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KING COUNTY
SUPERIOR COURT CLERK
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NAVEED HAQ,

Defendant.

No. 06-1-06658-4 SEA

STATE'S TRIAL MEMORANDUM

I. CHARGE

The defendant has been charged by second amended information with the crimes of:

- Count 1: Aggravated Murder in the First Degree with Firearm Allegation (Pam Waechter)
- Count 2: Attempted Murder in the First Degree with Firearm Allegation (Cheryl Stumbo)
- Count 3: Attempted Murder in the First Degree with Firearm Allegation (Layla Bush)
- Count 4: Attempted Murder in the First Degree with Firearm Allegation (Christina Rexroad)
- Count 5: Attempted Murder in the First Degree with Firearm Allegation (Dayna Klein)
- Count 6: Attempted Murder in the First Degree with Firearm Allegation (Carol Goldman)
- Count 7: Kidnapping in the First Degree with Firearm Allegation (Kelsie Burkum)
- Count 8: Unlawful Imprisonment with Firearm Allegation (Dayna Klein)

STATE'S TRIAL MEMORANDUM - 1

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- 1 Count 9: Malicious Harassment with Firearm Allegation (Cheryl Stumbo)
2 Count 10: Malicious Harassment with Firearm Allegation (Layla Bush)
3 Count 11: Malicious Harassment with Firearm Allegation (Christina Rexroad)
4 Count 12: Malicious Harassment with Firearm Allegation (Dayna Klein)
5 Count 13: Malicious Harassment with Firearm Allegation (Carol Goldman)
6 Count 14: Malicious Harassment with Firearm Allegation (Pam Waechter)
7 Count 15: Burglary in the First Degree with a Firearm Allegation (Cheryl Stumbo)
8 Count 16: Burglary in the First Degree with a Firearm Allegation (Layla Bush)
9 Count 17: Burglary in the First Degree with a Firearm Allegation (Christina Rexroad)
10 Count 18: Burglary in the First Degree with a Firearm Allegation (Dayna Klein)
11 Count 19: Burglary in the First Degree with a Firearm Allegation (Carol Goldman)
12 Count 20: Burglary in the First Degree with a Firearm Allegation (Pamela Waechter)

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15 II. TIME ESTIMATES

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16 This jury trial should last approximately 6 to 7 weeks, including pretrials and jury selection

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17 III. POTENTIAL WITNESSES

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Molly Bennett

Kelsie Burkum

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Layla Bush

Elana Feldman

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Carol Goldman

Tammy Kaiser

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Ilana Kennedy

Dayna Klein

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Christina Rexroad

Cheryl Stumbo

23

Mian Haq

1 Brian Jones
Deborah Lusch

2

3 SPD Ofcr William Collins
SPD Ofcr. Glenn Cook

4 SPD Ofcr. Marshall Coolidge
SPD Ofcr. Donald Johnson
SPD Ofcr. Steve Mathisen

5 SPD Ofcr. Tom Mooney
SPD Ofcr. Matthew Pasquan

6 SPD Ofcr. Tim Pasternak
SPD Ofcr Frank Poblocki

7 SPD Ofcr. Clay Stockwell
SPD Ofcr. Andrew West

8 SPD Ofcr. Tad Willoughby
SPD Sgt. Mike Coomes

9 SPD Sgt. Mark Worstman

10 SPD Det. Al Cruise
SPD Det. Dana Duffy

11 SPD Det. Dave Duty
SPD Det. Mark Hanf

12 SPD Det. Don Ledbetter
SPD Det. Brian Stampfl

13 SPD Det. Russ Weklych
SPD Det. Monty Moss

14 SPD Det. Tim Luckie
SPD Det. Kevin O'Keefe

15

16 Harborview Medical Center (HMC) Dr. Harigovinda Challa
HMC Dr. Greg Jurkovich
HMC Dr. Sean Nork

17 HMC Dr. Grant O'Keefe
HMC Dr. Samuel Warren

18 HMC Dr. Lisa A. Taitsman

19 Dr. Aldo Fasaro from the King County Medical Examiner's Office
Dr. Robert Wheeler

20 Dr. David Dunner
Forensic Scientist Rick Wyant from the Washington State Patrol Crime Lab

21

22 911 operator and/or custodian of 911 call recordings
Ben Keith
Sara Seager

23 Custodians of gun purchase records or individuals who interacted with defendant during sale of
weapons to Haq at Sportsman's Warehouse, G.I. Joe's, and Hole in the Wall Gun Shop

