

1 RCW 5.45.020 states:
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3 **“Business Records as evidence.** A record of an act, condition
4 or event, shall in so far as relevant, be competent evidence if the custodian or
5 other qualified witness testifies to its identity and the mode of its preparation, and
6 if it was made in the regular course of business, at or near the time of the act,
7 condition or event, and if, in the opinion of the court, the sources of information,
8 method and time of preparation were such as to justify its admission.”
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10 Therefore, to be admissible under the business records exception to the hearsay rule, the
11 business record must: (1) be in record form; (2) be of an act, condition, or event; (3) be made in
12 the regular course of business; (4) be made at or near the time of the fact, condition, or event; and
13 (5) the court must be satisfied that the sources of information, method, and time of preparation
14 justify admitting the evidence. The court’s decision to admit evidence as a business record will
15 not be reversed unless there has been a manifest abuse of discretion¹. Under the Uniform
16 Business Records as Evidence Act (UBRA), business records are presumptively reliable if made
17 in the regular course of business and there was no apparent motive to falsify². Furthermore, the
18 trial court is not required to examine the person who actually made a record to admit the record
19 under the business record exception to the hearsay rule; rather, testimony by one who has custody
20 of the record as a regular part of his work or who has supervision of its creation will be sufficient
21 to introduce the record³.

22 In the case at hand, the test-fired round was in a small sealed envelope under the padding
23 of the gun case located in Defendant’s garage pursuant to a search warrant. The label on the
24 envelope indicated that a “Tom B.” was the employee who fired the bullet and collected the
25 casing. Defendant erroneously claims that “Tom B.” is the “only person with personal
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28 ¹ R.C.W. 5.45.020, *State v. Kreck*, 86 Wash2d. 112 (1975).

29 ² *State v. Fleming*, 155 Wash.App. 489 (2010).

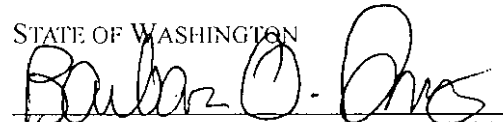
30 ³ *Id.* See also *Kreck*, holding that Uniform Business Records as Evidence Act was adopted to avoid the
31 necessity of calling as a witness persons such as state chemist who two years prior to trial had likely made
over 1,000 blood tests similar to that on which report sought to be admitted into evidence was made.

1 knowledge of how the shell casing was generated”⁴. This is completely untrue.
2 Notwithstanding the images left with the defendant and his counsel, the process described set out
3 that a Smith and Wesson range employee would personally fire a bullet from a gun, immediately
4 label it as having been fired from that weapon and seal it in an envelope so labeled, before
5 moving on to the next gun. It is a routine aspect of conducting the business of manufacturing
6 and selling firearms. The labels are not created in anticipation of litigation, but rather in the
7 normal course of business. The concerns of the defendant regarding “process or system” and
8 “internal controls” are perfectly appropriate areas for cross-examination of the witness from
9 Smith and Wesson; they do not remove NSM-008 from falling within the business records
10 exception to the hearsay rule.

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12 Because NSM-008 meets all of the requirements of the Uniform Business Records Act
13 codified at RCW 5.45.020, it is admissible as a business record exception to the hearsay rule.
14 The defendant’s motion should be **denied**.

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16 DATED this 25th day of ~~April~~^{July}, 2016.

17 STATE OF WASHINGTON

18 
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20 Deputy Prosecuting Attorney

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22 Prosecutor’s File Number–15-143920-5
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31 ⁴ Defense motion, p.4, line 16-17.