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**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,)	
)	No. 19-1-00773-31
Plaintiff,)	
)	STATE'S RESPONSE TO DEFENSE
v.)	MOTIONS
)	
TERRENCE MILLER)	
)	
Defendant.)	
)	

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorneys, CRAIG MATHESON AND BOB LANGBEHN, Deputy Prosecuting Attorneys, with the following responses to the various defense motions. The facts have been well laid out in previously filed briefings and are here for reference.

FACTS

SUMMARY

On the late afternoon of August 23, 1972, the defendant, Terrence Miller (DOB [REDACTED] then thirty years of age, raped and murdered twenty-year-old Jody Gwen Loomis (DOB [REDACTED]). Defendant killed Ms. Loomis by shooting her one time on the right side of her head with a .22 caliber handgun. The murder occurred in an area that was then heavily wooded, located east of the intersection of the Bothell-Everett Hwy (SR 527) and 164th St. SW., near Penny Creek Rd. (this road is now called Mill Creek Rd). From all accounts, defendant and Ms. Loomis had never met prior to the fatal encounter on August 23. Had Ms. Loomis survived her contact with the defendant, she would be 68 years of age today.

1 **THE MURDER**

2 Jody Loomis lived at [REDACTED] Bothell, with her parents, [REDACTED] and [REDACTED] her
3 then twelve year old sister, [REDACTED] and her fiancé, [REDACTED]. Jody was an avid horse rider and
4 boarded her horse, Saudi, at a stable located at 4315 Strumme Rd., in unincorporated Snohomish
5 County. Jody left her home on Winesap Rd. to ride her horse on the afternoon she was murdered.
6 To reach the stables on Strumme Rd. where Saudi was boarded Jody rode her 10 speed bike.
7 According to her parents and sister, this was the first time that Jody had ridden her bike to the
8 stables, as she was typically dropped off by one of her parents. The route that she took was west
9 on Winesap Rd. to North Rd, then north on North Rd. until it intersected with 164th, and then east
10 on 164th. This is about a 3.5 mile ride from 20 Winesap Rd to the intersection of 164th and the
11 Everett-Bothell Hwy. It is another approximate 3 miles to the stables on Strumme Rd. from this
12 intersection.

13
14 The last reported sightings of Jody alive came from a friend who spoke to Jody near the
15 intersection of 9th Ave. and 164th St., and a 14 year old girl who was working at the fruit stand at
16 the southwest corner of the intersection of 164th and the Bothell-Everett Hwy. Jody's friend
17 described a conversation lasting approximately 15 minutes before Jody rode her bike eastbound
18 on 164th. The 14 year old working at the fruit stand described watching Jody at the stop sign at the
19 intersection of 164th and the Bothell-Everett Highway, seemingly either confused or anxious on
20 what to do next, prior to heading eastbound across the Bothell-Everett Highway, and heading up
21 Penny Creek Rd. on her bike. Both witnesses put this last sighting of Jody at approximately 5:00
22 p.m.

23
24 When Jody left her home on Winesap Rd. on August 23 she was wearing a pair of brown "waffle
25 stomper" style hiking boots. These boots actually belonged to her younger sister, [REDACTED]
26 According to [REDACTED] this was the first time that Jody had borrowed that particular pair of boots.
27 [REDACTED] was told by her mother [REDACTED] that Jody had waited some time before leaving, so she
28 could ask [REDACTED] permission to borrow the boots. According to [REDACTED] Jody was likely attempting
29 to make a point as she got irritated when [REDACTED] borrowed her clothing without asking. Ultimately,
30 Jody left before [REDACTED] got home from playing.

1 Jody's body was initially discovered by [REDACTED] and [REDACTED] at approximately 5:30
2 p.m. According to Ms. [REDACTED] she and Mr. [REDACTED] had gone onto a dirt road that branched off of
3 Penny Creek Rd. to do some target shooting. As they drove north up a dirt spur road, [REDACTED] got
4 out of his car to move a log that lay across the road. As [REDACTED] approached the log he saw Jody
5 laying on the ground. Jody was on her back, gasping. She had an obvious bloody injury to her
6 head that appeared to be a single gunshot wound. Jody was mostly naked as she lay on the
7 ground, wearing only a pair of bikini style panties, a pair of knee high socks, and a pair of brown
8 "waffle stomper" style boots. Jody clutched her bra in her left hand, and her blue jeans and
9 blouse lay to the right of her body. Mr. [REDACTED] and Ms. [REDACTED] loaded Jody's body and her
10 clothing into [REDACTED] car and drove to Stevens Memorial Hospital (now Swedish, Edmonds) in
11 Edmonds.

