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2
3 IN THE MUNICIPAL COURT FOR THE CITY OF SEATTLE
4 KING COUNTY, STATE OF WASHINGTON

5 CITY OF SEATTLE,

6 Plaintiff,

7 vs.

8 HUDSON, MILES

9 Defendant.

)
)
) NO. 4240000362
)
)

) CITY'S TRIAL MEMORANDUM
)

) Clerk's Copy
)
)
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12 **I. CHARGE**

13 The Defendant is charged with one count of Reckless Driving by operating a motor vehicle
14 with a willful or wanton disregard for the safety of persons and/or property; and with one count of
15 Reckless Driving by racing a motor vehicle upon a street, alley or way open to the public, for his
16 conduct between the dates of February 01, 2024 and February 24, 2024, in the City of Seattle, King
17 County, Washington.

18 **II. RELEVANT FACTS**

19 All relevant facts are contained in the redacted police report filed with this Court on March
20 26th, 2024, under incident #24-076854. Relevant facts are introduced below as necessary.

21 **III. CITY'S POTENTIAL WITNESSES**

- 22
1. SPD Ofc. JOSHUA VAAGA #8397
 2. SPD Ofc. OLIVER MURPHY #8462
 3. Matthew Lankford

1 **IV. PRE-TRIAL / TRIAL ISSUES**

2 The City requests a pretrial hearing prior to the jury being impaneled on the following motions
3 in limine. The City reserves the right to make additional motions should they become necessary
4 during the trial.

5 **1. Disclosure of Defense**

6 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

7 The defendant had not disclosed the nature of the defense to the city. Pursuant to CrRLJ
8 4.7(b)(1)(vii), the City demands further disclosure of the general nature of the defense if it is other
9 than "General Denial".

10 **2. Disclosure of Defense Witnesses**

11 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

12 Pursuant to CrRLJ 4.7, the defense has not provided the City with notice of any witnesses aside
13 from the defendant. The City requests that any witnesses that have not been disclosed to the City by the
14 defense be excluded from the trial.

15 **3. Motion to Exclude Witnesses**

16 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

17 Pursuant to ER 615, the City moves to exclude all witnesses/potential witnesses from the
18 courtroom except during their own testimony. The City reserves the right to have one law enforcement
19 officer involved in the case remain during trial.

20 **4. Motion to Exclude Testimony, Evidence or Argument Concerning the Penalty the**
21 **Defendant may be Subject to if Convicted in this Case**

22 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

1 Pursuant to ER 401, ER 402, and ER 403, the City moves for an order prohibiting the defendant
2 at any point during this trial from arguing, eliciting testimony, offering evidence, suggesting, or
3 alluding in any way to the possibility of punishment, or effect of punishment in this case. This motion
4 does not apply to informing the jury of the ramifications of its verdict as a reason for it to decide
5 carefully.

6 **5. Motion to prohibit the use of any evidence not previously disclosed for any**
7 **purpose.**

8 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

9 Pursuant to CrRLJ 4.7(b), the City moves for an order prohibiting the defendant from using
10 any evidence or discovery not previously disclosed to the City. To comply with CrRLJ 4.7(b), the
11 defendant must disclose any books, papers, documents, photographs, or tangible objects which the
12 defendant intends to use in the hearing or trial. CrRLJ(b)(1)(ii). Similarly, CrRLJ 4.7(b)(2)
13 provides that the defendant must make such materials available for inspection no later than
14 fourteen days prior to the date set for trial. It is important to note that the rules do not distinguish
15 between using the discovery for the defendant's case in chief or for other reasons during the trial.
16 Instead, the rules simply state that if the defendant intends to use the evidence "in the trial or
17 hearing" it must be disclosed.

18 **6. Production of Physical Evidence, Documents, Defense Investigator's Notes, and**
19 **Other Impeachment Evidence**

20 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

21 The City requests that the defendant make available any physical evidence, photographs or
22 documents, other than those items previously provided by the City as a matter of discovery, that they
intend to rely on at trial.

