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9 **STATE OF WASHINGTON**
10 **SNOHOMISH COUNTY SUPERIOR COURT**

11 **STATE OF WASHINGTON,**)
12) **NO. 13-1-01546-8**
13 **PLAINTIFF,**)
14 **v.**) **STATE'S MOTION REGARDING**
15) **PROHIBITION OF OTHER SUSPECT**
16 **ALAN J. SMITH**) **EVIDENCE**
17 **DEFENDANT.**)
18)
19)

20 COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney, CRAIG
21 MATHESON, Deputy Prosecuting Attorney, with the following motion requesting that the Court
22 prohibit the defense from seeking to introduce evidence, make argument, infer or imply that
23 Susann Smith was murdered by someone other than her estranged husband, the defendant.
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25

I. **CHARGES**

26 The defendant is charged by information with one count of First Degree Murder. He is
27 charged with killing his estranged wife, Susann Smith, on February 10, thru February 11, 2013
28 while armed with a deadly weapon.
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II. FACTS

Defendant and the victim, Susann Smith, were in the midst of a contentious dissolution when she was murdered. In the few months before Ms. Smith's murder defendant had gone thru three different lawyers in his efforts to get a GAL appointed to report on the status of the couple's two young children in light of defendant's recent claims that Ms. Smith was sexually abusing the children, and her purported plans to move back to her native Germany with the children. On January 25, 2013, Judge Fair denied defendant's request for a revision of Commissioner Brudkivk's ruling denying defendant's request for appointment of a GAL.

Shortly after Judge Fair's ruling defendant left for a business trip to Ireland, returning on February 9, 2013. According to co-workers who had accompanied defendant to Ireland defendant had obsessed about the ongoing court proceedings with his wife, talking about little other than his ongoing issues with his wife.

Ms. Smith's battered body was found submerged in the bathtub at her home on February 12, 2013. A co-worker had called police after she had missed work on both Monday, February 11, and Tuesday morning, February 12, 2013. The home where the body was found was subsequently forensically processed by the Washington State Patrol Crime Scene Response Team (CSRT). Based on the blood evidence at the home it was apparent Ms. Smith had been in her bedroom when attacked, bludgeoned repeatedly, and then dragged from the bedroom into the nearby bathroom and placed in the bathtub. Multiple bloody footprints were located throughout the home. Subsequent examination of these bloody footprints had indicated they are consistent with being made by defendant. A washcloth with defendant's DNA was located underneath Ms. Smith's body in the tub. Subsequent examination of the GPS unit in defendant's vehicle discovered data that indicated defendant made a number of trips inconsistent with versions of events he had given police, and were consistent with defendant disposing of evidence and purchasing items to either replace items used in the murder, or to aid in additional cleaning at the murder scene. Several months after the murder defendant admitted to killing his wife to an acquaintance he had met thru church related activities.

III. ARGUMENT

The court will determine whether other suspect evidence is admissible under Washington case law when (1) the defendant is charged with killing his estranged wife with whom he was involved in a contentious divorce and custody proceeding; (2) the victim was clearly targeted for attack at her home; (3) there was no sign of forced entry, or of ransacking or other evidence that anything other than the murder of Ms. Smith was the purpose of the entry into her home;(4) the only forensic evidence found at the death scene was consistent with being left here by defendant; (5) forensic examination of defendant's computer and GPS unit indicate both potential planning for flight and activities consistent with the disposal of evidence; (6) defendant had voiced his hatred of his estranged wife to multiple individuals; (7) defendant ultimately confessed to the murder of his wife.

A criminal defendant has a right under the Sixth Amendment of the United States Constitution and article I, section 22 (amendment 10) of the Washington Constitution to present a defense. *State v. Strizheus*, 163 Wn. App. 820, 829-30, 262 P.3d 100, 105 (2011) (quoting *State v. Maupin*, 128 Wash.2d 918, 924, 913 P.2d 808 (1996)). Although the right to present a defense includes the right to offer the testimony of witnesses and to compel their attendance, this right to present a defense is not absolute. *Strizheus*, 163 Wn. App. at 830 (quoting *Montana v. Egelhoff*, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996); *Maupin*, 128 Wn.2d at 924, 913 P.2d 808). The right to present a defense does not extend to irrelevant or inadmissible evidence. *Id.*, at 830 (quoting *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010)).