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IV. FACTS

On 7-28-2006, 14-year-old Kelsie Burkum was in Seattle attending an art camp. She had been staying with her aunt, Cheryl Stumbo, who worked at the Jewish Federation of Greater Seattle which is located at 2031 Third Ave, City of Seattle, County of King and State of Washington. At approximately 3:50 p.m., Burkum approached the front entrance of the Jewish Federation. The Jewish Federation is located on the second floor of a secure building. To gain entry into this building, one must be "buzzed" in by someone inside or enter the security code into a keypad at the building's front entrance on the west side of Third Avenue. As Burkum approached the building's front entrance, Naveed Afzal Haq, DOB 9/23/75, who had been standing inside the building's vestibule, pulled out a gun, put it to Burkum's back and told her "open the door." With no options available to her, Burkum buzzed the intercom and said she was Cheryl's niece. As Burkum reached for the intercom button, Haq said "careful." She was let into the building. Haq, who had a second handgun, extra ammunition, and a knife, closely followed Burkum into the building, his gun still pointed to the middle of her back. As they entered the building, Haq said, "I'm only doing this for a statement."

Haq followed Burkum up the stairs that led to the reception area for the Jewish Federation. When they reached Layla Bush's reception desk, Haq asked to see the manager. Burkum continued walking, went into a nearby restroom and locked herself into a stall. A few moments later she heard gunshots and someone yelling call 911. Finding her aunt's cell phone in her bag, Burkum called for help.

As Ms. Burkum walked toward the bathroom, Haq turned his attention to receptionist Layla Bush. He asked for a manager. While Bush went back to get Marketing Director Cheryl

1 Stumbo, Haq readied his gun and then followed.¹ As Haq came up behind Bush, Stumbo told
2 Carol Goldman, who was sitting in a cubicle nearby, to call 911. Before Goldman could make
3 the call, Haq fired his gun at her, striking her in the knee. Goldman dove beneath her desk. Haq
4 continued to shoot, hitting Bush in the stomach and Stumbo in the left flank. Moving north, Haq
5 then shot Pamela Waechter, a graze wound to the left chest, as she was seated at her desk in her
6 office. Hearing the gunshots but not recognizing them as such, Dayna Klein got up from her desk
7 and walked to her office door. Klein, who was 17 weeks pregnant, and Haq got to the door at the
8 same time. Haq shot toward Klein's abdomen, but the bullet struck her in her wrist that she had
9 just raised up to protect her unborn child. Klein crumbled to the floor.

10 At approximately this time, Pam Waechter ran from her office towards the stairs, a hand
11 clutched to her left chest. Haq followed Waechter to the top of the stairs. Extending his arm and
12 gun over the railing, he took aim and fired. The bullet struck Waechter in the skull in the right
13 ear, killing her. Waechter fell and came to rest on a landing in the stairwell. Associate King
14 County Medical Examiner Dr. Aldo Fusaro determined the wound to Waechter's head was the
15 cause of her death. Dr. Fusaro ruled Waechter's death a homicide.

16 With Haq gone, Dayna Klein crawled over to her desk and dialed 911. As Klein
17 provided information to the 911 operator, Haq returned from the stairwell. Haq stopped at the
18 door of the office where Layla Bush lay, aimed and shot Ms Bush in the shoulder. He then shot
19 a second time at Carol Goldman. Christina Rexroad had heard the shots and thinking a
20 celebration of some sort was happening on the east side of the building, had come to investigate.
21 Haq shot Ms Rexroad in the left groin area. Haq then returned to Klein's office and put a gun to
22 her head. Haq said "now you are my hostage because you didn't follow directions." Haq told
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¹ Haq's actions on the street, at the entrance door, and at the reception desk were captured on the Federation's surveillance system.

1 Klein to have the 911 operator call CNN. He said he didn't care what happened to him. With the
2 gun pointed directly at her, Klein asked Haq if he wanted to talk to the operator. Haq took the
3 phone and began to talk.