12
13 [REDACTED] and [REDACTED] drove directly to Stevens, arriving there with Jody's body at approximately
14 5:45 p.m. According to [REDACTED] and [REDACTED] Jody said nothing during the last minutes of her life.
15 Once at Stevens Hospital Jody was immediately checked into the Emergency Room. It was too
16 late, however, as Jody was pronounced dead on arrival. One of the deputy coroners for
17 Snohomish County, Ken Christensen, was called and took custody of the body at the hospital.
18 Law enforcement was notified, with Detective Cook initially arriving at Stevens at approximately
19 6:00 p.m. Detective Cook interviewed both Mr. [REDACTED] and Ms. [REDACTED] and ultimately had the
20 two take police back to where Jody's body was initially located. Both Mr. [REDACTED] and Ms. [REDACTED]
21 wrote statements describing what they had seen and done, complete with diagrams of the scene as
22 they found it. A search of the area by police located a pool of blood where Jody's head had been,
23 and her 10 speed bike, which had been thrown down a nearby embankment. The body recovery
24 site was photographed by police to document what they found.

25
26 Detectives Lewis and Clausing arrived at Stevens Hospital at approximately 7:20 p.m. Jody's
27 body had been placed in the locked coroner's room by that time. The detectives were met by
28 Deputy Coroner Christensen and led into the coroner's room. Deputy Coroner Christensen was
29 present with the detectives the entirety of their time with the body of Jody Loomis. Detective
30 Clausing carefully photographed the body as the detectives found it-documenting the single
31 gunshot wound to her right temple, and noting an absence of an exit wound; photographing the

1 "waffle stompers" that Jody was wearing, noting that the left boot was untied and the right
2 shoelaces tied; photographing the clothing (jeans, blouse, bra) that had accompanied the body to
3 the hospital. The detectives also noted that when Deputy Coroner Christensen partially pulled
4 down the bikini panties that there appeared to be fresh seminal fluid staining the crotch of the
5 panties and leaking from her genitals. On her buttocks, detectives noted the presence of dirt and
6 leaves compacted inside of the panties and on her skin, indicating that Jody's bare buttocks had
7 come into contact with the ground. At the conclusion of photographing the body and evidence
8 the detectives seized most of the clothing items (boots, socks, blouse, jeans, bra) and booked
9 them into evidence for later forensic testing. The panties and various jewelry that Jody had been
10 wearing were left on the body for later dispersal by the coroner.

11
12 The following day, August 24, 1972, an autopsy was conducted on the body of Jody Loomis.
13 Present at the autopsy were the pathologist, Dr. Robertson, Deputy Coroner Christensen,
14 Detective Clausing, two Deputy Prosecuting Attorneys, and a professional photographer, Jim
15 Leo. Mr. Leo photographed the autopsy proceedings and various evidence items that were
16 ultimately collected by law enforcement. Dr. Robertson found the cause of death to be a
17 "gunshot wound to the head with perforating wound of brain". The spent round fragments were
18 recovered from the head of Ms. Loomis, and Dr. Robertson opined that the bullet was likely a .22
19 round. The pathologist also noted the debris on the buttocks and stated "external physical
20 evidence suggests that her buttocks had contact with leaf mold recently and that the underpants
21 had been repositioned." Cytologic smears made from vaginal swabs taken at autopsy showed
22 "abundant intact spermatozoa." In the intervening decades Dr. Robertson has died.

23
24 Dr. Mathew Lacy, current Assistant Medical Examiner for Snohomish County, has reviewed both
25 the original autopsy report and the numerous high quality photos taken at autopsy. Dr. Lacy
26 concurred that the cause of death was a single gunshot wound to Jody's head, and labeled the
27 manner of death homicide. Dr. Lacy opines that given the angle of the bullet trajectory it is likely
28 that Jody was seated at the time she was shot, and her assailant likely standing above her,
29 shooting downward. This trajectory, in combination with Jody's single untied boot, the dirt on
30 her buttocks, and the evidence of very recent ejaculation tends to support an inference that Jody
31 was in the act of getting dressed when she was shot. This single gunshot wound would have been

1 almost instantly incapacitating.

