A. No.

18 Q. Are there certain things you remember better than  
19 others?

20 A. Yes.

21 Q. What are the things you remember well?

22 A. Putting my foot up when he tried to sit on me and  
23 him strangling me.  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Why do you remember those things well?

2 A. Because I was in shock and the -- and I wasn't  
3 expecting it.

4 Q. What are things you don't remember as well as those?

5 A. The things that we argued about besides him being  
6 jealous.

7 Q. Do you remember specific times?

8 A. No.

9 Q. Why not?

10 A. Because I wasn't looking at a clock.

11 Q. Do you remember specific things that were said as  
12 well as you remember the things you do re -- strike that.

13 Do you remember specific things that were said?

14 A. No, not everything.

15 Q. The 911 call? Do you remember making the 911 call?

16 A. Yes.

17 Q. Did you know what time it was when you made that 911  
18 call?  
19

20 A. No.

21 Q. Why not?

22 A. I wasn't looking at the time.

23 Q. Why weren't you looking at the time?

24 A. Because I was thinking about going outside and being  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 safe.

2 Q. Did you call 911 soon after Shawn took his --

3 MS. STAUFFER: Objection, Your Honor, this was  
4 already covered in the direct examination, it's asked  
5 and answered.

6 JUDGE LEWIS: Without the question I don't know --  
7 why don't you complete the question and wait to  
8 answer it until I can rule on the objection.

9 BY MR. FARRA: (Continued.)

10 Q. Did you call 911 soon after Shawn took his hands off  
11 your throat?

12 MS. STAUFFER: Objection, Your Honor, asked and  
13 answered, direct examination.

14 JUDGE LEWIS: Overruled.

15 BY MR. FARRA: (Continued.)

16 Q. You can go ahead and answer.

17 A. Yes, I did.

18 JUDGE LEWIS: Counsel, could you take your hand  
19 away from your mouth?

20 MR. FARRA: I'm sorry. Sorry, Your Honor.

21 BY MR. FARRA: (Continued.)

22 Q. Did you tell 911 about the issue involving the chair  
23 and the beer can and the mirror?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. No. Just -- no. No, I haven't.

2 Q. Why not -- why didn't you?

3 A. Because I wasn't thinking about any of those things.

4 I --

5 Q. What --

6 A. -- was just in -- I was in shock.

7 Q. When you spoke to police how were you feeling?

8 A. Numb.

9 Q. Towards the end of yesterday, you talked about what  
10 you do at work, do you remember that?

11 A. Yes.

12 Q. And it sounds like you lift some heavier boxes at  
13 work?

14 A. Yes.

15 Q. How tall are you?

16 A. I'm five feet.

17 Q. How much do you weigh?

18 A. Hundred and ten.

19 Q. How does that compare to the Defendant? Is he  
20 heavier than you are?

21 A. Bigger. He's bigger than me.

22 Q. Is he bigger than you? Is he stronger than you?

23 A. Yes.

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. And there's -- there was, just a few minutes ago,  
2 some discussion of a balcony incident? With you and Shawn  
3 and a cigarette? Can you briefly explain what that was to  
4 the jury, I'm not sure that we covered it?

5 A. It was about me dropping the cigarette on the bal --  
6 through the balcony cracks. And when we went down to go  
7 get it, he had to lift me so that I can get over because  
8 it's kind of high.

9 Q. Okay. Did this happen at some point during the  
10 night leading up to the attack?

11 A. Yes.

12 Q. Did it happen before or after the lawn chair  
13 incident where you put your foot up?

14 A. It was before.

15 Q. Okay. And you had some bruising on your legs, is  
16 that right?

17 A. Yes.

18 Q. When did you notice that bruising?

19 A. I noticed it two or three days later.

20 Q. Where was that bruising?

21 A. It was on my leg and my foot.

22 Q. You know what the bru -- what caused the bruising?

23 A. No.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Was the bruising there before the night of August  
2 21<sup>st</sup> and into the morning of August 22<sup>nd</sup>?

3 A. No.

4 Q. So as far as you know it happen -- the bruising  
5 happened after or during that incident, is that correct?

6 A. Yes.

7 Q. And then some pictures you had -- you decided to  
8 take some pictures, yes?

9 A. No, Amos did.

10 Q. Amos did? Why --

11 A. Oh, Amos took the picture of my neck but I took the  
12 ones of my legs, yes.

13 Q. Okay. Why did you decide to take those pictures?

14 A. Because I was told that sometimes --

15 MS. STAUFFER: Objection, Your Honor, its hearsay.  
16

17 JUDGE LEWIS: Overruled. It's not being offered  
18 for the truth of the matter asserted, only as to why  
19 she's -- she decided to take the pictures.

20 BY MR. FARRA: (Continued.)

21 Q. You -- you can answer.

22 A. I was told that sometimes bruising can happen after  
23 you're strangled and -- and it can be in weird places like  
24 your arms, legs, feet. Anywhere on your body.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. And so what did you do in response to being told  
2 that?

3 A. I looked on my body to see if I had any bruises.

4 Q. And did you take pic -- and what'd you do?

5 A. Yes.

6 Q. Once you found them?

7 A. I took pictures because I didn't -- I knew that  
8 those bruises weren't there before.

9 Q. Why are you -- why are you testifying the way you  
10 are? Why are you testifying?

11 MS. STAUFFER: Objection, Your Honor, (inaudible).

12 JUDGE LEWIS: Sustained.

13 BY MR. FARRA: (Continued.)

14 Q. Are you testifying to get money from the Defendant?

15 A. No.

16 MS. STAUFFER: Objection, Your Honor.

17 JUDGE LEWIS: Overruled.

18 BY MR. FARRA: (Continued.)

19 Q. Are you testifying because you're jealous of the  
20 Defendant?  
21

22 A. No.

23 MR. FARRA: No further questions, thank you.

24 JUDGE LEWIS: Recross?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. STAUFFER: No further questions, Your Honor.

JUDGE LEWIS: Can the witness be excused then?

MR. FARRA: For the -- yes, so she -- I may like to recall her but for the moment, yes.

JUDGE LEWIS: Apparently you may be subject to recall, so you can step down for now but you can't remain in the courtroom. You'll need to not discuss your testimony with other potential witnesses.

(Ms. Stauffer and Mr. Christopher confer quietly.)

JUDGE LEWIS: Your next witness?

MR. FARRA: Next witness, Your Honor, will be Officer Bibens.

JUDGE LEWIS: Come forward. Stop and raise your right hand.

**OFFICER THERMAN BIBENS**

was thereupon called as a witness and, having been duly sworn on oath, was examined and testified as follows:

**DIRECT EXAMINATION**

JUDGE LEWIS: Please be seated then. Now that you're seated please state your name in full then spell your last name for the court's record.

WITNESS: Therman Charles Bibens III. Last name

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 is spelled B-I-B-as in boy-E-N-S.

2 JUDGE LEWIS: Go ahead, Counsel.

3 MR. FARRA: Thank you, Your Honor.

4 BY MR. FARRA: (Continued.)

5 Q. Morning, Officer.

6 A. Morning.

7 Q. Tell the jury what your occupation is and -- and  
8 what your duties are?

9 A. Okay. A Vancouver police officer, duties are  
10 primarily graveyard from 8:00 until 6:30 in the morning.

11 Q. And are you a patrol or what --

12 A. Patrol. Patrol graveyard with some collateral  
13 duties also.

14 Q. So what do you spend most of your time doing?

15 A. Responding to 911 calls for disturbances, unwanted,  
16 anything like that and some proactive work also. Traffic  
17 stops, field contacts. Premise checks.

18 Q. How long have you been an officer? Police officer?

19 A. Since June or July of '05, so just over eight years,  
20 just under nine.

21 Q. And could you describe briefly your -- the training  
22 you've received to become an officer?

23 A. Public safety (inaudible).com, took a test. I got  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 accepted and went to the police academy for approximately  
2 16 weeks, I think it was 720 hours at minimum up in  
3 Burien. Just south of Seattle. Monday thru Friday, drive  
4 home on the weekend and go back up for training. Come  
5 back another four months of field training with a field  
6 training officer and then you get on the street.

7 Q. During your training are you trained how to  
8 investigate calls for assistance?

9 A. Yes, sir.

10 Q. Are you trained how to recognize intoxication?

11 A. Yes, sir.

12 Q. Is that something you do often?

13 A. Yes, sir. Ninety-five percent of the calls we go  
14 people are intoxicated.

15 Q. Okay. What are you trained to look for, what --  
16 what are the signs you're trained to look for?

17 A. Some obvious signs is odor, o -- odor of  
18 intoxicating beverage. Slurred speech, red or watery eyes  
19 and nystagmus, different things like that depending on if  
20 the crime is like a DUI or a something as simple as MIP,  
21 so, different steps.

22 Q. Okay. You said -- what's a nystagmus, you mentioned  
23 nystagmus, what's that?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. It's a -- a -- it -- it's where the -- the pupil of  
2 your eye will jump at certain points, the -- the --  
3 depending on the level of intoxication. It could be  
4 something real slight or resting nystagmus would mean it's  
5 just -- you look at them in the eyes and you can see the  
6 pupil jumping around left to right, so.

7 Q. Okay. Were you working the early morning of August  
8 22<sup>nd</sup>, 2013?

9 A. Yes, sir.

10 Q. Did you respond to a call at 4619 NE 112<sup>th</sup> Avenue in  
11 Vancouver, Washington?

12 A. Yes, sir.

13 Q. Is that in Clark County?

14 A. Yes, sir.

15 Q. Why did you go to that address?

16 A. It was a 911 call of a -- a disturbance, a neighbor  
17 had called and basically said my neighbors are arguing  
18 again.

19 Q. Okay.

20 A. Yes.

21 Q. And what did you do once you got that call?

22 A. Started responding to the apartment complex. Part -  
23 - it's in my beat, or my attachment area where the 911  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 calls come out so I'm fairly close. So, you know, I park  
2 about a building, building and a half down so my car's out  
3 of view. I start to walk up to the -- the building, I had  
4 been there two, three times before so I knew where it was.

5 Q. Is that the only 911 call you received notice of?

6 A. No, sir.

7 Q. What was the other?

8 A. There was another one that actually came from the  
9 apartment, Christina had called and explained that she was

10 --

11 MS. STAUFFER: Objection, Your Honor, this is all  
12 hearsay, so relevancy?

13 JUDGE LEWIS: Sustained.

14 WITNESS: Okay. Okay.

15 BY MR. FARRA: (Continued.)

16 Q. How do you -- let me ask you this, Officer, how do  
17 you receive notice of a 911 -- how does that come to you?

18 A. On the -- the -- I'm sitting in the patrol car,  
19 there's a computer screen here with a laptop on it and  
20 it'll blink up on the screen. If it's something really  
21 serious, they'll throw tons out on the radio to let you  
22 know, you know, I -- a big call is coming out and so it  
23 bleeps up on your screen and you start going that way.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. So on that screen did you receive indication of a  
2 second call?

3 A. Uh, yeah, well --

4 Q. 911 call?

5 A. The -- the second 911 call came out, I -- I believe  
6 I was out of the car at this time and -- and walking up,  
7 so, I heard it over the radio where dispatch was saying  
8 okay, now, Christina's calling.

9 Q. Okay. So you're out of the car?

10 A. Yeah.

11 Q. You've heard this second call?

12 A. Yeah.

13 Q. What happened next?

14 A. Dispatch reports that Christina says she was choked  
15 by her boyfriend, gave the name Shawn Christopher. So I'm  
16 getting closer to the apartment at this time and they're  
17 telling me that Shawn has left the apartment.

18 Q. Okay. Do you know -- did you know Shawn  
19 Christopher?

20 A. I've met Shawn before on some previous calls at that  
21 same location.

22 MS. STAUFFER: Objection, Your Honor.

23 WITNESS: Oh --  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: Sustained. The com -- disregard the  
2 last remarks.

3 WITNESS: All right.

4 BY MR. FARRA: (Continued.)

5 Q. Um --

6 JUDGE LEWIS: Matter of fact, at this point, I'm  
7 going to ask you to step out. Leave your notepads  
8 closed and there on your chairs. Don't discuss the  
9 case, I need to resolve some evidentiary issues with  
10 Counsel that I thought I'd resolved but apparently I  
11 need to re -- reiterate it with them. So, don't  
12 discuss the case in the meantime.

13 (Ms. Stauffer and Mr. Christopher confer quietly.)

14 (Jury is escorted out of the courtroom.)

15 JUDGE LEWIS: This is the third time today that  
16 I've dealt with an issue in the presence of the jury  
17 that I had already expressly dealt with in motions in  
18 limine. Mental health issues other than on the day  
19 of occasion. An Assault 2 charge involving the  
20 witness and prior acts of the Defendant. I excluded  
21 those things so the purpose of having the motion in  
22 limine is to make sure you don't bring those things  
23 up in front of the jury. Whether this officer had  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 any prior contact with Mr. Christopher is irrelevant.

2 MR. FARRA: You -- Your Honor, I -- the -- I  
3 believe what the officer's going to testify to is  
4 that as he pulled up he saw a man walk out of the  
5 apartment. That man looked at him and then ran off.

6 JUDGE LEWIS: Uh-huh.

7 MR. FARRA: The reason I'm asking it is so that he  
8 can identify the Defendant. Did you -- did you  
9 recognize who this person was, did you know who this  
10 person was when they took off? And that that person  
11 is Shawn Christopher, so that's the -- that's the  
12 basis.

13 JUDGE LEWIS: Okay. And with regard to the issue  
14 of what -- how it happened on August 22<sup>nd</sup>, he's free  
15 to testify.

16 MR. FARRA: Okay.

17 JUDGE LEWIS: He's not free to testify that he  
18 recognizes him from other prior contacts with him at  
19 the building.

20 MR. FARRA: Okay.

21 JUDGE LEWIS: Okay.

22 MS. STAUFFER: Your Honor, I would indicate that  
23 there was a description of what he's wearing so I  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 don't think the State really had to get into what  
2 they just got into. So, I am concerned we need an  
3 instruction to have the --

4 JUDGE LEWIS: Well, that's why I wanted to  
5 reiterate with people that need -- you need to listen  
6 to the question asked, answer that question and the  
7 Court having made rulings concerning what can and  
8 can't be brought up in the presence of the jury, that  
9 parties -- the Counsel are expected to remember those  
10 issues and abide by them so that I don't have to try  
11 this case again.

12 MR. FARRA: Officer Bibens, do you -- do you  
13 understand what we're talking about?

14 WITNESS: Yeah, I'm sorry, Your Honor.

15 MR. FARRA: Okay.

16 WITNESS: I'm sorry.

17 MR. FARRA: So we don't want to say anything  
18 suggesting --

19 WITNESS: Yes. I --

20 MR. FARRA: -- your knowledge of anybody from the  
21 past.

22 WITNESS: I'm sorry.

23 MS. STAUFFER: Your Honor, for the record that --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 I would make a motion for mistrial because I think my  
2 client's been prejudiced so badly given this --  
3 especially the -- the stuff about the Assault 2's  
4 that came in yesterday and now today we've got this  
5 cumulative, I've, you know, had contact with him  
6 before. I -- I just think we're -- we're really over  
7 the edge of the matter, really sanitizing this jury  
8 with those types of negative comments in regarding my  
9 client that should not have been admissible. So I  
10 would ask -- respectfully ask the Court to order a  
11 mistrial at this time?

12 JUDGE LEWIS: I deny the motion for mistrial, I  
13 think that the immediate reference -- or, sustaining  
14 of the objection and the order for the jury to  
15 disregard the comment is sufficient in the  
16 circumstance. I'll keep it in mind in case it  
17 happens again.

18 MR. FARRA: Okay.

19 JUDGE LEWIS: Bring in the jury, please.

20 (Ms. Stauffer and Mr. Christopher confer quietly.)

21 (Jury is escorted into the courtroom.)

22 JUDGE LEWIS: All right. Thank you for your  
23 patience. Resume your examination.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Thank you, Your Honor. Thank you.

2 BY MR. FARRA: (Continued.)

3 Q. Back to just exiting from the car, Officer, what did  
4 you see when you exited the car?

5 A. When I exited the car I started to walk towards the  
6 apartment building, looked over to my left and saw a male.

7 Q. Okay. Why -- so it doesn't -- it sounds like you  
8 didn't park right by the apartment?

9 A. No, not -- I was out of view of the apartment when I  
10 park -- parked so I can get out and walk up and be on  
11 foot.

12 Q. Why do you do -- why do you do that?

13 A. Safety reasons.

14 Q. Could you explain that a little bit to the jury?

15 A. I -- I don't want to be stuck in a car and pull  
16 right up to a -- a scene of a -- alleged disturbance or  
17 something and get shot at. I'm stuck in a car, maybe my  
18 seatbelt's on, maybe it's off? I want to be mobile and on  
19 foot so I can see better, I don't have blind spots, I'm  
20 not confined to a vehicle.

21 Q. So is that standard procedure to park a little ways  
22 away and then approach on foot?  
23

24 A. Yes, sir.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. All right. You saw a gentleman as you approached?

2 A. Yes, sir.

3 Q. What did that person look like?

4 A. He had a -- a red hoodie on. I -- the -- male.

5 Q. Okay. Did the description match what had been sent  
6 out over 911?

7 A. Yes, sir.

8 Q. Did you get a chance to look at that person's face?

9 A. Yes, sir.

10 Q. And do you recognize that person that you saw then?

11 A. Yes, sir.

12 Q. Okay. Do you see that person in the courtroom  
13 today?

14 A. Yes, sir.

15 Q. Okay. And who is it?

16 A. Shawn Christopher.

17 Q. The def -- the Defendant seated at the table to the  
18 right?

19 A. Yes, sir. Yes, sir.

20 Q. What did you do when you -- when you saw the  
21 Defendant?

22 A. I initially told him to stop and I started running  
23 after him.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. Okay. You told him to stop?

2 A. Yeah.

3 Q. What -- what did he do?

4 A. He -- he looked at me, turned away and started  
5 running east.

6 Q. What were you wearing?

7 A. My patrol uniform.

8 Q. From your perspective is it clear that you were a  
9 police officer?

10 A. Yes, sir.

11 Q. You said you started to chase after him?

12 A. Yes, sir.

13 Q. What happened?

14 A. I -- I -- my containment was coming in to set up on  
15 the apartment, we got there pretty quick actually, there  
16 was already people on the east where he was running. Rule  
17 of thumb is as -- as much as you want to chase after that  
18 guy you -- you -- you can't. If canine comes you're going  
19 to contaminate the track. You got to get to the victim  
20 and see exactly what we got -- it could be --

22 JUDGE LEWIS: Okay. Counsel -- again, Officer  
23 listen to the question asked --

24 WITNESS: Okay.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: And answer the question that's  
2 asked.

3 WITNESS: Okay.

4 JUDGE LEWIS: The question was why did you stop  
5 chasing him?

6 WITNESS: Okay.

7 BY MR. FARRA: (Continued.)

8 Q. Why did you stop chasing him?

9 A. I --

10 JUDGE LEWIS: On this particular occasion?

11 WITNESS: I got to go to the victim and see  
12 exactly what we got.

13 BY MR. FARRA: (Continued.)

14 Q. All right.

15 JUDGE LEWIS: Right. You -- disregard the  
16 reference to the word victim in the case. Refer to  
17 people by their names.

18 WITNESS: Okay.

19 JUDGE LEWIS: It's for the jury to decide whether  
20 anyone is, in fact, a victim and the personal  
21 opinions of anyone, including the Officer, that  
22 someone may or may not be a victim is irrelevant, so  
23 disregard it.  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

MR. FARRA: Thank you, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. FARRA: (Continued.)

Q. You went to see -- you went inside the apartment?

A. Yes, sir.

Q. Who answered the door?

A. Christina.

Q. Did you knock?

A. Yes.

Q. Was it -- so the door was closed?

A. Yeah.

Q. Did you see anybody else at that point?

A. I did not see anybody else.

Q. What did you do next?

A. I asked her was anybody else in the apartment?

Q. What did she say?

A. She said her roommate was there.

Q. What did you do next?

A. Another officer had joined me at some point during this conversation. A safety sweep of the -- the home.

Q. After the safety -- safety -- is that -- and is that standard to perform a safety sweep?

A. Yes, sir.

Q. What did you do after the safety sweep?

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Came back to Christina.

2 Q. Okay. What happened next?

3 A. I gathered her statement.

4 Q. Okay. Let's slow down there for a second. How did  
5 -- how did Ms. Gutierrez appear to you?

6 A. She -- nervous, soft spoken. Kind of like in court  
7 today.

8 Q. How -- describe for the jury please her body  
9 language, if you could?

10 A. Uh --

11 MS. STAUFFER: Objection, Your Honor, I'm not  
12 exactly sure what we're referring to?

13 JUDGE LEWIS: Sustained.

14 BY MR. FARRA: (Continued.)

15 Q. Where was -- wouldn't -- and let me ask you this, is  
16 -- when we are talking about Ms. Guti -- Gutierrez, that's  
17 the same woman that had just been testifying before?

18 A. Yes, sir.

19 Q. Okay. Would she make eye contact when you spoke  
20 with her?

21 A. At -- at -- at times, yes.

22 Q. At -- at times she wouldn't though?

23 A. Yeah, she wouldn't.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Could you describe when she would or wouldn't make  
2 that eye contact?

3 A. When I spoke to her about some --

4 MS. STAUFFER: Objection, Your Honor, I don't know  
5 what the relevancy is? This line of questioning is?

6 MR. FARRA: It's the demeanor of the person he's  
7 interviewing, Your Honor.

8 JUDGE LEWIS: Okay, I'll have you step out while I  
9 resolve another evid -- evidentiary issue and close  
10 your notepads, leave them there on your chairs and  
11 I'll have you back in when I've resolved it.

12 (Jury is escorted out of the courtroom.)

13 JUDGE LEWIS: Okay. Go ahead and make your offer  
14 of proof as to what you're asking about?

15 MR. FARRA: Okay.

16  
17 **DIRECT EXAMINATION - OFFER OF PROOF**

18 BY MR. FARRA: (Continued.)

19 Q. So, Officer, I'd like to focus on she -- how Ms.  
20 Gutierrez appeared to you and what her demeanor was?  
21 Let's start from the beginning here. When you first saw  
22 her how did she appear to you?

23 A. She was very soft spoken and -- and would not make  
24 eye contact with me at some points.

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay. What points were those that she wouldn't make  
2 eye con -- eye contact with you?

3 A. When I asked her what specifically happened in  
4 regards to the assault or why she called 911?

5 Q. Did -- from your training and experience, how would  
6 you characterize her feelings about what she was  
7 describing?

8 MS. STAUFFER: Objection, Your Honor, this is all  
9 speculation.

10 JUDGE LEWIS: We're doing an offer of proof so you  
11 don't need to make objections.

12 MS. STAUFFER: Okay. I'm sorry. Okay.

13 JUDGE LEWIS: Go ahead and complete your offer of  
14 proof.

15 WITNESS: Can you repeat the question, sir, I'm  
16 sorry?

17 BY MR. FARRA: (Continued.)

18 Q. From your training and experience how would you  
19 characterize her feelings at that time?

20 A. I -- I would say it was kind of an embarrassment or  
21 that it's her fault that the assault happened. Some --

22 Q. So she described to you the assault? Or an assault?

23 A. Yes. Yes.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. And during that time her eye -- she would not make  
2 eye contact with you?

3 A. Yeah, she began to cry and --

4 Q. Were the words coming easily to her?

5 A. No. She -- no.

6 Q. Could you explain that a little bit?

7 A. Choked up, I would say. She began to cry and she  
8 continued to tell me what happened but it was difficult  
9 for her.

10 Q. Did she appear anxious or nervous or --

11 A. Nervous, I would say.

12 Q. Did she express any fear or pain?

13 A. She said her neck, to quote her, "was kind of sore."

14 Q. Did she say what that soreness was from?

15 A. When she was choked by Shawn.

16 Q. Did she indicate to you how -- how much time had  
17 elapsed between this alleged assault and her speaking to  
18 you at that time?

19 A. No, I didn't go in detail about that.

20 Q. Did she cry at any point?

21 A. Did she what, sir?

22 Q. Did she cry at any point?

23 A. Yes, sir.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. When did she cry?

2 A. When she would tell me about the strangulation.

3 Q. Was she able -- how was her thought process?

4 A. She -- she jumped around a lot. Her -- it -- I  
5 always had to keep her on track as far as what happened.

6 Q. So what types of things was she jumping around to?

7 A. Shawn's jealousy issue. To her being choked. Shawn  
8 leaving and running.

9 Q. Was she presenting to you a chronological event of  
10 things?

11 A. Uh --

12 Q. One after the other, a smooth description of what  
13 happened?

14 A. She was eventually able to.

15 Q. Was she able to do that at first?

16 A. No.

17  
18 MR. FARRA: No further questions in terms of the  
19 offer, Your Honor.

20 JUDGE LEWIS: Do you have any questions related to  
21 the offer of proof?

22 **CROSS-EXAMINATION - OFFER OF PROOF**

23 BY MS. STAUFFER:

24 Q. Just -- had you had a conversation or contact with  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 this Christina Gutierrez before that day?

2 A. Yes.

3 Q. Pardon me?

4 A. Yes.

5 Q. You had?

6 A. Yes.

7 Q. Okay. So, as far as your contact with her have you  
8 had her -- did you know her for a very long period of  
9 time?

10 A. No. I didn't. No.

11 Q. And you're indicating you had contact with her in  
12 reference to another call, is that correct?

13 A. Yes.

14 Q. We're not in front of the jury right now so --

15 MR. FARRA: You can say it now.

16 WITNESS: Okay, I'm just -- I didn't want to --  
17 okay. Yes, ma'am.

18 BY MS. STAUFFER: (Continued.)

19 Q. Okay. And is that reference to anything happening  
20 to her at that time?

21 A. No, ma'am. It was -- no.

22 Q. Okay. And how long was that contact? The prior  
23 one?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Minutes, I would -- minutes. I don't know.

2 Q. So you're not familiar really with her in terms of  
3 her ongoing behaviors one way or the other are you?

4 A. Other than the -- the times I was called out to the  
5 --

6 Q. Okay.

7 MS. STAUFFER: I have no further questions, Your  
8 Honor.

9 JUDGE LEWIS: You have any other questions on the  
10 offer of proof?

11 MR. FARRA: Just a few follow ups.

12 **REDIRECT EXAMINATION - OFFER OF PROOF**

13 BY MR. FARRA:

14 Q. Based on the -- it -- it was a one-time contact with  
15 her before?

16 A. Yes, I believe I was out there once or twice at the  
17 most at that apartment.

18 Q. And did you speak to her during those contacts?

19 A. Yes, sir.

20 Q. How did her demeanor during those contacts compare  
21 to her demeanor on August 22<sup>nd</sup>?

22 A. She was a bit more bubbly I guess you can say,  
23 smiled and, you know, happy go lucky as, you know, not as  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 nervous as she was on that day.

2 Q. Okay. Thank you. And you -- if I understood you  
3 right, you said you received notice of a -- Christina  
4 Gutierrez's 911 call as you got out of that -- out of you  
5 -- as you got out of the car?

6 A. Yes, sir.

7 Q. How long did it take you from receiving notice of  
8 that 911 call before you saw Ms. Gutierrez?

9 A. It -- a minute or more, it was -- would have been  
10 minutes from -- yeah.

11 Q. What -- what did you do between hearing that 911  
12 call of Christina Gutierrez's and then seeing her at the -  
13 - in the apartment?

14 A. I -- I believe I would have been somewhere in the  
15 apartment -- in the car, get out of the car, see Shawn  
16 run, go back to the apartment and make contact with her.

17 Q. How long do you think that took you?

18 A. A minute or two, three, somewhere in there.

19 Q. Okay.

20 A. Yeah.

21 MR. FARRA: No further questions, Your Honor.

22 JUDGE LEWIS: Anything else?

23 MS. STAUFFER: I have no further questions, Your  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

Honor.

1  
2 JUDGE LEWIS: Okay. Your argument as to why it's  
3 -- what is admissible?

4 MR. FARRA: Your Honor, I think what's admissible  
5 as an excited utterance would be the statements that  
6 the Defendant -- excuse me, that Ms. Gutierrez made  
7 to Officer Bibens as an excited utterance, hearsay  
8 exception. The main issue here is whether or not she  
9 was under the stress of excitement related to the  
10 event -- the exciting event when she made those  
11 comments. Officer Bibens has testified that he's  
12 spoken to her before. He's testified that she -- her  
13 demeanor was different than when he spoke to her  
14 before. In addition, he's described her demeanor as  
15 being soft spoken, embarrassed, looking at the  
16 ground, poor eye contact. Words, or a -- in the  
17 initial part at least, a chronological description  
18 not coming to her well. Jumping around from topic to  
19 topic. Beginning to cry as she described the  
20 strangulation. In terms of time, Officer Bibens  
21 testified that he was speaking to her minutes after  
22 she had made that 911 call. The Defendant had just  
23 left. Officer Bibens witnessed the Defendant just  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 leave the apartment, so he was -- it was soon in time  
2 after the -- after the time he'd left. So, given  
3 those things, Your Honor, I'd argue that she was  
4 under the stress of the excitement of the event that  
5 she was describing and that had just occurred not  
6 long ago. And that her statements ought to be  
7 admissible, as exceptions to hearsay.