4 Haq told the operator that "this is a hostage situation, I have a hostage." When asked his
5 name, he replied "This is Naveed Haq." He repeated that this was a hostage situation and said "I
6 want these Jews to get out." He stated he was "at 2031, the Jewish Federation, on 3 Ave, I'm
7 upstairs." Haq stated, "I'm not upset at the people, I'm upset at your foreign policy. These are
8 Jews. I'm tired of getting pushed around, and our people getting pushed around by the situation
9 in the Middle East." When asked again, Haq repeated his name as Naveed Haq and gave his
10 social security number. He said, "I just want us to get out of Iraq, I'm an American too but I
11 want our people out of Iraq." Haq said that he had his gun on one person, that she was scared,
12 and "I shot her once, I shot her in the arm."

13 When asked what he wanted the 911 operator to do, Haq said he wanted them to call the
14 media. When told he couldn't get us out of Iraq by doing this, Haq said "Call the media, this will
15 make a point." When the 911 operator said they needed to talk with Haq before they could call
16 the media, Haq responded "I have this gun pointed at her head." He said he didn't give a shit
17 about what happened to him. Haq told the operator that the woman was still conscious and had
18 told him that she was pregnant. Haq said that the Muslims are very upset at you (U.S.) sending
19 bombs to Israel and very upset that you (U.S.) staying in Iraq. Haq told the 911 operators he
20 was "acting alone", and that he had not been drinking that day. Haq reiterated that he just
21 wanted to make a point and was tired of everyone not listening to our point of view. He said he
22 was sick and tired of Jewish politicians being in favor of the war. Haq said he wanted there to be
23 some fairness in this country.

1 Haq asked to be connected to CNN. When told that the operator had no ability to connect
2 him, Haq said that he would give himself up. Haq described his clothes for the operator and told
3 the operator that he had put down his gun. Haq allowed Klein to confirm that Haq had put down
4 his gun. Indicating his willingness to walk out, Haq, following the operator instructions, put his
5 hands on this head, walked out of the Federation's offices, down the stairs, and out the doors he
6 had came in. As instructed, Haq laid facedown on the sidewalk and was immediately handcuffed
7 and arrested by Seattle Police Officers Collins, Mooney and Sergeant Coomes. When asked if
8 there were anymore suspects or shooters in the building, Haq said "no". Haq identified himself.

9 Officer Pasquan recovered a loaded handgun magazine from Haq's pants pocket. Pasquan
10 read Haq his Miranda rights which Haq indicated he understood. When asked, Haq told officers
11 that he had a white Mazda B2500 pick-up truck parked over by Bed Bath and Beyond. A pickup
12 truck registered to Haq was located in that area.

13 Detectives Al Cruise and Russ Weklych transported Haq to the Seattle Police Homicide
14 unit. In route, when asked, Haq indicated that he was not hurt. Subsequent visual inspection of
15 Haq confirmed this. Haq said that he acted alone. He said that he had two guns and a knife and
16 he had dropped all three of those weapons back at the Federation's offices. Haq then said "I am
17 making a statement OK, that's what this is all about." Haq said "This is about the Jews and what
18 they are doing. The Jews are running the country. This is about getting the US out of Iraq. I am
19 an American and I got no problem with America but we have to get out of Iraq. But we give
20 bombs and guns and bunker buster bombs to Israel and we shouldn't be doing it, it's got to stop,
21 that's what this is all about."

22 When he arrived at the Homicide Unit, Detective Dave Duty asked Haq why he had been
23 brought in. Haq replied "I shot somebody and I think I killed them." He further said that he had

1 just driven over from Pasco to do this. Haq was then placed in an interview room and questioned
2 by Detectives Cruise, Weklych, and Duty.

3 Seattle police detectives recovered two semi-automatic handguns at the scene of the
4 shooting: one .40 caliber and one .45 caliber. Detectives also recovered a knife that Haq had
5 brought with him. Detectives collected 8 spent .40 caliber shell casings at the scene along with
6 13 live .40 caliber rounds, 8 on the floor, 4 in the .40 caliber gun and 1 in an ammunition box
7 recovered at the scene. Police recovered 43 total .45 caliber rounds, 34 in an ammunition box, 2
8 live rounds on the floor, and 7 live rounds in the .45 caliber gun. Detectives later recovered
9 another spent .40 caliber shell casing from Molly Bennett who had found the casing in her
10 cubicle after the shooting. Bennett's cubicle was next to Carol Goldman. Goldman later recalled
11 that she had found a shell during the shooting and had taken it with her to the hospital. Goldman
12 indicated that she had given the shell casing to someone but did not know whom.

