IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

STATE OF WASHINGTON Plaintiff, vs. TALBOTT, William E., Defendant.	Case No: 18-1-01670-31 DEFENDANT'S TRIAL BRIEF ORIGINAL

I. STATEMENT OF FACTS

On November 18, 1987, Jay Cook and Tanya Van Cuylenborg left Victoria, British Columbia, for Seattle, Washington. They were driving a Ford 350 Econoline Club Wagon Van. There is evidence they or someone else purchased a ticket to cross on the ferry from Bremerton to Seattle (the ticket was ultimately found in the van), but there is no other indication of their activity thereafter, nor is there evidence that they crossed on the ferry that night.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

On November 24, 1987, Ms. Cuylenborg's body was discovered off a rural road in Skagit County, with a gunshot wound to the head.

On November 25, 1987, The Ford Van was discovered in a parking lot near Essie's Tavern, in Bellingham, Washington, about 18 miles north of where Ms. Cuylenborg's body was discovered.

On November 26, 1987, the body of Jay Cook was discovered at the base of High Bridge in the Monroe area of Snohomish County. Mr. Cook had been beaten, and ultimately strangled to death with a ligature. A pack of cigarettes had been forced into his mouth either before or after his death. The location where his body was found is about 80 miles south of where the Van was found, and 66 miles south of where Ms. Culyenborg's body was discovered.

Between the night of November 18, 2019, and the discovery of their bodies, there is no accounting of where they traveled. No specific date for their deaths can be ascertained, nor is their evidence as to whether they died at the same time, at separate times, or at separate locations. Ms. Cuylenborg's wallet and identification, and keys to the van were discovered outside the back entrance of a Tavern near where the van was parked in Bellingham. There was a partially full box of .380 caliber ammunition found under the back steps of the Tavern near where the wallet and keys were discovered, the same caliber of ammunition as the bullet recovered from Ms. Cuylenborg. No weapon was found.

It was ultimately determined that a number of items were believed to be missing from the couple's belongings. Those items believed to be missing were a green backpack, a black nylon jacket, and a Minolta camera and Ricoh camera lens.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

The Ricoh camera lens was ultimately found at a pawn shop in Portland, Oregon, in March of 1990. It had first been pawned about six months after the murders, but no records existed regarding the person who had originally pawned it.

Evidence was collected during the course of this investigation from the van and the autopsies of the decedents. Among the items found in the van was a pair of black knit pants. A small semen stain was discovered on the hem of on of the legs of the pants; the stain was cut away from the pants and reduced to a solution for DNA extraction, from which DNA profile was deduced.

In 2018, that hem stain DNA extract was processed through AKESOgen labs to be analyzed pursuant to a process called Single Nucleotide Polymorphisms [SNP] genotyping. The result of this SNP genotyping was then submitted to a database that contains other DNA profiles called GEDMatch. The GEDMatch database allows a person who uploads their DNA profile to identify the profiles of other persons who have uploaded their DNA profiles and who are found to be related. From this process, the Washington State Lab's DNA extract that was uploaded was found to have relational matches with two other DNA profiles. These two relational matches were traced back through genealogy to common parents and then forward to the parents of the person whose DNA the lab had extracted from the cutting. As those parents only had one male offspring – the defendant – it was determined that he must be the person whose DNA was extracted from the hem cutting.

Officers did not reach out to Mr. Talbott to ask for his cooperation. Rather, they surveilled him until they could covertly retrieve and item that might have DNA on it – in this case a cup from which he may have drank – and they sent the cup to the lab for DNA

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

extraction and comparison. The cup was found to have DNA and that DNA did render a positive comparison to the DNA profile from the hem cutting extract.

Mr. Talbott was then arrested.