8 JUDGE LEWIS: Your argument?

9 MS. STAUFFER: Your Honor, I think my objection  
10 was back earlier on when you were referencing  
11 initially to the fact of talking about body language,  
12 eye contact and your training and experience, what  
13 does that mean? And being embarrassed and this and  
14 that, so, those are the areas that I thought we were  
15 getting more of an offer of proof. I -- I would  
16 indicate that I -- I don't believe that that type of  
17 questioning should be allowed. It's speculative and  
18 it's not based on any real relevant evidence, I mean  
19 -- so I -- I think in terms of talking about eye  
20 contact, that shouldn't be allowed in the -- in the  
21 fashion that it's been asked. And where the training  
22 and experience in terms of what does the moving  
23 around of eyes mean? I mean, that's -- it's -- that  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 should not be appropriate, it's speculative. And  
2 again, we're back to a law enforcement officer  
3 somehow having some type of expertise on someone  
4 being embarrassed or something or other, and again,  
5 this -- this is all in the realm of the jury to  
6 determine what they take from what's been observed  
7 versus conclusions based on that observation. So I  
8 think we need to limit things to observations and not  
9 conclusions from those observations. Then, in terms  
10 of the hearsay issue, I would indicate that I'm not  
11 clear that these are excited utterances since he's  
12 indicating she was soft spoken and he basically  
13 started asking her what happened. So, again, I would  
14 indicate that I don't believe that those statements  
15 come under that exception. So those are, I think  
16 some of the issues I have with the offer of proof.  
17

18 JUDGE LEWIS: All right. With regard to the  
19 information re -- contained in the offer of proof,  
20 there appeared to be three ev -- evidentiary areas I  
21 need to rule on. The first is the officer's  
22 testimony concerning things that he observed.  
23 Whether a person acted in a particular way, averted  
24 their eyes, displayed a particular emotional state,  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           cried, things of that nature. To the extent that  
2           those are observations the officer personally made,  
3           he's permitted to testify to them. And I deny the  
4           request that he not be allowed to do it. The  
5           additional testimony that the officer was making  
6           concerning those observations that it appeared -- or  
7           he believed the person based on those symptoms was  
8           embarrassed. Thought it was her fault and other  
9           speculations as to her mental state, either her  
10          credibility or her actual mental state during that  
11          time, will not be permitted. There's no foundation  
12          to think that this Officer is trained in a way that  
13          would allow him to make those observations any better  
14          than the jury can from dealing with it. So, to the  
15          extent that he believes it or not, it's not relevant  
16          to these proceedings. The third section relates to  
17          the statements made by Ms. Gutierrez out of court  
18          while she was speaking to the Officer. The basis for  
19          admission is alleged to be an excited utterance. I  
20          do not find that this is sufficient foundation to  
21          believe that these are excited utterances. Ms.  
22          Gutierrez had had some period of time passing, she  
23          was being asked questions. Apparently, when --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 although became agitated during the questioning,  
2 initially was soft spoken and did not appear to be,  
3 at least according to the evidence, specifically  
4 excited by the events to justify the finding by the  
5 Court that she would be unable to fabricate a  
6 response, which is the test for an excited utterance.  
7 So, I deny the request to have the evidence come in  
8 under the hearsay rule. Obviously, if during cross  
9 examination the Defense brings in specific instances  
10 of what they believe to either be admissions by Ms.  
11 Gutierrez at the time or inconsistent statements by  
12 her at the time, inconsistent with her testimony here  
13 then on redirect the State can attempt to  
14 rehabilitate by bringing in what you perceive to be  
15 prior consistent statements.

16 MR. FARRA: Okay.

17  
18 JUDGE LEWIS: But at least in your case-in-chief  
19 the evidence is not admissible as an excited  
20 utterance.

21 MR. FARRA: Okay.

22 JUDGE LEWIS: Does anybody have any questions  
23 about any of my rulings?

24 MR. FARRA: Officer Bibens, do you understand what  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 the Judge just said? So --

2 JUDGE LEWIS: You cannot reveal --

3 WITNESS: No feelings, no -- no beliefs of --

4 MR. FARRA: You can't testify to what you thought  
5 she was feeling.

6 JUDGE LEWIS: Okay.

7 WITNESS: Yeah. Exactly.

8 MR. FARRA: You can testify to what she looked  
9 like and what she was doing.

10 WITNESS: Okay.

11 MR. FARRA: And you can't testify to what she  
12 said. Your Honor, would it -- would it be --

13 MS. STAUFFER: Uh --

14 MR. FARRA: Would it be acceptable just to ask him  
15 -- he -- he could testify to what he asked her and  
16 whether she gave a response but we're not going to  
17 get into that response, would that be acceptable?  
18

19 JUDGE LEWIS: He can certainly say that he  
20 questioned her and that during the questioning at  
21 times she was tearful when describing the events, but  
22 he cannot say she was tearful as a result of when she  
23 said this or that because that brings in the  
24 statements then.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Okay. Perfect. Okay.

2 JUDGE LEWIS: Okay? Let's bring in the jury then.  
3 And you're not offering his prior contact with her I  
4 take it? That was brought up by the Defense, so --

5 MR. FARRA: Yeah, we're not going to talk about  
6 that.

7 WITNESS: Yeah, no.

8 MR. FARRA: You -- that was just for this purpose.

9 WITNESS: Okay. Yeah.

10 (Jury is escorted into the courtroom.)

11 JUDGE LEWIS: All right, ladies and gentlemen,  
12 welcome back. I've resolved the evidentiary issue  
13 and I just wanted to indicate to you that law is not  
14 like professional wrestling, we don't script -- if  
15 you believe in professional wrestling I apologize in  
16 advance, but we don't script out everything in  
17 advance. (General laughter.) I often have to deal  
18 with these issues on the fly and the parties do as  
19 well, so, occasionally I have to ask you to step out  
20 be -- while I rule on admissibility simply because  
21 it's easier for you to disregard something if you  
22 haven't heard it than if you've already heard it and  
23 I rule it's inadmissible. But, whether I rule it's  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 inadmissible in court or out of court, if I tell you  
2 it's inadmissible you disregard it. And trust that I  
3 know what I'm doing so don't speculate on the reasons  
4 for my rulings. All right. Go ahead.

5 MR. FARRA: Thank you, Your Honor.

6 **DIRECT EXAMINATION - CONTINUED**

7 BY MR. FARRA: (Continued.)

8 Q. Let's go back to when you first saw Christina  
9 Gutierrez? Did you ask her to describe what happened?

10 A. Yes, sir.

11 Q. And did she eventually do that?

12 A. Yes, sir.

13 Q. What did you notice, if anything, as she described  
14 what happened?

15 A. At -- at -- she would begin to cry, she was real  
16 soft spoken and tended not to look at me all the time.

17 Q. Okay. Did she -- did she end up describing to you  
18 what happened?

19 A. Yes. Yeah.

20 Q. Did she appear intoxicated to you?

21 A. No, sir.

22 Q. And where were you as she was describing to you what  
23 -- what happened?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Her room, I believe it's her -- is towards the end  
2 of the hallway. We were kind of in and out of the -- the  
3 hallway in her room.

4 Q. Did Ms. Gutierrez make any complaint of pain?

5 A. Yeah, she said her neck --

6 MS. STAUFFER: Objection, Your Honor.

7 JUDGE LEWIS: Overruled.

8 BY MR. FARRA: (Continued.)

9 Q. You -- you can answer.

10 A. Okay. She said her neck was kind of sore.

11 Q. Did she do anything to support that?

12 A. Yeah, she would -- as I spoke with her she would do  
13 this thing and move her neck side to side. (Demonstrates  
14 by moving head side to side.)

15 Q. Did you ever inspect her for injuries?

16 A. Yes, I looked at her neck.

17 Q. Did you see any?

18 A. Yes, I saw some dark markings.

19 Q. What -- what did that marking appear to be to you?

20 A. It was some dark markings consistent with bruising  
21 under her left ear I believe it was.

22 Q. Did you ask Ms. Gutierrez to do anything else?

23 A. I asked her to -- if she would be willing to fill  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 out a *Smith* affi -- *Smith* affidavit.

2 Q. Okay. What is a -- a *Smith* affidavit?

3 A. It's a voluntary written form so she can fill it out  
4 in her own words what happened other than what I said. Or  
5 what I wrote.

6 Q. Is that a standard --

7 A. Yes, sir.

8 Q. -- thing to offer?

9 A. Yes, sir.

10 Q. What's the procedure for taking that statement?

11 A. She's get in a -- a neutral area away from anyone  
12 else and just fill out that form, made her feel as  
13 comfortable as possible then.

14 Q. Why -- why do you want her in -- what do you mean by  
15 a neutral --

16 A. Just so she's not swayed either way. Then she can  
17 just fill it out in her own words.

18 Q. Did she eventually make a statement?

19 A. Yes, sir.

20 Q. And where were you when -- when she made that  
21 statement?

22 A. When she filled out the *Smith*?

23 Q. Well -- where were you when you explained the  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 statement to her?

2 A. When I explained the statement to her I was in her  
3 room near the -- the door by the hallway.

4 Q. Did anything happen as you were explaining that  
5 statement to her?

6 A. Yes, sir.

7 Q. What was that?

8 A. It was a -- a loud cough.

9 Q. What -- what do you mean by that?

10 A. It was a loud, forced cough that came from another  
11 person in the household.

12 Q. Okay. Did you know who that other person was?

13 A. Yes, sir.

14 Q. Who was it?

15 A. It was Amos.

16 Q. Now when did you see Amos?

17 A. When we initially came into the house, or was  
18 invited to the house and we did the safety sweep just to  
19 make sure he was contacted.  
20

21 Q. Okay. And where -- where did he go?

22 A. In his bedroom, which is across the hall from  
23 Christina's room.

24 Q. So, you were reading -- you were telling her what  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 the *Smith* statement is, correct?

2 A. Yes, sir.

3 Q. And then what happened as you were doing that?

4 A. I hear a loud, sounded like a forced cough to me.

5 Q. Why do you say forced?

6 A. I -- it -- it came at the opportune moment when I  
7 was telling her that it was voluntary and, you know, you  
8 don't have to do it if you don't want to, but, this is  
9 something we like to see. Cough comes out.

10 Q. You had earlier said you try to find a neutral place

11 --

12 A. Yes.

13 Q. -- for people to take --

14 A. Yes.

15 Q. And why is that that you do that?

16 A. Exact same --

17  
18 MS. STAUFFER: Objection, Your Honor, it's been  
19 asked and answered, and again I don't know what the  
20 relevancy is at this point?

21 JUDGE LEWIS: Sustained.

22 BY MR. FARRA: (Continued.)

23 Q. What did you do after hearing that loud cough?

24 A. After, I -- I paused and she paused for a second, we  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 went into the -- the kitchen and she eventually filled out  
2 that statement.

3 Q. Why did you decide to go in the kitchen?

4 A. To be away from the disturbances I guess you would  
5 say. The coughing and noise and --

6 Q. Did you ever speak to Mr. Carpenter about what  
7 happened?

8 A. Yes, sir.

9 Q. Describe that to the jury, please?

10 A. He told me --

11 MS. STAUFFER: Objection, Your Honor, hearsay.

12 JUDGE LEWIS: Sustained.

13 WITNESS: Oh, okay.

14 BY MR. FARRA: (Continued.)

15 Q. Where did you speak to him?

16 A. In his room.

17 Q. When did you speak to him?

18 A. At the same time -- just after I got my verbal from  
19 Christina.

20 Q. Did he have anything useful?

21 A. Nothing at all, he said he knew nothing.

22 Q. Did you eventually speak to the Defendant?

23 A. Yes, sir.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. When did that happen?

2 A. Just after when -- when I got Christina started on  
3 her written statement, my sergeant stayed there with her  
4 and I went downstairs to speak with him in the rear -- one  
5 of the patrol cars.

6 Q. What's the first thing you noticed when you -- but,  
7 well, let me ask you this? Was the -- was the door closed  
8 when you came up to the patrol car?

9 A. The patrol car was -- was closed, he was -- right  
10 when you walk down the stairs of the apartment the patrol  
11 car was closed right there. He was in the back seat.

12 Q. Okay. Did you open the door?

13 A. Yes, sir.

14 Q. What did you notice?

15 A. Almost -- a -- a strong odor of an alcoholic  
16 beverage coming out of the car when I opened the door to  
17 talk to him.

18 Q. Did he appear intoxicated to you?

19 A. Yes, sir.

20 Q. Why do you say that?

21 A. His eyes were -- were watery. You can smell the  
22 odor coming off him, you know.

23 Q. Did you eventually speak to him?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes, sir.

2 Q. Or I should say did he eventually speak to you?

3 A. Yes, sir.

4 Q. How were his words coming out?

5 A. It -- he -- it was def -- and I -- I could  
6 understand what he was saying but you can tell he had some  
7 alcohol on board.

8 Q. Is that because his words were slurred?

9 A. Yes, sir.

10 Q. What was he wearing?

11 A. A red hoodie is from what I can remember.

12 Q. Did you ask him what happened?

13 A. Yes, sir.

14 Q. What did he say?

15 A. He told me that Christina grabbed him and he knocked  
16 her hands away and pushed her back.

17 Q. Did he explain why Christina had grabbed him?

18 A. Did he explain?

19 Q. Did he give you an explanation as to why she had  
20 grabbed him?  
21

22 A. He told me she was crazy.

23 Q. Did he provide any kind of details about being  
24 grabbed or anything other than just saying she grabbed  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 him?

2 A. No other details that I can recall.

3 Q. Did you talk to him about why he ran?

4 A. Yes, sir.

5 Q. Why did you ask him about that?

6 A. I wanted to know why he ran when he saw the police  
7 were there.

8 Q. What did he say?

9 A. He said because my boy told me the cops were coming.

10 Q. Who did you understand him to mean by my boy?

11 A. Amos, that's the only person I could of thought he  
12 was talking about.

13 Q. Did the Defendant say he had called 911?

14 A. Not that I can recall.

15 Q. Did he complain of any injuries?

16 A. Not that I can recall.

17 Q. Did you see any injuries on --

18 A. I did not see any injuries.

19  
20 MR. FARRA: No further questions.

21 JUDGE LEWIS: Cross examination?

22 MS. STAUFFER: Thank you, Your Honor.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

CROSS EXAMINATION

1  
2 BY MS. STAUFFER:

3 Q. You indicate you took pictures of Ms. Gutierrez that  
4 night, is that correct?

5 A. Ms. -- who?

6 Q. The vic -- the alleged victim, Christina here that  
7 we're talking about?

8 A. Yes.

9 Q. Okay. And in terms of your observations, did you  
10 observe any marks on her neck?

11 A. Yes, ma'am.

12 Q. How many?

13 A. I believe it was a couple dark marks.

14 Q. Did you take pictures of those?

15 A. Pictures were taken of those, yeah.

16 Q. Okay. And where were these dark marks?

17 A. I want to say under her left ear, ma'am, but, -- if  
18 you look at the picture.  
19

20 Q. Okay. So, anywhere else?

21 A. Not that I can recall.

22 Q. Okay. So, let me show you Plaintiff's Exhibit  
23 Number 2. Is that dark mark you're talking about on the  
24 left side of her neck?  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1           A.    Yeah, under her ear.  I believe there was two of  
2 them, I don't know if you just can't see it from --

3           Q.    So where's the other one?

4           A.    I -- I can't see anything from this picture.  I can  
5 recall two is from when I was --

6           Q.    Okay.  And then did you also take --

7           A.    Recollection of mine.

8           Q.    Did you take the Plaintiff's Exhibit Number 1?

9           A.    Yeah, this picture was taken when I was there, I  
10 don't know if I was the actual cameraman?

11          Q.    What do you mean?

12          A.    I don't know if I actually took the picture or if it  
13 was another -- it was another officer that was there that  
14 took that picture?

15          Q.    Okay.  Was -- so was that taken to your knowledge  
16 that evening?

17          A.    Yeah, this -- yes, when we were there, yes.

18          Q.    Okay.  So, you didn't observe any bruising on her  
19 throat or neck area in that part in that picture did you?  
20

21          A.    I -- I couldn't see any -- anything from that  
22 picture.

23          Q.    Okay.  Isn't it true she never told you that that  
24 bruise or whatever you thought was a bruise was actually a  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 hickey?

2 A. Is it true that she never --

3 Q. Did she tell you that that was a hickey?

4 A. No, ma'am, she did not.

5 Q. Okay. (Ms. Stauffer and Mr. Christopher confer  
6 quietly.) Isn't it true she didn't complain of any pain  
7 or injuries to her leg to you?

8 A. No, ma'am, she didn't complain about any.

9 Q. Isn't it true she never told you that something had  
10 occurred in the closet door area with a mirror?

11 A. Say -- can you re -- I'm sorry?

12 Q. Did she -- isn't it -- isn't it true she never  
13 talked to you about a picture or an altercation involving  
14 a -- erasing of a picture?

15 A. Yeah, I -- I can't recall her ever telling me about  
16 that, erasing of a picture.

17 Q. Okay. Did she tell you about her grabbing a beer  
18 from Shawn's hand?

19 A. Not that I can recall, ma'am.

20 Q. Did she tell you that he felt he had kicked her --  
21 she had kicked him when she -- he was trying to sit on her  
22 lap?  
23

24 A. Did -- can you say that one more --  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Did she -- yeah.

2 A. Did --

3 Q. Did she tell you about the incident where Shawn was  
4 contending that she had kicked him when he sat down on her  
5 lap?

6 A. Not that I can recall and nor was it written in my  
7 report.

8 Q. And you're indicating that you arrived and spoke  
9 with her within how many minutes of getting the 911 call?

10 A. I couldn't say exactly, ma'am, it was within minutes  
11 of the --

12 Q. Very quick?

13 A. And it depends on which 911 call you were talking  
14 about? From the neighbor or from her?

15 Q. Well, from the first call that came in to you  
16 arriving, how --

17 A. It would have been minutes, it wasn't -- yeah.

18 Q. Okay. So it was very quickly after what she was  
19 contending -- the incident occurred, is that correct?

20 A. Within -- within minutes.

21 Q. Okay. And she spoke with you when you arrived?

22 A. Yes, ma'am.

23 Q. Okay. And do you recall indicating that she  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 appeared to be calm to you when you spoke with my  
2 investigator?

3 A. She -- she was calm, soft spoken, yeah.

4 Q. Okay. Shawn was -- isn't it true that Shawn was  
5 cooperative with you, he answered questions?

6 A. He was handcuffed in the back seat of a car, he was  
7 cooperative.

8 Q. That's not my question.

9 A. Yeah, he was cooperative.

10 MS. STAUFFER: Objection, Your Honor, I would ask  
11 that that be excluded.

12 JUDGE LEWIS: I'll grant the motion to strike,  
13 disregard the last non-responsive comment. Repeat  
14 the question, listen to the question and answer that  
15 question.

16 MS. STAUFFER: Thank you, Your Honor.

17 BY MS. STAUFFER: (Continued.)

18 Q. Isn't it true that Mr. Christopher --

19 A. Uh-huh?

20 Q. Was cooperative, he answered your questions?

21 A. He answered my questions.

22 Q. Thank you.

23 MS. STAUFFER: I have no further questions, Your  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

Honor.

1 JUDGE LEWIS: Redirect?

2 MR. FARRA: No, Your Honor.

3 JUDGE LEWIS: Okay. You can step down Officer.

4 Your next witness?

5 MR. FARRA: Your Honor, our next witness I think  
6 is the one that we spoke about earlier, so maybe --

7 JUDGE LEWIS: Well, you know, actually -- although  
8 you folks have been in and out quite a bit, I haven't  
9 had to move from this seat for a couple hours now.

10 (General laughter.) So, we better take a break. You  
11 can close your notepads and leave them there on your  
12 chairs and -- and I'll have you back in when --  
13 probably about 15 minutes, I would guess, 20 minutes.  
14 Don't discuss the case in the meantime among  
15 yourselves or with anyone else.

16 (Jury is escorted out of the courtroom.)

17 JUDGE LEWIS: You indicated Mr. Hausinger's here  
18 and --

19 MR. FARRA: That's what I've been told, so --

20 JUDGE LEWIS: You want the opportunity to speak to  
21 him I take it, so, let's go ahead and take a break,  
22 let me know when you're ready to proceed.  
23  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Okay, thank you.

2 CLERK: All rise, please, court is in recess.

3 (Court recesses on this matter at 10:51:11 AM.)

4 (Court reconvenes on this matter at 11:16:11 AM.)

5 CLERK: All rise please, court is now in session.

6 JUDGE LEWIS: Thank you. Please be seated.

7 Counsel, are we ready to proceed?

8 MR. FARRA: I think we are, Your Honor, our next  
9 witness will be Jacinto Hausinger. Is that how I say  
10 your name, Jacinto, am I saying that correct?

11 JUDGE LEWIS: All right, if we're ready for the  
12 jury, bring them in.

13 MS. STAUFFER: I did have a chance to talk with  
14 him, Your Honor.

15 JUDGE LEWIS: Okay.

16 MS. STAUFFER: Well, I don't -- the State has  
17 something. Or do you want me to --

18 JUDGE LEWIS: I'm sorry, you need to hold the jury  
19 for a minute, Andrea. Is there anything else before  
20 we bring in the jury?

21 MR. FARRA: No.

22 MS. STAUFFER: Oh, you're going to call him next  
23 now?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Correct.

2 MS. STAUFFER: That's right, okay. That's fine,  
3 Your Honor.

4 JUDGE LEWIS: Okay. Bring in the jury.

5 (Jury is escorted into the courtroom.)

6 JUDGE LEWIS: Okay, welcome back. We're ready for  
7 the State's next witness then?

8 MR. FARRA: Thank you, Your Honor. It will be  
9 Jacinto Hausinger.

10 JUDGE LEWIS: Come forward please? Up to the  
11 front here, stop and raise your right hand.

12 **JACINTO EMILIO HAUSINGER**

13 was thereupon called as a witness and, having been  
14 duly sworn on oath, was examined and testified as  
15 follows:

16 **DIRECT EXAMINATION**

17 JUDGE LEWIS: Please be seated here then. Move  
18 forward and now that you're seated please state your  
19 name in full and spell your last name for the court's  
20 record.  
21

22 WITNESS: Jacinto Emilio Hausinger. H-A-U-S-I-N-  
23 G-E-R.

24 JUDGE LEWIS: Go ahead, Counsel.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Thank you, Your Honor.

2 BY MR. FARRA:

3 Q. Morning, Mr. Hausinger.

4 A. Morning.

5 Q. Do you know the Defendant, Shawn Christopher, seated  
6 to my right in the striped shirt?

7 A. Yes.

8 JUDGE LEWIS: I'm sorry, you'll need to keep your  
9 voice up, I'm recording the proceedings.

10 WITNESS: Yes.

11 BY MR. FARRA: (Continued.)

12 Q. How do you know him?

13 A. I was in Clark County Jail with him.

14 Q. Okay. When were you in jail with him, roughly?

15 A. In August, it was roughly the middle part of August.

16 Q. And how long were you in jail with him?

17 A. We were cellmates for about two weeks, a week-and-a-  
18 half, two weeks.

19 Q. Cellmates in that you -- by which you mean you  
20 shared a cell with him for about two weeks?

21 A. Roughly, if I -- I don't remember correctly the  
22 exact date, but --

23 Q. When did you get out of jail?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. On August 19<sup>th</sup>, or no, September 19<sup>th</sup>.

2 Q. On September -- you got out on September 19<sup>th</sup>? And  
3 was it the last two weeks towards the end of --

4 A. Yes.

5 Q. -- of your time there that you were cellmates with  
6 the Defendant?

7 A. Yes.

8 Q. Is that where you first met the Defendant?

9 A. Um, in -- in jail we met but -- yeah, I first met  
10 him when I was in jail.

11 Q. Did you know him before you got into jail?

12 A. No, sir.

13 Q. Did you and he talk about someone named Christina  
14 Gutierrez?

15 A. Yes.

16 BAILIFF: The camera's not going over to the  
17 witness.

18 JUDGE LEWIS: Could you lock it on the witness?

19 BAILIFF: I -- I will lock it on (inaudible).

20 JUDGE LEWIS: Okay. We do need to have you keep  
21 your voice up so that the re -- proceedings are being  
22 recorded. That microphone is not picking you up, so.  
23 Go ahead.  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Thank you.

2 BY MR. FARRA: (Continued.)

3 Q. Who is Christina Gutierrez?

4 A. To my knowledge it was someone that he had been  
5 seeing?

6 Q. By which you mean dating?

7 A. Correct.

8 Q. Did you know Christina Gutierrez before meeting the  
9 Defendant?

10 A. No.

11 Q. Did the Defendant ask you to do anything towards Ms.  
12 Gutierrez?

13 A. Um, meaning?

14 Q. Did he give you anything and ask you to do something  
15 with it?

16 A. I had a -- I had a letter that I read to her on the  
17 phone.

18 Q. Okay. Who gave you that letter?

19 A. Um, well, technically -- technically, it was laying  
20 on my bunk when I came in from lunch one time. But --

21 Q. While you were cellmates with the Defendant?

22 A. Correct.

23 Q. Did he give you that letter?  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 A. He didn't hand it to me.

2 Q. Okay. Did he write that letter?

3 A. Um, I don't know for certain if he wrote the letter  
4 but it was -- it was a letter from him that I took with  
5 me.

6 Q. Okay. What did he tell you to do with that letter?

7 A. Um --

8 Q. Did he -- did he tell you to read that letter to  
9 Christina?

10 A. It was for me to -- to look at and then -- almost  
11 like bullet points, I love you bullet points.

12 Q. Right, that -- but that's not what I asked. Did he  
13 tell you to read the letter to Christina?

14 A. Yes.

15 Q. Thank you. Did you read that letter to her?

16 A. Yes.

17 Q. How did you contact Ms. Gutierrez?

18 A. Called her.

19 Q. Did you call her on a cell phone?

20 A. Yes.

21 Q. Was the number of that cell phone 360-773-2514?

22 A. Yes.

23 Q. How did you get that phone number?

24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. From --

2 Q. Strike that. From where -- yeah, I think you're  
3 about to answer it but I want to be more specific. From  
4 where did you get Christina Gutierrez's phone number to  
5 call her?

6 A. From his sister.

7 Q. Who's "his"? The Defendant's sister?

8 A. Correct.

9 Q. Thank you. Did you keep the letter that you read --

10 A. No.

11 Q. -- to Ms. Gutierrez? What did you do with it?

12 A. I destroyed it along with some other paperwork.

13 Q. Is that phone call with Ms. Gutierrez the only  
14 contact you had with her?

15 A. I think we talked a couple times and texted a couple  
16 times.

17 Q. Did you have a text exchange with her at one point?

18 A. Yes.

19 Q. Did the text exchange come after the call?

20 A. Yes.

21 Q. Did you text her from the same phone number that you  
22 -- or that -- I'm sorry, let me ask that again. Did you  
23 text her from the same phone that you called her from  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 earlier?

2 A. Yes.

3 MR. FARRA: No further questions, Your Honor.

4 JUDGE LEWIS: Cross examination?

5 MS. STAUFFER: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 BY MS. STAUFFER:

8 Q. Sir, are you under the influence of any medications  
9 or controlled substances this morning?

10 A. No.

11 Q. Do you re -- recall being contacted by Vancouver  
12 Police Officer Skeeter?

13 A. Yes.

14 Q. She contact you by phone?

15 A. Yes.

16 Q. I can't hear you very well.

17 A. Yes.

18 Q. Okay. Through that phone contact, isn't it true  
19 that you told her --  
20

21 MR. FARRA: Objection, Your Honor, it's calling  
22 for hearsay.

23 JUDGE LEWIS: Are you offering it for the truth of  
24 the matter asserted?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Your Honor, at this point, he's  
2 testified to what he's saying but there's something  
3 different that he's told the officer, so I need to --

4 JUDGE LEWIS: It -- otherwise it's being offered  
5 as a prior inconsistent statement.

6 MS. STAUFFER: That's right.

7 JUDGE LEWIS: Overrule the objection.

8 BY MS. STAUFFER: (Continued.)

9 Q. Isn't it true that you told Officer Skeeter that you  
10 were not told by Shawn to give her the message but you  
11 took it upon yourself to talk to her on Shawn's behalf?

12 A. It's possible that I said that, I'm not certain  
13 exactly. I don't remember the conversation too well  
14 because it happened so fast but it's possible I did say  
15 that.

16 Q. Do you remember about five minutes ago you told me  
17 that yes, that's what you had told her?

18 A. To the first part of what you said, yeah. That the  
19 --

20 --  
21 Q. First part of -- okay -- can you --

22 A. The first -- the two things we went over. The first  
23 part, yes, I remember saying that.

24 Q. Okay. So what first part --  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 A. Or, I -- I can remember saying that. I remember  
2 saying that, yes. I remember saying that.

3 Q. Okay. Let me just back up and make sure I  
4 understand what you're saying. My question is, isn't it  
5 true that you told Officer Skeeter that you were not told  
6 by Shawn to give her the message, but that you took it  
7 upon yourself to talk to her, meaning Christina, on  
8 Shawn's behalf?

9 A. Correct.

10 Q. Did you say that or not?

11 A. Yes.

12 Q. Okay. And did you also indicate that you shared a  
13 cell with Shawn, considered him a friend? And didn't want  
14 to see him go to prison, did you tell her that?

15 A. Yes.

16 Q. Then, you received, shortly after that conversation  
17 with Officer Skeeter, which was your own first  
18 conversation with a -- the law officer, is that not  
19 correct, on this issue?

20 A. Yes.

21 Q. You received a message from her? On your cell  
22 phone?

23 A. Yes.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. And --

2 MR. FARRA: (Inaudible) --

3 JUDGE LEWIS: Right, for the record, who's "her"?

4 MS. STAUFFER: Being the -- Officer Skeeter.

5 JUDGE LEWIS: All right.

6 MS. STAUFFER: Right.

7 JUDGE LEWIS: Go ahead.

8 WITNESS: Yes.

9 BY MS. STAUFFER: (Continued.)

10 Q. You're -- okay. And that message told you that she  
11 was going to refer charges of tampering with a witness on  
12 you because you had contacted Christina and told her she  
13 needs to change her statement? Is that correct?

