NOTICE: SLIP OPINION
(not the court's final written decision)

The opinion that begins on the next page is a slip opinion. Slip opinions are the written opinions that are originally filed by the court.

A slip opinion is not necessarily the court's final written decision. Slip opinions can be changed by subsequent court orders. For example, a court may issue an order making substantive changes to a slip opinion or publishing for precedential purposes a previously "unpublished" opinion. Additionally, nonsubstantive edits (for style, grammar, citation, format, punctuation, etc.) are made before the opinions that have precedential value are published in the official reports of court decisions: the Washington Reports 2d and the Washington Appellate Reports. An opinion in the official reports replaces the slip opinion as the official opinion of the court.

The slip opinion that begins on the next page is for a published opinion, and it has since been revised for publication in the printed official reports. The official text of the court's opinion is found in the advance sheets and the bound volumes of the official reports. Also, an electronic version (intended to mirror the language found in the official reports) of the revised opinion can be found, free of charge, at this website: https://www.lexisnexis.com/clients/wareports.

For more information about precedential (published) opinions, nonprecedential (unpublished) opinions, slip opinions, and the official reports, see https://www.courts.wa.gov/opinions and the information that is linked there.

Filed
Washington State
Court of Appeals
Division Two

June 3, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KELLY DAVID HRIBAR, Appellant.	No. 58982-6-II PART PUBLISHED OPINION

MAXA, P.J. – Kelly Hribar appeals his conviction of first degree murder of Leonard Kowalsky.[1] At trial, Hribar admitted to killing Kowalsky but denied that he acted with premeditation.

Hribar and Kowalsky's relationship was antagonistic because Hribar believed Kowalsky had burned down his trailer. Hribar told people that he would kill Kowalsky. After Hribar and Kowalsky encountered each other at a mini mart near Pe Ell, Hribar drove east on State Route (SR) 6. Hribar backed his truck into the brush just past Katula Road, the turnoff to Kowalsky's property. Kowalsky also drove east on SR 6, saw Hribar's truck, and stopped. Hribar then shot Kowalsky three times with a shotgun. Kowalsky died from his injuries.

[1] The jury also convicted Hribar of unlawful possession of a firearm. Hribar does not appeal that conviction.

RCW 9A.32.020(1) states that the premeditation necessary to convict a defendant for first degree murder "must involve more than a moment in point of time." The pattern jury instruction for premeditation states in part, "Premeditation must involve more than a moment in point of time. The law requires *some time, however long or short*, in which a design to kill is deliberately formed." 11 WASHINGTON PRACTICE: PATTERN JURY INSTRUCTIONS: CRIMINAL (WPIC) 26.01.01 (5th ed. 2021) (emphasis added). The trial court gave that instruction as jury instruction 11.

Hribar argues that (1) jury instruction 11 was erroneous because the "some time, however long or short" phrase misstates RCW 9A.32.020(1)'s requirement that premeditation must involve "more than" a moment in point of time; and (2) because jury instruction 11 misstates the law of premeditation, the trial court unconstitutionally commented on the evidence.

We hold that jury instruction 11 accurately stated the law of premeditation and as a result, the trial court did not unconstitutionally comment on the evidence in jury instruction 11. In the unpublished portion of this opinion, we hold that the State presented sufficient evidence for the jury to find that Hribar acted with premeditation and that Hribar's assertions in his statement of additional grounds (SAG) either are meritless or not addressable on direct appeal.

Accordingly, we affirm Hribar's conviction of first degree murder.

FACTS

Hribar lived in Pe Ell in a trailer on another person's property. Kowalsky lived on Katula Road, near its intersection with SR 6 east of Pe Ell.

Around 7:00 PM on August 16, 2023, Trevor Pilz and his son KP heard a loud boom from their house located on SR 6 near its intersection with Katula Road. As the two approached the source of the noise, Trevor saw a vehicle driving at a high speed heading west on SR 6 toward Pe

Ell. He saw Kowalsky lying on the ground, with one leg propped against the open door of his vehicle. He observed that Kowalsky had been shot in the left arm and butt and hip area. Trevor and KP both stated that Kowalsky told them that Hribar had shot him. Kowalsky later died from his injuries.