2
3 The vaginal swabs were taken to Tacoma General Hospital the evening of August 24, 1972 after
4 the autopsy was completed. In a letter dated the following day, August 25, 1972, Dr. Thomas
5 Elder wrote that the vaginal swabs showed "numerous well preserved spermatozoa". Dr. Elder
6 came to the obvious conclusion that the finding of spermatozoa "indicates recent sexual
7 intercourse has occurred." Dr. Elder is still alive and was interviewed by detectives at his
8 Tacoma area home.

9
10 The bike found at the body site and the bullet fragments recovered from Jody's head were sent to
11 the FBI Crime Lab for forensic analysis. The bicycle was examined for latent fingerprints; none
12 of value for comparison purposes were located. The bullet fragments were examined and the
13 forensic scientist at the FBI lab concurred with Dr. Roberts' initial assessment that the round was
14 a .22.

15
16
17 **COLD CASE INVESTIGATION**

18 The Snohomish County Sheriff's Office worked the case for a number of years, operating a
19 number of different lines of investigation, and looking into a number of different persons of
20 interest. None of these lines of inquiry went anywhere and the case went cold, ultimately ending
21 up in the Cold Case Unit of the SCSO. With the advent of DNA technology new avenues of
22 investigation became available for investigators.

23
24 On January 10, 2008 Detective Jim Scharf of the SCSO Cold Case Unit sent a number of items to
25 the Washington State Patrol Crime Lab for DNA testing. Among the items sent to the crime lab
26 were the brown "waffle stomper" boots that Jody had been wearing when she was murdered. In a
27 report dated May 27, 2008 the WSP Crime Lab indicated that spermatozoa had been located on
28 the left boot that Jody had been wearing when she was found dying. Spermatozoa were
29 microscopically visible. Differential DNA extraction testing was then conducted. Differential
30 DNA extraction attempts to separate non-sperm DNA (non-sperm fraction) from DNA from
31 spermatozoa (sperm fraction). The partial DNA profile obtained from the semen on the left boot

1 was determined to be that of an unknown male source. The non-sperm fraction was determined
2 to be a mixture of at least two individuals, a male and a female. The male DNA profile from the
3 semen was found to be possible contributor to this mixture. The partial DNA profile from the
4 sperm fraction was then uploaded into CODIS. There were no hits in CODIS with this profile.
5

6 On July 23, 2008 the WSP Crime Lab issued another report regarding the DNA profiles, both
7 sperm and non-sperm fractions, that had been recovered. Using a known sample of Jody's blood
8 (collected from the blood pool at the crime scene where she had been shot), the lab determined
9 that Jody Loomis was included as a possible contributor to the non-sperm fraction mixture. The
10 lab also found that the DNA profile from the semen and the known DNA profile for Jody Loomis
11 could account for all of the alleles observed in the mixture. The testing specifically excluded
12 Jody's sister, [REDACTED], and her mother, [REDACTED], as possible contributors to the mixture.
13

14 The partial DNA profile from the semen on the left boot were compared to known DNA profiles
15 of a number of men who had been persons of interest at one time or another in the decades
16 following Jody's death. All of these individuals were excluded as having been possible sources
17 of the semen left on the left boot.
18

19 In a report dated March 18, 2019 the WSP Crime Lab issued a report indicating a comparison of a
20 known DNA profile from [REDACTED] (Jody's mother) with the DNA profile extracted
21 from blood collected at the body recovery site showed that it was 79 million times more likely
22 that the source of the blood from the body site was a biological child of [REDACTED] rather
23 than an unrelated individual selected at random from the U.S. population. In this same report,
24 wearer DNA located in the interior heel of both of the "waffle stomper" boots included Jody
25 Loomis as a possible contributor to this wearer DNA as opposed to a random individual selected
26 from the U.S. population on the order of 16,000 times (left boot) and 23,000 times(right boot)
27 more likely.
28

29 **FORENSIC GENEALOGY**

30 With increasingly sophisticated DNA technology, forensic genealogy has become an important
31 tool for law enforcement on cold cases (locally, the William Talbott double murder case, and

1 nationally the arrest of the alleged Golden State Killer, Joseph DeAngelo, are examples of the
2 value of this technique). Using open source genetic data bases, genealogists are able to compare
3 unknown DNA profiles against the known profiles in the data base and attempt to find relatives of
4 the unknown profile. Once a relationship is established, the genealogist will attempt to then trace
5 the relationship using standard methods (building a family tree) and attempt to locate the
6 biological parents of the unknown profile. Once this is done, a DNA sample of the various male
7 offspring of the parents is gathered and then compared to the unknown DNA profile from the
8 crime scene. This was done in the current case.