14 A. Correct.

15 Q. Then your subsequent interviews with Officer Skeeter  
16 as well as other officers changes to more along the lines  
17 what you just said, is that correct?

18 A. Correct.

19 MS. STAUFFER: I have no further questions, Your  
20 Honor.

21 JUDGE LEWIS: Redirect?  
22  
23  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

REDIRECT EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. FARRA:

Q. Are you telling the truth today?

A. Yes.

Q. Did you just take an oath to tell the truth?

A. Yes.

Q. Excuse me.

MS. STAUFFER: Objection, Your Honor, it's --

JUDGE LEWIS: I'll overrule the objection.

MR. FARRA: No further questions.

JUDGE LEWIS: Recross?

MS. STAUFFER: Nothing further, Your Honor.

JUDGE LEWIS: Can the witness be excused?

MR. FARRA: Yes.

MS. STAUFFER: I believe so, Your Honor.

JUDGE LEWIS: All right. You're free to go, don't discuss your testimony with any other potential witness.

WITNESS: Okay.

JUDGE LEWIS: Your next witness?

MR. FARRA: Your Honor, I have some foundational witnesses, they can be available right after lunch, Your Honor.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: You don't have any additional  
2 witnesses?

3 MR. FARRA: I do, but, they're not -- they had  
4 other obligations that they had to attend to. I can  
5 try to call them and have them there immediately?

6 JUDGE LEWIS: All right. Why don't you do that?

7 MR. FARRA: Okay. Thank you.

8 JUDGE LEWIS: Go ahead and close your notepads and  
9 leave them there in your chairs and we'll have you  
10 back in when we're ready to proceed. Don't discuss  
11 the case in the meantime.

12 (Jury is escorted out of the courtroom.)

13 MR. FARRA: Thank you, Your Honor.

14 MS. STAUFFER: Your Honor, I think there are still  
15 some issues if I'm understanding, he's going to be  
16 offering I think the jail records and the court  
17 proceedings of the restraining order and we're going  
18 to have to redact or somehow minimize some of the  
19 prejudice, so, I offer to stipulate that it can --  
20 apparently he wants to go forward, so I do want us to  
21 make sure that nothing inappropriate gets before the  
22 jury.  
23

24 JUDGE LEWIS: Okay. Well, once you get your  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 witnesses here then I'd like to use the time  
2 productively given the pace of the trial since we  
3 didn't start until a quarter to ten and have spent  
4 very little time with the jury in court. So, get  
5 your witnesses here and if I need to deal with  
6 something I will but we're going to go up to the noon  
7 hour, if we can.

8 MR. FARRA: Okay.

9 CLERK: All rise, please, the court is in recess.  
10 Mr. Farra, Ms. Campbell is on her way up right now.

11 MR. FARRA: Oh, is she. She would be my next --

12 (Court recesses on this matter at 11:30:50 AM.)

13 (Court reconvenes on this matter at 11:35:15 AM.)

14 CLERK: All rise, please, court is again in  
15 session.

16 JUDGE LEWIS: Thank you. Please be seated. All  
17 right, Counsel. There is a matter needs to be  
18 resolved before the jury comes in?

19 MS. STAUFFER: Your Honor, I -- I think the CD of  
20 the court proceedings of when the restraining order  
21 was signed by my client is cumulative evidence. I  
22 believe this Abbie Bartlett, the Prosecutor that was  
23 the docket deputy will be able to confirm that she  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 was in court and she observed him sign it. And we  
2 have the certified copy of the restraining order, so  
3 I don't believe the CD, other than to prejudice my  
4 client by showing him in jail garb and showing the  
5 big whole docket, I don't think it's -- it's  
6 necessary and I think it's prejudicial without  
7 needing to be brought in. So I'm objecting to using  
8 the CD of the court proceedings when we're willing to  
9 stipulate to it's his, he signed it and he understood  
10 it.

11 MR. FARRA: Your Honor, I --

12 JUDGE LEWIS: You're willing to enter a  
13 stipulation that he was -- he signed the document,  
14 that he knew of its existence?

15 MS. STAUFFER: Yes.

16 JUDGE LEWIS: He was aware of its term?

17 MS. STAUFFER: Yes.

18 MR. FARRA: Your Honor, I need to prove that he --  
19 he knew of the document, was aware of the terms. The  
20 best way to do that is to show exactly what was said  
21 to him, when it was said to him, how it was said to  
22 him and by whom it was said. This video is the best,  
23 most direct way to do that, Your Honor. And that's  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: There are case -- there is case law  
2 that indicates that if an issue is truly not  
3 contested and evidence is prejudicial, then I can  
4 exercise my discretion and prohibit the State from  
5 doing it, I would do so in this case and if the  
6 Defendant is willing to do such a thing I would allow  
7 testimony by Ms. Bartlett but not the playing of the  
8 video.

9 MR. FARRA: Your Honor, would you consider just  
10 the playing of only the part where Your Honor, you  
11 happened to be the judge on this, Your Honor -- where  
12 Your Honor read to him the no contact order and the  
13 warnings and -- and what not?

14 JUDGE LEWIS: No.

15 MR. FARRA: Okay.

16 JUDGE LEWIS: I find that on balance, I'm supposed  
17 to balance probative value versus prejudice. The  
18 prejudice of having him appear in jail garb on the  
19 video and etc., is -- is greater than the probative  
20 value of this issue given the fact that, as I  
21 understand it, he's willing to sign a stipulation,  
22 which says that he signed the document and he was  
23 aware of its terms. If he in fact is doing that,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 the purpose for me admitting it.

2 JUDGE LEWIS: Okay. Do you have the proposed  
3 stipulation?

4 MS. STAUFFER: Well, Your Honor, I guess my  
5 stipulation would be that the Defendant was -- the  
6 parties are stipulating to, one, the introduction of  
7 the domestic violence order violation that was  
8 entered on August 23<sup>rd</sup>. That was signed by Mr.  
9 Christopher.

10 JUDGE LEWIS: Okay. I think I mentioned yesterday  
11 if you want to do a stipulation, he wants to  
12 stipulate to certain things, I need to have it in  
13 writing so I can go over it with him and make sure he  
14 understands he's giving up certain rights by making  
15 such a stipulation.

16 MS. STAUFFER: I understand that.

17 JUDGE LEWIS: I can't do that until you've done  
18 it.

19 MR. FARRA: I'm not stip --

20 MS. STAUFFER: Okay.

21 MR. FARRA: I'm not stipulating, Your Honor, so --

22 JUDGE LEWIS: Okay, well, in the --

23 MR. FARRA: So, I --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 then there isn't any basis for me to have you play  
2 that particular doc -- video, so I won't allow it.

3 MR. FARRA: Okay.

4 JUDGE LEWIS: Now, if he turns around and says I'm  
5 not going to sign such a stipulation then you can  
6 renew it and I'll probably allow it.

7 MR. FARRA: Okay.

8 JUDGE LEWIS: Did you wish to call Ms. Bartlett  
9 otherwise?

10 MR. FARRA: Well, I will, yes, and I have staff  
11 that's trying to find her and get her over here as  
12 soon as we can. We have Ms. Campbell here who would  
13 be next.

14 JUDGE LEWIS: All right. Are you ready to call  
15 Ms. Campbell then?

16 MR. FARRA: I am ready to call her.

17 JUDGE LEWIS: Are we ready for the jury, then?

18 MS. STAUFFER: I believe so, Your Honor. Do you  
19 want my client to put on the record now the fact he -  
20 -

21 -  
22 JUDGE LEWIS: We'll have to do it later, after we  
23 call Ms. Campbell and I release the jury.

24 MR. FARRA: Okay.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Okay.

2 JUDGE LEWIS: So, bring in the jury. Did you want  
3 the screen down?

4 MR. FARRA: I'm not going to play anything, Your  
5 Honor. So, no.

6 JUDGE LEWIS: Oh, okay, I just noticed Jill had it  
7 turned on there, so.

8 MR. FARRA: I'm just trying to turn this off.

9 (Jury is escorted into the courtroom.)

10 JUDGE LEWIS: Welcome back. Your next witness?

11 MR. FARRA: It will be Nancy Campbell, Your Honor.

12 JUDGE LEWIS: Ms. Campbell, come forward. Stop  
13 and raise your right hand.

14 **NANCY CAMPBELL**

15 was thereupon called as a witness and, having been  
16 duly sworn on oath, was examined and testified as  
17 follows:  
18

19 **DIRECT EXAMINATION**

20 JUDGE LEWIS: Please be seated then. Now that  
21 you're seated please state your name in full then  
22 spell your last name for the court's record.

23 WITNESS: Nancy Campbell. C-A-M-P-B-E-L-L.

24 JUDGE LEWIS: Go ahead.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 BY MR. FARRA:

2 Q. Morning, Ms. Campbell.

3 A. Morning.

4 Q. Would you tell the jury what your occupation is?

5 A. I work for the Clerk's Office. My current title is  
6 Department Information Systems Coordinator. I'm also a  
7 Deputy Clerk of the court. The Clerk of the Superior  
8 Court.

9 Q. What are your duties in that occupation?

10 A. The Clerk files all documents at -- that are filed  
11 in every case that's filed with the Superior Court. And  
12 keeps a record of minutes, proceedings, orders, judgments,  
13 decrees, verdicts.

14 Q. So, it's -- it's your office that keeps track of  
15 those things?

16 A. Yes.

17 Q. And in your duties have you become familiar with  
18 what a no-contact order is?

19 A. Yes.

20 Q. Could you tell the jury what a no-contact order is?

21 MS. STAUFFER: Your Honor, I'd be objecting, it's  
22 not relevant from her perspective what it is. I  
23 think the document will speak for itself.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Overruled.

2 WITNESS: A no-contact order is issued to prohibit  
3 contact and prot -- protect one person from -- and  
4 restrain another person.

5 BY MR. FARRA: (Continued.)

6 Q. And in your duties, have you become familiar with  
7 what they look like?

8 A. Yes.

9 Q. How are they issued?

10 A. In a criminal case you mean?

11 Q. In a criminal case, correct.

12 A. They're -- whenever someone is before the Court at  
13 first appearance the Court considers whether a no-contact  
14 order should be issued to protect the vic -- the victim in  
15 the case or any witnesses.

16 Q. Let me -- let me --

17 JUDGE LEWIS: I --

18 MS. STAUFFER: Objection, Your Honor.

19 JUDGE LEWIS: I'll sustain the objection, strike  
20 the last remark. Again, the -- you should disregard  
21 any reference to someone as a victim in the case.  
22 It's not up to anyone else other than you to decide  
23 whether a crime's been committed and whether someone  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 is a victim or not. You want to go ahead and  
2 proceed?

3 BY MR. FARRA: (Continued.)

4 Q. Are no-contact orders issued early in a criminal  
5 proceeding?

6 A. Yes.

7 Q. And when they are issued, does your copy -- does  
8 your office, excuse me, get copies of those orders?

9 A. The Clerk -- the Clerk of the court retains the  
10 original no-contact order and copies are distributed to  
11 the parties.

12 Q. Okay. So does your office end up filing a copy of  
13 their -- or, storing a copy of that?

14 A. Yes.

15 Q. Is that done in the ordinary course of business?

16 A. Yes.

17 Q. And are you familiar with how those records are  
18 stored?

19 A. Yes.

20 Q. How are they stored? Are they stored by case number  
21 for instance?

22 A. They are. They're filed under the case number and  
23 we enter them into our Superior Court information system.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 We scan them into our document management system and  
2 they're filed into a regular hard copy paper file.

3 Q. So, if I -- if a document is needed from a  
4 particular court file for a particular person, is that  
5 something that can be retrieved?

6 A. Yes.

7 Q. If there were a no-contact order for instance in a  
8 particular case, is that something that could be retrieved  
9 with the case number?

10 A. Yes. All the file -- all the files and docu -- all  
11 the documents in any file in Superior Court are retained  
12 for the record.

13 Q. I'm going to hand you what's been -- (Crosses to Ms.  
14 Stauffer then back to witness.) -- handing you what's been  
15 marked as Exhibit Number 23. Do you recognize what that  
16 is?

17 A. Yes. This is a certified copy of a no-contact order  
18 entered in State v. Shawn Eric Christopher. It's Cause  
19 Number 13-1-01577-3.

20 Q. You mentioned it was certified?

21 A. Yes.

22 Q. What does that mean?

23 A. The Clerk has the authority to certify all documents  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that are of record on file in -- in her off -- his or her  
2 office and this is a -- a certified copy of the original  
3 that's on file in our office.

4 Q. Can you read the certification off, please, to the  
5 jury?

6 A. It says I, Scott Webber, County Clerk and Clerk of  
7 the Superior Court of Clark County, Washington, do hereby  
8 certify that this document is a true and correct copy of  
9 the original now on file, end of record, in my office and  
10 as County Clerk I am the legal custodian thereof. Signed  
11 and sealed at Vancouver, Washington, the state. This was  
12 certified on October 16<sup>th</sup>, 2013 by Angela Ferris who is a  
13 Deputy Clerk in our office.

14 Q. Who issues a no-contact order?

15 A. The court.

16 Q. In other words, does the judge issue a no-contact  
17 order?  
18

19 A. Yes.

20 Q. Did a judge sign that particular no-contact order  
21 that you're looking at?

22 A. Yes. On August 23<sup>rd</sup>, signed by Judge Lewis.

23 Q. Okay. And I believe you mentioned this before, but  
24 what case number is this in regard to?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. 13-1-01577-3.

2 Q. What's the Defendant's name?

3 A. Shawn Eric Christopher.

4 Q. Was that no contact order signed by the Defendant?

5 A. There is a signature on the Defendant line, yes.

6 Q. Okay. Do Defendants get copies of no-contact  
7 orders?

8 A. They do.

9 Q. How long does that no contact order remain in  
10 effect?

11 A. There's an expiration date listed on every no-  
12 contact order, this one ex -- has an expiration date of  
13 August 23<sup>rd</sup> of 2018. It's pretty common to put these into  
14 place for a five-year period, I (inaudible).

15 Q. Okay. Would that order have been in effect in  
16 September of 2012? Strike that, excuse me. Would that  
17 have been in effect September of 2013?

18 Q. Yes.

19  
20 MR. FARRA: Your Honor, at this point I'd move to  
21 admit Exhibit 24? Is that -- I'm sorry, what exhibit  
22 number was it?

23 WITNESS: Twenty-three.

24 MR. FARRA: At this point, I'd move to admit  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Exhibit Number 23, Your Honor.

2 JUDGE LEWIS: Any objection?

3 MS. STAUFFER: No, Your Honor. No.

4 JUDGE LEWIS: Twenty-three's admitted.

5 BY MR. FARRA: (Continued.)

6 Q. Actually, I have no further questions for you at  
7 this time, thank you.

8 A. Okay.

9 JUDGE LEWIS: Cross examination?

10 MS. STAUFFER: I have no questions, Your Honor.

11 JUDGE LEWIS: Can the witness be excused then?

12 MR. FARRA: Yes.

13 JUDGE LEWIS: Okay. You're free to go, don't  
14 discuss your testimony with other potential  
15 witnesses. Please leave the exhibit with the trial  
16 clerk. Your next witness?

17 MR. FARRA: Would be Abbie Bartlett, Your Honor.

18 (Prosecutor leaves the courtroom to retrieve the  
19 witness.)

20 JUDGE LEWIS: Come forward, please. Stop and  
21 raise your right hand.

22 **ABIGAIL BARTLETT**

23 was thereupon called as a witness and, having been  
24 duly sworn on oath, was examined and testified as  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 follows:

2 DIRECT EXAMINATION

3 JUDGE LEWIS: Please be seated then. Now that  
4 you're seated please state your name in full then  
5 spell your last name for the court's record.

6 WITNESS: Abigail Bartlett. Last name B-A-R-T-L-  
7 E-T-T.

8 JUDGE LEWIS: Go ahead.

9 BY MR. FARRA:

10 Q. Morning, Ms. Bartlett.

11 A. Morning.

12 Q. Could you tell the jury what your occupation is?

13 A. I'm a Deputy Prosecutor for the Clark County  
14 Prosecutor's Office.

15 Q. How long have you done that for?

16 A. Almost eight years.

17 Q. And what duties do you have as a Deputy Prosecutor?

18 A. They -- they've recently changed but for the past  
19 five months I was in the Docket Unit, so I presided over  
20 various court dockets.  
21

22 Q. Okay. Can you explain what types of dockets there  
23 are, generally, and what that means?

24 A. There are all sorts of dockets. Criminal cases come  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 before a court a lot of times for many different reasons,  
2 but for example, there's a -- a morning docket that's held  
3 every morning of the week and that's when a Defendant  
4 who'd just been arrested on a charge would --

5 MS. STAUFFER: Objection, Your Honor, I don't know  
6 what the relevancy of any of this is in terms of  
7 further testimony is. (Inaudible).

8 JUDGE LEWIS: I'll sustain the objection.

9 MR. FARRA: Okay.

10 JUDGE LEWIS: Allow the answer to stand as far as  
11 it went, next question?

12 MR. FARRA: Okay.

13 BY MR. FARRA: (Continued.)

14 Q. Are you familiar with no-contact orders?

15 A. Yes.

16 Q. What are no-contact orders?

17 A. Well, there are different kinds of no-contact  
18 orders, but there's a domestic violence no-contact order  
19 and that prohibits a -- a particular person from having  
20 any contact with another person.

21 Q. Okay. Thank you. When are domestic violence no-  
22 contact orders issued?

23 A. That varies, but for example, if a -- a person is  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 making first appearance in court --

2 Q. Uh-huh?

3 A. On a crime -- on a charge of domestic violence, then  
4 there would be a -- a domestic violence no-contact order  
5 issued at that first appearance.

6 Q. Who issues the orders?

7 A. The Court.

8 Q. What do those contact orders do again?

9 A. They prohibit the -- the Defendant, or the person  
10 listed in the order from having any contact with the --  
11 the protected party who's also listed in the order.

12 Q. Now, I think you mentioned a pretrial no-contact  
13 order?

14 A. There -- yes, those would be pretrial no-contact  
15 orders issued at the first appearance.

16 Q. How long do those last?

17 A. Five years.

18 Q. Can they be lifted or changed?

19 A. Only by the Court.

20 Q. Does the no-contact order make that clear that only  
21 a Court can change them?

22 A. Yes.

23 Q. Were you working on August 23<sup>rd</sup>, 2013?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes.

2 Q. As part of your -- what were you working as at that  
3 time, what were you --

4 A. I would have been in the Docket Unit then so I would  
5 have been representing the State at the criminal docket  
6 that morning.

7 Q. Now, is that when, at these first appearance  
8 dockets, is that when pretrial no-contact orders are --  
9 are typically entered?

10 A. Yes.

11 Q. And when those no-contact orders are entered does  
12 the Defendant receive a copy of the order?

13 A. Yes.

14 Q. Is the Defendant informed of what the order does --  
15 how the order restrains him?

16 A. Yes. The -- the Court goes over the -- the  
17 provisions of the order with the Defendant in court and  
18 then, like you said, the Defendant gets a copy that has  
19 all the provisions written.  
20

21 Q. Does the Defendant sign it?

22 A. Yes.

23 Q. The order? Does the judge sign the order?

24 A. Yes.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Is it clear when the order takes affect?

2 A. Yes.

3 Q. And is it clear when the order expires?

4 A. Yes.

5 Q. I'm passing you what's been admitted as Exhibit

6 Number 23. Do you recognize what that is?

7 A. I do.

8 Q. What is it?

9 A. This is a -- a pretrial domestic violence no-contact  
10 order.

11 Q. And in what case was that issued?

12 A. This was the case of Shawn Eric Christopher, and do  
13 you want me to give you the cause number?

14 Q. Please?

15 A. 13-1-01577-3.

16 Q. Were you present when that no-contact order was  
17 issued?

18 A. Yes.

19 Q. Was the order signed by a judge?

20 A. Yes.

21 Q. Was it signed by the Defendant?

22 A. Yes.

23 Q. When was it issued?

24

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 A. It was issued August 23<sup>rd</sup>, 2013.

2 Q. Okay. When did it expire?

3 A. It had an expiration date listed of August 23<sup>rd</sup>,  
4 2018.

5 Q. Does the order include what the Defendant cannot do?

6 A. Yes.

7 Q. What are the restraint terms in that?

8 A. It says the -- it lists the -- the person with whom  
9 the Defendant cannot have contact and then it says, "The  
10 Defendant is restrained from causing or attempting to  
11 cause physical harm, bodily injury, assault including  
12 sexual assault and from molesting, harassing, threatening  
13 or stalking the protected person, coming near and from  
14 having any contact whatsoever, in person or through  
15 others, by phone, mail or any means directly or indirectly  
16 except for mailing or service of process of court  
17 documents by a third party, or contact by a Defendant's  
18 lawyers with the protected person."  
19

20 Q. Who is the protected person?

21 A. Protected person is a Christina A. Gutierrez, and  
22 then it gives her date of birth.

23 Q. Does the no-contact order indicate what the  
24 consequences are if it's violated?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. It does.

2 Q. Okay. And what does it say are the consequences?

3 A. It says there's a --

4 MS. STAUFFER: I'm going to be objecting, I -- I  
5 don't know at this point --

6 JUDGE LEWIS: Sustained.

7 BY MR. FARRA: (Continued.)

8 Q. When these orders are issued, does the judge who  
9 issues them typically give -- tell the Defendant what the  
10 restraint provisions are?

11 MS. STAUFFER: Your Honor, I'd be objecting, this  
12 is cumulative, it's --

13 JUDGE LEWIS: Ov -- sustain the objection as to  
14 what's typical. Your next question?

15 BY MR. FARRA: (Continued.)

16 Q. In this par -- did you handle -- were you present  
17 for the entry of this order?

18 A. Yes.

19 Q. Did the judge, when this order was enter -- entered,  
20 tell the Defendant what the restraint provisions were?

21 A. I believe so.

22 MR. FARRA: No further questions, thank you.

23 JUDGE LEWIS: Cross examination?  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 MS. STAUFFER: I have no questions, Your Honor.

2 JUDGE LEWIS: Can the witness be excused?

3 MR. FARRA: Okay.

4 WITNESS: Thank you.

5 JUDGE LEWIS: All right. Don't discuss your  
6 testimony with other potential witnesses. You're  
7 free to go.

8 WITNESS: Okay. Thank you, Your Honor.

9 JUDGE LEWIS: And ladies and gentlemen, we've  
10 reached the noon hour, we're going to release you for  
11 lunch in a couple minutes the judicial assistant will  
12 go over anything she needs to go over with you and  
13 then you'll be released to leave this floor as  
14 quickly as possible and not come back up here until  
15 1:15 PM at the earliest. So between now and 1:15 PM  
16 you're to be off this floor. And the earliest you  
17 can come back is 1:15, the latest is 1:30, and we'll  
18 try to get started as close as we can to 1:30. In  
19 the meantime, don't discuss the case among yourselves  
20 or with anyone else. Don't go to any scene that was  
21 described and don't seek out information, factual or  
22 legal, from any other source. And be sure to leave  
23 your notepads closed there on your chairs as you go.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Have a good lunch.

2 (Jury is escorted out of the courtroom.)

3 JUDGE LEWIS: All right. Counsel, we'll resume  
4 again at 1:30.

5 MR. FARRA: Thank you.

6 MS. STAUFFER: Thank you, Your Honor.

7 (Court recesses on this matter at 11:57:41 PM.)

8 (Court reconvenes on this matter at 1:37:35 PM.)

9 (Mr. Farra and Clerk confer.)

10 CLERK: All rise please. Court is again in  
11 session.

12 JUDGE LEWIS: Thank you. Please be seated.

13 Before we begin I have here a stipulation, it says:  
14 "Shawn Eric Christopher had knowledge on August 23,  
15 2013, the Clark County Superior Court issued a valid  
16 no-contact order pursuant to Chapter 10.99 RCW, in  
17 Cause Number 13-1-01577-3. Shawn Eric Christopher  
18 knew of the no-contact orders contents, including the  
19 protected party, the restraint provisions and the  
20 expiration date. The no-contact order is Exhibit  
21 23." And I see Mr. Christopher and his attorney  
22 signed it. Mr. Farra, did you wish to sign it?

23 MR. FARRA: I do. (Mr. Farra signs stipulation.)  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: Now, Mr. Christopher, did -- first  
2 of all, could you state your name for the record?

3 DEFENDANT: Shawn Christopher.

4 JUDGE LEWIS: Right. You're the Defendant here  
5 and you've had an opportunity to go over this  
6 stipulation with your attorney?

7 DEFENDANT: Yes, I have.

8 JUDGE LEWIS: You understand that normally you  
9 have certain constitutional rights? You have the  
10 right to have the State prove facts beyond a  
11 reasonable doubt by evidence and you have a right if  
12 they present witnesses to have those witnesses  
13 present here in court to have them sworn under oath  
14 to testify and to have your attorney have the  
15 opportunity to ask them questions. Do you understand  
16 all that?

17 DEFENDANT: Yes, I do.

18 JUDGE LEWIS: I'm being told that by this  
19 stipulation you wish to agree that certain of these  
20 facts exist and that you're giving up the right to  
21 make the State prove these particular facts. And  
22 giving up the right to hear any witnesses that they  
23 might call that relates to this stipulation is that  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 correct?

2 DEFENDANT: Yes.

3 JUDGE LEWIS: You've had the opportunity to talk  
4 to your attorney about that?

5 DEFENDANT: Yes.

6 JUDGE LEWIS: And you're doing this voluntarily?  
7 No -- nobody threatened you or promised you anything  
8 in order to get you to do it?

9 DEFENDANT: Voluntarily.

10 JUDGE LEWIS: All right. Okay. Well, what will  
11 happen then is I -- when the jury comes in I will  
12 read them the stipulation, indicate they can consider  
13 it just like they can any other evidence. And then  
14 are you ready with your next witness?

15 MR. FARRA: Your Honor, I don't anticipate calling  
16 any more witnesses.

17 JUDGE LEWIS: Oh, you don't?

18 MR. FARRA: I don't.

19 JUDGE LEWIS: All right. Do you have your  
20 witnesses ready?

21 MS. STAUFFER: Pardon me, Your Honor? Do I have  
22 any -- State's resting? Is that --  
23

24 JUDGE LEWIS: Well, it's my understanding after I  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 read the stipulation they intend to rest.

2 MS. STAUFFER: Okay. Then I'll have motions, Your  
3 Honor.

4 JUDGE LEWIS: Okay. All right. Bring in the jury  
5 so I can read the stipulation to them and then we'll  
6 have them go back out.

7 (Jury is escorted into the courtroom.)

8 JUDGE LEWIS: All right. Welcome back, ladies and  
9 gentlemen, I hope you had a good lunch. I'm now  
10 going to read to you a stipulation. As I mentioned  
11 in previous instructions, the evidence that you're to  
12 consider consists of the testimony of witnesses and  
13 any exhibits which are offered and admitted.

14 However, the parties can also, in lieu of presenting  
15 testimony or exhibits, agree to stipulations and have  
16 me read those into the record and you would consider  
17 them as evidence along with the other information  
18 that you've heard. And that's happening in this case  
19 so I'm now going to read to you a stipulation.

20 "Shawn Eric Christopher had knowledge on August 23,  
21 2013 that Clark County Superior Court issued a valid  
22 no-contact order pursuant to Chapter 10.99 RCW in  
23 Cause Number 13-1-01577-3. Shawn Eric Christopher  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 knew of the no-contact order's terms, including the  
2 protected party, the restraint provisions and the  
3 expiration date. The no-contact order is Exhibit 23.  
4 This is stipulated to by," and it's signed by Shawn  
5 Eric Christopher, Susan Stauffer his attorney and by  
6 Mr. Farra, the Deputy Prosecuting attorney. All  
7 right. And did you have additional witnesses you  
8 wish to present?

9 MR. FARRA: I do not, Your Honor, the State rests.

10 JUDGE LEWIS: All right. State's rested and  
11 although you'd just come back in its customary that I  
12 deal with housekeeping matters after the State has  
13 formally rested and I need to do that outside your  
14 presence. So, keep your notepads closed there and  
15 step back out to the jury room. Don't discuss the  
16 case, you haven't heard it all and I'll have you back  
17 when we're ready for the next phase of the case.  
18

19 (Jury is escorted out of the courtroom.)

20 JUDGE LEWIS: All right. Counsel, your motions?

21 MS. STAUFFER: Your Honor, at this time the State  
22 has rested, I'd like to procedurally go forward with  
23 the motions to dismiss the State's accounts based on  
24 the lack of suf -- the sufficiency of the evidence  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 issues. And briefly, in reference to the assault in  
2 the second degree, it would be my contention that the  
3 evidence here has not been sufficient to go to the  
4 jury. I don't believe that there has been sufficient  
5 establishment of the strangulation or suffocation  
6 pros -- prong of the requirement for Assault - second  
7 degree. It has to include assault but that has to be  
8 by strangulation, which is obstructing a person's  
9 blood flow or ability to breathe. And I think it's  
10 been pretty clear from the testimony that the 911  
11 tapes in particular, that she indicated she could  
12 breathe, according to her rendition of events. And  
13 that she was speaking, it sounds like softly and  
14 pretty normally and calmly at the time of the  
15 officers arrival which, according to her version of  
16 events, was shortly after the alleged incident of  
17 this allegation of the Assault - second degree  
18 occurred. So, from our standpoint, we did not  
19 believe that the elements of the charge rise to the  
20 degree necessary to go forward with that charge, to  
21 take it to the jury. So we're asking that the Court  
22 make that finding of -- and dismiss that charge.  
23

24 In reference to Count 2, I would indicate that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 there is no evidence indicating that Mr. Christopher  
2 had any involvement in whatever Mr. Hausinger's  
3 actions were. Mr. Hausinger's testimony is extremely  
4 conflicted and basically, there's nothing to link my  
5 client to this -- his actions other than him being  
6 his cellmate and basically, feeling sorry for my  
7 client, and -- and taking this on his own as he  
8 basically stated to the Officer Skeeter, when he was  
9 first contacted about this and confronted with it,  
10 and then subsequently changes his story. So the  
11 credibility of that person's extremely questionable  
12 and there's really no link. There is no letter,  
13 there is nothing other than this individual's claim.  
14 So again, I don't believe the evidence is sufficient  
15 to take that charge, that count, to the jury. And  
16 that -- and then coincides with the tampering of the  
17 witness charge because, basically, that's the same  
18 issue and in essence, my argument that I just made  
19 for Count 2 also applies to Count 3, Your Honor.  
20

21 So that we feel that there is no sufficiency of  
22 the evidence to take this further and to allow that  
23 charge, or that count to go to the jury.