Following his arrest, the police begin an extensive investigation of him, which included interviewing friends, family members, and employers from the 1980s to the present day. The investigation revealed that:

- Mr.Talbott had no criminal history.
- Mr. Talbott did not own or a possess a .380 caliber handgun, nor any other firearm, nor was he ever known to own firearms.
- Mr. Talbott did not smoke.
- Mr. Talbott's DNA profile did not match any unsolved crimes from which DNA had been recovered, either within Washington State, Nationally, nor internationally.
- Mr. Talbott had lived his whole life in the King and Snohomish County area. He been raised primarily in the Woodinville-Duvall area, and he had resided there through early adulthood. At the time of his arrest he lived in Sea-Tac, Washington.
- At the time that the murders occurred, Mr. Talbott was never known to have traveled to Skagit or Whatcom County, and he had no relatives, friends, or acquaintances, in any of those locals. He was not known to have used the ferry system, and had no reason to do so. He was not known to travel to Bremerton. He was not known to have ever traveled to Portland.
- Following his arrest, Mr. Talbott was not found to be in possession of any of the items purported to be missing from the van. He had no connection to the camera lens that was pawned in Portland.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

II. EVIDENTIARY ISSUES

A. The Defense moves to exclude any testimonial statements implicating Mr. Talbott of non-appearing declarant pursuant to the Confrontation Clause of the Sixth Amendment, and to Article I, Section 22 of the Washington State Constitution, and ER 802.

The Sixth Amendment to the U.S. Constitution guarantees the accused the right to "be confronted with the witnesses against him", and Article 1, Section 22 of the Washington State Constitution guarantees the accused the right to "meet the witnesses against him face to face." ER 802 prohibits hearsay evidence. All of these provisions are implicated by circumstances regarding the state's missing witness.

The confrontation clause bars the admission of "testimonial" hearsay. To overcome that bar, the prosecution has the burden of establishing that statements are nontestimonial. State v. Koslowski, 166 Wn.2d 409 (2009). A statement is considered testimonial when its primary purpose is "directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator." State v. Davis, 547 US 813, 826 (2006).

In assessing whether statements are testimonial or nontestimonial, the courts have used a four-part inquiry (Koslowksi, 166 at 418-419). These four factors also establish that the witness statement provided in this case was testimonial:

(1) Timing of the statements relative to the events being described: When a speaker is describing events as they are occurring in real-time, it is indicative of an ongoing emergency that might weigh towards statements being nontestimonial. Conversely, if the statements are describing a past event, such as providing a statement to police to assist with the investigation and eventual prosecution, it is a testimonial statement. In the circumstances of this case, there are no real-time

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

non-testimonial statements. All of the statements from law enforcement and other witness were made and recorded for purposes of a criminal investigation to identifying a suspect in these crimes, and as such, are clearly testimonial statements as contemplated by this factor.

(2) The nature of the questions asked and the nature of the answers given: here again, the police were acquiring information to help in their investigation of these criminal offenses. This factor also weighs in favor of the statements being testimonial in this case.

(3) What is the harm posed by the situation? A call for help against a bona fide physical threat strongly suggests the speaker is facing an ongoing emergency involving physical danger to themselves, and this would suggest their statements are non-testimonial. However, when the declarant is facing no such physical threat, and when the declarant is answering routine police investigative questions, the declarant is clearly providing testimonial statements.

(4) What is the level of formality of the interrogation? The greater the formality of the encounter, the more likely it is that a statement elicited during that encounter is testimonial. In this investigation, the witness were answering question posed directly by police officers, with a full understanding that the police were coalescing information and looking for evidentiary leads to assist in their criminal investigation.

The circumstances of the statements developed during the course of the police investigation are by nature testimonial. Insofar as such a statement can be viewed as

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

implicating Mr. Talbott in these crimes, and the declarant is not testifying, the statements must be excluded pursuant to confrontation clause protections.