The State charged Hribar with first degree murder and unlawful possession of a firearm. Hribar conceded that he shot Kowalsky, but he denied that he acted with premeditation. In addition to first degree murder, the trial court instructed the jury on the lesser degree offense of second degree murder.

Trial Testimony

A few months before the murder, Hribar was in a relationship with Sabra Burgess. Burgess was Kowalsky's sister. Hribar lived in a trailer on the property of Leo Baggenstos. In January 2023, Hribar's trailer caught on fire. Hribar's relationship with Burgess ended shortly thereafter.

Baggenstos stated that Hribar blamed Kowalsky and Burgess for the fire at his trailer. Hribar stated to Baggenstos, "It was [Kowalsky]. I'm going to kill him. He did this." Report of Proceedings (RP) at 840. Other witnesses also testified that Hribar blamed Kowalsky for the fire because of his relationship with Burgess. Sam Schouten, a patrol deputy who responded to the trailer fire, stated that Hribar believed Kowalsky did not approve of Hribar and Burgess's relationship and was upset. Rocky Elliott, who arranged a meeting between Hribar and Kowalsky to discuss the incident, stated that Hribar threatened there "would be a payday" with respect to Kowalsky. RP at 945-47. A person named Jerrald Jones stated that he heard Hribar mention killing Kowalsky the day before the murder.

On August 16, 2023, Hribar, Stacey Page, and Hribar's girlfriend Janene Wilson planned to drive to the river. Hribar was driving his pickup truck when it started smoking. Page stated that Hribar believed that Kowalsky had loosened the radiator clamp on his truck. Hribar parked the truck across the street from a mini mart. He walked back to Baggenstos's property to get another vehicle. Baggenstos came and picked up Page and Wilson and brought them back to his property. Hribar was there when they arrived.

At some point before 7:00 PM, Hribar left in a different truck to get his tools from the other truck. Hribar brought along his 12 gauge shotgun.

Melissa Harbin worked at the mini mart in Pe Ell, which is on the road that becomes SR 6. She knew Kowalsky and Hribar as regular customers.

Harbin was standing outside the store and saw Hribar drive into and park at the mini mart. Harbin stated that Hribar was aggravated about his vehicle's radiator and said he thought that Kowalsky had tampered with his vehicle. Harbin stated that Hribar then saw Kowalsky drive in front of the store, and Hribar said that he was going to find Kowalsky after Hribar was done at the store.

Hribar went into the store and purchased a drink from Harbin, and then he headed back outside. At the same time, Kowalsky entered the store and crossed Hribar's path. Harbin could not see whether Kowalsky and Hribar interacted with each other. Harbin observed Hribar drive east on SR 6 in the direction of Kowalsky's house. Kowalsky purchased something and left the mini mart.

Hribar did not testify at trial, but the State played his recorded interview with police for the jury. Hribar stated when he saw Kowalsky in the store, Kowalsky gave him "this look." RP at 113. After leaving the mini mart, Hribar drove east on SR 6. He decided to stop and figure

out how to have a conversation with Kowalsky. He pulled over just past Katula Road. Hribar stated that he wanted "a place where we could just talk, public, open." RP at 115.

Tanner Pilz,[2] a volunteer firefighter, was driving an ambulance east on SR 6 at about the same time. He saw a vehicle that had backed into the brush and parked in a pullout on SR 6 near Katula Road. He testified that from that location, a person could see the Katula Road cutoff.

According to Hribar, Kowalsky drove up behind him and came to a stop near his vehicle. Hribar said that Kowalsky spoke to him in a "threatening manner and tone." RP at 116. Hribar saw Kowalsky back up and turn around, and he thought that Kowalsky was heading toward his house possibly to get a gun. Hribar had the shotgun alongside his truck, and Kowalsky did not see it. Hribar grabbed his pump action shotgun and took three shots that "were not fast." RP at 117. Specifically, he stated that he fired a first shot, and then fired two more shots when Kowalsky appeared to be "trying to grab for something." RP at 140. But Hribar claimed that he was trying to wound Kowalsky, not kill him. Kowalsky fell out of his vehicle, and Hribar drove away.

