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State of Washington
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SKAMANIA COUNTY
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SHARON K. VANCE, CLERK
DEPUTY

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

STATE OF WASHINGTON,
Plaintiff,

vs.

TYRONE ADDISON EAGLESPEAKER,
Defendant.

No. 12-1-00102-1
DEFENDANT'S MOTION FOR
RELIEF FROM JUDGMENT
CrR 7.8(b)(2) *and (6)*

MOTION

COMES NOW the defendant TYRONE ADDISON EAGLESPEAKER, by and through his attorney GREGORY S. CHENEY, to move the court for an order pursuant to CrR 7.8(b)(2) ^{*and (6)*} relieving him from the jury's verdict of guilty and the court's imposition of sentencing due to the presence of newly discovered evidence and *Brady* violatons.

This motion is based upon the records and files herein, the attached declaration of counsel, and upon the evidence, authority and argument to be presented at the hearing on this motion.

DATED this 23 day of February, 2016.



GREGORY S. CHENEY, WSBA #44174
Attorney for Defendant

MEMORANDUM OF LAW

I, Gregory S. Cheney, declare the following to be true and correct:

STATEMENT OF FACTS

1. On December 24, 2012, the State of Washington, via information in this cause number, charged the defendant Tyrone Addison Eaglespeaker with one count of Rape in the First Degree, and one count of Burglary in the First Degree. The State later filed an amended information alleging two counts Violations of the Uniform Controlled Substances Act (“VUCSA”) which are not at issue in the current motion and shall not be further referenced within this motion.
2. From May 13 through May 15, 2013, Mr. Eaglespeaker stood trial on the four counts charged in the amended information. During the trial, the alleged victim Julie A. Ricciardi testified Mr. Eaglespeaker forcefully tore her jeans when he digitally penetrated her vagina. During cross examination by defense counsel, Ricciardi testified she had given the jeans to one of the investigating deputies, and she admitted to lying before a grand jury in a criminal matter in the State of Oregon. None of the responding deputies testified to having received a pair of jeans from Ricciardi.
3. At the conclusion of evidence, the State argued the jury should be given an instruction that if they were unable to reach a verdict on the count of Rape in the First Degree, they should consider the lesser included degree of

Rape in the Second Degree. Over defense object, the court gave the lesser included instruction of Rape in the Second Degree.

4. On May 15, 2013, at the conclusion of its deliberations, the jury returned the following verdicts: not guilty on Rape in the First Degree; guilty on Rape in the Second Degree; and not guilty on Burglary in the First Degree.
5. On June 13, 2013, the court imposed a sentence on the Rape in the Second Degree of a minimum of 210 months in prison and a maximum of life imprisonment.
6. At a date later than June 23, 2013, and in the course of discovery in another case wherein Ricciardi is the alleged victim, the State disclosed to Chris Lanz, defense counsel the contents of Beaverton Police Case #11-00049.
7. Within this report, Ricciardi had made accusations that she had been assaulted and raped on January 3, 2011. She described three individuals, two males and one female, attacked her in her home, and the two male attackers had taken off her jeans in their attempt to rape her. The officers reported the physical evidence found within Ricciardi's residence, including the placement of her jeans, did not corroborate her complaints of being assaulted and raped. Ricciardi later admitted to an Oregon Department of Health Services caseworker that she had fabricated those accusations to cover-up the fact she had cut herself due to her depression. Beaverton Police cleared case #11-049 as "unfounded." A true and

accurate portion of this report, less confidential information and non-relevant information, is attached hereto as Exhibit A.

8. In the report, Ricciardi stated: “[T]hey took my pants off and raped me with scissors.’ I asked Julie if the scissors penetrated her vagina, she said, ‘Yes! They raped me with the scissors.’”
9. According to the investigating officer, “Mrs. Ricciardi reported the assailants held her down as they removed her pants but these pants were right side out and when I lifted the pants it appeared they had been dropped as they were stacked up and not thrown or inside out.”
10. Upon examination, however, the nurse examining Ricciardi found no evidence of any injuries to Ricciardi, including her vaginal area.
11. Officers examining Ricciardi also found “no signs of choking marks left on her neck.”
12. The detectives investigating the case referred the matter to DHS because of allegations of drug use.
13. Upon meeting with the DHS caseworker, Ricciardi “admitted she cut herself/hurt herself in an effort to feel better as she has been suffering from sever depression”
14. On or about February 14, 2014, Yarden Weidenfeld, the prosecutor who handled the trial, sent a letter and attachments to the Defendant’s appellate attorney. A true and accurate copy of the cover letter is attached hereto as Exhibit B.