13 All victims were transported to Harborview Medical Center and all underwent surgery.
14 All required live-saving surgery and most had to have subsequent surgeries to repair their
15 internal organs and/or bones. A bone in Klein's arm/wrist was shattered by the bullet's impact.
16 Goldman was treated for a gunshot wound to the knee. Bush, Stumbo, and Rexroad required
17 extended stays in the hospital before release.

18 Further investigation revealed that Haq had been stopped by SPD Motorcycle Officer
19 Glen Cook for a traffic infraction at approximately 3:35 p.m. on July 28, 2008. Haq had been
20 driving on Third Avenue during the transit only times. Officer Cook had a normal interaction
21 with Mr. Haq, noting nothing unusual. Cook cited Haq and Haq drove off.

22 Search warrants were executed on Haq's parents' home and Haq's apartment in Tri-Cities,
23 Washington. A "HP" laptop computer was recovered from Haq's apartment in Kennewick. A

1 forensic examination of the computer revealed that Haq Googled the Jewish Federation in Seattle
2 around 5:30 p.m. on July 27, 2006 and he Mapquested and directions to the Jewish Federation a
3 few minutes later. It was further determined that Haq had purchased the two handguns he
4 brought to the Jewish Federation earlier in the month of July, 2006. He started the paperwork for
5 the purchase of .45 caliber Ruger on July 19th at Sportsman's Warehouse in Kennewick. After
6 waiting the necessary period, Haq returned and purchased the .45 on July 27th. He put \$100.00
7 down for .40 Caliber Ruger on July 16th at Hole in the Wall Gun shop, returning to purchase the
8 gun on July 19th.

9 At the time of the shooting, Haq was receiving mental health care from Lourdes
10 Counseling Center in Tri-Cities. His counselor was Brian Jones; his medication nurse was
11 Deborah Lusch. Both Jones and Lusch had appointments with and saw Haq on July 25, 2006.
12 Neither Jones nor Lusch noted any symptoms in Haq that indicated he was manic or
13 experiencing psychosis.

14 In preparation for trial Mr. Haq was examined and/or his mental health documentation
15 was reviewed by 4 experts: Dr James Messitt and Robert Julien for the defense and Dr. Robert
16 Wheeler and Dr. David Dunner for the State.

17 18 V. PRETRIAL RULINGS

19 In the months leading up to trial, there have been multiple pretrial ruling. These rulings have
20 addressed issues such as defendant's attire for court, defense access to the crime scene, amendment
21 of the information, duration of Dr. Wheeler's interview of the defendant, jury pool, and case
22 scheduling, to name a few. To date there have been no rulings as to evidentiary issues.
23

1 VI. EVIDENTIARY ISSUES

2 1. The Defendant's Statements

3 The defendant made statements to police, 911 and civilians and the Jewish Federation. A
4 CrR 3.5 hearing is necessary to determine the admissibility of statements made by the defendant
5 to Seattle Police Officer Cook who issued the defendant a traffic citation within the hour before
6 the shooting, Officers Collins, Mooney and Sgt Coomes who took the defendant into custody,
7 Officer Pasquan who mirandized the defendant and held him for detectives and Detectives
8 Weklych and Cruise who transported the defendant to SPD Homicide Unit offices and along
9 with Detective Duty, interviewed the defendant. Testimony from these officers and detectives
10 will be required. The State is unaware of any basis to exclude statements made to the civilians
11 immediately prior to, during, and after the shooting, or made to 911.

12 CrR 3.5 requires that when a statement of the accused is to be offered into evidence, a
13 hearing must be held to determine whether the statement is admissible. The State may not use
14 statements stemming from the custodial interrogation of a defendant unless the defendant is first
15 informed of his constitutional rights. Miranda v. Arizona, 384 U.S. 436, 444, 16 L.Ed 2d 694, 86
16 S. Ct. 1602, 10 A.L.R.3d 974 (1966). If the defendant's statement were made in response to
17 custodial questioning, the State must show by a preponderance of the evidence that the defendant
18 knowingly, voluntarily, and intelligently waived his Miranda rights. State v. Gross, 23 Wn. App.
19 319, 597 P.2d 894 (1979). Further, police cannot overbear a defendant's freewill and bring about
20 confessions not freely determined. Rogers v. Richmond, 365 U.S. 534, 544, 5 L.Ed 2d 760, 81 S.
21 Ct. 735 (1961). The State must also show by a preponderance of the evidence that the
22 defendant's statement was voluntarily given. State v. Braun, 82 Wn.2d 157, 162, 509 P.2d 742
23 (1973).