B. The Court must exclude the Akesogen Labroatory result pursuant to Bullcoming v. New Mexico, 564 US 647 (2011), Melendez-Diaz v. Massachusetts, 557 US 305 (2009), and prejudicial lack of chain of custody (State v. Roche, 114 Wn.App. 424 (2002)

The State employed a company called Parabon Nanolabs as part of its investigation in this case involving the processing the DNA extract from the hem stain through an additional process called Single Nucleotide Polymorphisms [SNP] genotyping . Parabon did not have its own in-house lab to do this SNP processing; rather, they contracted that work out to AKESOgen laboratories. Parabon had no oversight of work done by AKESOgen Lab.

By way of short summary, AKESOgen's involvement in this case, as described by the state, was this: the Washington State authorities (its unclear who) sent a small sample of the DNA extract that was created from the pants hem stain to AKESOgen Labs to be processed to measure more genetic variation within the DNA extract that is provided. The more detailed SNP genotyping analysis wrought from the AKESOgen Lab treatment was then returned to Parabon, presumably to be uploaded to a DNA profile database called GEDmatch for comparison with other DNA profiles in that database.

The Defense requested to interview the lab technician who did the work for AKESOgen labs, and ultimately the defense was advised that a man named Alexander Axt would be called to testify about the lab work. The defense interview of Mr. Axt took place via phone on May 22, 2019.

The information obtained from that interview included the following:

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

- Mr. Axt did not perform the testing. The testing was performed by a man named Joseph Kim who is a technician who is no longer with the company. Mr. Axt has performed this same kind of testing before, and is familiar with the testing procedure.
- Mr. Axt was not Mr. Kim's supervisor, nor is Mr. Axt a supervisor of laboratory procedures generally. His role with the company is in sales and promotion.
- Mr. Axt is not a record custodian, nor does he have any responsibility regarding record keeping or the review of records in the lab.
- Mr. Axt was not with Mr. Kim when the samples were processed.
- Mr. Axt had no independent knowledge of when the lab work was done.
- Mr. Axt was not involved in any way with the processing of this evidence.
- Mr. Axt did not know what agency or who specifically sent the DNA sample they tested in this case.
- Mr. Axt does not know who at the lab received the sample from whomever has sent it, nor does he know when it was received.
- The sample that was sent from Washington State for testing was consumed.
- Mr. Kim generated no report regarding the procedures he used in the analysis; the analysis ultimately results in raw data generated from a computer analysis and that is provided to Parabon to use as they see fit.
- The SNP Genotyping process is not fully computerized. It involves steps in the procedure which require the unique input and accountability of the lab technician if the result is to be reliable. In simplifed terms, the steps are:

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

1. The DNA extract that is received by the lab and is assigned for processing, in this case to Mr. Kim. The first step Mr. Kim would have undertaken would have been to add a solution to the existing DNA extract so that it undergoes a process called amplification; and its amplified overnight in an oven. This process requires the DNA to be moved from the container in which it arrived and placed on what is called a 96 well plate. On this 96 well plate, there are placed 8 different samples from different cases. The 8 different wells in which these 8 different samples are placed are not individually numbered, so it is the sole responsibility of Mr. Kim to ensure he knows which samples are in which wells, and to ensure there is no cross contamination prior to the top of the plate being sealed.

   Mr. Axt acknowledged that if Mr. Kim failed to account for his work correctly in this step, it would affect the accuracy of the entire procedure.

2. The next day Mr. Kim would put the amplified extract through a process called fragmentation, where the long strands of DNA are cut up and made short enzymatically.

3. The next step requires Mr. Kim to precipitate the fragmented DNA, which concentrates it in the solution. Mr. Kim places that concentrated solution onto a micro-array, which is a small rectangular plate with multiple wells.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

4. The samples then go through a staining procedure and are scanned with a laser that can discern variations in nucleotides.

Given this procedure, and given the statements provided by Mr. Axt in the interview, it is clear at the outset that Mr. Kim is a necessary witness pursuant to the defendant's confrontation rights if the result of Mr. Kim's work is to be admitted as evidence.