15. In Attachment 5 to the February 14, 2014 letter, Yarden Weidenfeld disclosed the contents of a conversation with Richard Helm regarding the Defendant's rape case. A true and accurate copy of the relevant pages are attached as Exhibit C.
16. Russell Helm reported that he "tried telling Deputy Hepner at the time" that he was present the night of the "supposed rape" and Ricciardi was "sitting on the couch cuddling and kissing Eaglespeaker."
17. Helm suggested that "Ricciardi found out Scott (Ekman – her boyfriend) was out of jail early two or three weeks . . . Ekman (?) was home the very next day"
18. Helm concluded that "I am not friends with Eaglespeaker; not saying this for him . . . the only reason is that Ricciardi is a liar and will manipulate any situation into her favor".
19. In Attachment 6 to the February 14, 2014 letter, he also disclosed Beaverton police report 13-604242 from July of 2013 wherein Regina Rizo raised her concerns that Ricciardi may have lied at her trial. A true and accurate copy of the relevant portions are attached hereto as Exhibit D.
20. In that report, the Oregon detective reviewed video footage of a dependency hearing in Skamania county on April 10, 2013, wherein "The attorney referred to Beaverton Police case number 11-600049 [sp?], that occurred on January 3rd 2011, wherein Julie Ricciardi reported she was

attacked and raped during a burglary at her apartment, which she later admitted did not happen.” Exhibit D, p. 2.

21. The Court of Appeals issued a Mandate in this matter “terminating review” on March 26, 2015. Subsequently, the Mandate was filed by the Clerk of the Skamania County Court on April 6, 2015. A true and accurate copy is attached hereto as Exhibit E.

ARGUMENT

I. A NEW TRIAL SHOULD BE GRANTED BECAUSE OF NEWLY DISCOVERED EVIDENCE, POTENTIAL BRADY VIOLATIONS, AND FUNDAMENTAL FAIRNESS OF THE PROCEEDINGS.

Superior Court Criminal Rule (CrR) 7.8, entitled “RELIEF FROM JUDGMENT OR ORDER,” states in pertinent parts:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

....

(5) Any other reason justifying relief from the operation of the judgment.

RCW 10.73.090 specifies that a collateral attack on a judgment, such as a personal restraint petition or motion for relief from judgment, must be filed within one year from the final judgment. RCW 10.73.090(2). For purposes of “finality”, the judgment becomes final the date the Court issues its Mandate. RCW 10.73.090(3)(b). In this case, the judgment became final on March 26, 2015. Hence, the motion is timely.

Because these disclosures were not made within ten (10) days of trial, the Defendant was not able to file a motion for new trial pursuant to CrR 7.5. Hence, the court should grant this motion on the basis of a violation of the defendant’s fundamental due process rights pursuant to *Brady* and *Giglio* and for newly discovered evidence.

A. A prior Recantation of Rape and an Exculpatory Witness will change the outcome at Trial.

A trial court will not grant a new trial on the basis of newly discovered evidence unless the moving party demonstrates that the evidence "(1) will probably change the result of the trial; (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching." *State v. Gassman*, 160 Wn.App. 600, 609, 248 P.3d 155 (2011) quoting *State v. Williams*, 96 Wash.2d 215, 223, 634 P.2d 868 (1981). The absence of any one of these factors is grounds to deny a new trial. *Id.* When considering whether newly discovered evidence will probably change the trial's outcome, the trial court considers the credibility, significance, and cogency of the proffered evidence. *State v. Barry*, 25 Wn.App. 751, 758, 611 P.2d 1262 (1980).