9
10 Initial discussions with Parabon Labs were had on June 27, 2018, by SCSO. Parabon Labs has
11 been at the forefront of forensic genealogy. The DNA profile extracted from the semen stain on
12 the boot was compared to the various genetic databases, and distant relations to the unknown
13 sample were located. The genealogist then started their work and built a family tree. On August
14 14, 2018 the genealogist had concluded their search, and believed that the unknown DNA profile
15 extracted from the sperm on Jody Loomis' boot, had to belong to a male child of [REDACTED] and
16 [REDACTED]. The [REDACTED] were longtime residents of Edmonds. They had 7 children, six of
17 them boys. Defendant is one of those boys. Two of the brothers were deceased by the time that
18 law enforcement had worked its way to the [REDACTED] clan. Police elected to start surveilling
19 defendant as he had prior sex offense history.

20 21 22 **COLLECTION OF DEFENDANT'S DISCARDED DNA**

23 Based on the information from the genealogists, undercover officers from the Snohomish County
24 Regional Narcotics Task Force (SCRNTF) began following the defendant. On August 29, 2018
25 law enforcement officers followed defendant to the Tulalip Casino. The Officers then retrieved a
26 coffee cup the defendant had consumed coffee from and that he subsequently threw into a public
27 garbage can as they watched. Forensic scientist at the WSP Crime Lab were able to extract a
28 DNA profile from the coffee cup. On September 6, 2018 the WSP Crime Lab indicated that the
29 DNA profile extracted from the coffee cup matched the DNA profile extracted from the sperm
30 left on the left boot of Jody Loomis.

1 Defendant and his wife operate a ceramic shop out of their garage on the back of their property
2 located at 15904 52nd Ave. W., Edmonds. The ceramic shop is called "Miller's Cove" and is
3 open for business to the public on Fridays and Saturdays. On Friday, November 30, 2018, two
4 undercover detectives from the SCRNTF approached defendant's home and saw an "Open for
5 Business" sign in the yard. The two detectives were invited inside the garage by defendant's
6 wife, [REDACTED] While inside the ceramic shop the detectives noted one newspaper on a table.
7 There were no other reading materials or periodicals out in view except this for this newspaper.
8 The paper was the May 5, 2018 edition of the Everett Herald. The headline on the front page of
9 this paper read "Arrest made in cold case. DNA, ancestry research led investigators to 55 year
10 old Sea-Tac man." The Herald article outlined the recent arrest of William Talbott for the murder
11 of Jay Cook and Tanya Van Cuylenborg in 1987, and had a large photo of Talbott entering court
12 under guard. At the time detectives saw this newspaper in defendant's ceramic shop the paper
13 would have been almost 7 months old. Given the similarities between the rape and murder of
14 both Tanya Van Cuylenborg and Jody Loomis (vaginal rape with ejaculate left in the bodies, fatal
15 gunshot wounds to the head), and the manner in which police ultimately identified Talbott as the
16 killer, the presence of the newspaper seemed, at best, an odd coincidence. A fair inference could
17 also be drawn that defendant was keeping track of the techniques law enforcement was using to
18 solve cold cases.

19
20 Interviews of Jody Loomis' friends and family indicates that she did not know a Terrence Miller
21 and there is no legitimate explanation for his semen to be on her boot.

22 23 **JAIL PHONE CALLS**

24 The defendant was placed under arrest on April 10, 2019 and booked into the Snohomish County
25 Jail. From the time he was booked into jail, until approximately the middle of June when he
26 posted bond and was released from custody, the defendant made several jail phone calls. Though
27 many of these calls are irrelevant, there are portions of those phone calls that the State seeks to
28 admit in its case in chief.

1 **1. THE MOTION TO EXCLUDE THE JAIL PHONE CALLS**
2 **MADE BY THE DEFENDANT SHOULD BE DENIED**

3 **THE EQUAL PROTECTION CLAUSE DOES NOT APPLY**

4 The equal protection clauses of the Fourteenth Amendment to the United States Constitution and
5 article I, section 12 of the Washington Constitution require that people similarly situated under
6 the law receive similar treatment from the State. In order to determine whether a state action
7 violates equal protection, one of three different bases of review is employed—strict scrutiny,
8 intermediate scrutiny, or rational basis review. The appropriate level of scrutiny depends upon the
9 nature of the alleged classification and the rights involved.