24 So we'd ask, Your Honor, at this point for  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 dismissal of all three counts of the information,  
2 dismissal of the case. Thank you.

3 JUDGE LEWIS: Your response?

4 MR. FARRA: My response, Your Honor, is that there  
5 is sufficient evidence to proceed forward on all  
6 three counts. A reasonable juror could find in Count  
7 1 that Christina Gutierrez -- that the Defendant  
8 assaulted Christina Gutierrez, excuse me, in the  
9 second degree by strangulation. Ms. Gutierrez  
10 testified that he put both hands around her neck,  
11 that he squeezed. That it cut off her ability to  
12 yell; made it difficult for her to breathe at various  
13 points. That, in itself, is sufficient for a  
14 reasonable juror to find that there was an assault in  
15 the second degree.

16  
17 In terms of the domestic violence court order  
18 violation, the issues raised by Defense regarding Mr.  
19 Hausinger is basically a credibility argument and  
20 that's for the jury to decide. We've seen evidence  
21 that a no-contact order was entered and stipulated to  
22 the fact that he knew of that and Mr. Hausinger came  
23 in and -- and testified that the Defendant directed  
24 him to contact Christina Gutierrez, who is the  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 protected party in the contact order.

2 And then finally in terms of witness tampering,  
3 similar issues with the credibility. That is a -- a  
4 -- credibility arguments are for the jury. Ms.  
5 Gutierrez testified that she received a phone call  
6 from a particular number that I can't remember right  
7 now, but the caller told her to go change her story.  
8 To go to police, to go recant. That she needed to  
9 help the Defendant. Mr. Hausinger testified today  
10 that that same number was his number and that he was  
11 the one that called her and told her to do these  
12 things. He testified that he was reading a letter,  
13 that he was directed to read that letter from -- from  
14 the Defendant. So, we've got the link from the  
15 Defendant to Hausinger to the victim. We've got the  
16 content of those communications. Certainly a jury, a  
17 reasonable juror, could decide that the Defendant  
18 knew what he was doing, that he was trying to induce  
19 her to testify falsely today. She testified to that  
20 as a matter of fact. She said that she felt the  
21 Defendant didn't want her to testify to what she said  
22 today because of the phone calls and text messages  
23 that she received.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           So, on that basis, Your Honor, I think there's  
2 sufficient evidence on all three counts to go to the  
3 jury.

4           JUDGE LEWIS: Yes, I deny the motion to dismiss  
5 any of the counts. It appears to me that there's  
6 evidence for which a jury could find, and that  
7 they're not necessary that they're required to find  
8 but that they could find that Mr. Christopher  
9 compressed Ms. Gutierrez's neck either obstructing  
10 her blood flow or ability to breathe or did that with  
11 the intent to obstruct her blood flow or ability to  
12 breathe. It's true that there may be evidence to  
13 indicate to the contrary but that's for the jury to  
14 decide.

15           Similarly with regarding to Mr. Hausinger, while  
16 there's certainly evidence from which a jury could  
17 find he acted alone, there's also evidence from which  
18 a jury, if they believe it, could find that he acted  
19 at Mr. Christopher's behest. And that he was  
20 attempting to influence the witness's testimony. So,  
21 I deny the request for dismissal at this stage. Do  
22 you have witnesses available?  
23

24           MS. STAUFFER: Yes, Your Honor, I will have Mr.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Shawn Christopher as a Defense witness.

2 JUDGE LEWIS: All right. Are you ready to proceed  
3 then?

4 MS. STAUFFER: We are ready to proceed.

5 JUDGE LEWIS: Bring in the jury. Do you wish to  
6 make opening or are you going to just go straight --

7 MS. STAUFFER: I'm going to do a very brief  
8 opening.

9 JUDGE LEWIS: All right.

10 (Jury is escorted into the courtroom.)

11 JUDGE LEWIS: All right. Welcome back. We'll now  
12 begin with the next phase of the case. First, as you  
13 may recall, the Defense reserved opening until the  
14 beginning of their case and I understand you wish to  
15 make opening at this time. So, give your attention to  
16 Ms. Stauffer, she'll make opening statements at --

17 MS. STAUFFER: Thank you, Your Honor.

18 (Opening statement presented by Defense.)

19 JUDGE LEWIS: Okay.

20 MS. STAUFFER: So, I would like to call Shawn  
21 Christopher to the stand, Your Honor.

22 JUDGE LEWIS: Come forward. And stop and raise  
23  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 your right hand.

2 SHAWN ERIC CHRISTOPHER

3 was thereupon called as a witness and, having been  
4 duly sworn on oath, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 JUDGE LEWIS: Please be seated then. Now that  
8 you're seated please state your name in full then  
9 spell your last name for the court's record.

10 DEFENDANT: Shawn Christopher. C-H-R-I-S-T-O-P-H-  
11 E-R.

12 JUDGE LEWIS: Go ahead.

13 MS. STAUFFER: Thank you, Your Honor.

14 BY MS. STAUFFER:

15 Q. Shawn how old are you?

16 A. Thirty-four.

17 Q. And it's indicated you have been employed over this  
18 past year?

19 A. Yes.

20 Q. And where was that at?

21 A. (Inaudible) Nutritional.

22 Q. Okay. And what was your job title or your  
23 responsibilities in August of this year?  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. I was a line lead.

2 Q. And what does that entail?

3 A. I -- kind of like above -- for my line I was above  
4 like four other people, and then, like whenever we had to  
5 get product out it was my job to make sure everything goes  
6 smoothly on the line.

7 Q. Okay. Do you also -- are you also involved in some  
8 training of new temporary hires?

9 A. Yes, I have to train people all the time. We get  
10 new temps coming in all the time and I got to train them.

11 Q. Okay. And, it's been indicated that apparently you  
12 and Christina met somewhere, looks like March --  
13 February/March of this year, is that about the right time  
14 framework?

15 A. Yeah.

16 Q. Okay. And then subsequently moved in together in an  
17 apartment that was shared?

18 A. Yes.

19 Q. Okay. Who was sharing that apartment?

20 A. Me, Amos -- when we first moved in it was me, Amos,  
21 Christina and Amber. We all paid rent, we all split it in  
22 half.  
23

24 Q. So, Am -- Amos had his own girlfriend there for a  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 while?

2 A. Yes, he did.

3 Q. Okay. And then in August 22<sup>nd</sup>/23<sup>rd</sup>, the -- Amber,  
4 did she still live there?

5 A. No, she did not live there anymore.

6 Q. Okay. And Amos still lived there?

7 A. Yes.

8 Q. Okay. Okay. And you and Christina shared a room, a  
9 bedroom?

10 A. Yes, we did.

11 Q. Okay. And at that time what was the shifts? Does  
12 this company have different shifts for workers?

13 A. Yeah, it has day shift, swing shift and night shift.  
14 The day shift starts 6:00 to 2:30. Swing, 2:00 to 10:30  
15 and graveyard from 10:00 to 6:30.

16 Q. Okay. And did you just recently switch to that  
17 shift or --

18 A. I had been -- we had been on graveyard for a while  
19 and we just switched to swing shift about a week before.

20 Q. Okay. And was Christina in the sham -- same -- the  
21 -- was Christina in the same type of shifts with you or  
22 did that vary?  
23

24 A. She was on -- she was on -- she started off on day  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 shift then she moved to graveyard with me and then she was  
2 having problems with the lead there so we both moved to  
3 swing shift.

4 Q. So she was working pretty much the same type of  
5 shifts you were for what? A -- how long of a period of  
6 time?

7 A. Yeah. For a while she was working -- we were  
8 working the same shift. I think since March, I'm not  
9 sure, might have been a little before that.

10 Q. Okay. And in your place of employment would the two  
11 of you see each other, would you be in different buildings  
12 or how does that work?

13 A. Yeah, she worked kind of not where -- not exactly  
14 where I work at but when she was done with whatever she  
15 had to do then she would come over and help on my line or  
16 she'd help whatever line needed help.

17 Q. Okay.

18 A. So, we -- we would -- we would work together  
19 throughout the day.

20 Q. And, did she do lifting like she indicated of the  
21 pallets?  
22

23 A. Yeah. All the time.

24 Q. And she indicated those were like 45 pounds?  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 A. Yeah, some -- well when they're wet they're -- they  
2 weigh a lot more actually.

3 Q. Okay. And, would you consider her fairly strong?

4 A. Yeah, for her size, yes. She carries them around  
5 from -- from line to line, the pallets and stuff. She's  
6 pretty strong.

7 Q. And how tall are you?

8 A. Five-seven.

9 Q. How much do you weigh?

10 A. About 150.

11 Q. Okay. Now, going back to August 22<sup>nd</sup>, I believe  
12 into the morning hours of August 23, do you recall coming  
13 home from work that night, I guess, do you recall that?

14 A. Yeah. Yeah.

15 Q. And do you recall what time approximately you got  
16 home?

17 A. About 10:40, we only live a couple minutes away from  
18 -- from our work.

19 Q. Okay. So do you walk home from work or do you take  
20 the bus, or --

21 A. No, we get -- we get a ride. We -- we are -- we all  
22 carpool.

23 Q. Okay. Do you have your own car?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. No.

2 Q. Okay. Did you have access to a car after you got  
3 home that night?

4 A. No.

5 Q. Okay. And then -- so tell me what -- what did you  
6 do when you got home?

7 A. Well, the first thing I got home and we had stopped  
8 to grab a couple beers before.

9 Q. But by "we", who are we talking about?

10 A. Me -- oh, me and Amos. We had stopped to get a  
11 couple beers before we left, or before we got home and  
12 then we got home and put the beer in the fridge. And then  
13 I went and took a shower and got out and Christina was  
14 telling me that she was hungry so I made her dinner. And  
15 then after that I was drinking it -- I was drinking while  
16 I was cooking for her and then she ate and we were just  
17 hanging out outside for a while. What -- what all do you  
18 want me to talk about?

19 Q. And could you tell whether she had straightened up  
20 the house or did some housecleaning?

21 A. Oh, yeah, she -- she cleaned, she had straightened  
22 it all up.

23 Q. How do you know?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Because it was dirty before I went to work and it  
2 was clean when I got home.

3 Q. Okay. She's indicating she went home that day  
4 because she didn't feel good, apparently had some stomach  
5 problems, were you aware of that?

6 A. Yeah, she was saying her stomach didn't feel good.  
7 Yeah, I was.

8 Q. Okay.

9 A. But she looked fine when I got home.

10 Q. Okay. So, when you got home then was she sleeping  
11 or was she awake?

12 A. She was awake.

13 Q. Okay. There's apparently a series of events that  
14 transpire and can you kind of start with one at a time in  
15 chronological order and I'll try to make sure I kind of  
16 have the right order. But if I don't let me know. So,  
17 was the first event that happened that night a cigarette?  
18

19 A. Yeah, she had accidentally knocked a cigarette down  
20 through the -- through the cracks in the vent, or like the  
21 bottom, so it went to the neighbors'.

22 Q. Okay. And -- and that's from you guys sitting on  
23 the balcony or what?

24 A. Yeah. It was just like an accident, it just dropped  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 down there.

2 Q. Okay. And did that happen early on or was that  
3 later or do you recall?

4 A. I don't remember what time it was. I mean, we had -  
5 - we had been there for a while already. So, I mean, it  
6 wasn't like -- it wasn't like right away, she had already  
7 ate, we were already hanging out outside. Me and Amos and  
8 her and Bobby.

9 Q. Okay. And when you and she were together that night  
10 were you also hanging out with Amos and his friend?

11 A. Yes.

12 Q. Okay. Did that continue all night long and into the  
13 next day, or --

14 A. Yes.

15 Q. I mean the next morning hours or what?

16 A. Well, til -- until around 3:00, yes.

17 Q. Okay. So everybody was kind of in and out, or --

18 A. Yeah. Well, yeah, we're a sliding glass door, we're  
19 on a balcony, we're in and out. The, you know --

20 Q. Okay.

21 A. Go the bathroom, whatever.

22 Q. So -- so first of all, there's a cigarette and then  
23 what -- what happens there in terms of her movements and  
24

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 her ability to --

2 A. Well, her cigarette -- we -- she had dropped it  
3 down, we just went down there, I picked her up and I had  
4 to give her a boost with my hands so she got over and then  
5 she just jumped back over. She seemed fine to me, so,  
6 like her saying that her stomach still hurt, I don't know  
7 where that comes from.

8 Q. So then at some point there was the incident where  
9 you were going to go sit on her lap, right? Was that the  
10 next thing had happened?

11 A. Yeah. Well, yeah, it was a little while later  
12 though. And then, I would sit -- I wanted to go sit by  
13 her and then she kicked me. And then so after she kicked  
14 me I was going to leave, you know, go take a walk because  
15 it kind of upset me, you know, she -- she kicked me pretty  
16 hard.

17 Q. Okay.

18 A. And she wasn't -- wasn't trying to stop me like she  
19 was saying she was.

20 Q. So -- okay. So let's back up. Okay, so -- so what  
21 -- where was she located and where was she sitting?

22 A. We were on the balcony and she was sitting on -- we  
23 had like a lawn chair sitting out there.  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay. And then you were just going to go sit on  
2 her, like, I guess that's something you guys normally do?

3 A. Yeah, we -- yeah, we do. She would sit on my lap or  
4 I sit on her lap, we're fairly close to the same size, I  
5 mean, I weigh more than her, I'm a little bigger but, I  
6 mean, it's not like I'm -- you know. (Gestures with hands  
7 spread wide.)

8 Q. Okay. So at that time were you guys arguing?

9 A. No, we weren't -- well, we argued after she -- she  
10 kicked me and I tried to leave. And then she'd stop me,  
11 she wouldn't let me go out the door so I came back in. I  
12 came back to the balcony and then I pretended like I was  
13 going to go to the bathroom, went to the bathroom then I  
14 walked out and that's when she chased after me down the  
15 stairs.

16 Q. Okay. So, when -- by you trying to leave what was  
17 your intent?  
18

19 A. I was just going to go for a walk because she upset  
20 me when she kicked me.

21 Q. Okay. Okay. So, were you wanting to have things  
22 calm down or --

23 A. Yeah, that's, I mean that's what you're supposed to  
24 do, right?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay. Was she pretty upset?  
2 A. No, she -- she wasn't really upset, she's -- I don't  
3 know if -- she chased after me and she tried -- and then  
4 she grabbed the beer, she's like grabbing my hands.  
5 First, she grabbed my shirt to try to stop me from leaving  
6 when I was already outside. And she's grabbing my arms,  
7 then she grabs the beer and we're struggling over the beer  
8 for a little bit and I just let it go and it kind of  
9 spills all over the place. And then after that she --  
10 she's like -- she's threatened to kick me, so, she went to  
11 kick me and I -- I blocked her kick and then she was in a  
12 position like she was -- we play rough a lot of times, we  
13 -- that's -- we wrestle and we -- and we kick each other,  
14 I let her kick me all the time in my thigh, but, this was  
15 just a reflex when second kicked me I -- I just blocked it  
16 with my leg. It's -- it's a natural defense.  
17 Q. Okay.  
18 A. And then --  
19 Q. So this is the whole beer can thing, right?  
20 A. Yes. That's after she took the beer can out --  
21 Q. Okay.  
22 A. -- away from me.  
23 Q. Okay.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. And then she was asking me if I -- if I wanted to be  
2 kicked or something to that effect and then she -- she got  
3 in position so she kicked me and I blocked it and then I  
4 was looking at her, she looked like she was fine, like she  
5 was playing around. So then I kicked her back in her  
6 thigh, I thought we were playing and then she looked like  
7 she was hurt so she went upstairs and I immediately went  
8 after her and I was apologizing, I felt --

9 Q. Okay. So then where did you guys end up at, like  
10 what -- do you remember, I mean what -- what time we are  
11 at at this point in the evening?

12 A. I don't know what time it was.

13 Q. Okay. Do you know what area of your apartment you  
14 were in after the beer can incident and kicking? Are you  
15 -- do you know where you are?  
16

17 A. We went to the bedroom.

18 Q. That was your bedroom and her bedroom?

19 A. Yes.

20 Q. Okay. And then what -- who went in there first?

21 A. Um, she did and I followed her in.

22 Q. Okay. And then what happened?

23 A. And I was apologizing to her for that and then we  
24 got through that part. I wasn't trying to hurt her. We  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 were playing, or I thought we were playing anyways.

2 Q. Okay.

3 A. And then she left -- we were -- no before that we  
4 were arguing about cigarettes because she wanted a cig --  
5 me to get cigarettes and she wanted me to stop spending  
6 money on beer. So that was around like 2:00 because I was  
7 going to go back to the store for cigarettes for her but I  
8 couldn't get any more beer because the -- it was already  
9 past 2:00 so I didn't want to go to the store, we were  
10 arguing about that. She's getting mad that I was drinking  
11 and I -- I wouldn't get cigarettes. And then she left the  
12 room. Then she came back and -- (Voice cracks.) I was  
13 wiping off the mirror. She'd written starve on there  
14 before. (Defendant crying.)

15 Q. Would you like to take a break?

16 A. Yeah, hold on just a second.

17 MS. STAUFFER: Does he have Kleenex over there or  
18 --

19 JUDGE LEWIS: There's some right there by him.

20 (Defendant takes Kleenex and wipes his eyes.)

21 DEFENDANT: I was wiping off starve and she runs  
22 in and she pushed me very hard and I grabbed her so I  
23 don't fall and she's looking at me really mean and  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 she's yelling, I'm trying to tell her to calm down.  
2 We could take a timeout. She's yelling and she won't  
3 listen to me. Sometimes she has problems hearing,  
4 it's some -- I don't know what it's called, she has  
5 something. And so I just go lay on the bed and put  
6 my hands be -- (Gestures putting hands behind his  
7 head.) -- on my ears. (Defendant crying.) And she  
8 comes over and she grabs me and I get up and I push  
9 her away from me and she's like, "That's it, you're  
10 done for," and she's going to call the cops. And  
11 she's threatened cops to me before and it's not that  
12 big of a deal because you -- it's always her hitting  
13 me.

14 MR. FARRA: Objection, Your Honor.

15 JUDGE LEWIS: Sustained, doesn't appear to be  
16 responsive. Next question then.

17 MS. STAUFFER: Okay.

18 MR. FARRA: Move -- move -- move to strike as  
19 well.  
20

21 BY MS. STAUFFER: (Continued.)

22 Q. Hey -- Shawn, just --

23 JUDGE LEWIS: You should disregard the last non-  
24 responsive comment.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 BY MS. STAUFFER: (Continued.)

2 Q. So -- so she told you that she was going to call the  
3 cops, right?

4 A. Yes.

5 Q. Okay. The other incident had nothing to do with any  
6 assault, right?

7 A. What was that?

8 Q. The other time she called had nothing to do with any  
9 assaults, right?

10 A. No.

11 Q. Okay. But she had called before? And so, what did  
12 she --

13 A. She said, I --

14 Q. What did she -- okay, so what did you do this night  
15 then? Just stick to this night?

16 A. After she -- after she said she was going to call  
17 the cops, she left the room and I started putting my shoes  
18 on and getting ready and Amos came in and said she's  
19 really calling them. So I was looking for my sweatshirt,  
20 I couldn't find my sweatshirt. Amos found it for me, put  
21 it on and I left.

22 Q. Okay. Now, she's testified that you were real  
23 jealous of her all night long and that -- that she's, I  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 guess, never jealous? Is that --

2 A. I did -- I did say -- I asked --

3 JUDGE LEWIS: You need to wait for a question and  
4 then answer the question.

5 DEFENDANT: Sorry.

6 BY MS. STAUFFER: (Continued.)

7 Q. So, can you explain what the situation is on either,  
8 or both of you, as far as jealousy issues goes?

9 A. After she kicked me and we were downstairs she was  
10 asking -- because I was mad about her kicking me and I --  
11 I told her that she was showing off and she thought that I  
12 was getting jealous about that but I was not, I was just  
13 asking why she was showing off in front of my friends?  
14 Kicking me like that? And then she's like why are you  
15 getting jealous? And I -- I told her I wasn't getting  
16 jealous. That happened before we went upstairs.

17 Q. Okay. Has she been jealous of you?

18 A. Yes.

19 Q. Okay. And is it -- in what way, what kinds of  
20 things has she done?  
21

22 A. When we're working and I try to train somebody, if  
23 it's a girl she don't -- she don't even let me talk to  
24 them or smile at them. She gets really mad.  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 Q. Okay. And has she done things with your Facebook?

2 A. Yeah. She was -- she's erased girls off there and  
3 got my phone and changed phone numbers so I will not -- if  
4 I try to text them or get a hold of them the number is no  
5 longer the same.

6 Q. Now she's -- indicates she has some problems with  
7 her memory. Was -- are you aware of anything like that?

8 A. Yes, I am.

9 Q. What's -- what's -- types of issues does she seem to  
10 have?

11 MR. FARRA: Objection, Your Honor, in -- in terms  
12 of our pretrial.

13 JUDGE LEWIS: Sustained.

14 BY MS. STAUFFER: (Continued.)

15 Q. So she had problems with her memory during your  
16 relationship?

17 A. Yes.

18 Q. Now, you lived together then for several months, is  
19 that right?

20 A. Yes.

21 Q. Okay. And when the -- when she called 911, what --  
22 why do you think she did that?

23 A. I don't know she --  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: Objection, speculation, Your Honor.

2 JUDGE LEWIS: Sustained.

3 BY MS. STAUFFER: (Continued.)

4 Q. Let me ask you, she's indicating that you were on  
5 the bed, correct?

6 A. I was on the bed.

7 Q. That's her testimony. And out of the clear blue you  
8 jumped up and supposedly tried to choke her? Okay? Did  
9 you do that?

10 A. No.

11 Q. Did you put your hands around her neck that day or  
12 night?

13 A. I pushed her away from me.

14 Q. Okay.

15 A. But she -- she grabbed -- she was grabbing me to get  
16 me off the bed and I got up and I -- she grabbed me like  
17 this. (Demonstrates grabbing his shirt.) I put my hands  
18 this way and pushed her back. (Demonstrates pushing with  
19 hands away from his body.)  
20

21 Q. Okay. So at any point during the events of the time  
22 period of August 22<sup>nd</sup> and 23<sup>rd</sup> of 2013, did you ever put  
23 your hands around her throat and squeeze?

24 A. No.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Now, she also testified that while you were  
2 allegedly trying to choke her she doesn't do anything, her  
3 hands are on her side, does that make any sense to you?

4 MR. FARRA: Objection, Your Honor, opinion.

5 JUDGE LEWIS: Sustained. Disregard the last  
6 answer and question.

7 BY MS. STAUFFER: (Continued.)

8 Q. Okay. So anyway, that's her testimony, right? Is -  
9 -

10 MR. FARRA: Your Honor, I just object to the line  
11 of questioning about what her testimony is and --

12 JUDGE LEWIS: I'll sustain.

13 BY MS. STAUFFER: (Continued.)

14 Q. Apparently, given the events that she's agreed with  
15 of the pushing, kicking, shoving that night, she's capable  
16 of pushing and shoving?  
17

18 A. Yeah. She --

19 Q. That -- is that correct?

20 A. She -- she was the aggressor the whole night. I  
21 tried to -- I did everything right. (Defendant crying.)  
22 I walked away, I apologized, I tried to stop it. I did  
23 everything right.

24 JUDGE LEWIS: Okay, you've answered the question,  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 now do you have additional questions?

2 BY MS. STAUFFER: (Continued.)

3 Q. Okay. She's indicating that she was extremely upset

4 --

5 MR. FARRA: Objection, Your Honor, again to the --

6 JUDGE LEWIS: I'll need to hear what the question  
7 is, don't answer the question until I've an  
8 opportunity to hear the complete question. Go ahead.

9 BY MS. STAUFFER: (Continued.)

10 Q. She testified that she was ex -- upset because you  
11 were trying to, she thought, erase that mirror wall stuff,  
12 right?

13 A. Yes.

14 Q. Okay. And then, that's when she's claiming this  
15 event occurs that you suddenly tried to choke her?

16 A. She pushed me before that.

17 Q. Is that correct? Right. But you didn't choke her?

18 A. No.

19 Q. Okay. But, is that kind of what kind of got her  
20 pretty mad?

21 A. Yeah, she was really mad at -- but I wasn't erasing  
22 the picture, I was erasing starve, which she'd written  
23 before because we didn't have food the week before. That  
24

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 much and she had written up there and she's always --  
2 never mind.

3 Q. Okay. So could that be one of the motivations for  
4 why she called 911?

5 A. I don't know why she called them, maybe she was mad.  
6 I don't know.

7 Q. Now, did you have a debit card?

8 A. Yes.

9 Q. Did you have a wallet?

10 A. Yes.

11 Q. And on August 23<sup>rd</sup>, where was your debit card?

12 A. It was in the drawer next to the mirror. In my  
13 wallet.

14 Q. And where was your wallet?

15 A. In the -- in the mirror -- next to the mirror  
16 there's a -- there's a sink and there's a drawer right  
17 there and my wallet and my ID and everything was in it.

18 Q. Okay. And did you have money in your wallet?

19 A. No, I had money in the -- my black box that was in  
20 the closet that she was in front of.

21 Q. Okay.

22 A. And when she was telling me to leave I --

23 Q. Okay. So she testified somehow that the money that  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 was saved in a black box was her money and then -- or she  
2 had already used it up? Is that true?

3 A. No, it was not hers, I --

4 MR. FARRA: Objection --

5 JUDGE LEWIS: Sir, first of all you need to wait  
6 until the question's complete before you begin to  
7 answer. <sup>I did</sup> Second, do you have a question of this  
8 witness as to what they know, not to comment on the  
9 testimony of others?

10 BY MS. STAUFFER: (Continued.)

11 Q. She's -- so what was in the black box on August  
12 23<sup>rd</sup>?

13 A. It's full of my -- I have like baseball cards and  
14 old pictures from when I was young. And I had money in  
15 there.

16 Q. How much money did you have in there?

17 A. Eighty dollars.

18 Q. Okay.

19 A. It was for fines.

20 Q. And was your debit card used after August 23<sup>rd</sup>?

21 A. Yeah, my sister had got a transaction and found out  
22 that it had been used after I -- I was already -- after  
23 the date. After August 20 -- was it 23<sup>rd</sup>? Yeah.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 Q. We also have the -- Mr. Hausinger has testified. Is  
2 it correct that you were in a -- same location as him?

3 A. Yes.

4 Q. Okay. And did the two of you talk about every --  
5 things about your lives?

6 A. We talked about -- talked about everything, like  
7 what we were in there for, what we've done before. Things  
8 like that.

9 Q. Okay. Then, did you indi -- did you give him a  
10 letter to take to contact Christina with?

11 A. No.

12 Q. Did you tell him to contact her in any way to change  
13 her story?

14 A. No, I didn't.

15 Q. Okay. You did tell him your version of events  
16 there, correct?

17 A. Yes, I did. Told him everything that happened.

18 Q. Okay.

19 A. And I showed him the letter that she wrote me.

20 MS. STAUFFER: Okay. I have no further questions,  
21 Your Honor.

22 JUDGE LEWIS: Cross examination?

23 MR. FARRA: Thank you, Your Honor.  
24  
25

CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. FARRA:

Q. Mr. Christopher, you -- you played rough with  
Christina a lot?

A. Yes, we do. We -- we wrestle and we play.

Q. And your testimony is that on the night of the 21<sup>st</sup>  
into the morning of the 22<sup>nd</sup> that you -- you played rough -  
- rough with her again, is that correct?

A. Yes, she kicked me and then, I kicked her back.

Q. Okay. Okay. And so, when you did kick her back, to  
you that was just playing, correct?

A. Yes.

Q. She didn't seem to take it that way, though, is that  
correct?

A. I thought she was because she kicked me first and  
then she got into a stance.

Q. And when you were talking about her kicking you  
first, you're -- you're speaking to the incident on the  
balcony --

A. No.

Q. Where you tried to sit down on her?

A. No, but downstairs after she took my beer away and  
then she -- she's threatening to kick me.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Q. Okay.

2 A. Then she got in a stance and then she kicked me and  
3 I checked it.

4 Q. Oh, I see, you blocked it, okay. And then you  
5 kicked her back, correct?

6 A. Yes.

7 Q. And after that she ran back into the apartment,  
8 correct?

9 A. She didn't run, she walked.

10 Q. Walked back into the apartment? And to you, you  
11 felt that was playing? What you had just -- that little  
12 interchange you just had with her outside the apartment,  
13 correct?

14 A. Yes, we were playing.

15 Q. Okay.

16 A. But, I --

17 Q. That's -- that's okay, I just wanted an answer, you  
18 thought that you were playing, correct?

19 A. Yeah, but then I thought I hurt her.

20 Q. Okay. Okay. And then she ran back inside?  
21 Correct?

22 A. Yes.

23 Q. Walked back inside, excuse me. And you had had a  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 beer in your hand when you were outside with her, correct?