There was evidence that to fire more than one shot from a pump action shotgun, the shooter must manually cycle new ammunition into the barrel with a pumping action after recovering from the kickback of prior shots.

Kathy Staley lived on SR 6 near Trevor Pilz. After hearing very loud gunfire, Staley went outside to investigate. She saw a truck backed up on a little driveway near her mailbox and a utility box facing SR 6. She saw a man standing outside the truck, and he appeared to be shooting across the roadway. She stated that she could see the man standing there and she

[2] Tanner Pilz is Trevor Pilz's cousin.

"could hear the shots going off." RP at 361-62. From where she stood, trees blocked her view of the road.

Staley was running back toward her house when she heard Kowalsky say, "Help, I've been shot." RP at 350. She started back toward the road and saw the truck leave at a high rate of speed. She saw that Kowalsky had been shot in his arm and torso. Kowalsky told her that Hribar had shot him.

A medical examiner stated that Kowalsky had a near amputation of the left forearm and a fractured hip. Kowalsky also had a penetrating wound to the left buttock that fractured his femur and damaged his bladder and bowel. The medical examiner determined that Kowalsky could have died from any of the multiple gunshot wounds.

Jury Instructions

The parties agreed on jury instructions. Jury instruction 11 was from WPIC 26.01.01, which stated,

> Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

Clerk's Papers (CP) at 27. Hribar did not object to this instruction.

The trial court instructed the jury on first degree murder and the lesser offense of second degree murder. The jury convicted Hribar of first degree murder and found that he committed murder with a firearm.

Hribar appeals his conviction of first degree murder.

ANALYSIS

A. CHALLENGE TO WPIC 26.01.01

Hribar argues that jury instruction 11 – which was based on WPIC 26.01.01 – was ambiguous and misstated the law on premeditation, which reduced the State's burden of proof and violated his due process rights. He argues that RCW 9A.32.020(1)'s length of time requires for premeditation is longer than what jury instruction 11 required in order to convict him. We disagree.[3]

1. Standard of Review

We review alleged legal error in jury instructions de novo. *State v. Houser*, 196 Wn. App. 486, 491, 386 P.3d 1113 (2016). "Jury instructions are sufficient if, viewed as a whole, they allow the defendant to argue his or her theory of the case and accurately inform the jury of the applicable law." *State v. Wilson*, 10 Wn. App. 2d 719, 727, 450 P.3d 187 (2019). "The jury instructions, read as a whole, 'must make the relevant legal standard manifestly apparent to the average juror.' " *State v. Kyllo*, 166 Wn.2d 856, 864, 215 P.3d 177 (2009) (quoting *State v. Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997)).

However, instructing the jury in a manner that relieves the State of its burden to prove every element of a crime beyond a reasonable doubt is a violation of due process and requires automatic reversal. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). And a jury instruction that permits the jury to convict a defendant under a lesser standard than required by law is erroneous. *See Kyllo*, 166 Wn.2d at 863-64 (holding that a jury instruction on self defense

[3] Hribar did not object to the premeditation jury instruction in the trial court. However, the State does not argue that this court cannot consider Hribar's challenges to jury instruction 11 for the first time on appeal. Accordingly, we address Hribar's arguments.

was erroneous because it required a defendant to apprehend a greater degree of harm than required by statute).

Statutory interpretation is a question of law that we review de novo. *State v. Abdi-Issa*, 199 Wn.2d 163, 168, 504 P.3d 223 (2022). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Id.* To determine the legislature's intent, we first look to the plain language of the statute, considering the language of the provisions in question, how the provisions fit within the context of the statute, and the statutory scheme as a whole. *Id.* at 168-69. If a word is not defined in the statute, we can consider dictionary definitions to determine the word's ordinary meaning. *State v. Lake*, 13 Wn. App. 2d 773, 777, 466 P.3d 1152 (2020). We end the inquiry if the plain language of the statute is clear. *Abdi-Issa*, 199 Wn.2d at 169.