10 Suspect classifications (such as race, alienage, and national origin) are subject to strict scrutiny.
11 Strict scrutiny also applies to laws burdening fundamental rights or liberties. Intermediate
12 scrutiny applies only if the statute implicates both an important right and a semi-suspect class, not
13 accountable for its status. Absent a fundamental right or suspect class, or an important right or
14 semi-suspect class, a law will be upheld under rational basis review so long as it bears a rational
15 relation to some legitimate end. Washington Courts have already held that the recording and
16 dissemination of his phone calls do not implicate a fundamental right and consequently do not
17 require strict scrutiny pursuant to *State v. Haq*, 166 Wash.App 221, 268 P.3d 997 (2012).

18 Even if strict scrutiny were to apply to the governmental actions here, it is not clear that the
19 defendant is similarly situated to those who are not held in custody pending charges. For a court
20 to engage in equal protection analysis, the individual alleging a violation must establish that he or
21 she is similarly situated with other persons in a class. For example, in *State v. Osman*, 157
22 Wash.2d 474, 484, 139 P.3d 334 (2006), the court noted that to make out his equal protection
23 claim, the defendant must “first establish his classification by showing he was treated differently
24 from others who were similarly situated.” Additionally, in *Harmon v. McNutt*, 91 Wash.2d 126,
25 130, 587 P.2d 537 (1978) where requirements for transfer to mental health facilities were applied
26 differently as between prisoners and nonprisoners, which is the same argument counsel makes
27 here, the supreme court concluded that “[w]e need not address defendant’s contention that there is
28 a rational basis for classification between prisoners and nonprisoners.... Rather, we need only to
29 30 31

1 look at the treatment afforded persons who, like plaintiff, are enmeshed in and subject to the
2 criminal justice system.”

3
4 Taking the McNutt and applying it here, it is easy to see how the defense claim fails. The
5 question is not whether the defendant is treated differently than those who are out of custody
6 pending trial, rather, the question is whether the other defendants who are also incarcerated are
7 treated similarly. The answer, of course, is yes. Every defendant who is incarcerated in the
8 Snohomish County Jail are subject to having their phone calls recorded from the moment they are
9 booked.

10
11 Similarly, the defense argument that only indigent defendants are held in custody and therefore,
12 only indigent defendants are subject to having their phone calls recorded also fails for several
13 reasons. First, the jail calls are recorded for every defendant from the moment they are
14 incarcerated and, often, these recordings can occur prior to a determination of indigence by a
15 judicial officer is ever made. Also, a defendant’s resources available to them is a factor in setting
16 bail, but while a Judge may set bail at an amount that would provide incentive for the defendant
17 to appear for Court hearings, the Judge is not allowed to set bail that would effectively be a “no
18 bail” hold absent other findings related to dangerousness to the community or risk of failing to
19 appear. Therefore, there is no supported argument that “only indigent defendants” are held in
20 custody. There is a plethora of defendant’s who may have means to bail out of custody, but
21 cannot for other reasons (absence of a verified address, risk to the community, etc.)

22
23 **THE JAIL CALLS ARE RELEVANT**

24 Relevant evidence is admissible under Evidence Rule 401 where it has any tendency to make the
25 existence of a fact that is “of consequence to the determination of the action” more or less
26 probable. However, under ER 403, evidence whose probative value is outweighed by its potential
27 prejudice should not be admitted. “ ‘[U]nfair prejudice’ is that which is more likely to arouse an
28 emotional response than a rational decision by the jury [and which creates] ... an undue tendency
29 to suggest a decision on an improper basis....” As the court made clear in State v. Benson, 40
30 Wash.App. 729, 700 P.2d 758 (1985):

1 “[i]n applying ER 403 ... the linchpin word is ‘unfair.’ In almost any instance, a
2 defendant can complain that the admission of potentially incriminating evidence is
3 prejudicial in that it may contribute to proving beyond a reasonable doubt he committed
4 the crime with which he is charged. Addition of the word ‘unfair’ to prejudice obligates
5 the court to weigh the evidence [seen] in the context of the trial itself, bearing in mind
6 fairness to both the State and the defendant.”

7
8 A trial court’s evidentiary rulings are generally reviewed for abuse of discretion. A trial court
9 abuses its discretion only “if its decision is manifestly unreasonable or based on untenable
10 grounds or untenable reasons.”