2 A. Yes.

3 Q. And you brought that beer from the inside to the  
4 outside?

5 A. Yes.

6 Q. You'd been drinking some that night?

7 A. Yes.

8 Q. And you started drinking when you got home and --  
9 and made her dinner, correct?

10 A. At around 10:40, yeah. I only had a six pack.

11 Q. Okay.

12 A. And -- yeah, she took one of them, so.

13 Q. Okay. And you apologized to her after she came back  
14 inside, correct?

15 A. Yeah, we went -- we were -- she went in the room and  
16 I went in the room with her.

17 Q. Oh, yeah, and you apologized, correct?

18 A. Yes.

19 Q. Okay. And then, at some point later that night she  
20 called -- she told you that she was going to call 911,  
21 correct?  
22

23 A. Yes.

24 Q. You knew she was calling 911 or thought she was at  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 least calling 911?

2 A. Yes.

3 Q. And at that point you decided to gather your things?

4 A. Yes.

5 Q. And you went outside the apartment, correct?

6 A. Yes.

7 Q. And then, at some point you saw Officer Bibens, is  
8 that right?

9 A. Yes, I seen -- I don't -- I -- I didn't recognize  
10 him at the time.

11 Q. Okay.

12 A. (Inaudible).

13 Q. But you saw -- you saw somebody you recognized as a  
14 police officer?

15 A. Yeah, but I didn't hear him say stop, once I seen  
16 him I -- I realized that she actually did call him because  
17 she's threatened me before.

18 Q. Okay. Hold on, I didn't ask you what you did after.

19 MS. STAUFFER: Your Honor -- Your Honor, let him  
20 answer the question and to stop cutting him off.

21 JUDGE LEWIS: The answer will stand as is, the  
22 next question then.

23 MR. FARRA: Okay.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 BY MR. FARRA: (Continued.)

2 Q. You ran after seeing Officer Bibens?

3 A. Yes.

4 Q. You stipulated that you know a no-contact order had  
5 been entered about Aug -- August 23<sup>rd</sup>, 2013, correct?

6 A. Yes, I do.

7 Q. Okay. You knew there might be a trial in this  
8 matter as of August 23<sup>rd</sup>, 2013?

9 A. I knew there was going to be a trial.

10 Q. You knew there was? Okay. And you knew Ms.  
11 Gutierrez might be called as a witness?

12 A. Yes.

13 Q. And you met Mr. Hausinger in jail, correct?

14 A. Yes, I did.

15 Q. And that's the first time you'd met him?

16 A. Yes.

17 Q. You didn't know him from any -- anywhere before,  
18 anything like that?

19 A. I hadn't seen him before.

20 MR. FARRA: I have no further questions.

21 DEFENDANT: Can I say something?

22 JUDGE LEWIS: Redirect?

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

**REDIRECT EXAMINATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. STAUFFER:

Q. Um, why did you run from the officer?

A. Because I -- I had a warrant for unpaid fines.

Q. Okay.

A. I get it sometimes if I don't pay. Or I thought I did, because I know it -- my date was to pay my fine was like around the 20<sup>th</sup>.

Q. Okay.

MS. STAUFFER: I have no further questions, Your Honor.

JUDGE LEWIS: Recross?

**RECROSS EXAMINATION**

BY MR. FARRA:

Q. Did you tell the officers that you had a warrant for unpaid fines?

A. No, I did not. I didn't want to get arrested for that also.

MS. STAUFFER: I don't have anything further.

BY MR. FARRA: (Continued.)

Q. Isn't it true that when you were running around gathering your things before you left that Amos was helping you?

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 A. Yes, he was --

2 MS. STAUFFER: Objection, Your Honor, it's beyond  
3 the scope.

4 JUDGE LEWIS: Sustained.

5 MR. FARRA: No further questions.

6 MS. STAUFFER: I have nothing further, Your Honor.

7 JUDGE LEWIS: You can step down. Defense have  
8 additional witnesses?

9 MS. STAUFFER: Your Honor, I think at this point  
10 the Defense would rest.

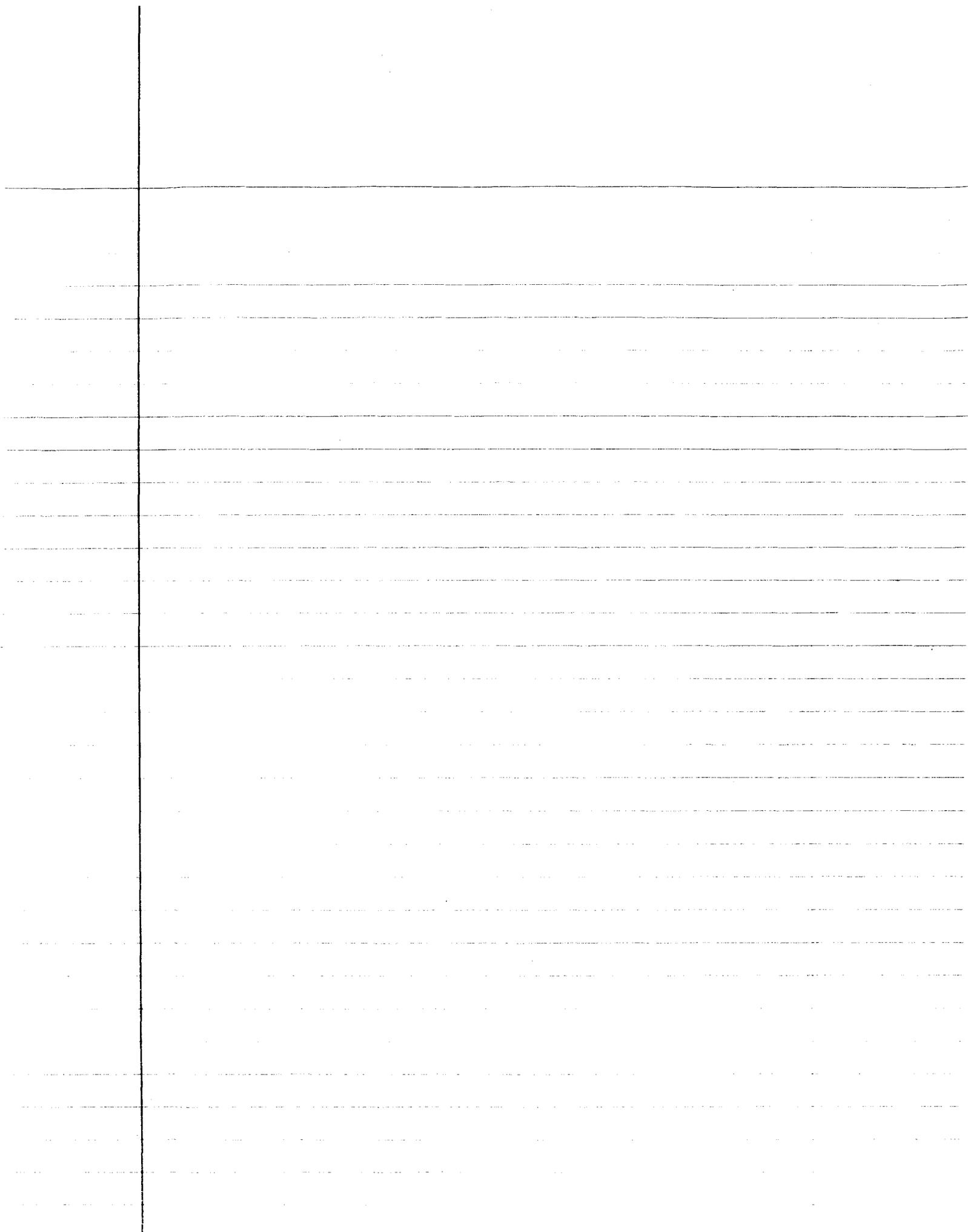
11 JUDGE LEWIS: All right. Did you wish to call  
12 rebuttal witnesses?

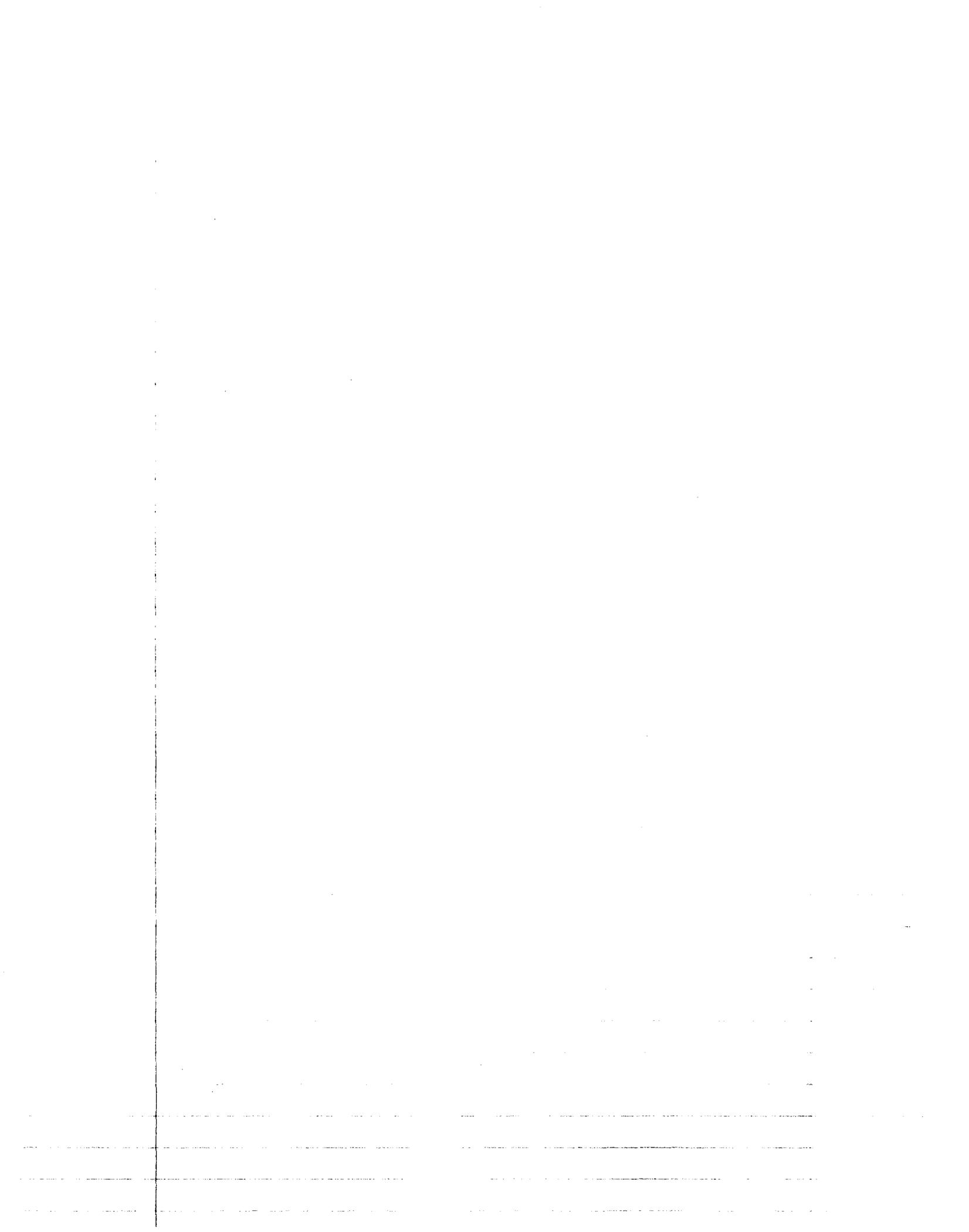
13 MR. FARRA: I think I may, Your Honor, but I think  
14 I might have a -- a matter for the Court first.

15 JUDGE LEWIS: All right. Now we'll go ahead and  
16 have you step out then and close your notepads, leave  
17 them there on your chairs and do not discuss the  
18 case.

19  
20 (Jury is escorted out of the courtroom.)

21 (Part A ends.)  
22  
23  
24  
25





IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, )

Respondent, )

vs. )

SHAWN ERIC CHRISTOPHER, )

Appellant. )

---

Clark County No. 13-1-01577-3

Court of Appeals No. 45694-0-II

VERBATIM REPORT OF PROCEEDINGS

Volume 2B



November 13, 2013 - Part B

November 14, 2013

November 25, 2013

*Sharon A. Ball*  
*Court Transcriptionist*  
*107 Birch Street*  
*Lakeview, OR 9763-1259*  
*(360) 751-0199*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,	)	
	)	Clark County No. 13-1-01577-3
Respondent,	)	
	)	Court of Appeals No. 45694-0-II
vs.	)	
	)	
SHAWN ERIC CHRISTOPHER,	)	
	)	
Appellant.	)	
	)	
	)	
	)	

---

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington, for the County of Clark, Vancouver, Washington,

BEFORE: THE HONORABLE ROBERT LEWIS, Judge on:  
November 13, 2013, November 14, 2013 &  
November 25, 2013.

APPEARANCES: Mr. John R. Farra; Deputy Prosecuting Attorney,  
on behalf of the State of Washington; and

Ms. Susan Stauffer, Attorney at Law, on behalf of the  
Defendant.

*Sharon A. Ball*  
*Court Transcriptionist*  
*107 Birch Street*  
*Lakeview, OR 9763-1259*  
*(360) 751-0199*

## VOLUME 2B

## INDEX

**State of Washington v. Shawn Eric Christopher**

November 13, 2013 - Part B	349 - 426
November 14, 2013	427 - 433
November 25, 2013	434 - 453

**TRIAL TESTIMONY**

<b>SPEAKER</b>	<b>State / Defense</b>	<b>D</b>	<b>X</b>	<b>ReD</b>	<b>ReX</b>	<b>Re-ReD</b>	<b>R-ReX</b>

**EXHIBITS**


**EVENTS**

Jury Instructions	369
Closing Argument - State	385
Closing Argument - Defense	403
Rebuttal Closing Argument - State	415
Verdict & Polling of the Jury	427
Sentencing	434

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

(Part B begins.)

1  
2 JUDGE LEWIS: Did you wish to address your matter  
3 now?

4 MR. FARRA: I would.

5 JUDGE LEWIS: Go ahead.

6 MR. FARRA: (Inaudible) for a second. At this  
7 point, Your Honor, I'm passing forward the written  
8 motion, a memorandum of law to admit prior acts,  
9 under Evidence Rule 404(b). The general basis for my  
10 request is that we've heard a -- a fair amount of  
11 evidence and I -- I detail some of that evidence at  
12 least on -- on the seventh page, Your Honor.  
13 Beginning at the top of the seventh page. Yesterday,  
14 in cross examination, we heard testimony about the  
15 debit card. Defense introduced evidence yesterday  
16 through cross examination that Ms. Gutierrez not only  
17 had the debit card but had also written the victim  
18 from jail. We heard about that again today. Defense  
19 also yesterday emphasized that Ms. Gutierrez had  
20 followed the Defendant around the apartment  
21 throughout the evening. The Defendant just testified  
22 as well. Taken together, I think all of this  
23 evidence and -- and what we've heard today, in  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 addition, regarding the money and the locked box and  
2 her motives for what she's doing bring into question  
3 her credibility as a witness. There's case law,  
4 primarily *State v. Grant*, which I cite in this  
5 motion, *Majors*, *Cook* and *Wilson*, which indicates that  
6 prior bad acts by the Defendant towards a domestic  
7 violence victim are admissible in order to gauge the  
8 alleged victim's credibility and to explore the  
9 dynamics of the DV relationship for the jury. I  
10 think the evidence that the Defense has raised is  
11 basically claiming that the victim is acting  
12 inconsistently, I'm sorry the alleged victim, excuse  
13 me. Ms. Gutierrez is acting inconsistent with a  
14 victim of domestic violence, or a victim, period.  
15 She's got a debit card, she's writing him in jail,  
16 she's following him around that night. The Defendant  
17 testified that she's the aggressor. By making that  
18 argument, Your Honor, I need to be able to rebut that  
19 and to show the dynamics of the relationship that Ms.  
20 Gutierrez has had with the Defendant. And there's  
21 two in -- two incidences in particular that I think  
22 should be admitted to prove those dynamics. Both of  
23 them are prior bad acts. One of them was an incident  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 in June of 2013 that I describe on Page 1. The  
2 Defendant -- Ms. Gutierrez I anticipate would testify  
3 that the Defendant had been drinking and thought Ms.  
4 Gutierrez had been unfaithful. They were at a park,  
5 the Defendant pulled her to the ground, spat on her  
6 and backhand slapped her. That occurred in June,  
7 2013 near in time to when Ms. Gutierrez and the  
8 Defendant moved in together.

9 A second incident happened closer in time to this  
10 one. A week or so before, I believe she would  
11 testify, where -- where the Defendant pushed her to  
12 the ground. So, these -- there -- there's also  
13 another incident where she had sex with the Defendant  
14 when she did not want to because she feared what he  
15 might do in response.

16  
17 DEFENDANT: That's -- no -- no.

18 MS. STAUFFER: (Addresses Mr. Christopher.) Shhh,  
19 don't.

20 MR. FARRA: The -- these prior incidents are  
21 necessary to demonstrate to the jury the dynamic of  
22 the relationship that she is in with the Defendant.  
23 He has indicated today that she's the aggressor.  
24 He's said that she writes him from jail, which  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 appears to be inconsistent, that she's got his debit  
2 card which seems to be inconsistent. These prior  
3 incidences are necessary to demonstrate to the jury  
4 that there is a pattern of behavior where he abuses  
5 her, she goes back, he abuses her, she goes back and  
6 that it is not inconsistent for a domestic violence  
7 victim to have a debit card. Or to write him from  
8 jail. Or to follow him around, or to try to protect  
9 him from going outside by grabbing a beer from his  
10 can -- excuse me, a beer can from his hand. The  
11 evidence would be very probative of that relationship  
12 and would be necessary for an entire picture for the  
13 jury. The prejudice would not be unfair or undue.  
14 These are acts that he has taken against her. They -  
15 - they're not acts that he took against somebody  
16 else. They are acts that would directly impact her  
17 state of mind and her reasons for staying with him  
18 and coming back to him. It would put into context,  
19 basically, this type of rough play scenario where  
20 there's an act of violence and there's an apology.  
21 And there's an act of violence and there's an  
22 apology. So I think, Your Honor, that this should be  
23 admitted to allow me to -- to present that evidence  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 to the jury so they can understand the full context  
2 of the relationship and what's happening here.

3 JUDGE LEWIS: And so, you're proposing to call her  
4 back to testify as to these incidents?

5 MR. FARRA: Correct. Yes, correct.

6 JUDGE LEWIS: And you have any other witnesses or  
7 just her?

8 MR. FARRA: It would be just her, Your Honor.

9 JUDGE LEWIS: Okay. Your response?

10 MS. STAUFFER: Your Honor, I am rather amazed that  
11 when we basically tried to find the truth of the  
12 particular events in question, basically, the  
13 testimony that he's upset about is basically the true  
14 facts of what occurred and what was going on during  
15 the time period of this alleged incident she's  
16 alleging. But now somehow we have to bring in some  
17 other events that she claims happened, that she did  
18 not report to the police and somehow pile this on to  
19 this case? And I -- I -- I -- I don't see the  
20 connection or the admissibility of -- of going in  
21 that type of direction, Your Honor. So I -- I feel  
22 that this is certainly the reason we have a rule that  
23 prevents bringing in all sorts of other types of  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 allegations that are unsubstantiated to attempt to  
2 smear the individual and basically, trying to claim  
3 that well, what she says had to have happened because  
4 she says all these other things had happened  
5 previously. So, I think the prejudicial impact of  
6 that type of uncorroborated, unsubstantiated, no  
7 conviction type of evidence is totally inadmissible  
8 and ask the Court to deny the State's request in that  
9 regard.

10 JUDGE LEWIS: Do you have anything else?

11 MR. FARRA: Your Honor, I can say that she did --  
12 the victim did on her *Smith* statement she did,  
13 indicated there were priors and she described that  
14 backhand in the park incident. She also indicated  
15 that she had sex with him at a time when she didn't  
16 want to because she was in fear of what he would do.  
17 So, they're -- they're not completely out of the blue  
18 in -- in those regards. They're -- and that's an  
19 issue for the jury to decide. I mean is it --  
20 ultimately do they believe that part of it and how it  
21 applies to the dynamics of this relationship but it's  
22 something that the jury should be able to consider.

24 JUDGE LEWIS: All right. Well, with regard to the  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 information that's being proposed, it's proposed that  
2 Ms. Gutierrez be able to come back and describe that  
3 Mr. Christopher, on a couple of other occasions,  
4 assaulted her. I guess on one occasion when he was  
5 alleged to have been drinking, I don't remember  
6 whether the second one also involved alcohol or not.  
7 And there isn't going to be any expert testimony or  
8 other testimony related to the dynamic of domestic  
9 violence relationships, only the testimony by the  
10 alleged victim in this case and on a couple of other  
11 occasions she was in fact assaulted by Mr.  
12 Christopher. The cases that are cited by the State  
13 are almost always cases where the State is attempting  
14 to explain something that the person did afterwards  
15 in order to explain why that -- they would do that  
16 even though they had just been assaulted. So, even  
17 though they'd been assaulted they waited for a while,  
18 delayed reporting it until some other time. Or after  
19 they had been assaulted they minimized the conduct of  
20 the person involved. They attempted to recant their  
21 statement, they attempted to do things to try to make  
22 it better for Mr. Christopher, or in this case it  
23 would be Mr. Christopher. In this case, there is no  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 evidence that needs to be explained regarding the  
2 dynamics of domestic violence. Ms. Gutierrez  
3 immediately reported what she described as a  
4 surprising event, the fact that Mr. Christopher had  
5 attempted to strangle her. Both of them have  
6 testified in the past that they played rough.  
7 Neither of them testified that they had any prior  
8 history of either of them being aggressive or violent  
9 toward the other, although they were having a number  
10 of arguments on the day in question here. So, she  
11 did not afterwards -- there's no evidence for the  
12 jury to have to understand as to why after this in --  
13 incident occurred that she tried to minimize what he  
14 did, or said that he did less than he talked about.  
15 If anything, the allegation is that she's saying that  
16 he did more. That she discovered bruises on his  
17 (sic) leg that she didn't report initially to the  
18 police. So there simply isn't anything for the jury  
19 to gain by having knowledge that she believed that  
20 she had been assaulted on a couple of other  
21 occasions, because it doesn't help explain anything  
22 that she did afterwards. At most, there's been some  
23 brief reference of the fact that she wrote him  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 afterwards. I don't believe there's any evidence  
2 that indicate that she wrote him saying, "I want to  
3 recant," or -- or "I lied about this" or things of  
4 that nature, so, the fact that she wrote him doesn't  
5 necessarily -- for all the jury knows she wrote him  
6 and said you're the, you know, you strangled me and  
7 I'm -- I hate you and I never want to see you again,  
8 so. So, I don't see anything in here that would  
9 assist the jury. It has very limited, I guess what  
10 I'm trying to say, probative value as the cases  
11 indicate and the indi -- cases indicate that Court  
12 has to be careful because this sort of evidence can  
13 easily be misconstrued by a jury to use -- be used in  
14 exactly the way it's not allowed to be used, which is  
15 that because the person is a bad actor in the past  
16 they must have been a bad actor on this particular  
17 occasion. So, the request to present the evidence is  
18 denied.  
19

20 MR. FARRA: Okay.

21 JUDGE LEWIS: Do you have additional rebuttal  
22 witnesses, then?

23 MR. FARRA: No, Your Honor.

24 JUDGE LEWIS: Did you have any instructions you  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 wish to present to the Court?

2 MS. STAUFFER: Your Honor, no, I think what I --  
3 reviewed the State's, there is a -- one about the  
4 Defen -- Defendant not testifying and the State's  
5 wanting -- we would ask that be removed. But beyond  
6 that we have nothing to supplement the standard stock  
7 instructions.

8 JUDGE LEWIS: All right. Why don't you take your  
9 instructions -- I'm sorry, Counsel, did you have  
10 something else?

11 MR. FARRA: I was just going to draw your  
12 attention, Your Honor, there is a 404(b) instruction  
13 in there that I left unfiled -- we'll get to it, I  
14 guess.

15 MS. STAUFFER: And I appreciate that. Yeah, I  
16 appreciate that, that's fine.

17 MR. FARRA: We'll get to it when we get to it, I  
18 guess.

19 JUDGE LEWIS: Okay. So if you each have your  
20 instructions, we'll try to put them in the order that  
21 I want to put them in, and I had one question that I  
22 wanted to resolve with you but let's go ahead and  
23 start on that right now.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: Okay.

2 JUDGE LEWIS: So Instruction Number 1 would be the  
3 three-page instruction, it is your duty to decide the  
4 facts in this case. Instruction 2 would be as jurors  
5 you have a duty to discuss the case with one another.  
6 Now, the next instruction I would normally put is  
7 Instruction 3, a separate crime is charged in each  
8 count. And then, I would have Instruction Number 4,  
9 the Defendant has entered a plea of not guilty.  
10 Instruction 5, the evidence that has been presented  
11 to you may be either direct or circumstantial. The  
12 Defendant did testify so I can take that matter out.  
13 And there was also an instruction with evidence for a  
14 limited purpose, I don't need that instruction  
15 because it --

16 MR. FARRA: Well, Your Honor, I think we heard  
17 evidence -- one of the statements that the victim  
18 testified was told to her by the caller, was that the  
19 Defendant was facing a sec -- something to the effect  
20 of the Defendant is facing a second strike and needs  
21 your help. That's what I had in mind at least  
22 initially with the 404(b).

23 JUDGE LEWIS: Okay. Are you asking for a limiting  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 instruction in that case?

2 MS. STAUFFER: Well, Your Honor, I guess what I  
3 would be asking is that the State just not refer to  
4 it in closing argument. I mean, the jury's heard the  
5 evidence unfortunately which I think some of that was  
6 inappropriate coming out the way it did, and I think  
7 it -- right now we need to minimize the impact of  
8 that type of evidence. And in fact, the State made  
9 the motion of not having anything in reference to  
10 prison to be brought out in trial and they proceed to  
11 go ahead and introduce all that evidence. So, that's  
12 my concern, I -- I think at this point we should just  
13 leave it alone and not even -- and basically,  
14 prohibit either -- both Counsel from talking about  
15 prison and strikes.

16 JUDGE LEWIS: I'm not going to prohibit the State  
17 from referring to evidence that was properly admitted  
18 and I previously ruled that the evidence of what Mr.  
19 Hausinger said to Ms. Gutierrez on the date in  
20 question, including his attempts to convince her that  
21 she needed to testify falsely because of the  
22 consequences Mr. Christopher was facing, was properly  
23 admitted and I allowed it. If you want a limiting  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 instruction saying they can't -- they can't consider  
2 it for the truth of the matter in the statement, but  
3 only for the purpose of dealing with the transaction  
4 between -- or something similar, the transaction  
5 between Ms. Gutierrez and Mr. Hausinger then you're  
6 certainly free to propose a limiting instruction but  
7 I'm not going to tell the State you can't talk about  
8 evidence that was admitted. So --

9 MS. STAUFFER: Well, I guess at this point I don't  
10 really have any reasons to ask for some type of --

11 JUDGE LEWIS: Okay. So we don't need an  
12 instruction to that effect then.

13 MS. STAUFFER: Okay.

14 JUDGE LEWIS: So Instruction Number 6 would be a  
15 person commits a crime of assault in the second  
16 degree. Instruction Number 7 would be to convict the  
17 Defendant of the crime of assault in the second  
18 degree. Instruction Number 8 would be an assault is  
19 an intentional touching or striking. Nine would be a  
20 person acts with intent or intentionally. And ten  
21 would be the definition of strangulation. Eleven  
22 would be a person -- well, actually I guess what I  
23 need -- okay. I'm okay for there. Then we'll go to  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Number 11, a person commits a crime of violation of a  
2 court order. And 12 would be, to convict the  
3 Defendant of the crime of violation of a court order.

4 MR. FARRA: I'm sorry, that's 12?

5 JUDGE LEWIS: Twelve.

6 MR. FARRA: Twelve, Your Honor?

7 JUDGE LEWIS: That was Number 12, uh-huh. Number  
8 13 would be a person knows or acts knowingly. Number  
9 14, a person commits a crime of tampering with a  
10 witness. Under 15 would be to convict the Defendant  
11 of the crime of tampering with a witness. And 16  
12 would be an official proceeding definition.

13 MR. FARRA: Official proceeding, Your Honor?

14 JUDGE LEWIS: Yes. Uh-huh. Now, the question I  
15 have is I did not see that the State was requesting  
16 an accomplice instruction, is that correct? You  
17 don't want an accomplice instruction?

18 MR. FARRA: No, Your Honor.

19 JUDGE LEWIS: All right. Seventeen, then, when  
20 you begin delivering -- deliberating you should first  
21 select a presiding juror. I guess I need to  
22 understand the State's theory why --

23 MR. FARRA: Well -- well, hold on. I'm sorry.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: Obviously, a person can commit the  
2 crime of domestic violence court order violation by  
3 asking a third party to do contact. I'm not sure how  
4 you have evidence which supports that Mr. Christopher  
5 here is a principle in witness tampering?

6 MR. FARRA: I think no evidence is --

7 JUDGE LEWIS: There's no evidence that he directly  
8 contacted and attempted to --

9 MR. FARRA: Well, I think the -- Your Honor, he  
10 attempted to induce her to testify falsely by  
11 directing somebody to contact her, who did contact  
12 her and read off a -- a letter that he had written  
13 telling the victim that she needed to change her  
14 story and all of the things that we had -- was  
15 telling her about the second strike and she needs to  
16 go to the police and change her story. Those words  
17 came from the Defendant, Your Honor, and he took a  
18 step and attempted to induce her to change her story  
19 by having Mr. Hausinger read them to her.