2. Legal Principles

RCW 9A.32.020(1) states, "the premeditation required in order to support a conviction of the crime of murder in the first degree must involve *more than a moment in point of time*." (Emphasis added.)

WPIC 26.01.01, the pattern jury instruction on premeditation, and jury instruction 11 stated:

> Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires *some time, however long or short*, in which a design to kill is deliberately formed.

CP at 27 (emphasis added).

The Supreme Court repeatedly has held that "WPIC 26.01.01 properly defines 'premeditation,' accurately states the law, and is not misleading." *State v. Schierman*, 192 Wn.2d 577, 651, 438 P.3d 1063 (2018); *see also State v. Scherf*, 192 Wn.2d 350, 400, 429 P.3d

776 (2018); *State v. Clark*, 143 Wn.2d 731, 770-71, 24 P.3d 1006 (2001). And courts have repeated the "however short" language from WPIC 26.01.01 when defining premeditation. *E.g.*, *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006).

But as Hribar points out, the cases upholding WPIC 26.01.01 were decided on the grounds that the pattern instruction clearly distinguishes intent from premeditation. *Schierman*, 192 Wn.2d at 651-52 (holding that the pattern instruction makes abundantly clear the distinction between intent and premeditation); *Scherf*, 192 Wn.2d at 400 (holding that the pattern jury instruction is clear that intent and premeditation are not synonymous); *Clark*, 143 Wn.2d at 770-71 (holding that further challenges to the premeditation on instruction would be frivolous because the instruction clearly delineates between intent and premeditation); *State v. Benn*, 120 Wn.2d 631, 657-58, 845 P.2d 289 (1993) (distinguishing intent and deliberation).

No Washington court has expressly addressed whether WPIC 26.01.01's standard of "some time, however long or short" is inconsistent with RCW 9A.32.020(1)'s standard of "more than a moment in point of time."

3. Analysis

Hribar argues that WPIC 26.01.01's language is inconsistent with RCW 9A.32.020(1)'s definition of premeditation. Accordingly, the issue before this court is whether "some time, however . . . short" comports with RCW 9A.32.020(1)'s requirement that premeditation be for "more than a moment in point of time."

We start with the plain language of the statute. *Abdi-Issa*, 199 Wn.2d at 168-69. "Moment" is defined in the dictionary as a "a minute portion of time" or "a point of time: instant" and "a comparatively brief period of time." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1456 (2002). The word "minute" is defined as "a point or short space of time."

WEBSTER'S at 1440. The word "instant" is defined as "an infinitesimal space of time." WEBSTER'S at 1171. As related to time, "point" is defined as "a particular narrowly limited often critical interval of time singled out as occurring at a precisely indicated moment and having [usually] minimum duration or no relevant duration: exact moment: precise instant." WEBSTER'S at 1749. Under these definitions, a "moment in point of time" unambiguously refers to a minute portion of time, an instant, having a minimum duration. Under RCW 9A.32.020(1), premeditation must involve more than that period of time. In other words, premeditation must involve *more than* a short, brief, or infinitesimal space of time having minimum duration.

The last sentence of WPIC 26.01.01 is consistent with the phrase "moment in point of time" in RCW 9A.32.020(1). That sentence first states that the law requires "some time." This term appropriately reflects the definition of moment; a minute portion of time, an instant, is "some time." Similarly, the term "however short" also reflects the definition of moment. A minute portion of time can be as short as an instant, an infinitesimal space of time.

The potential problem is that the last sentence of WPIC 26.01.01 does not contain the term "more than." That sentence states that the period of time for premeditation can be very short. But it does not state that premeditation requires *more than* this very short period of time.