11
12 In this case there can be no credible argument that the statements made by the defendant that the
13 State seeks to admit are relevant. The defendant is expressing consternation at the State’s
14 evidence in the case and the likelihood that he could be convicted on that basis. Both in terms of
15 what the defendant says, and doesn’t say, the relevancy standard has clearly been met. Any
16 argument that these statements are overly prejudicial should fail as well. Of course the defense
17 considers the statements to be prejudicial. They are harmful to their claims of innocence.
18 However, there is nothing so prejudicial as to outweigh their probative value.

19
20 Defense also claims that the statements are taken out of context. Certainly the Court has wide
21 latitude under other evidentiary rules (res gestae and the rule of completeness for example) to
22 allow other parts of the recordings if it can be shown that the statements are truly not as they
23 appear to be. But to not allow their inclusion in the State’s case is unsupported by the law..

24
25
26 **2. EVIDENCE OF HUNTING IS ADMISSIBLE FOR THE**
27 **LIMITED PURPOSE OF SHOWING ACCESS TO FIREARMS**
28 **PER 404(b)**

29 At autopsy it was determined that Jody Loomis was killed by a single gunshot wound to the head.
30 Two fragments of the bullet were removed from her head and measured and photographed. The
31 original pathologist, Dr. Robertson opined that the fragments were from a .22 bullet. Dr. Lacy,

1 who has subsequently reviewed the original autopsy reports and photographs, has also opined that
2 the bullet was a small caliber bullet, likely .22.

3
4 The bullet fragments were sent to the FBI lab in September of 1972 for examination. In a report
5 dated from November 2, 1972 the FBI lab indicated that the fragments were from a .22 long rifle
6 bullet. The lab also discussed that the bullet was fired from a barrel rifled with six lands and
7 grooves, right twist. The lab indicated that there were numerous guns having this rifling
8 characteristic, including both handguns and rifles.

9
10 Dr. Lacy indicated that he could not tell the length of the barrel that fired the fatal bullet. All he
11 could definitively say was that the caliber was small, likely a .22.

12
13 After review of the authorities provided by defense, the State will no longer be offering evidence
14 of the two handguns recovered by law enforcement when the search warrant was served on
15 defendant's home.

16
17 There is evidence from a variety of sources that defendant hunted with family and friends.
18 During the deposition of [REDACTED] he indicated he had gone hunting with defendant and his
19 brothers on one occasion. Defendant in his interview with police indicated that he used to go
20 hunting and had ultimately given his guns to his step-son, [REDACTED]

21
22 The State is offering this evidence for the limited purpose of showing that defendant had access to
23 firearms and knew (presumably) how to use them. There is nothing prejudicial about limited
24 information that defendant hunted in his youth. Hunting is a sport enjoyed by many in the Pacific
25 Northwest. There is no issue that the weapon used to kill Jody Loomis was a firearm. There is
26 not much dispute that the caliber of the firearm was .22. Whether or not the firearm was a
27 handgun or long gun remains unclear.

28
29 Evidence Rule 404(b) allows evidence of other acts to show "opportunity", i.e. access. In that the
30 proffered evidence isn't misconduct, and the potential prejudice extremely slight, the Court
31 should deny defendant's request to exclude.

1 **3. THE NEWSPAPERS ARE RELEVANT AND ADMISSIBLE**

2 As part of the investigation conducted by the Sheriff's Office after defendant's DNA was
3 matched to the DNA recovered from the boot, a pair of undercover officers were sent to
4 defendant's home business, Miller's Cove, on two occasions. On the first occasion, occurring on
5 October 26, 2018, the undercover detectives, Molly Spellman and Robert Cracchiolo, were
6 allowed into the ceramic shop by defendant's wife, and engaged in conversation with Mrs. Miller.
7 The pair returned a second time on November 30, 2018. While Mrs. Miller led Detective
8 Spellman to the restroom inside the Miller home, Cracchiolo was left by himself in the ceramic
9 shop. While waiting, Cracchiolo noted that there were no reading material or periodicals out in
10 view except for a single newspaper, which was on a table. This newspaper was from May 17,
11 2018. The under the fold portion of the front page was visible. Detective Cracchiolo was able to
12 see the article regarding the recent cold case double murder charges against William Talbott, and
13 the photographs of the two murder victims, Jay Cook and Tanya Van Cuylonberg. The over the
14 fold portion of the story showed a photograph of Talbott being led into court by jail staff (not
15 visible as the paper was laid on the table). Cracchiolo recognized the case and the photographs as
16 his unit had been involved in gathering Talbott's DNA prior to his arrest back in 2018. The
17 presence of the lone newspaper, the topic of the front-page story of the newspaper, and the age of
18 the newspaper (7 months) all caught Cracchiolo's attention. He took a brief video and a single
19 photograph documenting what he saw.