In Melendez-Diaz v. Massachusetts, 557 US 305 (2009) the US Supreme Court considered a state prosecution of the defendant for cocaine distribution. At his trial, the state entered into evidence the bags of suspected cocaine found in the defendant's possession and three 'certificates of analysis' from State Crime Lab analysists that stated the weight of the substance and stating that the substance was analyzed and found to contain cocaine. The defendant appealed, and the court reversed the conviction, holding that the testing of drugs and the results of that testing were clearly testimonial and the defendant was entitled under the Sixth Amendment to confront those witnesses.

The decision expressly rejected the rational that laboratory analysts should be treated differently under the confrontation clause analysis:

> Respondent claims that there is a difference, for Confrontation Clause purposes, between testimony recounting historical events, which is "prone to distortion or manipulation," and the testimony at issue here, which is the "resul[t] of neutral, scientific testing." Brief for Respondent 29. Relatedly, respondent and the dissent argue that confrontation of forensic analysts would be of little value because "one would not reasonably expect a laboratory professional ... to feel quite differently about the results of his scientific test by having to look at the defendant." *Id.*, at 31 (internal quotation marks omitted); see *post*, at 2548 – 2549.
>
> This argument is little more than an invitation to return to our overruled decision in *Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597, which held that evidence with "particularized guarantees of trustworthiness" was admissible notwithstanding the Confrontation Clause. *Id.*, at 66, 100 S.Ct. 2531. What we said in *Crawford* in response to that argument remains true:
>
> > "To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. ... Dispensing with confrontation

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

> because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes." 541 U.S., at 61–62, 124 S.Ct. 1354.
>
> Respondent and the dissent may be right that there are other ways—and in some cases better ways—to challenge or verify the results of a forensic test. But the Constitution guarantees one way: confrontation. We do not have license to suspend the Confrontation Clause when a preferable trial strategy is available.

Id. at 317-318.

In Bullcoming v. New Mexico, 564 US 647 (2011), the court reiterated its decision it had rendered in *Melendez-Diaz*. In *Bullcoming*, the defendant was charged with a DUI. At his trial, a forensic analyst from the State Crime Lab was called as a witness to testify in regard to the result of the defendant's blood alcohol test, and to explain the procedures and protocols regarding how the testing was done. The problem arose because the forensic analyst who was called to testify – though employed by the crime lab and familiar with its testing and procedures – he was not the analyst who performed the actual analysis on the defendant's blood.

Notably, this is precisely the process the state seeks to employ in this case at bar.

Bullcoming objected based on the confrontation clause, but the trial court overruled him, and he was convicted. The State Supreme Court upheld the conviction, finding that

> the report's admission did not violate the Confrontation Clause because (1) [the analyst who performed the test] was a mere scrivener who simply transcribed machine-generated test results, and (2) [the testifying analyst], although he did not participate in testing Bullcoming's blood, was qualified as an expert witness with respect to the testing machine and [lab] protocols.

Id., at 648

The Supreme Court reversed the lower courts and commanded that an equally qualified expert testifying in place of the analyst who actually did the testing did not satisfy the requirements of the Confrontation Clause. Importantly, the court noted that the 'act' of

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

testing embodied many more aspects than just the final result. The final result contained within it the representation that the analyst had

> received Bullcoming's blood sample intact with the seal unbroken; that he checked to make sure that the forensic report number and the sample number corresponded; that he performed a particular test on Bullcoming's sample, adhering to a precise protocol; and that he left the report's remarks section blank, indicating that no circumstance or condition affected the sample's integrity or the analysis' validity. These representations, relating to past events and human actions not revealed in raw, machine-produced data, are meet for cross-examination.

Id., at 649

The *Bullcoming* and *Melendez-Diaz* decisions make clear that the Confrontation Clause requires the presence of Mr. Kim if there is to be any testimony regarding the AKESOgen lab testing and results.

Evidence rules and due process forbid the state's experts from relating the hearsay opinions of non-testifying experts who may have been consulted about Mr. Taylor. ER 802. Mr. Taylor does not have the opportunity to cross-examine the people who formed those opinions to determine the reliability of such opinions. State v. Wicker, 66 Wn.App. 409 (1992); State v. Garrett, 76 Wn. App. 719 (1995). See also State v. Guloy,104 Wn.2d 412, 424 (1985); State v. Goddard, 38 Wn. App. 509, 512 (1984).