However, we cannot read the last sentence of WPIC 26.01.01 in isolation. *See Kyllo*, 166 Wn.2d at 864. The first sentence of WPIC 26.01.01 states the primary definition: "Premeditation means thought over beforehand." The second sentence of WPIC 26.01.01 requires "any deliberation." Even the last sentence of WPIC 26.01.01 states that the design to kill must be "deliberately formed." Based on this language, the court in *Scherf* stated, "The standard WPIC accurately states the applicable law – it defines premeditation as more than intent and *requires at least some deliberation*." 192 Wn.2d at 400 (emphasis added). A rational juror would

understand that thinking over something beforehand and deliberation requires *more than* a very short period of time.

WPIC 26.01.01 then states the statutory standard: "Premeditation must involve more than a moment in point of time." And the last sentence follows. The last sentence reasonably can be understood as explaining only the phrase "a moment in point of time"; a moment in point of time can be very short. With this understanding, the last sentence necessarily incorporates the "more than" requirement of the previous sentence. Premeditation requires *more than* some time, however short.

This interpretation is consistent with the long line of Supreme Court cases that have approved of WPIC 26.01.01. *E.g.*, *Schierman*, 192 Wn.2d at 651. We will not adopt an interpretation of WPIC 26.01.01 that contradicts those cases.

Accordingly, we hold that WPIC 26.01.01 does not misstate the law on premeditation, and the trial court did not err in giving jury instruction 11.

B. JUDICIAL COMMENT ON THE EVIDENCE

Hribar argues that because jury instruction 11 misstated the law of premeditation, giving the instruction amounted to an unconstitutional judicial comment on the evidence. We disagree.

Article IV, section 16 of the Washington Constitution prohibits a judge from commenting on the evidence. A trial court makes an improper comment on the evidence if it gives a jury instruction that conveys to the jury its personal attitude on the merits of the case. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). But because a trial court's duty is to declare the law, a jury instruction that does no more than accurately state the law pertaining to an issue is not an improper comment on the evidence. *State v. Brush*, 183 Wn.2d 550, 557, 353 P.3d 213

(2015). We review the jury instructions de novo to determine if the trial court has improperly commented on the evidence. *Levy*, 156 Wn.2d at 721.

We hold above that WPIC 26.01.01 is consistent with RCW 9A.32.020(1)'s requirements for premeditation. Because the trial court instructed the jury on an accurate statement of law, it did not unconstitutionally comment on the evidence.

Accordingly, we hold that the trial court did not unconstitutionally comment on the evidence when it gave jury instruction 11.

CONCLUSION

We affirm Hribar's conviction of first degree murder.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

In the unpublished portion of this opinion, we address Hribar's argument that the State did not present sufficient evidence to show that he acted with premeditation when he killed Kowalsky and Hribar's SAG claims. We hold that the evidence was sufficient for the jury to find that Hribar acted with premeditation and that Hribar's assertions in his SAG either are meritless or not addressable on direct appeal.

A. SUFFICIENCY OF THE EVIDENCE

Hribar argues that the State did not present sufficient evidence to prove beyond a reasonable doubt that Hribar acted with premeditation in killing Kowalsky. We disagree.

1. Legal Principles

The test for determining sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt

beyond a reasonable doubt. *State v. Bergstrom*, 199 Wn.2d 23, 40-41, 502 P.3d 837 (2022). In a sufficiency of the evidence claim, the defendant admits the truth of the State's evidence, and we view the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the State. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). We defer to the trier of fact's resolution of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *Bergstrom*, 199 Wn.2d at 41. And circumstantial and direct evidence are equally reliable. *Cardenas-Flores*, 189 Wn.2d at 266.

RCW 9A.32.030(1) states, "A person is guilty of murder in the first degree when: (a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person." By contrast, second degree murder is when a person "[w]ith intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person." RCW 9A 32.050(1)(a).