20 JUDGE LEWIS: Okay. Well, he's not charged with  
21 attempt, he's charged with tampering with a witness.  
22 So there's either one way he did it, he directly  
23 tampered with a witness, in other words, he called  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 the witness and tried to do something or knowing that  
2 that -- someone else would be doing that he did  
3 something which allowed the person to be found to  
4 have committed the crime themselves. But I'm not  
5 going to argue with the State, if you've -- if you  
6 feel that there's no basis for an accomplice  
7 instruction then --

8 MR. FARRA: Well, Your Honor, I'll -- I'll request  
9 -- yes, I would request an accomplice instruction  
10 then, I think that would cover both basis and --

11 JUDGE LEWIS: Okay. Then the -- you have any  
12 objection of the accomplice instruction being given?

13 MS. STAUFFER: I may, Your Honor, I'd like to see  
14 what it says first?

15 JUDGE LEWIS: If he's asking for anything other  
16 than the pattern instruction?

17 MR. FARRA: No, I'm not, Your Honor.

18 JUDGE LEWIS: Dayle, could you bring out the jury  
19 instructions Volume 11 of the Washington Practice?  
20 If I give the accomplice instruction it will be  
21 Number 17 and the closing instruction will be Number  
22 18, when you begin deliberating. Nineteen will be  
23 you will all -- you'll be given a Special Verdict  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 form. And 20 will be the definition of family or  
2 household members. (Judge looks through Volume 11.)  
3 Okay, here's Instruction 10-point -- WPIC 10.51, can  
4 you please look at it and tell me which sections of  
5 it -- there's a couple of bracketed material, so, are  
6 you asking for all of the materials or only portions?

7 MR. FARRA: Your Honor, I think Number 1 would be  
8 sufficient for the facts of this case, soliciting,  
9 commanding, encouraging, requesting another person to  
10 commit the crime. I think that's --

11 JUDGE LEWIS: Okay.

12 MR. FARRA: -- an appropriate fit for this. I  
13 also would ask for the bracketed at the bottom.  
14 Person who was an accomplice in the commission of a  
15 crime is guilty of that crime whether present at the  
16 scene or not. I would also ask for that given that  
17 Mr. Christopher, according to the facts, was not  
18 present at the scene when the crime occurred.

19 JUDGE LEWIS: All right. Ms. Stauffer, your  
20 comments?

21 MS. STAUFFER: Your Honor, I would just indicate  
22 that I was happy with the jury instructions I  
23 received originally without the accomplice  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 instruction, so at this point I'm not necessarily  
2 agreeing that it should be used so I would defer to  
3 the Court as to the appropriate language.

4 (Inaudible).

5 JUDGE LEWIS: Okay. You want to hand me the --  
6 Dayle, could you step out again? I need to have this  
7 instruction done up in the same manner as the others.

8 JUDICIAL ASSISTANT: Okay.

9 JUDGE LEWIS: So none of this stuff, just  
10 instruction number blank.

11 JUDICIAL ASSISTANT: Right. Uh-huh.

12 JUDGE LEWIS: The first paragraph here that's  
13 bracketed, we need -- delete Number 2 here.

14 JUDICIAL ASSISTANT: Okay.

15 JUDGE LEWIS: And include this last one as well.

16 JUDICIAL ASSISTANT: Okay.

17 JUDGE LEWIS: As mentioned that will be  
18 Instruction Number --  
19

20 MR. FARRA: Seventeen, I believe, Your Honor.

21 JUDGE LEWIS: Seventeen. And the other  
22 instructions will be as indicated. I should indi --  
23 also tell you for the record, I did not include the  
24 definition of physical injury, I did not see any  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 basis for including that instruction and I did not  
2 see any basis for including a defense to the charge  
3 that a person protected, invited or consented to the  
4 contact since there was no indication that Ms.  
5 Gutierrez invited or consented to the contact.

6 MR. FARRA: In -- in regards, Your Honor, to WPIC  
7 2.03, the physical injury, I included that because  
8 the -- this -- the instruction to the WPIC's that I  
9 saw say you just do and (inaudible).

10 JUDGE LEWIS: All right. First, from the State,  
11 assuming the instructions are as numbered, do you  
12 have any objections or exceptions to the  
13 instructions?

14 MR. FARRA: I do not, Your Honor.

15 JUDGE LEWIS: From the Defense?

16 MS. STAUFFER: Well, Your Honor, other than my  
17 comments we don't really need accomplice instruction.  
18

19 JUDGE LEWIS: All right. As soon as that  
20 instruction is ready I will have the judicial  
21 assistant bring out the instruction for you to add to  
22 your packets. Since you already have the packets I  
23 don't intend to have you do another one, and -- and  
24 we will proceed to instructions, accordingly.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 CLERK: All rise please, court is now recessed.

2 (Defense Counsel and Clerk confer.)

3 (Court recesses on this matter at 2:46:13 PM.)

4 (Court reconvenes on this matter at 3:10:28 PM.)

5 CLERK: All rise, please, court is again in  
6 session.

7 JUDGE LEWIS: All right. Thank you. Please be  
8 seated. I've provided the additional instruction to  
9 the parties and I have the original and one copy of  
10 the instructions, with verdict forms. I'll note that  
11 Exhibits 1 through 5, 11, 12, 13, 16, 17, 18, 20, 23  
12 and 24 were admitted. All other numbered exhibits  
13 were not offered. Is that how the parties understand  
14 it?

15 MR. FARRA: That is.

16 JUDGE LEWIS: Okay. Are we ready for the jury  
17 then?

18 MR. FARRA: I am.

19 JUDGE LEWIS: Bring in the jury please.

20 (Jury is escorted into the courtroom.)

21 JUDGE LEWIS: Okay. Welcome back, ladies and  
22 gentlemen. Just to confirm, the State does not  
23 intend to call rebuttal witnesses?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: No, Your Honor.

2 JUDGE LEWIS: All right. So, both sides have  
3 completed their presentation of the evidence. What's  
4 going to happen now is I'm going to read to you the  
5 Court's instructions on the law and then we'll have  
6 the closing argument of the parties. I read the  
7 instructions to you before the closing arguments  
8 because in this state we think that helps you  
9 understand the arguments and because the attorneys  
10 may want to refer to specific arguments. You're free  
11 to take notes or not as you wish but I will give you  
12 a hint, I am going to give you the original and one  
13 copy of everything I read to you so you will have it  
14 word for word in the jury room during your  
15 deliberations.

16 **JURY INSTRUCTIONS**

17 JUDGE LEWIS: Instruction Number 1. It is your  
18 duty to decide the facts in this case based upon the  
19 evidence presented to you during this trial. It also  
20 is your duty to accept the law from my instructions  
21 regardless of what you personally believe the law is  
22 or what you personally think it should be. You must  
23 apply the law from my instructions to the facts that  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 you decide have been proved and in this way decide  
2 the case. Keep in mind that a charge is only an  
3 accusation. The filing of a charge is not evidence  
4 that the charge is true. Your decisions as jurors  
5 must be made solely upon the evidence presented  
6 during these proceedings. The evidence that you are  
7 to consider during your deliberations consists of the  
8 testimony you have heard from witnesses, stipulations  
9 and the exhibits that I have admitted during the  
10 trial. If evidence was not admitted or was stricken  
11 from the record then you are not to consider it in  
12 reaching your verdict.

13 Exhibits may have been marked by the Court Clerk  
14 and given a number but they do not go with you to the  
15 jury room during your deliberations unless they have  
16 been admitted into evidence. The exhibits that have  
17 been admitted will be available to you in the jury  
18 room.  
19

20 One of my duties has been to rule on the  
21 admissibility of evidence. Do not be concerned  
22 during your deliberations about the reasons for my  
23 rulings on the evidence. If I have ruled that any  
24 evidence is inadmissible or if I have asked you to  
25



State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 disregard any evidence then you must not discuss that  
2 evidence during your deliberations or consider it in  
3 reaching your verdict. Do not speculate whether the  
4 evidence would have favored one party or the other.  
5 In order to decide whether any proposition has been  
6 proved you must consider all of the evidence that I  
7 have admitted that relates to the proposition. Each  
8 party is entitled to the benefit of all of the  
9 evidence whether or not that party introduced it.

10 You are the sole judges of the credibility of each  
11 witness. You are also the sole judges of the value  
12 or weight to be given to the testimony of each  
13 witness. In considering a witnesses testimony, you  
14 may consider these things: the opportunity of the  
15 witness to observe or know the things he or she  
16 testifies about; the ability of the witness to  
17 observe accurately; the quality of a witness's memory  
18 while testifying; the manner of the witness while  
19 testifying; any personal interest that the witness  
20 might have in the outcome or the issues; any bias or  
21 prejudice that the witness may have shown; the  
22 reasonableness of the witness's statements in the  
23 context of all of the other evidence and any other  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 factors that affect your evaluation or belief of a  
2 witness, or your evaluation of his or her testimony.

3 The lawyers' remarks, statements and arguments are  
4 intended to help you understand the evidence and  
5 apply the law. It is important, however, for you to  
6 remember that the lawyers' statements are not  
7 evidence. The evidence is the testimony and the  
8 exhibits. The law is contained in my instructions to  
9 you. You must disregard any remark, statement or  
10 argument that is not supported by the evidence or the  
11 law in my instructions.

12 You may have heard objections made by the lawyers  
13 during trial. Each party has the right to object to  
14 questions asked by another lawyer and may have a duty  
15 to do so. These objections should not influence you.  
16 Do not make any assumptions or draw any conclusions  
17 based on a lawyer's objections.

18 Our State constitution prohibits a trial judge  
19 from making a comment on the evidence. It would be  
20 improper for me to express by words or conduct my  
21 personal opinion about the value of testimony or  
22 other evidence. I have not intentionally done this.  
23 If it appeared to you that I have indicated my  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 personal opinion in any way, either during trial or  
2 in giving these instructions, you must disregard this  
3 entirely.

4 You have nothing whatever to do with any  
5 punishment that may be imposed in case of a violation  
6 of the law. You may not consider the fact that  
7 punishment may follow conviction, except insofar as  
8 it may tend to make you careful.

9 The order of these instructions has no  
10 significance as to their relative importance. They  
11 are all important. In closing arguments, the lawyers  
12 may properly discuss specific instructions. During  
13 your deliberations you must consider the instructions  
14 as a whole.

15 As jurors, you are officers of this court. You  
16 must not let your emotions overcome your rational  
17 thought process. You must reach your decision based  
18 on the facts proved to you and on the law given to  
19 you. Not on sympathy, prejudice or personal  
20 preference. To assure that all parties receive a  
21 fair trial you must act impartially with an earnest  
22 desire to reach a proper verdict.

23  
24 Instruction Number 2. As jurors you have a duty  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 to discuss the case with one another and to  
2 deliberate in an effort to reach a unanimous verdict.  
3 Each of you must decide the case for yourselves, but  
4 only after you consider the evidence impartially with  
5 your fellow jurors. During your deliberations you  
6 should not hesitate to re-examine your own views and  
7 to change your opinion based upon further review of  
8 the evidence and these instructions. You should not,  
9 however, surrender your honest belief about the value  
10 or significance of evidence solely because of the  
11 opinions of your fellow jurors, nor should you change  
12 your mind just for the purpose of reaching a verdict.

13 Instruction Number 3. A separate crime is charged  
14 in each count. You must decide each count  
15 separately. Your verdict on one count should not  
16 control your verdict on any other count.

17  
18 Instruction Number 4. The Defendant has entered a  
19 plea of not guilty. That plea puts in issue every  
20 element of each crime charged. The State of  
21 Washington is the plaintiff and has the burden of  
22 proving each element of each crime beyond a  
23 reasonable doubt. The Defendant has no burden of  
24 proving that a reasonable doubt exists as to these  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 elements. A Defendant is presumed innocent. This  
2 presumption continues throughout the entire trial  
3 unless your -- during your deliberations you find it  
4 has been overcome by the evidence beyond a reasonable  
5 doubt.

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

14 Instruction Number 5. The evidence that has been  
15 presented to you may be either direct or  
16 circumstantial. The term "direct evidence" refers to  
17 evidence that is given by a witness who has directly  
18 perceived something at issue in this case. The term  
19 "circumstantial evidence" refers to evidence from  
20 which, based on your common sense and experience, you  
21 may reasonably infer something that is at issue in  
22 this case. The law does not distinguish between  
23 direct and circumstantial evidence in terms of their  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 weight or value in finding the facts in this case.  
2 One is not necessarily more or less valuable than the  
3 other.

4 Instruction Number 6. A person commits a crime of  
5 assault in the second degree when he or she assaults  
6 another by strangulation.

7 Instruction Number 7. To convict the Defendant of  
8 the crime of assault in the second degree, each of  
9 the following elements of the crime must be proved  
10 beyond a reasonable doubt. One, that on or about  
11 August 22<sup>nd</sup>, 2013, the Defendant assaulted Christina  
12 Gutierrez by strangulation. Two, that this act  
13 occurred in the State of Washington.

14 If you find from the evidence that each of these  
15 elements has been proved beyond a reasonable doubt  
16 then it will be your duty to return a verdict of  
17 guilty.

18 On the other hand if after weighing all the  
19 evidence you have a reasonable doubt as to any of  
20 these elements then it will be your duty to return a  
21 verdict of not guilty.

22 Instruction Number 8. An assault is an  
23 intentional touching or striking of another person  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 with unlawful force that is harmful or offensive  
2 regardless of whether any physical injury is done to  
3 the person. A touching or striking is offensive if  
4 the touching or striking would offend an ordinary  
5 person who is not unduly sensitive. An act is not an  
6 assault if it is done with the consent of the person  
7 alleged to be assaulted.

8 Instruction Number 9. A person acts with intent  
9 or intentionally when acting with the objective or  
10 purpose to accomplish a result that constitutes a  
11 crime.

12 Instruction Number 10. Strangulation means to  
13 compress a person's neck, thereby obstructing the  
14 person's blood flow or ability to breathe or doing so  
15 with the intent to obstruct the person's blood flow  
16 or ability to breathe.

17 Instruction Number 11. A person commits a crime,  
18 a violation of a court order when he or she knows of  
19 the existence of a no contact order and knowingly  
20 violates restraint provisions of the order  
21 prohibiting contact with a protected party.

22 Instruction Number 12. To convict the Defendant  
23 of the crime of a violation of a no -- court order,  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 each of the following elements of the crime must be  
2 proved beyond a reasonable doubt. One, that between  
3 September 24, 2013 and September 27, 2013, there  
4 existed a no-contact order applicable to the  
5 Defendant. Two, that the Defendant knew of the  
6 existence of this order. Three, that on or about  
7 said date, the Defendant knowingly violated a  
8 restraint provision of the order prohibiting contact  
9 with a protected party and four, that the Defendant's  
10 act occurred in the State of Washington, County of  
11 Clark.

12 If you find from the evidence that each of these  
13 elements has been proved beyond a reasonable doubt  
14 then it will be your duty to return a verdict of  
15 guilty.  
16

17 On the other hand, if after weighing all the  
18 evidence, you have a reasonable doubt as to any one  
19 of these elements then it will be your duty to return  
20 a verdict of not guilty.

21 Instruction Number 13. A person knows or acts  
22 knowingly or with know with respect to a fact when he  
23 or she is aware of that fact. It is not necessary  
24 that the person know that the fact is defined by law  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 as being unlawful or an element of a crime. If a  
2 person has information that would lead a reasonable  
3 person in the same situation to believe that a fact  
4 exists, the jury is permitted but not required, to  
5 find that he or she acted with knowledge of that  
6 fact. When acting knowingly as to a particular fact  
7 is required to establish an element of a crime the  
8 element is also established if a person acts  
9 intentionally as to that fact.

10 Instruction Number 14. A person commits a crime  
11 of tampering with a witness when he or she attempts  
12 to induce a witness or person he or she has reason to  
13 believe is about to be called as a witness in any  
14 official proceeding, or a person whom he or she has  
15 reason to believe may have information relevant to a  
16 criminal investigation to testify falsely.

17 Instruction Number 15. To convict the Defendant  
18 of the crime of tampering with a witness, each of the  
19 following elements of the crime must be proved beyond  
20 a reasonable doubt. One, that between September 24,  
21 2013 and September 27, 2013, the Defendant attempted  
22 to induce a person to testify falsely. And two, that  
23 the other person was a witness or a person the  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Defendant had reason to believe was about to be  
2 called as a witness in any official proceedings, or a  
3 person who the Defendant had reason to believe might  
4 have information relevant to a criminal  
5 investigation. And three, that any of these acts  
6 occurred in the State of Washington.

7 If you find from the evidence that each of these  
8 elements has proved beyond a reasonable doubt then it  
9 will be your duty to return a verdict of guilty.

10 On the other hand, if after weighing all of the  
11 evidence you have a reasonable doubt as to any one of  
12 these elements, then it will be your duty to return a  
13 verdict of not guilty.

14 Instruction Number 16. Official proceeding means  
15 a proceeding heard before any legislative, judicial,  
16 administrative or other, excuse me -- (Judge  
17 sneezes.) -- I almost made it.

18 MR. FARRA: Bless you.

19 JUDGE LEWIS: Or other government agency or  
20 official authorized to hear evidence under oath,  
21 including any referee, hearing examiner,  
22 commissioner, notary or other person taking testimony  
23 or depositions.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Instruction Number 17. A person is guilty of a  
2 crime if it is committed by the conduct of another  
3 person for which he or she is legally accountable. A  
4 person is legally accountable for the conduct of  
5 another person when he or she is an accomplice of  
6 such other person in the commission of the crime. A  
7 person is an accomplice in the commission of a crime,  
8 if with knowledge that it will promote or facilitate  
9 the commission of the crime he or she solicits,  
10 commands, encourages or requests another person to  
11 commit the crime.

12 The word "aid" means all assistance whether given  
13 by words, acts, encouragement, support or presence.  
14 A person who is present at the scene and ready to  
15 assist by his or her presence is aiding in the  
16 commission of the crime. However, more than mere  
17 presence and knowledge of the criminal activity of  
18 another must be shown to establish that a person  
19 present is an accomplice. A person who is an  
20 accomplice in the commission of a crime is guilty  
21 whether present at the scene or not.

22 Instruction Number 18. When you begin  
23 deliberating you should first select a presiding  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 juror. The presiding juror's duty is to see that you  
2 discuss the issues in this case in an orderly and  
3 reasonable fact -- manner; that you discuss each  
4 issue submitted for your decision fully and fairly,  
5 and that each one of you has a chance to be heard on  
6 every question before you. During your deliberations  
7 you may discuss any notes that you have taken during  
8 the trial if you wish. You've been allowed to take  
9 notes to assist you in remembering clearly, not to  
10 substitute for your memory or the memories or notes  
11 of other jurors. Do not assume, however, that your  
12 notes are more or less accurate than your memory.  
13 You will need to rely on your notes and memory as to  
14 the testimony presented in this case. Testimony will  
15 rarely, if ever, be repeated for you during your  
16 deliberations. If after carefully reviewing the  
17 evidence and instructions you feel a need to ask the  
18 Court a legal or procedural question that you have  
19 been unable to answer, write the question out simply  
20 and clearly. For this purpose, use the form provided  
21 in the jury room. In your question, do not state how  
22 the jury has voted. The presiding juror should sign  
23 and date the question and give it to the Bailiff. I  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 will confer with the lawyers to determine what  
2 response, if any, can be given.

3 You will be given the te -- exhibits admitted in  
4 evidence, these instructions and three verdict forms  
5 for recording your verdict. Some exhibits and visual  
6 aids may have been used in court but will not go with  
7 you to the jury room. The exhibits that have been  
8 admitted into evidence will be available to you in  
9 the jury room. You must fill in the blank provided  
10 in each verdict form the words "not guilty" or the  
11 word "guilty," according to the decision you reach.

12 Because this is a criminal case, each of you must  
13 agree for you to return a verdict. When all of you  
14 have so agreed, fill in the verdict forms to express  
15 your decision. The presiding juror must sign the  
16 verdict forms and notify the Bailiff. The Bailiff  
17 will bring you into court to declare your verdict.

18 Instruction Number 19 You will also be given a  
19 Special Verdict form for the crimes charged in Counts  
20 1, 2 and 3. If you find the Defendant not guilty of  
21 these crimes do not use the Special Verdict form. If  
22 you find the Defendant guilty of any of these crimes  
23 you will then use the Special Verdict form and fill  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 in the blank with the answer "yes" or "no," according  
2 to the decision you reach. In order to answer the  
3 Special Verdict form yes, you must be unanimous --  
4 you must unanimously be satisfied beyond a reasonable  
5 doubt that yes is the correct answer. If you  
6 unanimously have a reasonable doubt as to the  
7 question you must answer no.

8 And Instruction Number 20. For purposes of this  
9 case, family or household members means adult persons  
10 who are presently residing together or have resided  
11 together in the past or persons 16 years of age or  
12 older who are presently residing together or who have  
13 resided together in the past and who have or have had  
14 a dating relationship, or a person 16 years of age or  
15 older with whom a person 16 years of age or older has  
16 or has had a dating relationship.

17  
18 Dating relationship means a social relationship of  
19 a romantic nature. In deciding whether two people  
20 had a dating relationship you may consider all  
21 relevant factors including A) the nature of any  
22 relationship between them; B) the length of time that  
23 any relationship existed and C) the frequency of any  
24 interaction between them.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Those are the Court's instructions on the law.  
2 We'll now have the closing argument, first from the  
3 State of Washington.

4 **CLOSING ARGUMENT - STATE**

5 MR. FARRA: In a narrow sense, this trial is about  
6 drunkenness, jealousy and control. It's been about a  
7 Defendant who was intoxicated that night, been  
8 drinking beer, some malt liquor; who was jealous that  
9 his girlfriend wasn't paying attention to him or at  
10 least as non -- not as much attention as he thought  
11 she should and who decided that he was going to get  
12 her attention one way or the other. And then he set  
13 out on a course of conduct to get her attention.  
14 Starting low, escalating to high. That's what this  
15 case is about in -- in a narrow sense.

16  
17 But in a broader sense and a much more important  
18 sense, this case is about a woman breaking free. A  
19 woman saying, "Enough." The story starts with a  
20 young, vulnerable woman at work. She meets a man,  
21 somewhat older than she is. They begin dating.  
22 Before she knows it she's living with this man, she's  
23 living with this man's very good close friend and  
24 she's also working with all of these people. Her  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 life becomes his. But it's not an equal  
2 relationship. It turns into a relationship where the  
3 Defendant can accuse her of cheating on him. The  
4 Defendant can play rough. It turns into a  
5 relationship where the Defendant can try to go sit  
6 down on her when she's having cramps and then when  
7 she puts her foot up to keep him from sitting down on  
8 her, he gets angry. It turns into a relationship  
9 where he can kick her in the leg and then run after  
10 her and say, "Sorry, sorry, sorry," and she'll take  
11 him back. It turns into a type of relationship where  
12 he can go to a cherished portrait that her child had  
13 drawn on a mirror and play games with it. That's a  
14 relationship characterized by manipulation. That's  
15 wanting to control somebody just for the -- the sake  
16 of controlling them. And that's the type of  
17 relationship that Christina Gutierrez found herself  
18 in with the Defendant.  
19

20 Now you may say and it may be tempting to  
21 question, "Well, how did you get to that point,  
22 Christina? What brought you there?" And I -- likely  
23 it's not the type of -- of a relationship that you  
24 may find yourself in or it may not be something that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you can relate to when you start to ask, "Well, how  
2 did this happen? Why would she do that? Why didn't  
3 she do this?" But if you find yourself asking those  
4 questions, I submit to you that you're missing the  
5 main point. The more important question is not how  
6 did she get there, the more important question,  
7 especially for this trial, is what did she have to do  
8 to get out? What did she have to do to bring herself  
9 to that chair right there yesterday and tell you her  
10 story? And the answer to that, the evidence shows,  
11 is a lot, an awful lot. She had to overcome the  
12 social and work binds that -- connections that she  
13 had with the Defendant. She worked with him and his  
14 best buddy. She lived with him and his best buddy.  
15 When she decided to call 911 that night, her roommate  
16 is helping the Defendant run around and get his  
17 clothes and his stuff together and then when the  
18 police come that roommate has nothing useful to say.  
19 She's got to overcome that, being alone in that  
20 situation out on that balcony. She's got to overcome  
21 the emotional ties of a five-year relationship that  
22 she thought was love at first sight. She thought it  
23 was a great relationship at first. A relationship  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 where she wanted to protect him, she didn't want him  
2 in trouble. A relationship and emotional ties that  
3 he takes advantage of when he directs Jacinto  
4 Hausinger from jail to contact her.

5 Now, she didn't know who this person was, consider  
6 that. This is about a month after these events.  
7 Feeling okay, maybe we're moving on from what  
8 happened last mon -- last month. Out of the blue a  
9 call from somebody she doesn't know. Never seen the  
10 phone number before, name doesn't pop up. She calls  
11 back, the person won't identify himself. All he  
12 tells him (sic) is, "I know the Defendant because  
13 we've been in jail together but I'm out of jail now,  
14 and I've got a letter that he wants me to read." And  
15 what's in that letter? All kinds of emotional pleas.  
16 "I love you, I'm facing a second strike, you've got  
17 to help me. Go to the police, change your story, you  
18 won't get in trouble." That's a manipulative,  
19 emotional appeal. And that's hard for Christina to  
20 overcome.  
21

22 In other words, it's a guilt trip. "I'm here, you  
23 can get me out and you won't get in trouble. You can  
24 do something without getting in trouble yourself to  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 get me out, get me out of this trouble that I'm in."  
2 How easy would it have been for her to do that? To  
3 pick up the phone, call the police and say, "You know  
4 what? It didn't happen that way. I was lying," or "I  
5 made it up," or whatever. How easy would it have  
6 been to do that? But she didn't do it.

7 So the next question is why and the answer is she  
8 didn't do it because it was that bad. What caused  
9 her to call was that bad, it was the last straw that  
10 she was no longer willing to tolerate. She can  
11 tolerate being accused of -- of being unfaithful.  
12 She can tolerate kicks, she can tolerate wiping away  
13 or playing games like a cat and a mouse to wipe away  
14 a cherished photo but she's not going to tolerate  
15 when you put your hands around her neck and you  
16 squeeze, because that's scary. That's very scary,  
17 that crosses a line that is no longer tolerable. The  
18 Defendant's responsible for that behavior, not hers -  
19 - not her, excuse me, and that's why she came forward  
20 today. That's why she stepped forward, excuse me,  
21 yesterday. But that's why she stepped forward.

22 And that's the nature of domestic violence crimes.  
23 There are lots of emotional ties. It is a  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 complicated situation. It's behind closed doors.  
2 There's witnesses with divided loyalties. That's the  
3 nature of these types of situations and it's very  
4 difficult to overcome. There is a lot of reason not  
5 to step forward but she stepped forward. And she got  
6 up on the stand and she told you exactly what  
7 happened that night and it's the same thing that she  
8 told 911 that night. "He put his hands around my  
9 neck, he crossed the line, it scared me." She didn't  
10 exaggerate. I -- I don't think it's unreasonable to  
11 say that she could have got up here and she could  
12 have said, "I was passing out, I saw stars, my lips  
13 turned blue. I thought I was going to die." But she  
14 didn't do that. She could have done it. She could  
15 have done it just as easily as she could have changed  
16 her story. But she didn't exaggerate today and she  
17 didn't exaggerate back then. Christina is a  
18 plainspoken person. And she spoke plainly about what  
19 happened and what didn't happen. She didn't have to  
20 oversell this because it's the truth. And that's  
21 what she testified to.  
22

23 She said -- she admitted that there was a mark on  
24 her neck that was a hickey. She could have said that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that was a thumbprint or a handprint or something  
2 from the strangulation but she said, "No, that was a  
3 -- what it was, it was a bruise, it was a hickey."  
4 She said -- she admitted that she can't remember  
5 every single detail. And that's understandable  
6 because she didn't think she'd have to remember every  
7 single detail. And it's not something that she wants  
8 to remember, who would want to remember every single  
9 detail? She said it was hard to speak and it was  
10 hard to breathe. She tried to yell but her voice cut  
11 out because his hands were squeezing around her neck  
12 and she showed repeatedly over and over how he had  
13 his hands around her throat and how he was squeezing.  
14 But she didn't say she thought she was going to die,  
15 she didn't say she was going to pass out. She told  
16 you exactly what happened. If she were out to get  
17 the Defendant, if she were out to prove a point to  
18 him or to get his money, or to get back at him for  
19 training some woman on the job or something like  
20 that, she could have easily, easily exaggerated that  
21 story but she did not.  
22

23 Contrast that with the Defendant. The Defendant  
24 ran. Instead of staying he decided to run. He tells  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 don't know, I don't know if he wrote it." But he  
2 finally came clean and said, "Yes." Unequivocally.  
3 He said, "Yes, he told me to take this letter and to  
4 call Christina and to read this letter to her." And  
5 then in that letter he tells Christina to do this for  
6 him because he loves her. That is an emotional  
7 appeal, that is manipulation. From the very  
8 beginning to the very end.

9 Today he tells us that it's all Christina's fault.  
10 She was the aggressor the entire time. It's all her  
11 fault. The law exists to protect people in  
12 Christina's situation. Especially these laws we're  
13 talking about today, contact order violations,  
14 witness tampering and Assault 2. I want to -- and as  
15 the Judge said, you'll have a copy of some of these  
16 instructions but I want to highlight some of these  
17 particular laws that I think are very important for  
18 you to consider as you go back there. And you will  
19 have a copy of them, I'll refer to them by the  
20 number.  
21

22 First, I have the burden. As the Prosecutor, I  
23 have the burden. One of the things that I need to  
24 prove for each of these crimes are for the most part  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 is that they occurred in Clark County. So we've  
2 heard testimony that -- from Christina that she was  
3 in Clark County, both when the assault occurred and  
4 when she received the contact order violations. That  
5 is established without doubt. We've heard testimony  
6 about the dates involved and especially with the text  
7 messages and the contacts through telephone, the  
8 exhibits that we've admitted here have the dates on  
9 them, at least one of them does. We've got a date  
10 right here that you can check and dates throughout  
11 here that you can check. So the -- the Clark County  
12 part and the date part are -- are in black and white.