In Hamilton, the court held the state could not impeach experts with opinions of other non-testifying professionals on which defense expert "should have relied." State v. Hamilton, 196 Wn.App. 461, 383 P.3d 1062 (2016). In Wicker, *supra,* the Court of Appeals overturned a burglary conviction because the fingerprint expert attempted to bolster his opinion by stating that another, non-testifying fingerprint expert, had reviewed his work and agreed with his opinion that the fingerprints belonged to the defendant. Even though it was reasonable for the expert to rely on such information, the information was inadmissible hearsay and violated

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

of the defendant's right to confrontation and cross examination. *Accord* Brown v. Georgia, 427 S.E. 2d (Ga.Ct.App. 1992); Wisconsin v. Weber, 496 N.W.2d 762 (Wis.Ct.App. 1993). Similarly, the state may not elicit, nor may the state's expert volunteer, the hearsay opinions of another expert. *See also* State v. Martinez, 78 Wn. App. 870 (1995).

ER 703 may permit the expert to rely on hearsay facts and data for her opinion, but the opinions themselves (in this case, the diagnosis) are not admissible under the evidence rule, and indeed, due process requires its exclusion. ER 705 indicates that on cross examination, the expert may in any event be required to disclose the "underlying facts or data". This provides the confronting party with the option (indeed, the protection) of exposing otherwise inadmissible data in furtherance of its theory of the case. This exception, however, does not swallow the rule. The mere fact of cross examination does not "open the door" to admission of otherwise impermissible hearsay or highly prejudicial information either in rebuttal or redirect. The terms "facts" and "data" do not imply hearsay opinions or speculation. ER 703 and 705 do not provide a blank check for an expert witness to bolster his own opinion by maintaining it is corroborated by otherwise inadmissible evidence of a non-testifying expert's opinion. *See e.g.* Wicker, *supra* (impermissible to bolster with opinion of an expert who is not in court to testify).

Additionally, the complete lack of protocol with regard to the chain of custody of evidence in AKESOgen testing raises its own grounds for exclusion. In State v. Roche, 114 Wn.App. 424 (2002), the defendant was convicted of possession of methamphetamine; shortly thereafter, it was disclosed that the chemists who had tested the drugs in his case had been using heroin which he was pilfering from drug evidence submitted to the crime lab.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

The defendant filed a PRP seeking a new trial, and the State opposed it on grounds that it would not likely change the result – after all, the methamphetamine was still going to test positive, and the chemist had been stealing heroin, not meth.

The appellate court disagreed with the state, finding that "Before a physical object connected with the commission of a crime may properly be admitted into evidence, it must be satisfactorily identified and shown to be in substantially the same conditions as when the crime was committed." Id., at 436, *citing to* State v. Campbell, 103 Wn.2d 1 (1984). The court found that where "evidence is susceptible to alteration by tampering or contamination, it is customarily identified by each custodian in the chain of custody from the time the evidence was acquired." Id. The more opportunity that exists for alteration by contamination or alteration, the more stringent the requirements should be; the strictest test requires that chain of custody be established "with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with." Id., citing to United States v. Cardenas, 864 F.2d 1528, 1531 (10th Cir. 1989). If there are only "minor discrepancies or uncertainty on the part of the witness," then chain of custody discrepancies affect only the weight of the evidence, not admissibility." Id., citing to Campbell, 103 Wn.2d at 21.

In the case of the AKESOgen lab testing, there is not chain of custody, at all. It is insufficient foundation to be admissible.