To admit evidence suggesting another person committed the charged offense, the defendant must lay a foundation; that is, he must establish a train of facts or circumstances as tend clearly to point out someone besides the defendant as the guilty party. *Strizheus*, 163 Wn. App. at 830 (quoting *State v. Downs*, 168 Wn. 664, 667, 13 P.2d 1 (1932)). The foundation requires a clear nexus between the person and the crime. *Strizheus*, 163 Wn. App. at 830 (quoting *State v. Condon*, 72 Wn. App. 638, 647, 865 P.2d 521 (1993)). The offered evidence must demonstrate a “step taken by the third party that indicates an intention to act” on the motive or opportunity. *Strizheus*, 163 Wn. App. at 830 (quoting *State v. Rehak*, 67 Wn. App. 157, 163, 834 P.2d 651 (1992)). Mere motive, ability, and opportunity to commit a crime alone are not sufficient.

1 *Strizheus*, 163 Wn. App. at 830 (quoting *Maupin*, 128 Wn.2d at 927). The defendant has the
2 burden of showing that the other suspect evidence is admissible. *Strizheus*, 163 Wn. App. at 830
3 (quoting *State v. Pacheco*, 107 Wn.2d 59, 67, 726 P.2d 981 (1986)).

4 In cases in which the court has held evidence of another suspect inadmissible, the court
5 looked to direct evidence substantially contravening the State's version of events, evidence of any
6 step taken by the alternate suspect that indicated an intention to act on his alleged motive should
7 there be one, and whether the evidence is being offered solely to encourage the jury to speculate
8 as to possible other assailants. *Strizheus*, 163 Wn. App. 820 (2011); *State v. Drummer*, 54 Wn.
9 App. 751, 775 P.2d 981 (1989); *Downs*, 168 Wn. 664 (1932). It is while looking through this
10 lens that the Court will find the defense lacking in any credible evidence to present to a jury;
11 either because they cannot establish a nexus between the proposed "suspect" and the crime, or
12 because they are lacking in relevant admissible evidence in which to do so.

13 In *Strizheus*, the court held that other suspect evidence offered by defendant was
14 inadmissible because there was no evidence establishing a nexus between the other suspect and
15 the crime; there was no physical evidence connecting the other suspect to the crime; no
16 eyewitness placed him at the crime scene; and despite many opportunities to do so, the victim
17 never identified the other suspect as her attacker. *Strizheus*, 163 Wn. App., 820, 829 (2011). The
18 *Strizheus* court also held that the other suspect evidence rule does not violate a defendant's
19 constitutional right to present a defense. *Id.*

21 In the early evening of March 11, 2007, a neighbor called the police after he saw
22 Strizheus' wife, Valentina, running from her residence covered in blood and yelling "911."
23 Valentina had sustained multiple stab wounds to her abdomen and upper body, and defensive
24 wounds to her arms and hands. Valentina told a neighbor that her "husband had stabbed her with
25 a knife." When police arrived, Strizheus appeared in the doorway of Valentina's residence with
26 blood on both hands and on his clothes, additionally, Strizheus had a laceration on his wrist and
27 several puncture wounds on his forearm and hand. Strizheus said that Valentina was responsible
28 for his injuries. When other officers responded to the scene, Officer Charlene Hoch asked
29 Valentina who hurt her. In response, Valentina said, "husband." Valentina also disclosed this
30 information to an emergency medical technician at the scene. The State charged Strizheus with
31 attempted murder in the second degree with a deadly weapon enhancement.

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1 Seven months later, in October 2007, Strizheus and Valentina's son, Vladimir, called 911
2 and told the operator that he had done "something he felt bad about." When they arrived, the
3 officers noted that Vladimir was intoxicated and appeared unstable. Vladimir told the police
4 "[i]t's my fault, arrest me. I should be in jail." Valentina said Vladimir was very drunk and felt
5 bad about what happened to her. Vladimir denied attacking his mother with a knife on March 11,
6 2007.

7 In his trial brief, Strizheus argued the sufficient connection between Vladimir and the
8 crime was evidenced by: (1) Vladimir's October 2007 statements to the police, (2) the February
9 2007 malicious mischief conviction, (3) the 2008 incident resulting in the assault charge, (4) and
10 evidence that police had been called to the residence on several occasions in the months before
11 the stabbing. The trial court ruled that the other suspect evidence did not tend to clearly point to
12 someone else as the guilty person.

13 On appeal, Strizheus contended that the trial court violated his constitutional right to
14 present a defense by excluding the statement Vladimir allegedly made that he stabbed his mother
15 and father. Strizheus argued that the prior statement is direct evidence that Vladimir committed
16 the crime and, that statement alone, satisfies the nexus required to admit evidence showing that
17 Vladimir committed the crime. *Strizheus*, 163 Wn. App. at 829. The court concluded that the trial
18 court did not err by excluding other suspect evidence because there was no physical evidence
19 connecting Vladimir to the crime, no eyewitnesses placed Vladimir at the scene of the crime, nor
20 did Valentina identified Vladimir as her attacker. Furthermore, the court found no evidence of
21 any step taken by Vladimir that indicated an "intention to act" on his alleged motive.
22