13 Let's look at some of these other parts. Number  
14 1, not Number 1, Instruction Number 8 is the assault  
15 instruction. One of the charges is assault in the  
16 second degree. So I need to prove to you that there  
17 was an assault. An assault is an intentional  
18 touching or striking of another person with unlawful  
19 for -- force, excuse me, that is harmful or offensive  
20 regardless of whether any physical injury is done.  
21 Assault means to be intentional, an intentional  
22 touching and it needs to be either harmful or  
23 offensive. It doesn't have to be both. Harmful or  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 offensive, regardless of whether there's physical  
2 injury. So what could be an example of an assault?  
3 Just a basic assault? It could be spitting, it could  
4 be throwing a drink in somebody's face. Offensive,  
5 spitting, offensive. Spitting could be harmful, I  
6 suppose. Maybe even throwing a drink could be  
7 harmful. Those are some examples of what an assault  
8 could be.

9 Now what I have to prove to you, and -- and well,  
10 we'll come back to that. What I have to prove to you  
11 is that this assault had to be done by strangulation.  
12 Now, think what the word strangulation means. What  
13 may come into your mind is loss of consciousness.  
14 Just on the very brink of -- of passing out or of  
15 death. You may be thinking of bloodshot eyes or all  
16 kinds of blood vessels popping in the head because  
17 somebody's just squeezing that hard. (Demonstrates  
18 choking.) The challenge for you here is to focus on  
19 the legal definition of strangulation because it may  
20 not be the one that you have in your heads. The  
21 legal definition of strangulation is, "Strangulation"  
22 -- excuse me, "means to compress a person's neck  
23 thereby obstructing the person's blood flow or  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 ability to breathe. Strangulation means," this is  
2 Number 10, "to compress a person's neck thereby  
3 obstructing the person's blood flow or ability to  
4 breathe." The Defendant compressed Christina's neck  
5 when he put both hands around, had his thumbs over  
6 locking, grabbed her on the back with the -- the  
7 fingers meeting towards the back and squeezed. As  
8 she testified she tried to yell but she couldn't.  
9 The reason she couldn't yell is you need air to be  
10 able to make noise. If somebody's choking on a piece  
11 of food, what's the general rule? If you can hear  
12 them making noise you're not supposed to start  
13 slamming them on the back, just let them get it out.  
14 But if they're not making noise they're in trouble.  
15 That's because they're not getting any air.  
16 Christina Gutierrez says she couldn't make noise, it  
17 was hard to breathe. Now the definition of  
18 strangulation doesn't require proof that she couldn't  
19 breathe at all, it just needs proof of obstructing  
20 the ability to breathe. And that makes sense because  
21 if you want to control somebody, if you want to  
22 strike at the essence of somebody, and prove to them  
23 who's in charge, you go for the neck. The law is  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 there to protect against that because that is an  
2 absolute direct threat at somebody's life. To be  
3 able to go to that person's neck, squeeze it and let  
4 them know that they're breathing only because you're  
5 letting them breathe. That is a tremendous amount of  
6 power and control. And that's why strangulation is  
7 specifically protected. The evidence shows that the  
8 Defendant strangled, legally, Christina Gutierrez.

9 The next instruction I want you to focus on is  
10 Number 17. This is an important instruction, it's an  
11 instruction on the accomplice. What it basically --  
12 there was a lot of legal mumbo jumbo in here but what  
13 it basically says is that if somebody is an  
14 accomplice to a crime they're also guilty of it.  
15 That's what seventeen basically says. If somebody's  
16 an accomplice to a crime -- a crime, excuse me,  
17 they're ba -- they're also guilty of it. They're  
18 considered to have committed it themselves. Well,  
19 what is an accom -- an accomplice? That's in the  
20 second paragraph here. "A person is an accomplice in  
21 the commission of a crime if, with knowledge that it  
22 will promote or facilitate the commission of the  
23 crime, he or she solicits, commands, encourages or  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 requests another person to commit the crime." If you  
2 ask somebody to commit a crime for you then you're an  
3 accomplice.

4 So, that takes us to the no-contact order  
5 violation and the witness tampering. Exhibit Number  
6 23 has been admitted, this is a no-contact order, and  
7 you'll get a -- these exhibits will go back with you,  
8 all the evidence goes back with you so you can take a  
9 look at this and read it for yourself. But this is a  
10 no-contact order that was signed on the back page by  
11 the Defendant and the Judge. And in this order it  
12 lays out, it says right here, "It is ordered that  
13 Defendant is restrained from," and then it lists the  
14 things that the Defendant is restrained from doing.  
15 And it also lists the protected party who is  
16 Christina Gutierrez. One of the things the Defendant  
17 is restrained from doing is coming near and from  
18 having any contact whatsoever, in person or through  
19 others by phone, mail or any means, directly or  
20 indirectly. This no-contact order puts a wall, at  
21 least it's -- it's intended to put a wall between the  
22 protected party and the restrained person. That  
23 order is violated if you know what the terms are and  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           you knowingly contact. Or, in the case of an  
2           accomplice, if you knowingly ask somebody to do the  
3           contact for you and that's what we heard today with  
4           Jacinto Hausinger. He, the Defendant, asked Jacinto  
5           Hausinger to contact the Defendant (sic) and read the  
6           letter. He prepared a written letter for Mr.  
7           Hausinger to read and he eventually did that. The  
8           Defendant is the accomplice, he's guilty of the  
9           contact order violation. By having a third party  
10          contact her.

11           And then lastly, towards the last at least, Number  
12          14, witness tampering. "A person commits the crime  
13          of tampering with a witness when he or she attempts  
14          to induce a witness or person he or she has reason to  
15          believe is about to be called as a witness." Again,  
16          the accomplice issue comes into this. If you command  
17          or you request or solicit somebody to tamper with a  
18          witness, then you're committing that crime, too. So  
19          what is this? Well, did the Defendant know that  
20          Christina Gutierrez was potentially going to be a  
21          witness in a official proceeding? That's one thing  
22          he did admit to today. He said, "Yeah, I knew there  
23          could be a trial, I knew there was going to be a  
24          could be a trial, I knew there was going to be a  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 trial. And I knew that Christina Gutierrez was going  
2 to testify in that trial." So did he attempt to  
3 induce her to testify falsely by asking Jacinto  
4 Hausinger -- by -- not asking, by directing Jacinto  
5 Hausinger to contact Christina Gutierrez and tell her  
6 how much the Defendant loved her; to tell her that he  
7 was facing a second strike and didn't want to get in  
8 any more trouble; to tell her to go to the police and  
9 change her story; to tell her that if she went to the  
10 police and changed her story she wouldn't get in  
11 trouble. That was an attempt -- does -- it -- the  
12 law only requires an attempt. Doesn't require that  
13 it be successful, that was an attempt to get  
14 Christina Gutierrez to testify falsely today. And  
15 she testified herself that she didn't think the  
16 Defendant wanted her testifying as she did today,  
17 telling the truth -- or yesterday. Telling the  
18 truth. I asked her that directly. "Does the  
19 Defendant want you to testify -- are you telling the  
20 truth today? Does the Defendant want you to testify  
21 to the truth you're telling today? Why do you think  
22 that?" Because of the contact that was made. That's  
23 an attempt to induce her to testify falsely.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           And it was a hard thing to tell the truth. The  
2           courage to stand up and tell the truth. You saw  
3           somewhat of a visual of that with Jacinto Hausinger.  
4           He didn't want to tell the truth, it was a struggle,  
5           an internal struggle for him to do that. The  
6           pressures he felt he was facing to tell the truth  
7           about the Defendant. Well, imagine that for  
8           Christina Gutierrez. That's the pressure she faced,  
9           increased because of her domestic relationship with  
10          him.

11          Christina broke free from manipulation, she had  
12          the courage to stand up and tell you her story  
13          yesterday. A story that is in many respects backed  
14          by what Mr. Hausinger said today. And is consistent,  
15          she's been consistent throughout. The law exists to  
16          protect the people that do that type of thing. You  
17          have a chance to do that. The evidence shows, beyond  
18          a reasonable doubt, that the Defendant assaulted her.  
19          That after assaulting her he decided to contact her,  
20          even though he wasn't supposed to, he was forbidden  
21          by the law to do it and to get her to testify  
22          falsely. because he knew he was in trouble and that  
23          if she told the truth he'd be in trouble. Those are  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 crimes and I ask you to find him guilty of Assault 2  
2 strangulation, domestic violence court order  
3 violation and witness tampering. Thank you.

4 JUDGE LEWIS: All right. Now we'll have the  
5 closing argument of Defense Counsel.

6 MS. STAUFFER: Thank you, Your Honor.

7 **CLOSING ARGUMENT - DEFENSE**

8 MS. STAUFFER: Good afternoon. I know it's been a  
9 long day, I appreciate your patience, and service  
10 here. I get to give a closing argument but I only  
11 get to talk to you once. Okay? The State would have  
12 if they chose to give you a second closing argument  
13 because of the fact the State has the burden of  
14 proof. So it's not like (inaudible), wouldn't want  
15 to keep arguing all day long of presenting our  
16 arguments but I will be only having one opportunity  
17 to address the issues here today. So, on behalf of  
18 my client, Shawn, I would like to simply run over the  
19 issues here and what the evidence shows or doesn't.  
20 Remember that what each attorney says is not  
21 evidence. So, if there's speculation, if there's  
22 assumptions and you don't feel that's in the evidence  
23 or that's something that you heard then you're going  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 to have to make your decision what you feel the  
2 evidence that's been presented by testimony. I'm  
3 going to attempt to not misstate stuff, so, but  
4 however, just want to caution you that what I say in  
5 terms of evidence is not meaning to tell you this is  
6 what the evidence, you know, my version of evidence,  
7 it's got to be what's actually been testified to. I  
8 hope that makes sense, okay.

9 So, this particular case as you have heard over  
10 two days involves two parties and a situation where  
11 there are quite a few consistencies in reference to  
12 what the -- Christina has to say and I think those  
13 things are important because we have to deal with the  
14 issue of credibility and believability. And that is  
15 true of perhaps all the witnesses but in particular  
16 the omissions of Christina and I think are quite  
17 striking. And this comes to the issue of whether or  
18 not her version of events is credible or believable.  
19

20 The first thing, or some of the things that we  
21 have heard, include the 911 tape, we've had an  
22 opportunity to hear that. And she's indicating that  
23 -- that on one hand told my investigator, "Oh, gee  
24 whiz, this whole event occurred an hour before I  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 called 911." Then she comes in and says, "Oh, I  
2 called right away." In any event, the voice and the  
3 demeanor of her on the 911 call speaks for itself and  
4 I would put to you that when Officer Bibens talks to  
5 her, which he's indicating is just not very long  
6 after the 911 call comes in, two calls, that she's  
7 soft spoken, she's calm and he also indicates she's  
8 complaining about her neck. And that in terms of the  
9 claims of bruises, the -- the real striking thing  
10 here which is pretty concerning is that she's busy  
11 saying, "Oh, gee, hurt my neck, my neck hurts," and  
12 he can see a bruise. Or what he thinks is a bruise,  
13 because that's what she's telling him, "Hey, here's  
14 the bruise." She never says, "Oh, gee whiz, I know  
15 there's that hickey over there, I had a hickey." And  
16 -- and -- and that's part of when we start here, so  
17 the Officer's saying, "Ooh, I'll -- I see evidence of  
18 a bruise." Or something that corroborates with her  
19 claim is of somehow having some injuries from this  
20 episode of what she's claiming she was choked. And  
21 that's important because those are some of the things  
22 that the officers do look for, and that's one of the  
23 things he mentions. And he, in fact, goes and takes  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 pictures. And then, we have it here today that he's  
2 saying, "No, she never told me it was a hickey." So,  
3 that's -- that's one area.

4 The other thing is, is that she fails to really  
5 indicate what -- what's been going on that evening  
6 and she does finally kind of tell us when we start  
7 pulling it out of her that this wasn't just a  
8 situation where suddenly she had not been having any  
9 types of interactions with -- with Shawn but that  
10 indeed there had been an ongoing pattern that evening  
11 of her being, basically, continuing to go after him  
12 and to push, kick, grab beer cans, so on and so  
13 forth. He agrees that yeah, I kicked back here and  
14 there, but the whole process of that evening was more  
15 or less her indicating what she was doing but she  
16 doesn't tell the police a lot of that. The other  
17 thing is the demeanor of a witness. So, if you  
18 recall correctly, or do recall, her testimony  
19 throughout when the Prosecutor was asking questions,  
20 she kept crying and crying and crying. When I asked  
21 her questions, I don't recall her crying very much.  
22 And yet, I was also going over some of the same  
23 territories that she was busy crying when she was  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 describing to the Prosecutor about what had  
2 supposedly happened.

3 The -- your job is to determine whether or not the  
4 State has established each of these charges beyond a  
5 reasonable doubt and in doing so how do you make that  
6 determination? You have to use your judgment, use  
7 the law and also listen to what testimony has been  
8 given.

9 And in this case the other telling part is the  
10 critical one, which is when -- after trying to get  
11 her to agree to a certain extent to what she had told  
12 my investigator regarding the incident, regarding the  
13 mirror and the erasing, which is she's shoving him  
14 away and she shoves him so hard he almost falls, he  
15 hits the wall, they almost both fall. And then she's  
16 saying, "Well, then he just goes and lays on the bed  
17 and that's -- that's about it until suddenly boom, he  
18 runs up to me and tries to choke me." And through  
19 the process of this alleged choking she says, "I  
20 don't do anything, I just stand there and try to talk  
21 to him." Yet, the whole evening she has been  
22 demonstrating her grabbing, pushing and shoving and  
23 yet all of a sudden when she's saying, "Oh, he's busy  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1       choking me, well, my -- my arms are at my side, I  
2       didn't do anything." She's, I think, five-six, my  
3       client is five-seven. She lifts pallets and she  
4       shows that, you know, we kick, I pushed him and  
5       shoved him. And then he's, you know, he's indicating  
6       that basically what seems to have triggered her  
7       calling was when they were messing around with this  
8       mirror, she shoves -- pushes him and that's pretty  
9       much about the time frame where -- when she goes and  
10      says she's going to call 911. Not him suddenly being  
11      in the bed and leaping out of the bed at her and  
12      suddenly trying to choke her. It makes no sense,  
13      but, her reaction to that alleged claim of him trying  
14      to choke her? Her reaction, given what she said she  
15      had been doing all night long, doesn't really fit.  
16      Her procedures all night long doesn't fit that what  
17      she had been, how she had been reacting. So, I think  
18      that is one of the most telling issues of this whole  
19      case in terms of believability and her anger and  
20      upset.  
21

22             And the other, few other things that she kind of  
23      says, "Oh, I'm never jealous. No, Shawn's always  
24      jealous." Then Shawn's indicating, "Oh, she's taken  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 stuff off Facebook. She's messed around with my cell  
2 phone, got jealous when I had to train other women at  
3 work." And again, those may be little things, they  
4 may be big things, but, it goes to the credibility  
5 issue of whether she's that believable when she says,  
6 "No, I'm never jealous," and "No, I didn't do  
7 anything" when he supposedly was busy choking me.  
8 Which makes no sense given her ongoing types of  
9 behavior towards Shawn in that whole process of that  
10 night. Of being pretty pushy, kicking and shoving  
11 and then just not doing anything when she's  
12 supposedly -- suddenly being extremely scared and  
13 extremely frightened but she doesn't do anything.  
14 Just stands limp.

15  
16 So then we have -- and Shawn's pretty much told  
17 you his -- what happened that night. It obviously  
18 was emotionally upsetting to him, he had some  
19 difficulty talking as he went through that evening  
20 and, again, you have to decide, you know, who you  
21 feel was being fairly credible, believable. And I  
22 would put that Shawn was pretty honest and honestly  
23 telling you what happened.

24 Again, then Christina's indication of money and  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 debit cards, again, they may not be real big issues,  
2 but again they play into the thing of "no, that was  
3 my money. Oh, he gave me permission to use the debit  
4 card" and so on and so forth. So, again, those are  
5 things that just show her total pre -- the -- the  
6 posturing of herself in a light that she does no  
7 wrong.

8 Then we have Mr. Hausinger. And there's been no  
9 dispute that he apparently had been with my client  
10 for a period of time. That my client, Shawn, had  
11 told him what had happened. Mr. Hausinger,  
12 apparently on his own, goes out and contacts  
13 Christina and the most interesting thing about him --  
14 and I had to kind of drag it out of him, was the fact  
15 that police contact you. The first police officer  
16 that talks to him and says, "Hey, I know you  
17 contacted Christina, I know you did this. And -- and  
18 so who are you and -- and what happened," and -- and  
19 what does he tell her? He says he was not told by  
20 Shawn to give her the message, meaning her being  
21 Christina, but he took it upon himself to talk to her  
22 on Shawn's behalf.

24 MR. FARRA: Ob -- object to the manner of reading  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 the --

2 MS. STAUFFER: This is what the testimony --

3 JUDGE LEWIS: I'll overrule the objection.

4 MR. FARRA: Okay.

5 MS. STAUFFER: I'm trying to reiterate what he  
6 actually said in court so I will go over it again.  
7 He agreed that he had told Officer Skeeter that this  
8 -- told that he was not told by Shawn to give her,  
9 meaning Christina, the message but he took it upon  
10 himself to talk to her, being Christina, on Shawn's  
11 behalf. He said he shared a cell with Shawn,  
12 considers him a friend and doesn't want to see him go  
13 to prison. That is what Mr. Hausinger said to the  
14 police when he was contacted. The officer proceeds  
15 shortly after that phone call to call him back and  
16 leave a message, which he says, "Yes, I got that  
17 message." Which said, I got the message, this is  
18 from -- he indicates that's what the officer said. A  
19 message explaining that the officer would be  
20 referring charges of tampering with a witness on him  
21 because he has contacted Christina and told her she  
22 needs to change her statement. He says, "Yeah,  
23 that's -- that's what the officer did." And so,  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           thereafter he then comes around and says, "Oh gee, it  
2           was all Shawn's fault. Shawn made me do this"  
3           because he is now being told if you don't cooperate  
4           you're going to get charged, so you better be doing  
5           it and that's kind of where we're at, what is the  
6           truth? The truth is when he first talks to the  
7           officer and he tells them why he did this and he  
8           says, "Shawn doesn't have anything to do with it."  
9           And when he's told you're going to get charged now he  
10          shows up in court and tells well, yeah, that -- all  
11          of a sudden it's Shawn's responsibility. So, I guess  
12          you have to determine where Mr. Hausinger is in this  
13          picture, but, he certainly has his own protection  
14          issues. Terms of what he's indicating, no matter  
15          which way he indicates but the first contact, I think  
16          is most telling. And I think the most honest because  
17          he does incriminate himself and he does tell what  
18          happened and then later changes the story because  
19          he's being told he's going to be charged.  
20

21                 So, that is, I guess our cast of characters and  
22                 it's in the sense of looking at this from a  
23                 standpoint of the various testimony that we have  
24                 heard through the last two days and you folks are the  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 ones that decide how you weigh tho -- that evidence  
2 or that testimony. The believability, the  
3 credibility of it. But -- and I'm not touching on  
4 everything, I trust your -- you have listened closely  
5 and that you will carefully review this and make a  
6 determination.

7 And if -- indeed you will be given the jury  
8 instructions. And, again, you have to decide whether  
9 or not the evidence establishes each -- and on each  
10 of the counts, they're all separate to begin with,  
11 so, each individual charge or count you have to  
12 decide individually, and make a determination. That  
13 you have to decide whether or not you are convinced  
14 beyond a reasonable doubt on each individual count  
15 that the evidence has been established by the State  
16 beyond a reasonable doubt. And in this particular  
17 case, I don't believe that the State or the -- strike  
18 that. That the State has not established the -- the  
19 evidence beyond a reasonable doubt. And, again, all  
20 the types of statements that have been made have to  
21 come into play in terms of weighing what you believe  
22 or end up deciding is the true picture of what  
23 happened or didn't happen on that -- that night.  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           And, I think again, going to the Assault 2, the  
2 strangulation part of this is certainly, extremely  
3 questionable given the photos that you have and you -  
4 - you will take and be able to look over, and  
5 basically, really -- be -- look at those photos,  
6 there's this mark on her side of her neck that is  
7 indicated later on and in court that this maybe is a  
8 hickey but it was not indicated at the time of  
9 contact and yet that was taken -- a picture was taken  
10 of that. You look at her -- front of her throat,  
11 there are no marks. She says that the -- she was --  
12 the pressure was hard. The State would like to tell  
13 you, well, there's -- wouldn't be any evidence, there  
14 may not be any marks and you still find  
15 strangulation. Well, I put to you, in this  
16 particular case, no strangulation took place and  
17 that's why you're not seeing any physical evidence of  
18 the strangulation. Especially when you hear what her  
19 version of events that took place in that regard.  
20 And don't get confused with the -- the assault, and  
21 they talk about someone assaulting and -- and  
22 touching unlawfully. The strangulation was the only  
23 thing you still have to find, so make sure you,  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 again, cover your -- your instructions carefully in -  
2 - in looking at that.

3 So, I do appreciate your attention and I would ask  
4 that you on each of these counts go through the  
5 elements and render a verdict of not guilty on each  
6 count in respect to Shawn. Thank you very much.

7 JUDGE LEWIS: Ladies and gentlemen, because the  
8 State has the burden of proof they also have the last  
9 opportunity to address you in rebuttal argument if  
10 they wish and since Counsel's on his feet I assume he  
11 does wish to address you in rebuttal. (General  
12 laughter.)

13 MR. FARRA: That's correct, Your Honor, thank you.

14 **REBUTTAL CLOSING ARGUMENT - STATE**

15 MR. FARRA: I just want to touch on the -- on the  
16 things that I heard there. First off, we went back,  
17 Ms. Stauffer did, to the 911 tape and the time that  
18 the call was made. Christina Gutierrez was not  
19 checking her watch throughout the night. She  
20 indicated what happened in that bedroom was a  
21 surprise to her, she went right out of that bedroom  
22 and she called 911. What time it was, was the last  
23 thing on her mind, she wanted to make sure that she  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 And she didn't oversell anything and she didn't  
2 exaggerate anything and she got up in front of you  
3 and you said, yeah, and said, excuse me, "Yes, the  
4 bruise is a hickey. Yes, I pushed him." She  
5 admitted to it all. That's credibility. That is  
6 credibility. What's not credibility is running from  
7 the police. Saying that the other person was the  
8 aggressive party the entire night, I did nothing  
9 wrong. That's not credibility.

10 So when you go back and it comes -- and it will  
11 come to a point where you have to decide who are we  
12 going to believe? Who does the evidence support?  
13 That's clearly Christina Gutierrez. And that's why  
14 the Defendant's guilty of what he's been charged  
15 with. Thank you.

16  
17 JUDGE LEWIS: All right, ladies and gentlemen,  
18 you'll now take your notepads and go back to the jury  
19 room. In a couple of minutes we'll send back the  
20 original and one copy of the instructions, the  
21 verdict forms and the exhibits that have been  
22 admitted into evidence with a couple of -- with one  
23 exception, which I'll talk about in just a second.  
24 First of all, do not write on the jury instructions.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 They are public documents that I have to file after  
2 your deliberations, but if you need something to  
3 write on use your notepads or something else but  
4 please do not write on the jury instruction itself.

5 Second, only write on the verdict forms the  
6 verdict that you've found. Don't use those for  
7 scratch paper either. The only exhibit you will not  
8 be given is Exhibit Number 24, which is the CD of the  
9 call which was played to you. That's because it  
10 would be meaningless for you to have it since you  
11 won't have a playing -- playback device in the jury  
12 room with you. If at some point during your  
13 deliberations you wish to hear that exhibit again, I  
14 don't know whether you will or not, but if you do,  
15 notify the Bailiff and we will bring you back into  
16 court to let you listen to it again. Go ahead and go  
17 with the Bailiff then and I do need the alternate  
18 juror to remain here in the courtroom.

19  
20 (Jury is escorted out of the courtroom.)

21 JUDGE LEWIS: I understand you were the alternate  
22 juror. The purpose of an alternate is to be  
23 available in case one of the other jurors becomes ill  
24 or is otherwise unable to participate in the trial.

25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 But the law requires that if the originally selected  
2 twelve jurors are available to deliberate that I not  
3 allow you to go into the jury room with them and  
4 participate in the process. But your service may or  
5 may not be complete because on occasion people during  
6 the deliberation process become ill or can't  
7 participate and I may have to call you back in. So  
8 my previous instructions to you remain in effect.  
9 You are not to discuss this case with anyone else  
10 including any of the jurors. You are not to seek out  
11 information, factual or legal from any other source.  
12 You are not to go to any scene described. You'll  
13 leave your notepad with the Bailiff, and she'll keep  
14 it separate from everything else and secure until the  
15 matter is resolved. You are not required to remain  
16 here at the courthouse but you are required to keep  
17 the judicial assistant notified of how to reach you  
18 and to be within a reasonable period of time --  
19 distance from the courthouse so that we don't have to  
20 wait hours for you to come back in if I have to call  
21 you in. Now, those things will continue until either  
22 we call you and tell you that the jury has reached a  
23 verdict or been discharged, or until we call you and  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 tell you to come back in. Is all of that clear to  
2 you? All right. I just need you to step out there  
3 and wait until the judicial assistant can assist you  
4 with taking your notepad and getting your contact  
5 information.

6 ALTERNATE JUROR: Okay.

7 JUDGE LEWIS: Thank you.

8 (Alternate juror escorted out of the courtroom.)

9 JUDGE LEWIS: All right, Counsel, I'll allow the  
10 jury to deliberate for about a half an hour and then  
11 if they haven't reached a verdict I'll be sending  
12 them home. We don't keep people into the evening  
13 hours to deliberate. So, if you haven't heard from  
14 me before then you'll need to be back here at 5:00.

15 MR. FARRA: Okay. Thank you.

16 (Clerk confers with both Counsel about the  
17 exhibits.)

18 (Court recesses on this matter at 4:29:06 PM.)

19 (Court reconvenes on this matter at 5:14:25 PM.)

20 JUDGE LEWIS: All right. Bring in the jury please.

21 (Jury is escorted into the courtroom.)

22 JUDGE LEWIS: All right. Welcome back, ladies and  
23 gentlemen. You're in the middle of your  
24 deliberations so you shouldn't say anything, but I  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 should advise you that we don't keep court staff and  
2 jurors past 5:00 more than we need to and so I'm  
3 going to let you recess at this time and have you  
4 resume your deliberations in the morning. Now, once  
5 you're excused, I need you to follow the normal  
6 procedure and head off this floor and leave the  
7 courthouse and don't come back again to this floor  
8 until any earlier than 8:30 AM, and it's very  
9 important that you not come up here any earlier than  
10 8:30 AM because I have to have staff available to do  
11 other things and that -- that's the earliest they'll  
12 be able to let you in and get you situated in the  
13 jury room. So, please, the earliest you can come up  
14 is 8:30, the latest you can come back is 9:00 and  
15 we'll try to get you doing your deliberations as soon  
16 as you can after 9:00. Now, because you've begun  
17 your deliberations, there's a few things that I need  
18 to re-emphasize with you. The first is that  
19 deliberation is a group process that's done in the  
20 jury room, so you are not to discuss this case either  
21 to -- altogether or in groups or even just two of you  
22 outside of the jury room. So that this evening you  
23 should not discuss the case with one another. When  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 you come back in the morning until all 12 of you are  
2 back in the jury room and ready to proceed, you  
3 should not begin to discuss the case though some of  
4 you get here earlier than others, don't begin to  
5 discuss it. Leave everything that relates to the  
6 case, including your notebooks in the jury room,  
7 don't take anything out with you. Don't discuss the  
8 case with anyone else and do not seek out information  
9 from any other source, factual or legal. Everything  
10 you need to decide the case has been provided to you  
11 here in the courtroom. And don't go to any scene  
12 described. So, have a good evening and we'll see you  
13 back between 8:30 and 9:00 tomorrow, directly to the  
14 jury room to begin your deliberations.

15 (Jury is escorted out of the courtroom.)

16 JUDGE LEWIS: Counsel, you're not required to  
17 check in tomorrow at 9:00. However, you need to keep  
18 the Bailiff advised of your whereabouts and you need  
19 to be within ten minutes of the court's call. That  
20 means from the time we call because the jury has a  
21 question or verdict, you're standing here in the  
22 courtroom so that the jury does not have wait a  
23 prolonged period of time in order to have this matter  
24  
25

**State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II**

1 resolved. So, check in at 9:00 to let the -- the  
2 judicial assistant know where you are and we'll see  
3 you tomorrow.

4 MS. STAUFFER: Thank you, Your Honor.

5 CLERK: All rise, please, court is in recess.

6 (Court recesses on this matter at 5:18:53 PM.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VOLUME 2B

HEARING INDEX

**State of Washington v. Shawn Eric Christopher**

November 14, 2013

427 - 433

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 (Court reconvenes on this matter at 11:28:46 AM,  
November 14, 2013.)

2 CLERK: Court is again in session.

3 JUDGE LEWIS: Thank you. Please be seated. All  
4 right. This is the State of Washington v. Shawn  
5 Christopher. We're back on the record because I've  
6 been advised that the jury has reached a verdict.  
7 Please bring the jury in.

8 (Jury is escorted into the courtroom.)