In the present case, the evidence of Ricciardi's earlier fabricated rape allegation would change the result of the trial due to similarity between her two sets of allegations wherein her alleged attackers both attempted to rape her while forcefully removed her jeans. Similarly, the fact that Russell Helm's had seen the Defendant and Ricciardi together on the couch earlier that evening is significantly different than Ricciardi's. She testified that she did not see Eaglespeaker that evening until he arrived just before the rape, yet Helms saw them earlier in the evening on the couch kissing. The second prong is also satisfied as the evidence of Ricciardi's earlier fabricated rape allegation was discovered to defense counsel more than 10 days since Mr. Eaglespeaker was found guilty by the jury. Similarly, the statements by Russell Helms were discovered more than ten days after trial. Prong three is also satisfied because defense counsel does not have the access to the investigative tools which would have reveal an unfounded complaint. Typical background checks show only arrests and convictions, not false complaints. Additionally, the defense would have no reason to have knowledge of Helm's attempts to report his observations to Deputy Hepner. The evidence of Ricciardi's earlier fabricated rape allegation is material because it goes directly to impeachment regarding her credibility wherein the only issue is whether or not she consent to sex with the Defendant. Similarly, Russell Helms testimony is material because it directly contradicts the Defendant's version of events. Finally, while the evidence of Ricciardi's earlier fabricated rape allegation is impeaching, it is not merely cumulative.

Because newly discovered evidence of another false rape allegation by Ricciardi and the existence of an exculpatory witness, the Court should grant the Defendant a new trial pursuant to CrR 7.8(b)(2).

B. THE STATE'S FAILURE TO DISCLOSE EVIDENCE VIOLATED THE DEFENDANT'S DUE PROCESS RIGHTS UNDER *BRADY V. MARYLAND*.

The Court should grant the Defendant's motion for a new trial pursuant to CrR 7.8(b)(5) because the state violated the Defendant's fundamental due process rights.

Brady v. Maryland and *Giglio v. United States* require the state to disclose to the defense critical information bearing on a witness's credibility. *Carriger v. Stewart*, 132 F.3d 463, 479 (9th Cir. 1997) citing *Kyles v. Whitley*, 514 U.S. 419, 433, 115 S.Ct. 1555 (1995); *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375 (1985). The animating principle is simple: "Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963).

Brady requires the prosecution to disclose evidence that is "material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *State v. Mullen*, 171 Wn.2d 881, ¶29, 259 P.3d 158 (2011) quoting *Brady*, 373 U.S. at 87; see also *State v. Davila*, 184 Wn.2d 55, ¶31, 357 P.3d 636 (2015) citing *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936 (1999). Expanding the disclosure obligations in *Brady*, *Giglio* requires disclosure of "not only exculpatory evidence but also impeachment evidence." *Id.*, ¶29 citing *Giglio v. United States*, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972). These disclosure obligations are mandatory regardless of whether or not the defense specifically requests such evidence. *Id.*, ¶29 citing *United States v.*

Agurs, 427 U.S. 97, 110, 96 S.Ct. 2392 (1976). Critically, “[t]he government must disclose not only the evidence possessed by prosecutors but evidence possessed by law enforcement as well.” *Id.*, ¶29 citing *Kyles*, 514 U.S. at 437 (Emphasis added).

“A violation of the rule promulgated in *Brady* and its progeny is a violation of constitutional due process.” *Mullen*, 171 Wn.2d at ¶28 citing *Brady*, 373 U.S. at 87.

To establish a *Brady* violation, the Defendant must demonstrate three elements:

“(1) ‘the State failed to disclose evidence that is favorable to the accused, either because it is exculpatory or impeaching,’

(2) ‘the State suppressed the evidence either willfully or inadvertently,’ and

(3) the evidence must be material.”

State v. Diamond, 184 Wn.2d 55, ¶30, 357 P.3d 636 (2015) quoting *Strickler*, 527 U.S. at 281-82; *see also Mullen*, 171 Wn.2d at ¶31. Additionally, the court should consider “not only [the test’s] discrete elements but its animating purpose as well. ‘The animating purpose of *Brady* is to preserve the fairness of criminal trials.’” *Id.*, ¶31 quoting *Morris v. Ylst*, 447 F.3d 735, 742 (9th Cir.2006) (citing *Brady*, 373 U.S. at 87). “**In analyzing these factors, we are mindful that the fundamental purpose of *Brady* is the preservation of a fair trial.**” *Id.* (emphasis added) quoting *Morris*, 447 F.3d at 742. A defendant is not required to demonstrate that “‘the evidence if disclosed probably would have resulted in acquittal.’” *Mullen*, 171 Wn.2d at ¶30 quoting *Bagley*, 473 U.S. at 680 (opinion of Blackmun, J.).