Under RCW 9A.32.020(1), "the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time." Premeditation requires the " 'deliberate formation of and reflection upon the intent to take a human life and involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.' " *Gregory*, 158 Wn.2d at 817 (quoting *State v. Hoffman*, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991)). Circumstantial evidence can prove premeditation if the evidence is substantial and the inferences drawn from the evidence are reasonable. *Gregory*, 158 Wn.2d at 817. But proof of premeditation requires more than the fact that the defendant had an opportunity to deliberate. *State v. Bingham*, 105 Wn.2d 820, 827, 719 P.2d 109 (1986).

Four characteristics are relevant to proving premeditation: "motive, procurement of a weapon, stealth, and the method of killing." *State v. DeJesus*, 7 Wn. App. 2d 849, 883, 436 P.3d 834 (2019). In addition, in the context of murder with a firearm, Washington courts look to (1) the infliction of multiple wounds or shots, *Gregory*, 158 Wn.2d at 817; (2) a time interval or pause between shots, *State v. Ra*, 144 Wn. App. 688, 704, 175 P.3d 609 (2008); and (3) continued firing after missing a first shot. *Id.*

WPIC 26.01.01 defines the time requirement of premeditation in part as follows: "Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed." Hribar argues that jury instruction 11, which is based on WPIC 26.01.01, is erroneous. But we have rejected that argument. We therefore analyze Hribar's sufficiency claim under the instruction the trial court gave.

2. Analysis

Hribar argues that the evidence was insufficient for a jury to conclude he acted with premeditation for two reasons: (1) Hribar parked his truck beyond the road to Kowalsky's house, meaning that it is unreasonable to infer that he waited to ambush Kowalsky; and (2) the time between gunshots does not permit a reasonable inference of premeditation. We disagree.

a. Ambushing Kowalsky

Hribar argues that it is unreasonable to infer that he parked his truck along SR 6 to ambush Kowalsky. We disagree.

Hribar told the mini mart clerk that he was going to find Kowalsky after Hribar was done at the store. The evidence from Hribar himself and from firefighter Tanner Pilz showed that after Hribar left the mini mart, he drove east on SR 6 and then backed into the brush off the

highway just past Katula Road. Hribar admitted that he was waiting for Kowalsky, although he claimed he just wanted to talk with him.

Hribar had been angry at Kowalsky for a length of time before the murder. He thought that Kowalsky had burned down his trailer. Hribar told Leo Baggenstos that he was going to kill Kowalsky because of that. Jerrald Jones stated that he heard Hribar mention killing Kowalsky the day before the murder. A rational juror could infer that Hribar stopped and waited in the brush so he could confront and kill Kowalsky as he had threatened.

Hribar argues that the inference that Hribar was waiting to confront Kowalsky is unreasonable because Hribar parked beyond where Kowalsky would turn on Katula Road to go home and Hribar could not even see Katula Road from where he was parked. But Tanner Pilz testified that someone parked where Hribar did could see the Katula Road intersection. And it can be inferred that Kowalsky could see Hribar as he approached Katula Road because he drove past the road to his house to encounter Hribar. If Kowalsky could see Hribar, Hribar could see Kowalsky. Hribar's argument that he more likely would have parked *before* Katula Road if he intended to confront Kowalsky goes to the weight of the evidence, not its sufficiency.

Resolving reasonable inferences in favor of the State, a rational juror could find beyond a reasonable doubt that Hribar acted with premeditation because he parked in the brush along SR 6 for the purpose of confronting and killing Kowalsky.

b. Time Between Gunshots

Hribar argues that the timing of his three shots cannot support a reasonable inference of premeditation. We disagree.

A time interval or pause between shots is relevant to a finding of premeditation. *Ra*, 144 Wn. App. at 704. Hribar specifically stated that the three shots "were not fast." RP at 117. He

stated that he fired a first shot, and then fired two more shots when Kowalsky appeared to be "trying to grab for something." RP at 140. This statement is evidence of a pause between shots. And to operate the shotgun, Hribar needed to engage in a pumping action between shots in order to fire again. This evidence also shows that there must have been a pause between shots.