C. Motion to exclude evidence related to vaginal, rectal, and oral swabs purportedly collected at medical examination of Ms. Culyenborg if a clean chain of custody cannot be established

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

There appears to exist a break in the chain of custody and the nature of the evidence regarding these swabs. Stated broadly, it is this: In the months and years after this medical examination, the swabs are referenced by crime lab analysts as being distinctively labeled as to where the swab was used to collect a sample (vaginal, rectal, or oral). But there is no record that the swabs were ever labeled as such at the point of collection.

The defense interviewed (with the prosecuting attorneys present) former Skagit County Detective Gerald Bowers who assisted in the pathological examination of Tanya Van Culyenborg on November 25, 1987. Mr. Bowers actually held the test tube into which the swabs were placed by the pathologist, and then placed them all together in a bag marked "Vials containing swabs and body fluids from the autopsy," and placed an identifying evidence card in the bag. The vials were not individually marked or identified.

The pathologist made no record that he ever went back and into the evidence bag and labeled the swabs, nor is there any explanation as to how he would tell one from the other.

The swabs were then eventually processed down into a DNA extract, so they do not appear to be the same swabs as Detective Bowers placed into evidence.

Relying on the discussion regarding State v. Roche, and the related cases in that discussion, above, the swabs that were collected by Detective Bowers were not labeled and appeared different when they were placed in evidence. After being transferred to the Washington State Crime lab, the swabs were labeled. There is no record that accounts for this discrepancy.

D. MOTIONS IN LIMINE

A. Motion to exclude witnesses from the court pursuant to ER 615.

B. Motion to exclude ER 404(b) evidence.

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

ER 404(b) requires the exclusion of "other crimes, wrongs, or acts" that impugn a person's character. "The primary purpose of the rule is to restrict the admissibility of related, but uncharged, criminal activity in a criminal case, though other applications are possible." Tegland, Courtroom Handbook on Washington Evidence 2010-2011, pg. 239, *Author's Comments.*

In determining the admissibility any 404(b) evidence for purposes other than character evidence, the court must undertake a series of inquiries:

(1) The court must determine, by a preponderance of the evidence, that the alleged misconduct occurred. The party offering the evidence has the burden of proof. In the absence of the necessary foundational showing, the evidence remains inadmissible. *See e.g.* State v. Benn, 120 Wn.2d 631 (1993).

(2) The court must identify the purpose for which the evidence is being offered.

(3) The court must find that the evidence is relevant.

(4) The court must undertake, on the record, an ER 403 balancing test to ensure that the probative value of the evidence is not outweighed by the danger of unfair prejudice.

In a criminal case, in which the evidence is being offered against the accused, any doubt should normally be resolved in favor of the excluding the evidence. *See e.g.* State v. Meyers, 49 Wn.App. 243 (1997) ("When considering misconduct which does not rise to a level of criminal activity, but which may nonetheless disparage the defendant, extreme

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363

caution must be used to avoid prejudice…where the decision is doubtful, the scale must tip in favor of the defendant and the exclusion of the evidence.").

It is unclear if the state has any intention or presenting any ER 404(b) evidence. If the state does so intend, the defense would request that the matter be heard outside of the presence of the jury so that the court can make a ruling prior to any testimony.

C. Motion to exclude speculation that Ms. Culyenborg was sexually assaulted.

The defense moves to limit the state's witnesses by excluding speculation. This speculation is not supported by forensic evidence. The state's witness should be limited to describing their investigations and observations. Any speculation related to sexual assault should be left for the state's closing argument.

D. Motion to exclude the assertion by Defendant to exercise his right to remain silent and right to an attorney.

Mr. Talbott requests that witnesses and counsel be ordered not to mention, comment, question, argue, or otherwise reference the defendant's invocation of his right to remain silent and request for an attorney. Fifth and Sixth Amendment, U.S. Constitution; ER 401, 403

DATED this 5th day of June, 2019.

Respectfully submitted,

Jon T. Scott, WSBA #30308
Rachel Forde, WSBA# 37104
Attorneys for Defendant

Snohomish County Public Defender Association
2722 Colby Avenue, Ste. 200, Everett, WA. 98201
PH 425.339.6300 / FX 425.339.6363