1 Further, pursuant to CrRLJ 4.7 and State v. Yates, 111 Wn.2d 793, 765 P.2d 291 (1988), the
2 City requests an order compelling the defendant to provide all written or recorded statements of
3 defense interviews with the City's witnesses if the defense investigator will be called as a witness to
4 impeach the testimony of that State witness. The City also requests an order compelling disclosure
5 of *any additional evidence that may be used to impeach a State's witness*. State v. Dunivin, 65 Wn.
6 App. 728, 829 P.2d 799 (1992).

7 **7. Motion to Compel Submission of Jury Instructions**

8 **Granted** X **Denied** ____ **Reserved** ____ **Explanation** _____

9 Trial counsel has an obligation to assist the court in drafting accurate jury instructions so that
10 the parties' rights to a fair trial are addressed. The time to ensure accuracy of jury instructions is
11 before such instructions are submitted. CrRLJ 6.15 dictates that:

12 Proposed jury instructions shall be served and filed when a case is
13 called for trial by serving one copy upon counsel for each party, by
14 filing one copy with the clerk, and by delivering the original and one
additional copy for each party to the trial judge.

15 CrRLJ 6.15(a) (emphasis added).

16 The rule's plain language applies equally to the prosecution and defense. Moreover, the use of
17 the word "shall" means that compliance is mandatory. Despite this, numerous defense counsel in
18 King County frequently submit an incomplete packet of proposed instructions or fail to submit
19 proposed instructions at all. This practice is apparently deliberate. Counsel hopes that by withholding
20
21
22

1 jury instructions, his client may argue on appeal that the giving of an instruction constituted reversible
2 error and that the doctrine of invited error will not preclude the tardy argument.¹

3 The City respectfully submits that the court should not acquiesce to such a strategy,
4 particularly in light of the mandatory language of CrRLJ 6.15(a). Failure to comply with CrRLJ
5 6.15(a) prevents the court from addressing avoidable errors at the trial stage. Requiring each counsel
6 to comply with the rules and submit a *complete* set of proposed jury instructions gives the Court the
7 opportunity to rule on the propriety of instructions now, rather than wait for a claim of instructional
8 error on appeal.

9 For these reasons, the City respectfully asks the Court to require the defense to comply with
10 CrRLJ 6.15(a) and submit a complete set of proposed instructions. However, if defense counsel fully
11 agrees with the City's proposed instructions, counsel can affirmatively adopt the State's proposed
12 instructions.

13 **8. Motion to Prohibit Defense Argument Relating to Other Burdens of Proof**

14 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

15 The City requests that the defense be prohibited from arguing a percentage to the jury as a
16 measure of "beyond a reasonable doubt." The City also requests that the defense be prohibited from
17
18

19 ¹ Many instructional errors are presumed prejudicial unless it affirmatively appears that the error
20 was harmless, and error of a constitutional magnitude can be raised for the first time on appeal
21 unless the invited error doctrine applies. State v. Stein, 144 Wn.2d 236, 246, 27 P.3d 184 (2004);
22 State v. Henderson, 114 Wn.2d 867, 870 792 P.2d 514 (1990). The invited error doctrine precludes
review of instructions proposed by the defendant, but only when the defense actually *proposes* the
instruction at issue. State v. Greer, 91 Wn.2d 342, 588 P.2d 1151 (1979); see also State v. Studd,
137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999); State v. Doogan, 82 Wn. App. 185, 188, 917 P.2d
155 (1996). And, unfortunately, the appellate courts have held that, "failing to except to an
instruction does not constitute invited error." State v. Corn, 95 Wn. App. 41, 56, 975 P.2d 520
(1999).

1 using a graph, chart, or other visual aid to depict the burden of proof in comparison to the burden in
2 other types of cases and/or legal matters.

3 The jury instructions provide the instruction to the jury on the meaning of beyond a reasonable
4 doubt standard that the State must meet in this case. Further, the instruction defines the appropriate
5 measure of the State's burden and no case law supports the apportionment of a percentage in
6 measuring this burden of proof. Finally, discussion of burdens in non-criminal cases or for other legal
7 issues will only serve to confuse the jury. Thus, this argument should be excluded under ER 402 and
8 ER 403.