1. **A Victim’s prior recantation of Rape and the existence of an Exculpatory Witness is favorable to the accused.**

The prosecutor's duty to disclose both impeachment evidence and exculpatory evidence is well established. "Favorable evidence includes not only evidence that tends to exculpate the accused, but also evidence that is useful to impeach the credibility of a government witness." *State v. Davila*, 183 Wn.App. 154, ¶26, 333 P.3d 459 (Div. 3, 2014) *overruled on other grounds by State v. Davila*, 184 Wn.2d 55, ¶¶26-30, 357 P.3d 636 (2015) quoting *United States v. Jackson*, 345 F.3d 59, 70 (2d Cir. 2003)(internal citations omitted for clarity).

In *Davila*, the court held that information regarding the forensic scientist's poor job performance and previously contaminated DNA samples would, if disclosed "opened an area of impeachment that Mr. Davila was unaware of at the time of trial. As such it constitutes evidence that was favorable to him on the issue of guilt." 183 Wn.App. at ¶29. Davila, who was found guilty at trial of second degree murder, challenged the withholding of information regarding the competency of the forensic scientist, Ms. Olson, who initially tested the DNA evidence. *Id.*, ¶¶15-19. Although the State had disclosed that Ms. Olson had tested the evidence, it instead chose to call her supervisor to testify regarding the DNA samples. *Id.*, ¶11. Further, at closing, the state emphasized the handling of the "meticulous and professional" handling of the DNA evidence. *Id.*, ¶13. In fact, the State had never disclosed that Ms. Olson had been fired by the Washington State Patrol for her incompetence. *Id.*, ¶15. An audit of Ms. Olson's cases had resulted in "Brady letters" being sent to prosecutors regarding her errors. *Id.*, ¶17. The Court rejected the State's argument that because "Ms. Olson's work did not identify Mr. Davila as being at the scene of the murder" he would have no reason to impeach her. *Id.*, ¶27. Rather, the court held that the mere "the prospect of contamination or false results, Ms.

Olson's extensive history of poor performance and incompetence would have been favorable evidence that should have been disclosed. *This evidence would have opened an area of impeachment which Mr. Davila was unaware of at the time of trial.* As such, it constitutes evidence that was favorable to him on the issue of guilt." *Id.*, ¶29 (emphasis added).

Similarly, in *Carriger v. Stewart*, the evidence for the conviction of murder was an eyewitness with a long history of crimes and false accusations. *See* 132 F.3d 463, 480 (9th Cir. 1997). The witness' credibility was central to the case:

"[He] was the state's only direct witness [to the crime]. There was no direct evidence of Carriger's guilt. The case was tried, therefore, on a simple basic issue: Did [the witness] tell the truth when he blamed the robbery and murder on Carriger, or was Carriger's contention that the robbery and murder were committed by Dunbar to be believed? All other issues were peripheral."

Id., 480 citing *State v. Carriger*, 143 Ariz. 142, 692 P.2d 991 1012 (1984)(Feldman, J., dissenting) (parenthetical's in original). However, the "key" witness had a history of violent rages, falsely accusing police officers, been involved in shootouts with officers, and "committed ninety-two admitted burglaries in six months following his release from his first burglary sentence." *Id.*, 480-81. As a result, the court held that the defendant was prejudiced because the "length of Dunbar's record of burglaries, and, more important, his long history of lying to the police and blaming others to cover up his own guilt" was not disclosed. *Id.*, 482. Particularly troubling to the court was that the entire case relied upon the witness's credibility. *Id.* Because the state failed to turn over all information bearing on the witness' credibility which, "if disclosed and used effectively,

it may make the difference between conviction and acquittal”, the court granted a new trial. *See Id.*, 481-82 quoting *Bagley*, 473 U.S. at 676.