1 The defendant was not in custody when he was stopped and cited for a traffic violation by
2 Officer Cook. Upon receipt of the citation, the defendant was free to leave. Immediately after
3 the defendant exited the building and was still at the scene, Officers Collins and Mooney and Sgt
4 Coomes asked the defendant minimal questions focused on whether there were any other
5 participants in the attack on the Federation. Once the defendant was moved from the entry to the
6 Federation, Officer Pasquan read the defendant his Miranda rights which the defendant
7 acknowledged. Having been Mirandized, the defendant spoke with Officer Pasquan and with
8 Detectives Weklych, Cruise, and Duty. All of the defendant's statements were voluntarily made.
9

10 2. Select photographs from the murder scene and autopsy should be admitted into
11 evidence²

12 The State intends to offer numerous photographs into evidence at trial. Among these are
13 photos depicting Pamela Waechter's body at the scene and at the time of autopsy. The defense
14 may argue that some of these photos should be excluded because their prejudice to the defendant
15 outweighs their probative value. ER 403. Opponents of photographic evidence of murder often
16 characterize the photos as "gruesome," imputing to the photographer the actions of the murderer.

17 Accurate, though gruesome, photographic representations are admissible if their
18 probative value outweighs their prejudicial effect. State v. Kendrick, 47 Wn. App. 620, 624, 736
19 P.2d 1079 (1987)(photographs, like the defendant's actions, were gruesome but not unnecessarily
20 so; admission of death scene photos affirmed). A trial court's decision to admit such
21

22 _____
23 ² The State has yet to select which specific photographs it intends to use at trial. The State will submit the
photographs of Ms. Waechter's body it seeks to admit to the defense for review. Should the defense find certain
photographs objectionable or unnecessarily duplicative, the State would ask the defense will identify specific
photographs they wish to challenge to assist in narrowing this issue.

1 photographs is reviewable only for a manifest abuse of discretion. State v. Harris, 106 Wn.2d
2 784, 791, 725 P.2d 975 (1986).

3 The courts have consistently held photos of death scenes are admissible because they
4 depict the reality of what occurred. State v. Kendrick, supra (admission of photos of mutilated
5 victim affirmed); State v. Borefield, 47 Wn. App. 444, 735 P.2d 1339 (1987)(admission of
6 photos of crushed victim affirmed); State v. Strandy, 49 Wn. App. 537, 745 P.2d 43
7 (1987)(admission of photos of bound and shot "execution style" victim affirmed); State v.
8 Crenshaw, 27 Wn. App. 326, 617 P.2d 1041 (1980), aff'd 98 Wn.2d 789, 6569 P.2d 488
9 (1983)(admission of photos of decapitated victim affirmed); State v. Hatley, 41 Wn. App. 789,
10 706 P.2d 1083 (1985)(admission of photos of victim whose brains were blown out was
11 affirmed). It frequently has been stated that "a bloody, brutal crime cannot be explained to a jury
12 in a lily-white manner to save members of the jury the discomfiture (sic) of criminal activity."
13 State v. Adams, 76 Wn.2d 650, 657; State v. Bockman, 37 Wn. App. 474, 489 (1984).

14 The State intends to offer into evidence a limited number of photographs of the victim at
15 the scene and at autopsy. Admission of photos will be upheld "unless it is clear from the record
16 that the primary reason to admit gruesome photographs is to inflame the jury's passion." State v.
17 Daniels, 56 Wn. App. 646, 649, 784 P.2d 579 (1990). The State is not offering the photos to
18 inflame the jury. These photographs are highly probative to explain the medical examiner's
19 observations and conclusions and to accurately depict the scene to the jury. A jury should not be
20 denied an opportunity to view exhibits that aid in its understanding of the evidence. Strandy,
21 supra at 541. The State seeks to admit only those photos necessary to explain the scene and the
22 autopsy to the jurors. The State's photographs depicting the victim's body should be admitted.
23

1 3. Prior criminal history of the defendant and witnesses

2 The defendant has no prior criminal history that the State intends to use for impeachment.

3 At this time, the State is unaware of any admissible criminal history of any of its witnesses.

4 Similarly, the State is unaware of any admissible criminal history of any of the defense's
5 identified witnesses. To protect both sides, the State requests that neither party use any witness'
6 criminal convictions or history until after the Court has ruled on its admissibility under ER 609.