20
21 Search warrants were served on defendant's home after his arrest on April 10, 2019. Among
22 other items, a stack of newspapers located on a chair was recovered from the ceramic shop. The
23 papers spanned a time frame from 2012 to 2019. Among this stack of newspapers were 12 that
24 were of interest to detectives. One of these newspapers was an April 12, 2018 Everett Herald.
25 The front-page story was regarding the use of DNA analysis to "Conjure the face" of the
26 perpetrator of the killer of Jay Cook and Tanya Van Cuylonberg. The over the fold photo is of
27 Detective Scharf at a press conference discussing the case. The main thrust of the story was a
28 recounting of the murders of the two young people, and the use of a new DNA technique that
29 allowed analysts to predict the appearance of the donor of the forensic DNA. There was also the
30 April 14, 2018 Herald containing the front-page story of "Tips in Cold Case Pour In", in response
31

1 to the April 12 news conference. Both newspapers would have been a year old when seized by
2 detectives.

3
4 Among the other papers of interest were an Everett Herald from May 22, 2012. The headline
5 story was "Rapist Guilty in 1998 attack". The article subject matter was regarding the conviction
6 of a rapist in a cold case wherein DNA was utilized. There was an Everett Herald from July 19,
7 2013, with a headline story "Long Sentence Possible" in relation to the murder of a teen girl
8 named Molly Conley by Erik Walker. There was an Everett Herald from July 20, 2013, with a
9 headline story of "Charge in Brutal Death", regarding the filing of charges against Alan Smith for
10 the murder of his estranged wife and mention of a potential sexual assault and potential DNA
11 evidence. There was a July 24, 2013 Everett Herald paper with a headline story of "Ex Cop
12 wants to take the stand". The story was in regard to an alleged rape by a local police officer on
13 trial for that offense.

14
15 Also, of interest, were a Seattle Times and Everett Herald both dated August 23, 2015. This
16 would have been the 43rd anniversary of the murder of Jody Loomis. The May 2018 Everett
17 Herald regarding the Talbott trial (initially seen by Detective Cracchiolo) was not located.

18
19 Defendant asks the court to exclude mention of these papers. The court should deny that motion.
20 The papers can be divided into two groups. The first group is the single newspaper from May 17,
21 2018 discussing the arrest of William Talbott. The article regarding Talbott discusses how
22 Talbott was arrested and charged because of DNA he left during the course of a rape, and how
23 genetic genealogy was subsequently used to identify him using this DNA. This paper was the
24 only reading material on the table. At the time the paper was photographed, it was 7 months old.
25 A fair inference can be drawn that due to the parallels of the Talbott case and defendant's own
26 situation this newspaper story was of particular interest to him. Defendant was at that moment in
27 time situated in exactly the same position as Talbott was before Talbott's arrest. This is
28 probative information as to consciousness of guilt that a jury should have access to. All of
29 defendant's claims and explanations go to the weight, not the admissibility of this evidence.

30
31 The second group of papers are those recovered during the service of the search warrant in April

1 2019. This was a stack of paper on a chair in the ceramic shop. Of note are the two papers from
2 April 2018 that discuss the murders of Jay Cook and Tanya Van Cuylonberg, the ongoing DNA
3 work in the case, and the increasing sophistication of DNA technology. Again, the State's theory
4 of the case is that defendant knew exactly he had done, and what evidence he left when he raped
5 and murdered Jody Loomis. The other papers of interest all contain major articles that seem to be
6 of a theme. The fact of the retention of these papers, and the subject matter of various articles in
7 the papers, is relevant information for the jury. Finally, having two papers, one each from the
8 Seattle Times and Everett Herald, dated August 23, 2015, is a coincidence too bizarre to just
9 ignore. Once again, all of defendant's complaints and explanations go to the weight the evidence,
10 not its admissibility.

11
12 **4. STATISTICAL PROBABILITY IS NOT REQUIRED WHEN**
13 **THE DNA PROFILE IS "REASONABLY ASSUMED" TO BE**
14 **THE VICTIM'S DNA**

15 On May 27, 2008 the WSP lab generated a report regarding the initial DNA examination of the
16 boots removed from the body of Jody Loomis. During this examination semen was detected on
17 the left boot. A cutting of the sperm stain was extracted, and a process called differential
18 extraction was conducted. This divided the sample into two portions-the sperm fraction and the
19 non-sperm fraction. The non-sperm fraction was determined to be a mixed sample from two
20 individuals, a male and a female. The DNA profile obtained from the sperm fraction was
21 determined to be a "possible contributor" to the mixed sample from the non-sperm fraction (the
22 male contributor).