9 **9. Motion to Prohibit Defense Counsel from Asking the Members of the Jury to Place Him**
10 **or Herself in the Defendant's Position**

11 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

12 The City moves to prohibit defense counsel from asking members of the jury to place him or
13 herself in the defendant's position. An argument urging the members of the jury to place themselves
14 in the place of one of the parties is improper because it encourages the jury to depart from the sworn
15 duty, the obligation to remain neutral, and to decide the case on the basis of personal interest and bias.
16 Adkins v. Aluminum Co. of America, 110 Wn.2d 128, 750 P.2d 1257 (1988); 14A WAPRAC § 30.26.

17 **10. Motion Prohibiting Speaking Objections.**

18 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

19 The City moves this Court to prohibit the use of "speaking objections" or of objections stating
20 more than the basic grounds for the objection. ER 611.

1 **11. Motion prohibiting the defense from appealing to the sympathies of the jury.**

2 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

3 The City moves the Court to prohibit the defense from making a deliberate appeal to the
4 passions, sympathies or prejudices of the jury. State v. Russell, 125 Wn.2d 24, 882 P.2d 747 (1994);
5 State v. Belgrade, 110 Wn.2d 504, 506-507, 755 P.2d 174 (1988); RPCW 3.4(e).

6 **12. Motion Prohibiting the Defense from Arguing the Facts of the Case in Voir Dire.**

7 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

8 The City moves the Court to prohibit the defense from arguing the facts of the case in voir
9 dire because it is more prejudicial than probative. ER 403.

10 **13. Motion Barring Defense from Asking Witnesses What They Want, or Think should**
11 **Happen to the Defendant because of this Incident.**

12 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

13 Pursuant to ER 401, ER 402, and ER 403, The City moves the Court to prohibit the defense
14 from questioning the witnesses what they think should happen to the defendant, or what they want to
15 happen to the defendant in relation to this case. What the witnesses think or want to happen to the
16 defendant have no bearing on his guilt and are therefore not relevant testimony.

17 **14. Motion to Bar Parties from Discussing Defendant being Discriminated Against**

18 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* dfns can question
19 in part about race

20 The City moves this Court to bar any discussion, testimony, questioning, or evidence of
21 Defendant being discriminated against. Discrimination is a civil cause of action, not a criminal charge
22 or affirmative defense to a criminal charge. It is also irrelevant as is has no bearing on whether the
 defendant assaulted the victim in this case. Discussion of discrimination is likely to inflame the
 passions of the jury and be prejudicial to the City. Again, it is not in any way probative to this action,

1 as it has no bearing on whether the defendant assaulted the victim in this case and would therefore
2 violate of ER 403.

3 **14. Any Defense Motion to Suppress Evidence or Dismiss**

4 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

5 Pursuant to CrRLJ 3.6, “[m]otions to suppress physical, oral or identification evidence other
6 than motions pursuant to rule 3.5 **shall** be in writing supported by an affidavit or document as
7 provided in RCW 9A.72.085 or any law amendatory thereto, setting forth the facts the moving party
8 anticipates will be elicited at the hearing.” CrRLJ 3.6(a). Emphasis added. Additionally, pursuant
9 to SMCLR 8.2.1, “[n]ot later than fourteen (14) business days prior to the hearing date, the moving
10 Party shall serve the motion on all parties and the clerk, a supporting brief, copies of all affidavits,
11 photographic, video, audio, documentary and all other evidence presented in support of the motion
12 and a proposed order.” SMCLR 8.2.1(a)(2). As of the filing of this motion, the Defendant has not
13 filed any motion, affidavit or brief in support of any motions. Therefore, the City moves the Court to
14 deny any such motions filed at this point as untimely.

15
16 **15. Motion to Preclude the Defendant from Offering His Own Out-of-Court Statements**

17 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* rule of completeness
18 in part applies

19 The City moves this Court for an order prohibiting any reference to Defendant’s hearsay
20 statements to potential witnesses, either on direct or cross examination, including but not limited to
21 the Seattle Police Officers called to testify in the above referenced case, unless previously approved
22 by the court via offer of proof. ER 801(1)(a)(b)(c), ER 802. Such statements are inadmissible unless
offered by the City as statements against a party opponent, as held in *State v. Finch*, 137 Wn.2d 792,
824, 975 P.2d 967, cert. denied, 528 U.S. 922 (1999).