In addition, Staley testified that she heard gunfire and went to investigate. She then saw a man who appeared to be shooting across the highway. She saw the man standing there and "could hear the shots going off." RP at 361-62. This testimony is evidence that Hribar fired one shot, and then some time passed before he fired the second and third shots.

Resolving reasonable inferences in favor of the State, a rational juror could find beyond a reasonable doubt that Hribar acted with premeditation because he paused after shooting Kowalsky once and then some time passed before he fired the next two shots.

Hribar admits that Staley's testimony could allow an inference that he paused between shots. However, he argues that this testimony fails to establish premeditation because causation is a requirement under RCW 9A.32.030(1)(a) and the medical examiner testified that either of Kowalsky's gunshot wounds could have caused his death. Therefore, only the first shot may have been the cause of death and not the shots fired after deliberation.

But it is undisputed that Kowalsky was alive after the shooting and that he died later because of his wounds. Viewed in the light most favorable to the State, the evidence shows that both of Kowalsky's wounds contributed to his death.

c. Other Premeditation Factors

As discussed above, four additional characteristics are relevant to proving premeditation: "motive, procurement of a weapon, stealth, and the method of killing." *DeJesus*, 7 Wn. App. 2d at 883.

Hribar had a clear motive to kill Kowalsky – he blamed Kowalsky for burning down his trailer and in fact had threatened to kill Kowalsky. And he procured a weapon – he brought his shotgun with him when he went back to his vehicle. Hribar admits that these two factors support an inference of premeditation. And the manner of killing is discussed above – Hribar fired three shots with a pause after the first shot.

Hribar argues that there was no evidence of stealth because his truck was visible to anyone driving down SR 6. But Tanner Pilz testified that Hribar had parked his truck back into the brush. It can be inferred that even though Kowalsky apparently saw him, Hribar was attempting to hide in the brush until Kowalsky turned onto Katula Road. And Hribar admitted that Kowalsky could not see his shotgun because he had it alongside his truck. It can be inferred that Hribar was hiding the shotgun from Kowalsky.

Resolving reasonable inferences in favor of the State, a rational juror could find beyond a reasonable doubt that Hribar acted with premeditation based on these factors.

d. Summary

A rational juror could find beyond a reasonable doubt that Hribar waited to confront and kill Kowalsky, that Hribar paused for some time after his first shot, and that additional factors supported a finding of premeditation. Accordingly, we hold that the State presented sufficient evidence for the jury to convict Hribar of first degree murder.

B. SAG CLAIMS

Hribar makes three assertions in his SAG. First, Hribar states that the prosecutor's presentation of evidence regarding him driving his truck away from the scene of the crime was a mischaracterization of the evidence. He asserts that he specifically drove around Kowalsky to avoid killing him and he was unaware of the shotgun wound to Kowalsky's hip and buttock area.

But because Hribar does not inform the court of the "nature and occurrence" of any error, this claim is too vague to address. *See* RAP 10.10(c).

Second, Hribar asserts that the trial court or his defense counsel violated his constitutional rights because defense counsel previously represented Kowalsky's sister in criminal matters and asked her to leave the courtroom. The record contradicts Hribar's argument. Hribar's counsel placed on the record that he previously represented Kowalsky's sister because she frequently was in the court system. The trial court specifically asked Hribar if he was aware of this and comfortable with defense counsel continuing to represent Hribar. Hribar stated, "Absolutely. Yeah." RP at 228. The record does not reflect that Kowalsky's sister was asked to leave the courtroom.

Third, Hribar argues that the trial court violated his constitutional rights because the trial judge was Sabra Burgess's cousin and related by marriage to other members of Kowalsky's and Burgess's family. But Hribar's assertions rely entirely on matters outside the record. As a result, we cannot consider them on direct appeal. *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). These assertions are more properly raised in a personal restraint petition. *Id.*

CONCLUSION

We affirm Hribar's conviction of first degree murder.

MAXA, P.J.

We concur:

LEE, J.

GLASGOW, J.