23 In *Downs*, the court looked to draw the line between remote speculation and a reasonable
24 inference. In so doing, the court held that the offered evidence by defense was "merely of the
25 most remote kind of speculation." *Downs*, 168 Wn. at 668. The State presented evidence that
26 sometime after 11 p.m. on April 10, 1931, the Franklin Dairy in Seattle was entered and
27 burglarized. The door of the safe had been knocked off and a considerable amount of money,
28 checks, and other valuable papers had been taken. This burglary was discovered by an employee
29 at 5:30 a.m. the next morning. At around 2 a.m. on the morning of April 11, two police officers in
30 a prowler car discovered appellants parked in an automobile along a side road within two miles of
31 the dairy. Appellants had a dim light burning in the car, checks and money were spread all over

1 the back seat, and they were counting the money. At trial, appellants contended that they had
2 overheard some man named "Jimmy Mack something," at a restaurant discussing the location
3 where his loot was stored, they drove to the south end of the city on Beacon Hill, and had just
4 found the loot, together with the loaded revolver, when the officers arrested them. Appellants
5 offer of proof consisted of testimony from a detective, in which the detective would confirm that
6 there, in fact, was a known safe burglar named "Madison Jimmy" in town April 10, and that they
7 had a picture of him at police headquarters. The court reasoned that the admission of the
8 testimony, alone, would be manifestly irrelevant; the mere presence of "Madison Jimmy" on the
9 night of the crime, and the opportunity to commit the crime, did not provide a sufficient train of
10 facts to connect him to this crime. "Before such testimony can be received, there must be such
11 proof of connection with the crime, such a train of facts and circumstances as tend clearly to point
12 out someone besides the accused as the guilty party." *State v. Downs*, 168 Wash. 664, 667, 13
13 P.2d 1 (1932); *State v. Kwan*, 174 Wash 528, 25 P.2d 104 (1933).

14 The Supreme Court recently clarified these decisions when it wrote that the "standard for
15 relevance of other-suspect evidence, (as evolved), is whether there is evidence tending to connect
16 someone other than the defendant with the crime". *State v. Franklin*, 325 P.3d 159 (2014).

17 In *Franklin*, the Supreme Court ruled that the exclusion of other suspect evidence was
18 prejudicial, but the ruling was founded on two specific errors the trial Court committed. First, the
19 Trial Court appeared to adopt a *per se* rule that other suspect evidence was inadmissible, which
20 has never been the case nor is the State attempting to argue here. Second, the Trial Court
21 considered the strength of the prosecution's case against the defendant in determining whether the
22 other suspect evidence should be admitted, which is clearly improper. Whether the State has a
23 strong case against the defendant is irrelevant to the ultimate question of whether the defense can
24 lay the proper foundation to introduce other suspect information.

25 The Court used the *Franklin* case as an opportunity to clarify the ruling held in *Downes*,
26 while noting that it was still good law. The Court went on to say that "evidence establishing
27 nothing more than suspicion that another person might have committed the crime is inadmissible
28 because its probative value was greatly outweighed by the burden on the judicial system. Other
29 suspect evidence that established only such suspicion is inadmissible. The *Downes* test in essence
30 has not changed: some combination of facts or circumstances must point to a non-speculative link

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1 between the other suspect and the charged crime". *State v. Franklin*, 325 P.3d 159 at 164 (2014).

2 In the instant case there is no evidence that anyone other than the defendant killed Susann
3 Smith. There is no forensic evidence that ties any other individual to the murder. There is no
4 evidence that anyone else had animus towards Ms. Smith; to the contrary, she was almost
5 uniformly praised as a devoted mother by those who knew her. There is no evidence that anyone
6 other than the defendant has admitted to killing her.

7

8 **IV. CONCLUSION**

9

10 The court should conclude that other suspect evidence is not admissible in this case
11 absent not only the proper showing that a nexus exists between a proposed person and the crime,
12 but that the proper foundation comporting with the Evidence Rules can be made. The rationale
13 behind allowing a defendant to present evidence of another suspect is to allow that defendant to
14 present a defense in accordance with his rights guaranteed under the Sixth Amendment of the
15 United States Constitution. This applies to cases in which a defendant is able to meet his burden
16 of proof by pointing to a clear foundation, nexus, and step taken by an alternate suspect in order
17 to present evidence of that alternate suspect at trial. However, in the State's case, the defendant
18 will not be able to come forward with evidence establishing a nexus between another suspect and
19 the crime, nor will defendant be able to establish a clear step taken by an alternate suspect to
20 commit the alleged crime.

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22 RESPECTFULLY SUBMITTED this 25 day of November, 2014.

23 STATE OF WASHINGTON

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CRAIG MATHESON, 18556
Deputy Prosecuting Attorney

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