1 Out-of-court admissions by a party, although hearsay, may be admissible against the party if
2 they are relevant. However, if an out-of-court admission by a party is self-serving, in the sense that
3 it tends to aid his case and is offered for the truth of the matter asserted, then such statement is not
4 admissible under the admission exception to the hearsay rule. *State v. Finch*, 137 Wn.2d at 824.

5 It is improper for the defendant to attempt to tell his/her version of events through other
6 witnesses. See ER 801(d)(2) (statements offered against the defendant are not hearsay). See, e.g.,
7 *State v. Perez* 139 Wn.App. 522, 531 (2007) (The rule of completeness does not apply to oral
8 testimony). Any statements not offered by the State against the defendant should be elicited from the
9 defendant on direct from his counsel. See, e.g., *State v. Finch*, 137 Wash.2d 792, 824 (1999) cert.
10 denied, 528 U.S. 922 (1999) (an out of court admission by a party offered by that party for the truth
11 of the matter asserted is inadmissible hearsay because it denies the State the right to cross examine
12 and denies the jury a chance to gauge credibility); *State v. Ammlung*, 31 Wash. App. 696, 703 (1982)
13 (defendant cannot introduce his own testimony from a hearsay source, thereby insulating his
14 testimony from cross-examination); *State v. Huff*, 3 Wash. App. 632 (1970) (defendants may not use
15 the rule to insulate themselves from cross examination); *State v. Haga*, 8 Wash. App. 481 (1973),
16 appeal after remand, 13 Wash. App. 630 (1975), cert. denied, 425 U.S. 959 (1976); Karl B. Tegland,
17 *Courtroom Handbook on Evidence*, page 375-76, cmt. 1(d) to ER 801(d)(2) (2005) ("If the rule were
18 otherwise, a party could simply tell his or her story out of court, and then present it through the
19 testimony of other witnesses without taking an oath and without facing cross-examination").

20 If the Defendant's hearsay statements are allowed, the City requests a limiting instruction
21 pursuant to ER 105 so that the jury will know not to use any statements that have not been offered by
22 the City as proof of the matter asserted. ER 105 requires that the jury be instructed as the evidence
cannot be offered for the truth of the matter asserted as it is not offered by a party opponent against

ANN DAVISON
SEATTLE CITY ATTORNEY
Criminal Law Division
701 Fifth Ave, Suite 2050
Seattle, WA 98104
P: (206) 684-7757 F: (206) 684-4648

1 the defendant. See also State v. Fitzgerald, 39 Wash. App. 652, 663 (1985) (a party seeking a limiting
2 instruction has the burden of requesting it and failure to request waives the instruction; instruction
3 should give the purpose for which the evidence is admitted).

4
5 **19. Motion to Address the Impeachment of City's Witness**

6 *Granted* X *Denied* _____ *Reserved* _____ *Explanation* _____

7 Pursuant to ER 613, there is a procedure that must be followed when attempting to impeach
8 witnesses. The prior statement of the witness must first be inconsistent with the witness's testimony
9 at trial. The witness may be cross-examined regarding the inconsistent statement. If the witness
10 admits making a prior inconsistent statement then the impeachment is complete. If the witness denies
11 making the prior inconsistent statement then extrinsic evidence of the statement is admissible unless
12 the statement concerns a collateral matter. If extrinsic evidence of the statement is admitted then the
13 witness must be given an opportunity to explain or deny the statement. ER 613.

14 Pursuant to ER 613, the City moves for an order requiring defense, during cross-examination,
15 to show the witnesses their statements or to play the precise contents of their recorded statements
16 when confronting them with prior statements. ER 613 provides that "In the examination of a witness
17 concerning a prior statement made by the witness, whether written or not, the court may require that
18 the statement be shown or its contents disclosed to the witness at that time..."