7
8 4. Exclusion of witnesses

9 The State requests that witnesses be excluded from the courtroom until their testimony is
10 complete. The State requests that either Seattle Police Department Detective Dana Duffy or
11 Dave Duty be allowed to sit in the courtroom as necessary to assist the State in the presentation
12 of its case. The State has no objection to the presence of defense investigator, Sara Seager, in the
13 courtroom.

14 5. Witness statements in the possession of the defense

15 The State moves pursuant to CrR 4.7 and State v. Yates, 111 Wn.2d 793, 765 P. 2d 291
16 (1988) for discovery of any witness statements not provided by the State that the defense may have
17 in its possession and has not yet provided to the State. Further, the State would seek any
18 investigator's summary statements prior to their use by the defense for impeachment of State's
19 witnesses or when defense witnesses are called to the stand.

1 6. In-life photograph of victims.³

2 The State intends to offer one in-life photograph of the murder victim, Pamela Waechter.
3 In State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910 (1989), the
4 Washington Supreme Court upheld the admission of in-life photographs of the victim. The court
5 held that such evidence was relevant to proof of identity of the victim, an element of the crime.
6 The court further held that the State was not required to accept a defense stipulation to that
7 particular element.

8 The Washington Supreme Court has upheld the admission of in-life photographs. In
9 State v. Brett, 126 Wn.2d 136, 159, 892 P.2d 29 (1995), the court followed the Rice holding and
10 observed, "(i)n-life photographs are not inherently prejudicial, especially when the jury also sees
11 'after death' pictures of the victims' body." Additionally, in State v. Pirtle, 127 Wn.2d 628, 904
12 P.2d 245 (1995), the court upheld the admission of in-life photographs of the victims because
13 their probative value was outweighed by any potential for prejudice to the defendant. The court
14 reasoned that "in light of the gruesome photos of the victims that were also before the jury, it
15 cannot be said that the 'in-life' photos could have added much additional prejudice." Pirtle, supra
16 at 653. For these reasons, the court should admit an in-life photo of the victim to contrast how
17 the victim looked prior to the attack, and because it's probative value outweighs any potential for
18 unfair prejudice to the defendant.

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³ Per discussion with defense counsel, it appears that the defense will not object to the State's use of a family portrait.

1 7. Prospective juror inquire about the death penalty.

2 Case law prohibits the parties or the court from informing jurors, prospective or seated,
3 that the present case is not a death penalty case. The State would suggest that the parties discuss
4 how this issue will be handled should the issue arise.

5
6 8. The State Moves to Preclude the Defense from Informing the Jury of Potential
7 Punishment upon Conviction.

8 The only possible reason for presenting sentencing information to the jury would be
9 to elicit their sympathy and cloud their fact-finding function. The punishment which may or may
10 not follow from a criminal trial "is irrelevant to the jury's task." State v. Murphy, 86 Wn.App.
11 667, 670, 937 P.2d 1173 (1998)(citing State v. Todd, 78 Wn.2d 362, 474 P.2d 542 (1970).
12 "Except in capital cases, it is error to instruct the jury on sentencing consequences." State v.
13 Murphy, 86 Wn.App. at 668. Surely, if it error for the court to mention sentencing consequences
14 in an instruction, it is error for the parties to mention it in argument or through some other
15 means. Any mention of life in prison should be excluded.

16
17 9. Motion to Prohibit Defense Inquiry Into Inappropriate Witness Opinions

18 The defendant may ask questions of witnesses that call for personal opinions,
19 inappropriate legal conclusions, or medical opinions that those witnesses and not qualified to
20 offer. The State moves to preclude the defendant from asking such questions during trial. The
21 State moves to exclude these topics and other similar irrelevant topics. These areas are not
22 relevant under ER 401, are more prejudicial than probative under ER 403, and are not
23 appropriate character evidence under ER 404(a)(2) & (3). Aside from being inappropriate
character evidence, it is not in the form of reputation as is required by ER 405(b) and ER 608.