23
24 A subsequent report was generated on July 23, 2008. In this examination evidence item #9 (the
25 blood/debris described as having been collected from where Jody Loomis' head had been) was
26 used as a control sample for Jody Loomis. A single source profile was deduced from this sample.
27 Forensic scientist Brian Smelser wrote: "The partial DNA typing profile obtained from the non-
28 sperm fraction from the sample from the left boot (item 3) is a mixture of at least two individuals
29 (male and female)(previously reported). The donor of the sample (item 9), Jody Loomis, is
30 included as a possible contributor to this profile. The profile from the semen and the sample from
31 Jody Loomis could account for all of the alleles observed in this mixture."

1 Defendant cites to two cases, *State v Cauthron*, 120 Wn. 2d. 879 (1993) and *State v Copeland*,
2 130 Wn. 2d. 244 (1996), for the proposition that a statistical analysis must be conducted on the
3 profile from a victim for the analysis to be admissible. Defendant mis-reads these cases. Both
4 Cauthron and Copeland stand for the proposition (among other things) that when declaring a
5 “match” to a suspect, i.e. using the DNA profile to identify the defendant as the perpetrator of the
6 crime, that statistical evidence of genetic profile frequency probabilities must be presented to the
7 jury. *Id.* at 264. One issue in Cauthron was that the State called four experts who testified that
8 the DNA profile from the semen samples taken from multiple rape victims “matched” that of the
9 defendant’s DNA profile. One of the experts, in fact testified that the DNA “could not have come
10 from anyone else on earth.” Cauthron 120 Wn 2d at 906. No statistical analysis accompanied
11 this testimony. The court held that this type of identification testimony, i.e. declaring a “match”
12 to the defendant, needs to be paired with statistical evidence telling the jury a scientific estimate of
13 the frequency with which such matches occur by chance to give the testimony context. *Id.* When
14 using this type of scientific testimony to potentially convict a defendant of a serious crime, this
15 makes perfect sense.

16
17 In the instant case, a “match” was not declared to either a suspect or a victim. The language of
18 the report, and what the forensic scientist would testify to is that DNA profile from the assumed
19 DNA from the victim and the DNA profile from the sperm fraction “could account for all the
20 alleles observed in this mixture.” There was no suspect DNA to declare a “match” to, and the
21 scientist “reasonably assumed” that the DNA profile deduced from evidence item #9 was that of
22 Jody Loomis.

23
24 Defendant cites to the Scientific Working Group on DNA Analysis Methods (SWGDM), and
25 Section 3.2 of the “Interpretation Guidelines for Autosomal STR Typing by Forensic DNA
26 Testing Laboratories” in support of their position. This section, however, completely supports the
27 work that the lab did and the State’s position. Section 3.2.1 states that “Except for a reasonably
28 assumed contributor, the laboratory shall perform statistical analysis...” In the instant case, it
29 was “reasonable” to assume that the DNA profile collected from the blood (item #9) was that of
30 Jody Loomis. It was “reasonable” to assume that female DNA located in the non-sperm fraction
31 located on the boot taken from the left foot of Jody Loomis was that of Jody Loomis (particularly

1 as both [REDACTED] and [REDACTED] were excluded). The "reasonableness" of this
2 position was confirmed by subsequent maternity testing reported in the March 18, 2019 WSP lab
3 report. There, when comparing the DNA profile from [REDACTED] Jody's mother, to the
4 female DNA profile deduced from the dried blood, it was determined that it was 79,000,000 times
5 more likely that the donor of the blood was a biological child of [REDACTED]

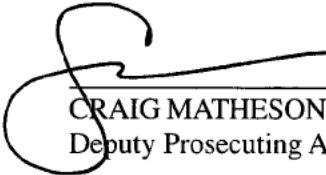
6
7 The lab did their work appropriately, and conservatively. No statistical analysis was required or
8 necessary. The defense motion to exclude should be denied.

9
10 **CONCLUSION**

11 The defense motions for exclusion should be denied.

12
13 RESPECTFULLY SUBMITTED this 21th day of October, 2020.

14
15 STATE OF WASHINGTON

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18 _____
19 CRAIG MATHESON %18556
20 Deputy Prosecuting Attorney
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