19 The City anticipates that defense may attempt to impeach the State's witnesses with prior
20 statements made in defense interviews. Under ER 613, the State requests that the witnesses be given
21 a transcript or be afforded the opportunity to listen to the recording when being confronted with a
22 prior inconsistent statement. Following the procedure of ER 613 will ensure that the witnesses are
properly and fairly confronted with a prior statement that is actually inconsistent, rather than counsel's

1 memory of a statement. Therefore, defense should be required to show the witnesses a transcript or
2 be prepared to play the audio portion of the interview when impeaching witnesses.

3
4 **15. Motion to find defendant's prior contacts with law enforcement admissible under**
5 **Rule 404(b) as evidence of knowledge and identity.** *motion to admit 404(b) evidence denied.*

6 Generally, Rule 404(b) evidence is not admissible to prove character and show action in
7 conformity therewith. State v. Powell, 126 Wn.2d 244, 258 (1995); ER 404(b). However, it is a widely
8 held tenet of evidence law that Rule 404(b) evidence is admissible for other purposes, "such as proof
9 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
10 accident." ER 404(b).

11 These common permissible vehicles for 404(b) evidence do not comprise an
12 exhaustive list. State v. Lane, 125 Wn.2d 825, 831 (1995). The court should engage in an appropriate
13 analysis and make findings where 404(b) evidence is offered for other purposes. To wit, the court
14 must 1) identify that purpose, State v. Smith, 106 Wn.2d 772, 776 (1986); 2) determine whether the
15 evidence is relevant and necessary to prove an essential ingredient of the crime charged (or is of
16 consequence in the outcome of the action), Smith, 106 Wn.2d at 776; and 3) determine whether the
17 probative value of that evidence outweighs its prejudicial effect, State v. Lough, 125 Wn.2d 847, 853
18 (1995). In this context, courts have established that evidence is "relevant and necessary" if the
19 purpose of admitting the evidence is of consequence to the action and makes the existence of the
20 identified fact more probable. Powell, 26 Wn.2d at 258-59.

21 In this inquiry the City has the threshold burden of establishing that the other crimes,
22 wrongs, or acts occurred by a preponderance of the evidence. State v. Binkin, 79 Wn. App. 284, 289
(1995). However, this is a relatively simple burden to meet. The trial court may simply make

1 preliminary decisions on the admissibility of this evidence based purely on the City's offer of proof.
2 State v. Kilgore, 147 Wn. 2d 288, 292 (2002). As always, rulings concerning the admissibility of
3 evidence are within the discretion of the trial court and are reversible only for abuse of that discretion.
4 Powell, 126 Wn.2d at 258. Discretion is only abused if the trial court's decision is manifestly
5 unreasonable, exercised on untenable grounds, or for untenable reasons. State v. Alexander, 125
6 Wn.2d 717, 732 (1995).

7 A. Prior contacts with Law Enforcement is directly relevant to show the defendant had
8 knowledge of his criminal acts; in fact, not only did the defendant have knowledge- he
9 also intended to commit them and did not intend to stop.

10 In the present case, the crime of reckless driving requires proof that the defendant: "drove the vehicle
11 in willful or wanton disregard for the safety of persons or property"; Further, the crime of reckless
12 driving (racing) requires proof that the defendant "raced the motor vehicle on any street, alley or way
13 open to the public".

14 The defendant's contacts with law enforcement are evidence of knowledge and intent and are
15 therefore relevant to the elements of the crimes charged. Washington courts have upheld the
16 admission of evidence of prior misconduct when it is relevant to the elements of the crime charged.

17 The city is required to prove the defendant drove the vehicle in willful or wanton disregard for the
18 safety of persons or property; the city is also required to prove that the defendant raced the vehicle.

19 Viewed in the light most favorable to admission, this evidence will not be substantially more
20 prejudicial than probative. The city is required to prove that the defendant drove his vehicle recklessly
21 and that he was racing his vehicle in the City of Seattle. The city is also required to prove that the
22 defendant is in fact the driver behind the wheel driving the "Hellcat" vehicle in downtown Seattle.