9 JUDGE LEWIS: Welcome back, ladies and gentlemen.  
10 Ms. Rock, Juror Number 2, I see you have some  
11 documents in your hand, are you the presiding juror?  
12

13 PRESIDING JUROR: I am.

14 JUDGE LEWIS: And has the jury reached a verdict?

15 PRESIDING JUROR: Yes, they have.

16 JUDGE LEWIS: Would you please hand the verdict  
17 forms in to the Bailiff so I can review them?

18 (Bailiff hands forms to Judge Lewis.)

19 **VERDICT & POLLING OF THE JURY**

20 The verdict as to Count 1; We, the jury, find the  
21 above-named Defendant guilty of the crime of assault  
22 in the second degree. Verdict as to Count 2; We, the  
23 jury, find the above-named Defendant guilty of the  
24 crime of domestic violence court order violation.  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Verdict as to Count 3; We, the jury, find the above-  
2 named Defendant guilty of the crime of tampering with  
3 a witness. Special Verdict form; Was Shawn Eric  
4 Christopher and Christina Gutierrez members of the  
5 same family or household? Answer: yes.

6 I'm now going to ask each of you two questions to  
7 make sure that you are unanimous in your verdict.  
8 The first question will be whether these were your  
9 individual verdicts and second, whether they were the  
10 verdict for the jury, in other words, the verdicts of  
11 all 12 of you? So, Juror #1, were these your  
12 individual verdicts?

13 JUROR #1: Yes.

14 JUDGE LEWIS: And were they the verdicts of the  
15 jury?

16 JUROR #1: (Inaudible) to the jury.

17 JUDGE LEWIS: I'm sorry?

18 JUROR #1: And then we all -- we all agreed on the  
19 second one, yes.

20 JUDGE LEWIS: Juror #2, were these your individual  
21 verdicts?

22 JUROR #2: Yes.

23 JUDGE LEWIS: And were they the verdicts of the  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 jury?

2 JUROR #2: Yes.

3 JUDGE LEWIS: Juror #3, were these your individual  
4 verdicts?

5 JUROR #3: Yes.

6 JUDGE LEWIS: And were they the verdicts of the  
7 jury?

8 JUROR #3: Yes.

9 JUDGE LEWIS: Juror #4, were these your individual  
10 verdicts?

11 JUROR #4: After much deliberation, yes.

12 JUDGE LEWIS: All right. And were they verdicts  
13 of the jury?

14 JUROR #4: Yes.

15 JUDGE LEWIS: And Juror #5, were these your  
16 individual verdicts?

17 JUROR #5: Yes.

18 JUDGE LEWIS: And were they the verdicts of the  
19 jury?

20 JUROR #5: Yes.

21 JUDGE LEWIS: Juror #6, were these your individual  
22 verdicts?

23 JUROR #6: Yes.

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUDGE LEWIS: And were they the verdicts of the  
2 jury?

3 JUROR #6: Yes.

4 JUDGE LEWIS: Juror #7, were these your individual  
5 verdicts?

6 JUROR #7: Yes.

7 JUDGE LEWIS: And were they the verdicts of the  
8 jury?

9 JUROR #7: Yes.

10 JUDGE LEWIS: Juror #8, were these your individual  
11 verdicts?

12 JUROR #8: Yes.

13 JUDGE LEWIS: And were they the verdicts of the  
14 jury?

15 JUROR #8: Yes.

16 JUDGE LEWIS: And Juror #9, were these your  
17 individual verdicts?

18 JUROR #9: Yes.

19 JUDGE LEWIS: And were they the verdicts of the  
20 jury?

21 JUROR #9: Yes.

22 JUDGE LEWIS: Juror #10, were these your  
23 individual verdicts?  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 JUROR #10: Yes.

2 JUDGE LEWIS: And were they the verdicts of the  
3 jury?

4 JUROR #10: Yes.

5 JUDGE LEWIS: Juror #11, were these your  
6 individual verdicts?

7 JUROR #11: Yes.

8 JUDGE LEWIS: And were they the verdicts of the  
9 jury?

10 JUROR #11: Yes.

11 JUDGE LEWIS: And Juror #12, were these your  
12 individual verdicts?

13 JUROR #12: Yes.

14 JUDGE LEWIS: And were they the verdicts of the  
15 jury?

16 JUROR #12: Yes, sir.

17 JUDGE LEWIS: All right. All of the jurors have  
18 been polled, the verdicts were unanimous and they've  
19 been signed and dated, they're in proper form, so  
20 they'll be filed with the Clerk.

21 Ladies and gentlemen, I want to thank you for your  
22 assistance in this matter. We couldn't have a  
23 functioning jury system if citizens such as  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 yourselves didn't come in and take the time to  
2 carefully consider these issues. You're now released  
3 from the obligation that you're not to discuss this  
4 case with anyone else, you're free to discuss it with  
5 whoever you'd like and in a couple of minutes I'll be  
6 off the bench and come back to the jury room if any  
7 of you want to speak to me, has questions or make  
8 comments concerning the process, I'll be glad to try  
9 to talk to you about that and sometimes the attorneys  
10 come back as well. The flip side of that is that you  
11 are not required to talk about this case with anyone  
12 if you don't want to and if I come back to the jury  
13 room and all of you have decided you have something  
14 else you would rather do than talk to me, I won't be  
15 offended in the least. (General laughter.) Either  
16 way you're discharged.

17  
18 (Jury is escorted out of the courtroom.)

19 JUDGE LEWIS: Counsel, I know that I have the in  
20 custody change of plea docket on Monday, November 25<sup>th</sup>  
21 at 1:30, is that a date when you'd be available and  
22 prepared for sentencing?

23 MR. FARRA: I believe I would, Your Honor.

24 MS. STAUFFER: That will work, Your Honor.  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 JUDGE LEWIS: Okay. We'll set sentencing then on  
2 the 25<sup>th</sup> at 1:30. Let's do a memo to that effect and  
3 holding Mr. Christopher without bail until that issue  
4 is resolved.

5 MR. FARRA: Thank you.

6 JUDGE LEWIS: Melissa, do you need them to work  
7 with you on anything related to the exhibits?

8 CLERK: No, we completed that last night. Thank  
9 you, Your Honor.

10 JUDGE LEWIS: Okay.

11 (Ms. Stauffer and Mr. Christopher confer quietly.)

12 JUDGE LEWIS: All right. I've signed the memo  
13 setting the matter for the 25<sup>th</sup> at 1:30 and if you  
14 could take both copies.

15 MS. STAUFFER: Thank you.

16 (Parties confer as the Defendant is escorted out.)

17 (Court recesses on this matter at 11:34:52 PM.)  
18  
19  
20  
21  
22  
23  
24  
25

VOLUME 2B

HEARING INDEX

**State of Washington v. Shawn Eric Christopher**

November 25, 2013

434 - 453

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 (Court reconvenes on this matter at 2:29:26 PM,  
November 25, 2013.)

2 DOCKET PROSECUTOR: Your Honor, next we would call  
3 -- well, whenever you're ready, Your Honor?

4 JUDGE LEWIS: Go ahead and call it.

5 CLERK: Christopher, Number 2? Shawn Christopher.

6 COURT OFFICER: Get Christopher, Shawn  
7 Christopher.

8 MS. STAUFFER: (Addresses Mr. Farra.) I think the  
9 only issue we might have is whether or not that was a  
10 domestic violence (inaudible)?  
11

12 UNKNOWN VOICE: (Inaudible).

13 MS. STAUFFER: (Addresses Mr. Christopher  
14 quietly.) I have one issue on this.

15 JUDGE LEWIS: Okay. In the Shawn Christopher  
16 matter.

17 MR. FARRA: That's right, Your Honor, we're on for  
18 sentencing after a finding of guilt at trial on three  
19 counts. An Assault 2 domestic violence. Count 2 is  
20 a no contact order violation, gross misdemeanor.  
21 Count 3 was a witness tampering, Your Honor.  
22 Defendant has --

23 JUDGE LEWIS: Okay. Well on the Assault 2, what's  
24 the calculation of offender score in the standard  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 range?

2 MR. FARRA: The offender score on both the Assault  
3 2 and the witness tampering is five points -- well,  
4 it comes in with a -- it's five points for an -- a  
5 range of 22 to 29 months on the Assault 2. And 17 to  
6 22 on the tampering.

7 JUDGE LEWIS: Then is there a community custody  
8 after either?

9 MR. FARRA: Eighteen months for the Assault 2,  
10 Your Honor.

11 JUDGE LEWIS: Do you have any dispute with the  
12 offender score or standard range?

13 MS. STAUFFER: Your Honor, I think the only thing  
14 that I would note is that the State is attempting to  
15 utilize a violation no-contact order, domestic  
16 violence conviction of -- in District Court, a  
17 2Z0249096 and I guess I would just be objecting  
18 insofar as whether or not that's actually a domestic  
19 violence charge? So, with that in mind, I think that  
20 would be our -- the nature of our objection.

21 JUDGE LEWIS: First, we'd need to have a hearing  
22 about whether or not -- what the correct offender  
23 score is. So I guess we need to -- unless you're  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 prepared to deal with that issue today? I'm not, but

2 --

3 MR. FARRA: I -- I am prepared to the extent that  
4 I have a certified copy of his statement of plea and  
5 guilty on that -- on that case, that I could pass to  
6 the Court. I believe we've provided that to Ms.  
7 Stauffer, she thinks she's got it right there. We  
8 handed that to her.

9 DEFENDANT: (Addresses Mr. Farra.) s/l John, it's  
10 a five? Is that what we're going through right now?

11 MR. FARRA: Yes. Five is correct, that's what  
12 I've calculated.

13 DEFENDANT: (Inaudible.)

14 CLERK: Okay. Fingerprints you got (inaudible).

15 JUDGE LEWIS: Okay. Do you want to hand it up?  
16 You have a declaration of criminal history that  
17 you're relying on to get you your offender score of  
18 five, or --

19 MS. STAUFFER: (Inaudible).

20 MR. FARRA: Well, I do, Your Honor. And I've  
21 stapled that to the felony judgment and sentence  
22 which I have yet to fill in but --

23 MS. STAUFFER: I have a blank one.  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MR. FARRA: I can tell you --

2 MS. STAUFFER: (Inaudible).

3 MR. FARRA: Summarize it for you, or kind of walk  
4 through it.

5 MS. STAUFFER: (Addresses Mr. Christopher.) We'll  
6 just dispute it to see if we can get rid of it, okay?

7 JUDGE LEWIS: Okay. So you have a DV, no contact  
8 order violation in 2012 and you're counting that as a  
9 point?

10 MR. FARRA: As one point, correct. And that's in  
11 2z -- Clark County, 2Z0249096.

12 JUDGE LEWIS: That's this one right here.

13 MR. FARRA: That's what you've got there, Your  
14 Honor.

15 JUDGE LEWIS: Okay. What else?

16 MR. FARRA: There also is a 2008 case for Assault  
17 2, domestic violence. It's Clark County, 08-1-02159-  
18 9.

19 (Mr. Christopher and Ms. Stauffer confer quietly.)

20 JUDGE LEWIS: Okay.

21 MR. FARRA: Those are the two convictions, Your  
22 Honor, that I --

23 JUDGE LEWIS: You say that counts as one point as  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 well?

2 (Mr. Christopher and Ms. Stauffer continue to  
3 confer.)

4 MR. FARRA: Well, that counts for -- it counts for  
5 two points on scoring the Assault 2, it counts for  
6 one point on scoring the Assault 1. The reason it  
7 counts for two points scoring on the Assault 2, and  
8 I've got the -- the sentencing manual, copies of  
9 that, Your Honor, if you'd like to see? But that  
10 counts as two when scoring the assault because it is  
11 a prior violent felony conviction which doubles.

12 MS. STAUFFER: We don't dispute --

13 JUDGE LEWIS: He isn't charged with Assault 1,  
14 he's charged with Assault 2 and tampering.

15 MR. FARRA: Correct, and Assault 2 -- I don't have  
16 the printout of that.

17 JUDGE LEWIS: Okay. So you have a domestic  
18 violence no contact order as one point?  
19

20 MR. FARRA: But it is a violent -- . Correct.

21 JUDGE LEWIS: The Assault 2 is two points on the  
22 assault?

23 MR. FARRA: Correct.

24 JUDGE LEWIS: And one point for the tampering?  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 MS. STAUFFER: That is correct.

2 MR. FARRA: And then one point as well for the no-  
3 contact order violation he was found guilty of in  
4 this case.

5 JUDGE LEWIS: I see. And so that would come up  
6 with five there, now, how did you come up with a -- a  
7 five on the tampering?

8 MR. FARRA: Okay. On the tampering, we've got one  
9 point for the Assault 2 conviction, the '08 Assault 2  
10 conviction, Your Honor.

11 JUDGE LEWIS: All right.

12 MR. FARRA: We've got one point for the prior no-  
13 contact order misdemeanor, which you have in front of  
14 you there.

15 MS. STAUFFER: No, that doesn't count on the  
16 tampering, Your Honor, that's a dispute.

17 MR. FARRA: As a DV -- as a DV crime.

18 MS. STAUFFER: It doesn't -- the tampering is not  
19 a DV crime so it's not a --  
20

21 JUDGE LEWIS: Yes, it looks like it is.

22 MS. STAUFFER: It doesn't give an enhancement  
23 (inaudible).

24 JUDGE LEWIS: There's a Special Verdict form that  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 says it was. Did you allege DV on that matter?

2 MS. STAUFFER: Huh?

3 MR. FARRA: Yes, Your Honor.

4 MS. STAUFFER: Huh.

5 MR. FARRA: I will check to be absolutely sure,  
6 but --

7 JUDGE LEWIS: Oh, (inaudible). Take a look. Yes,  
8 that was what was asked.

9 MR. FARRA: Charged it as DV, I'm almost certain.  
10 Correct, so, for the witness tampering --

11 JUDGE LEWIS: Uh-huh?

12 MR. FARRA: Charged his DV. One point for the  
13 prior Assault 2. Another point for the prior contact  
14 order violation. And then the current offense --

15 JUDGE LEWIS: Uh-huh?

16 MR. FARRA: -- of the Assault 2 counts as two  
17 points, as the DV doubler. Then also another point  
18 for the current contact order violation you  
19 (inaudible).

20 JUDGE LEWIS: Okay. And so what parts of that are  
21 you disputing?

22 MS. STAUFFER: Well, Your Honor, I -- I guess the  
23 one issue I have on the tampering while we're there  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 is that I don't believe there's a two point on the  
2 Assault 2 because it's not a violent offense. It's a  
3 non-violent offense and I -- I don't know if I have  
4 that actual score sheet on that with the domestic  
5 violence form but my recollection would be that I  
6 don't believe that -- okay, the violent is what makes  
7 it two points. Unless he's got the actual --

8 MR. FARRA: I've got the score sheets here, Your  
9 Honor.

10 MS. STAUFFER: -- DV things. Does it say two  
11 points or one for the Assault 2?

12 MR. FARRA: Under other current offenses, the  
13 scoring sheet for general non-violent, which is what  
14 we're --

15 JUDGE LEWIS: Okay. Why don't the two of you step  
16 back and look at it and see whether it is truly a  
17 dispute so that I know whether I need to set a  
18 hearing or not? I'll take another matter in the  
19 meantime.  
20

21 MR. FARRA: Thank you.

22 (Court recesses on this matter at 2:36:47 PM.)

23 (Court reconvenes on this matter at 2:43:50 PM.)

24 JUDGE LEWIS: Are we ready to go back on the  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 Christopher matter?

2 MS. STAUFFER: We are, Your Honor.

3 MR. FARRA: I think we are, Your Honor.

4 JUDGE LEWIS: He's going to come back out? Okay.

5 And is there a disagreement about the offender score  
6 and standard range?

7 MR. FARRA: I think what the disagreement  
8 potentially revolves around is counting the prior no-  
9 contact order violation, the misdemeanor no-contact  
10 order violation, is that correct, Ms. Stauffer?

11 MS. STAUFFER: That is correct, Your Honor.

12 MR. FARRA: And you have, Your Honor, my certified  
13 copy that I handed up of that conviction, which -- I  
14 don't have a copy in front of me but I think it does  
15 indicate -- it was checked off at least I believe  
16 where the portion on that says it's already proven.

17 JUDGE LEWIS: You want to look at it?

18 CLERK: Number C in a --

19 MR. FARRA: Thank you, Your Honor. So, what I'm  
20 looking at is on the second page of the certified  
21 copy of Shawn Eric Christopher's statement of  
22 Defendant on plea of guilty in Case Number 2Z0249096.  
23 Second page towards the bottom, under the general  
24

25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 notifications relating to specific crimes. The very  
2 last notification indicates the crime charged is  
3 domestic violence offense, as that is defined in RCW  
4 10.99.020. Then, on the third page we have  
5 Defendant's statement, (inaudible) the no contact  
6 order. So, based on that, Your Honor, at this point  
7 I'd argue that it should be counted as a repetitive  
8 domestic violence offense.

9 JUDGE LEWIS: Do you have the --

10 MR. FARRA: We need more argument?

11 JUDGE LEWIS: -- scoring sheet that you're using?

12 MR. FARRA: Sure, I do, Your Honor.

13 JUDGE LEWIS: All right. So, Ms. Stauffer, as I  
14 understand it you're not disputing that the charge  
15 exists?

16 MS. STAUFFER: No.

17 JUDGE LEWIS: You're just alleging that for some  
18 reason legally it should not be counted?

19 MS. STAUFFER: Right, Your Honor, the issue is  
20 whether or not the elements for a domestic violence  
21 allegation were scored to count and I'm -- I'm -- my  
22 position is, is it's not contained in the police  
23 statement and therefore it's not -- cannot be  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 considered as part of the sentencing range in terms  
2 of being a misdemeanor that counts because it's been  
3 established to be a do -- domestic violence offense.

4 (Ms. Stauffer and Defendant confer.)

5 MR. FARRA: Your Honor, those are the scoring  
6 sheets, both of the sheets when it's a DV offense,  
7 Your Honor, domestic violence offense it refers to a  
8 -- a more generic sheet. The generic sheet that is  
9 on the back side of it, it's actually used.

10 JUDGE LEWIS: All right. Well, it appears to be  
11 that the case in dispute, 2Z0249096CLS, a District  
12 Court conviction from April 5<sup>th</sup>, 2012, was a  
13 conviction for a domestic violence court order  
14 violation and that that was laid out in an amended  
15 complaint, which was attached as an appendix to the  
16 plea form and that Mr. Christopher had when he  
17 entered his plea to that charge. The judgment and  
18 sentence which Mr. Chris -- Christopher also signed  
19 ref -- referenced that the conviction was for  
20 violation of RCW 26.50.110.1 (DV). So, there didn't  
21 seem to be any dispute, at least I find that there is  
22 no basis to conclude other than that this is the type  
23 of offense that would count and does count, so. I  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 will find the offender score in each case to be five,  
2 standard range on Count 1 would be 22 to 29 months  
3 followed by 18 months community custody. Count 2,  
4 the offender score of five, standard range 17 to 22  
5 months, that's Count 3, excuse me. Count 2 is a  
6 gross misdemeanor. Okay. Now, are we ready then to  
7 proceed to sentencing?

8 MR. FARRA: Right.

9 MS. STAUFFER: Your Honor, the only thing I have  
10 is the motion for arrest of judgment for new trial  
11 just to clean up the -- the trial process so I'm just  
12 making standard motions pursuant to Criminal Rule  
13 7.4, 7.5, in that we -- we are asking the Court to  
14 consider that the State did not establish sufficient  
15 evidence in reference to the Assault 2 by  
16 strangulation, or choking as there was no physical  
17 evidence. The victim, basically, had a hickey on her  
18 -- her neck which she tried to represent to the  
19 officer. Beyond that there was no substantial  
20 corroboration with any physical injuries. So, our  
21 position is the actual strangulation requirement was  
22 not established. And, again, that we were asking  
23 that the Court set aside the judgment in reference to  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 the rulings of the Court in terms of error of law  
2 regarding the mistrial motion when the State's  
3 witnesses continued to make numerous occasions  
4 disclosing the fact the Defendant had a prior  
5 criminal history and assault convictions. And then  
6 finally, the hearsay evidence, the ruling. We're  
7 asking that the Court reconsider that. The  
8 individual named Mr. Hausinger in terms of statements  
9 that he supposedly told to the victim, the victim was  
10 allowed to parrot those statements. Supposedly --  
11 though -- those supposed statements in court and we  
12 objected to that. So, based on all those factors as  
13 well as a final decision, we feel that substantial  
14 justice has not been done and respectfully ask the  
15 Court to arrest the judgment for a new trial.

16  
17 JUDGE LEWIS: Okay. I did receive your motion for  
18 arrest of judgment or a new trial. Are you prepared  
19 to address the issues?

20 MR. FARRA: Your Honor, all -- each of these  
21 issues was addressed at trial, Your Honor, I'm not  
22 prepared to address them other than to repeat what  
23 was said at trial for the most part. Which is that  
24 we did hear evidence from the victim that she could  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 not breathe for a time, that it affected her ability  
2 to make noise and cut off her ability to speak to  
3 satisfy the -- the burden to proving strangulation.  
4 All the other matters were ruled by the Court at  
5 trial, Your Honor, so I -- beyond that I'm not -- I'm  
6 not prepared but that would be my response.

7 JUDGE LEWIS: I deny the motion for arrest of  
8 judgment or new trial. Motion does not request  
9 additional hearing on the factual basis of it. It's  
10 based on the facts at trial. Based on that I do find  
11 there's sufficient evidence to support the  
12 convictions and that the rulings that I made at trial  
13 were correct and I have no reason to revise them.  
14 So, motions are denied. Now are we prepared to  
15 proceed to sentencing?  
16

17 MS. STAUFFER: We are, Your Honor.

18 JUDGE LEWIS: Is Ms. Gutierrez here? Did she wish  
19 to speak?

20 MR. FARRA: She's been notified, Your Honor, but  
21 she wasn't able to make it today. She's told our  
22 office she had to work.

23 JUDGE LEWIS: Okay. Your recommendation?

24 MR. FARRA: My recommendation, Your Honor, the mid  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           -- the mid-point, and I'll just start with the  
2 Assault 2, because that's the highest range right now  
3 of 22 to 29. The mid-point is 25 ½ and I realize  
4 that the presumption is mid-point, but I think in  
5 this case with the Defendant's prior assault of  
6 history, including an Assault 4 DV that had similar  
7 circumstances to this, I'm going to ask for 27 months  
8 and I think that would be fair and appropriate. The  
9 Assault 2 DV from 2008, his prior from 2008, also  
10 involved a girlfriend. The police reports from that  
11 incident indicate that the Defendant was intoxicated  
12 at the time. He was sentenced to domestic violence  
13 treatment and to some alcohol treatment. And five  
14 years later we find ourselves right back in the same  
15 position. The Defendant also had some older  
16 convictions that washed out. Those are from '94 and  
17 '95. One for assault to -- Assault 2, excuse me,  
18 another for attempted Assault 2. In this case, the  
19 Defendant, similar to the prior Assault 2 DV  
20 strangulation, was drunk. There was a escalating  
21 pattern of behavior throughout the night as -- as  
22 Your Honor heard from the trial testimony. And  
23 eventually that culminated in -- in the strangulation  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 that the jury found. The victim on her *Smith*  
2 affidavit indicated that there had been a few prior  
3 incidents that would amount to Assault 4's. One of  
4 which was a prior backhand that the Defendant  
5 backhand slapped and spitting. About -- just before  
6 they moved in together is what she's indicated to me,  
7 so --

8 DEFENDANT: Can I ask a question?

9 MR. FARRA: Um -- let me say --

10 DEFENDANT: Does she say about when she attacks  
11 me?

12 MR. FARRA: So based on the prior Assault 2 DV  
13 strangulation, very similar, and that we find  
14 ourselves back in this situation again, Your Honor, I  
15 think more than the mid-point is appropriate in this  
16 case. I'd argue for 27 months. As the Defendant --  
17 I'm sorry, as Your Honor knows, this is the  
18 Defendant's second strike. He does not have much as  
19 a criminal history other than an assaultive behavior.  
20 So I think a strong message needs to be sent that --  
21 that -- just cannot continue this pattern of  
22 behavior. I'd ask for domestic violence treatment,  
23 alcohol evaluation and treatment, no-contact order  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1           for ten years and then 18 months supervision on the  
2 Assault 2. The Defendant does have 96 days credit  
3 for time served according to our cal -- our  
4 calculations.

5           JUDGE LEWIS: Pleas. All right. Go ahead.

6           MS. STAUFFER: Your Honor, I would indicate that I  
7 believe the range on the Assault 2 is the 22 to 29  
8 and then the tampering is 17 to 22. So, obviously,  
9 the Assault 2 is what we're looking at in terms of  
10 the overall picture. I believe, Your Honor, given  
11 the circumstances that we heard at trial and  
12 especially the ongoing fact pattern of the evening  
13 and the actual, supposed allegation by the victim in  
14 reference to the strangulation, we are not talking  
15 about a significant, severe Assault 2 as we normally,  
16 usually see in -- in -- in some of these cases. And  
17 because of that, given the allegations of the victim  
18 and the jury's decision, I would indicate that I  
19 think the low end of the range of 22 months is more  
20 than enough for -- for Shawn. He doesn't -- hasn't  
21 been to prison before and I think this will have a  
22 major impact on him as well as the other charges that  
23 have increased his range. So, given that I would ask  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 for -- for consideration of the low end of the  
2 standard range given the entirety of the situation,  
3 and the allegations that were made. Thank you.

4 JUDGE LEWIS: Is there anything you want to say  
5 before I sentence you?

6 DEFENDANT: No, Your Honor.

7 JUDGE LEWIS: All right. Well, it appears to me  
8 that the middle of the range is the appropriate  
9 sentence for the more severe count, I count that as  
10 actually 26 months rather than 25 months. I'm going  
11 to sentence you in Count 1 to 26 months. In Count 2  
12 to 22 months. Those will run concurrently so the  
13 time that you serve will be 26 months, you'll be  
14 given 96 days credit for time served. Be on  
15 community custody following your release on Count 1.  
16 And you'll pay the legal financial obligations that  
17 are standard with restitution, if any, to be set. On  
18 the second charge, Count 2, I will sentence you to  
19 364 days in jail, with all of that suspended for a  
20 period of two years on the same conditions as the  
21 community custody for Count 1. I will advise you at  
22 this time that you have the right to appeal your  
23 conviction. If you file your notice of appeal within  
24  
25

**State of Washington v. Shawn Eric Christopher**  
**Clark County Cause No. 13-1-01577-3**  
**Court of Appeals No. 45694-0-II**

1 30 days of today's date, when the entry of judgment  
2 and order occurred, or else you'll lose the right to  
3 appeal. Either your attorney or the Clerk will  
4 assist you in filing the appropriate paperwork. If  
5 you are unable to pay the cost yourself, you are the  
6 right -- have the right to have the cost of the  
7 appeal paid, including transcription of the record at  
8 public expense and an attorney appointed at public  
9 expense to assist you. You understand all that?

10 DEFENDANT: Yes.

11 JUDGE LEWIS: Okay. I need you to sign this  
12 indicating that I've advised you of those rights,  
13 then I'll give you a copy of it. (Mr. Christopher  
14 signs papers.)

15 MS. STAUFFER: Okay.

16 MR. FARRA: Terms of conditions, Your Honor? Will  
17 you be imposing a treatment --  
18

19 JUDGE LEWIS: The (inaudible) treatment and  
20 evaluation and treatment for substance abuse. He's  
21 already got that.

22 MR. FARRA: Thank you. Your Honor, I'm passing a  
23 treatment agency list and reporting instructions. A  
24 waiver regarding restitution, I don't anticipate that  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

1 there is any restitution involved in this case, but -

2 -

3 JUDGE LEWIS: All right.

4 MS. STAUFFER: Thank you, Your Honor.

5 JUDGE LEWIS: (Inaudible).

6 MR. FARRA: Thank you.

7 (Ms. Stauffer and Defendant move off camera.)

8 DOCKET PROSECUTOR: And, Your Honor, next we have

9 --

10 JUDGE LEWIS: I am going to take a recess for  
11 about five minutes while I get the paperwork signed.  
12 And, for the record, in Mr. Christopher's case, I am  
13 imposing a no-contact order with Ms. Gutierrez and  
14 that order means exactly what it says. For the next  
15 ten years you are to have no direct or indirect  
16 contact with her.

17 (Court recesses on this matter at 2:58:01 PM.)  
18  
19  
20  
21  
22  
23  
24  
25

State of Washington v. Shawn Eric Christopher  
Clark County Cause No. 13-1-01577-3  
Court of Appeals No. 45694-0-II

CERTIFICATE

1 I, Sharon A. Ball, do hereby certify:  
2

3 That I am a court-approved transcriber for the  
4 State of Washington, County of Clark;

5 That the foregoing is a transcript of digitally  
6 recorded proceeding copied from the master file by a  
7 judicial assistant of the Court for transcription and  
8 provided to me;

9 I further certify that I am not a relative or  
10 employee or attorney or counsel of any of the parties  
11 to said action, or a relative or employee of any such  
12 attorney or counsel, and that I am not financially  
13 interested in the said action or the outcome thereof;

14 I further certify that the transcript is a true  
15 and correct record of all audible portions of the  
16 recorded testimony, including questions and answers,  
17 and all objections, motions and exceptions of counsel  
18 made and taken at the time of the foregoing  
19 proceedings. Areas of the record, which were not  
20 decipherable for any reason, are noted as  
21 [inaudible].

22 Dated this 23<sup>rd</sup> day of April 2014.

23 *Sharon A. Ball*  
24

25  
\_\_\_\_\_  
Sharon A. Ball  
107 Birch Street  
Lakeview, OR 97630-1259  
(360) 751-0199