1 As a specific example, given the defense of Insanity, the State moves to suppress questions
2 that solicit a lay person's opinion on a conclusion of law. ER 701. Witnesses, including police
3 officers, should not be asked, for instance, whether they thought the defendant "crazy" or "sane."
4 State v. Garrison, 71 Wn.2d 312, 427 P.2d 1012 (1967). Similarly, detectives should be asked if
5 they thought this was a "mental" or "insanity" case. These areas of inquiry and areas like them
6 should be excluded.

7
8 10. The use of character evidence and discovery from the defense

9 The State is unaware of any admissible character evidence that may be used in regards to the
10 victims, the State's witnesses, the defense witnesses, or the defendant. ⁴ The State has not been
11 provided with any discovery from the defense as to character. The State would move that no
12 character evidence be used or introduced in trial by the defense without prior ruling of the court.
13 The State would also request any discoverable materials as to character and any other issue the
14 defense may have that did not originate with the State or was previously provided to the State that
15 they have yet to provide.

16 The State would also request any discoverable materials as to impeachment of witnesses and
17 any other issue the defense may have that did not originate with the State or was previously
18 provided to the State that they have yet to provide. Both parties believe that the discovery process is
19 complete. The State makes this request, however, on the off chance that some materials were
20 inadvertently overlooked.

21 The State further moves for acknowledgement that the defense has provided a copy or
22 original of all physical, paper, video or photographic piece of evidence the defense plans to
23

⁴ The State would distinguish character evidence from evidence that is appropriately considered in evaluating the defendant's mental health at the time of the shooting.

1 reference or offer at trial. The State has been promised copies of letters that the defendant has
2 send to his brother Hasan, lists of records and documents reviewed by Doctors Missett and
3 Julien, and copies of any additional learned articles relied upon those doctors. The State expects
4 to receive these materials presently.

5
6 11. Scope of Dr. Julien's testimony

7 The State has been informed that Dr Julien will not be offering opinions as to whether the
8 defendant was insane at the time of the shooting or his capacity to intend or premeditate
9 diminished. The State simply wishes this representation to be acknowledged on the record.

10
11 12. ER 403 Motions in Limine

12 The State moves to exclude the following evidence:

13 a. Speculative comments by Dr. Julien such as

14 "In retrospect, if treating physicians had merely cut the
15 dose of lithium in half, rather than totally discontinuing a drug
16 that had been effective in Mr. Haq, circumstances might have
17 been much different and the shooting may never have happened."

18 b. Cross-examination of Dr. Dunner or Dr. Wheeler using unlearned articles from
19 the New York Times or internet web sites wherein neither doctor was quoted or cited.

20 c. Cross-examination of Dayna Klein that she appeared on television and gave
21 newspaper and magazine interviews in the months after the shooting. (The State agrees
22 that if any inconsistent statements were made by Ms. Klein during subsequent interview
23 those could be used for impeachment).

d. Inquiry of any witness what their opinion was as to whether or not the
defendant should have faced the death penalty.

1 e. Non-expert opinions by lay witnesses that the defendant was crazy, manic,
2 psychotic, not in this right mind. Lay witnesses should be limited to testifying about their
3 observations of the defendant.

4 f. The Haqs, Mian, Navida, and Hasan should be precluded from testifying to
5 hearsay statements and hearsay knowledge they recieved from each other and other
6 sources.

7 g. Testimony that a video tape that may have included pictures of some of the
8 victims of the shooting was played a Seattle Police Department banquet wherein first
9 responders and 911 operators associated with the shooting were honored.

10 h. The religions of the victims and witnesses.

11 i. Opinions by officers and detectives that they believed this was a terrorist attack.

12
13 It is possible that as the State continues to prepare for trial, other motions in limine
14 might become evident. The State will endeavor to inform the defense and the court as those
15 issues are identified

16 17 VI. STIPULATIONS

18 The State and the defense have not yet discussed the possibility of entering into several
19 stipulations concerning topics such as the chain of custody the identity of the individuals
20 autopsied, certain foundations, among others. If agreement can be reached, the parties will
21 present written stipulations for the court to read to the jury.
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VII. CONCLUSION

This memorandum has been prepared solely to acquaint the trial court with the issues as they will be presented at trial.

DATED this 21 day of February, 2008.

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