The evidence the city plans to introduce tends to show that: (1) Seattle police Officers had several

1 contacts with the defendant in Downtown Seattle; (2) Seattle Police Officers are familiar with the
2 defendant and are able to recognize him and his voice; (3) Seattle Police Officers identify the Hellcat
3 vehicle and know that it is in fact the defendant driving it; (4) The Hellcat's brake light says "SRT.
4 MILES" which is the name of the defendant's Instagram account; (5) The defendant shows his own
5 Instagram account to Seattle Police Officers.

6 B. 404(b) evidence is admissible to prove identity of the suspect.

7 While 404(b) evidence is traditionally inadmissible to show conformity of behavior, it may
8 be admissible for such purposes as to show motive, knowledge or identity. See State v. Newton, 412
9 Wash.App. 718 (Div. 2 1986)(In which testimony of a witness that they received several phone calls
10 from the defendant purporting to be the victim was admissible to prove defendant's identity.). Here,
11 Seattle Police Officers Vaaga and Murphy had several prior and subsequent contacts with Mr. Hudson
12 that allowed them to recognize him by name, sight and voice as the driver in the Instagram videos
13 that will be presented to the jury.

14 **16. Motion to Have Court Conduct Inquiry into Jury Nullification.**

15 *Granted* X *Denied* ____ *Reserved* ____ *Explanation* _____

16 The City moves the Court to ask the jury, prior to voir dire, to inquire into jury nullification
17 materials that panel members may have received on going into court. A group calling itself Fully
18 Informed Jury Association has been handing pamphlets out to every potential juror at the door to
19 the courthouse. The pamphlets encourage jurors who "don't agree with the law or how it is applied"
20 to "vote Not Guilty for any reason [they] believe is just." These materials unequivocally instruct
21 potential jurors to acquit based on their personal beliefs of what the law should be.
22

Guilty or Not Guilty?

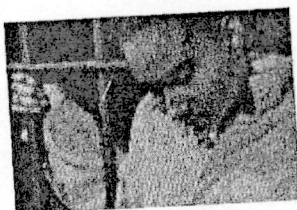
What should you do as a juror if you don't agree with the law or how it is applied in the case at hand?



As a juror, you may vote Not Guilty for any reason you believe is just.



Around 97% of federal and 95% of state criminal charges are decided without the benefit of trial by jury.



Many who risk trial by jury are punished with a far harsher sentence (known as the "trial tax") merely for exercising their Constitutionally guaranteed right.



YOU may be the defendant's last hope for a fair hearing and a just verdict!

Learn more at FIJA.org



Seattle Note: Defendants usually do not receive drug treatment in jail/prison.

You ALWAYS have the option of Not Guilty

- even if you believe the law was broken
- even if the judge says you must convict

Judges are officially not allowed to instruct jurors to convict, but courts have been extremely lenient with judges who lead jurors into Guilty verdicts they regret.

Don't fall for it!

Did the government prove beyond reasonable doubt that the accused broke the law?	NO	✓ NOT GUILTY	There is no partial credit for the prosecution! Each charge must be proved beyond a reasonable doubt every time.
↓ YES			
Is the law that was broken Constitutional?	NO	✓ NOT GUILTY	The Constitution is the highest law of the land. When lower and higher law conflict, lower law must give way.
↓ YES			
Is the law that was broken just (and justly applied in the case at hand)?	NO	✓ NOT GUILTY	Do not check your conscience or your common sense at the courthouse door! Apply them to deliver just verdicts.
↓ YES			
Was anyone harmed?	NO	✓ NOT GUILTY	Consider whether you would be doing justice to harm someone who has not harmed anyone.
↓ YES			
Does the punishment fit the crime?	NO	✓ NOT GUILTY	Mandatory sentences can result in unfair punishment. Excessive penalties are unjust, expensive for taxpayers, and can ruin lives.
↓ YES			
Do other factors exist that would make strict enforcement of the law unjust in this case?	YES	✓ NOT GUILTY	Jurors have the ability to temper law with mercy when circumstances call for it.

Jury deliberations are a sanctity that are protected by strict rules against court interference—rules created “to protect the cherished right to a jury trial.” *State v. Nicholas*, 185 Wn. App. 298, 305, 341 P.3d 1013 (2014). Courts must generally presume that juries follow the instructions given to them and not substitute its findings for a jury, nor inquire into the thought process of any

ANN DAVISON
SEATTLE CITY ATTORNEY
Criminal Law Division
701 Fifth Ave, Suite 2050
Seattle, WA 98104
P: (206) 684-7757 F: (206) 684-4648

1 particular juror. *Id.* However, “[a] defendant should not take advantage of these protections by
2 demanding jury nullification.” *Id.* at 305-06 (emphasis added). To that end, there are also widely
3 recognized rules that do allow courts to remove jurors from a panel or excuse seated jurors who
4 refuse to obey the law. *Id.* at 306. *Also see State v. Cross*, 156 Wn.2d 580, 597, 132 P.3d 80 (2006);
5 *State v. Morfin*, 171 Wash.App. 1, 7–8, 287 P.3d 600 (2012), *review denied*, 176 Wn.2d 1025, 301
6 P.3d 1047 (2013).

7 In order to prevent any potential prejudice to either the City or the Defendant by having
8 counsel inquire into the panel’s receipt of these nullification materials, the City moves that the
9 Court make the inquiry. As the neutral party whose duty is to instruct the jury and initiate the oath
10 to follow their instructions, the Court is in the best position to make this inquiry. The Court
11 questions and instructs the jury on the importance of following the Court’s orders. Specifically, the
12 Court instructs jurors to acquit the Defendant if they have an abiding belief that the City failed to
13 meet its burden in proving the case, and to convict the Defendant if they have an abiding belief the
14 City has met its burden of proof. Further, the Court’s anticipated instructions to the jury instruct the
15 jury as to what information they may use when deliberating. An order instructing the jury to vote
16 “not guilty” simply because they do not believe the law is just explicitly against the instruction that
17 jurors cannot decide based on “sympathy, prejudice, or personal preference.” WPIC 1.02. As such,
18 it is of crucial interest to the Court that it inquires about jury nullification to the panel.

19 Both parties would face potential prejudice by opening an inquiry about nullification to the
20 panel. Although these pamphlets take one perspective that seems pro-defendant on the surface, they
21 also set a dangerous precedent against defendants by encouraging jurors to vote based on how they
22 “agree” with the law “or how it is applied,” not based on what the law is. A potential juror could
just as easily understand this to mean that if a defendant does not testify, that they could assume that

1 means the defendant is not truly innocent, despite the instruction telling them otherwise. Or, if a
2 potential juror believes that current laws do not protect victims sufficiently, they could vote guilty
3 based on that belief rather than strictly on the evidence. Any type of jury decision that is based on
4 personal agreement or belief by necessity also appeals to the inherent subconscious biases that courts
5 have been attempting to *undo*, not reinforce. The now-common pattern jury instruction tells jurors:
6 “You must avoid bias, conscious or unconscious, including bias based on religion, ethnicity, race,
7 sexual orientation, gender or disability.” WPIC 1.02.

8 The Court is the only appropriate neutral party that must properly instruct the jury and
9 attempt to mitigate any outside influences that appeal to conscious or unconscious bias. Therefore,
10 the City asks that, before either counsel begins voir dire, that the Court ask the panel who has
11 received the nullification pamphlet, and who agrees with the materials or is inclined to follow them.

12 **17. Motion to admit self authenticating business record. - granted**

13 The City intends to produce the results of a search warrant served on Meta as evidence in
14 this case. The City anticipates providing a certification from the custodian of records pursuant to ER
15 901(b)(9) to authenticate the results it intends to admit. Furthermore, the results are admissible and
16 not hearsay under the business record exemption. ER 803(6).

17
18 DATED this 3rd day of June, 2025.

19 Respectfully submitted,

20 Christopher T. Karr
21 **ANN DAVISON**
SEATTLE CITY ATTORNEY

22 /s/ Christopher T. Karr
WSBA # 44836
Assistant City Prosecutor

ANN DAVISON
SEATTLE CITY ATTORNEY
Criminal Law Division
701 Fifth Ave, Suite 2050
Seattle, WA 98104
P: (206) 684-7757 F: (206) 684-4648

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