In the present case, the question of the credibility of the victim was clearly central to the jury’s determination. Ricciardi’s credibility was central both the case and Mr. Weidenfeld’s closing argument:

So, a lot of this case as we talked about obviously comes down to the credibility, to Ms. Ricciardi’s — not so much with the drugs because there we have a lot of testimony that’s all corroborated together, but when we’re talking about counts one and two with the Rape in the first degree and the Burglary in the first degree with sexual motivation, critical but not the only, but the critical main piece of testimony here that we heard here was the testimony, the direct testimony of Julie Ricciardi and do keep in mind — well, I’ll get back to that in a second actually, sorry to jump ahead there.

May 14, 2013 Record of Proceedings (“RP”) 139. However, because the prior recantation of the rape allegation in Beaverton was not disclosed to the Defense, nor did the Defense know about Russell Helms seeing the victim and defendant together that evening “sitting on the couch cuddling and kissing Eaglespeaker”, the defense was unable to effectively cross-examine Ricciardi regarding her statements that she did not see the Defendant that evening until the alleged assault or put on Helms an exculpatory witness to contradict her statements. *See* RP 45-48. Indeed, the Defendant admitted to having sexual contact with Ricciardi, the only question was whether she consent. Remarkably, in both incidents Ricciardi relayed that her jeans removed. *Compare* RP 91, lns. 19-25 and **Exhibit A**. Yet, in the instant case she allegedly threw the jeans away before the police could take them into evidence. In the other case, the jeans were neatly folded when they were alleged to have been ripped off during the incident. Similarly, when given the chance on cross examination to explain previous instances of lying to a

grand jury, she failed to mention that she had also admitted to lying to the Beaverton Police Department because she was “depressed.” *Compare* RP 96-97 and **Exhibit A**. With respect to Russell Helm, Ricciardi specifically stated that she had not told anything about the incident, yet Helm told police officers that Ricciardi had in fact tried to call him multiple times and told him the next morning what had occurred. *Compare* RP 95, lns 3 - 5 and Exhibit C.

Because the prior recantation and Russell Helms testimony are clearly favorable to the accused, the prosecution violated its disclosure obligations necessitating a new trial pursuant to *Brady* and *Giglio* under CrR 7.8(b)(5).

2. The State’s failure to disclose evidence of the victim’s prior recantation of rape and the existence of an exculpatory witness suppressed evidence in violation of *Brady*.

The prosecution suppressed evidence by failing to turn over evidence of the victim’s prior recantation and statements by an exculpatory witness in the possession of police working the case. “Brady obligations include not only evidence in the prosecutor’s file but also include evidence in the possession of the police and others working on the State’s behalf.” *Mullen*, 171 Wn. 2d at ¶32 citing *State v. Lord*, 161 Wash.2d 276, 292, 165 P.3d 1251 (2007) (citing *Kyles*, 514 U.S. at 438). The failure to disclose favorable evidence renders it “suppressed” under *Brady*. *Davila*, 183 Wn.App. at ¶30 citing *Benn v. Lambert*, 283 F.3d 1040, 1053 (9th Cir. 2002) (“the terms ‘suppression’ and ‘failure to disclose’ have the same meaning for *Brady* purposes”). The good faith or bad faith of the prosecution is not relevant whether evidence has been suppressed. *Id.*, ¶30 citing *Brady*, 373 U.S. at 87. “[A]n inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment.” *Id.* quoting *Strickler*, 527 U.S. at 288, 119

S.Ct. 1936. Rather, the prosecutor has the “duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case’ and disclose that information to the defendant.” *Id.* quoting *Kyles*, 514 U.S. at 437.

Brady’s obligations extend to “information in the government’s possession or knowledge, whether actual or constructive.” *Davila*, 183 Wn.App. at ¶30 citing *United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir. 1999); *see also Carriger*, 132 F.3d at 479 citing *Kyles*, 514 U.S. at 435-440 (“A prosecutor’s actual knowledge of exculpatory evidence in the state’s possession “is not determinative of the prosecution’s disclosure obligations.”); *In re Brennan*, 117 Wn.App. 797, 804, 72 P.3d 182 (Div. 1, 2003). “Because the prosecution is in a unique position to obtain information known to other investigating agents of the government, it may not be excused from disclosing what it does not know, but could have learned.” *Id.* citing *Kyles*, 514 U.S. at 438–40; *Carriger*, 132 F.3d at 480. “Thus, a prosecutor’s duty to learn of favorable evidence has been interpreted broadly because of a ‘special status’ within the American criminal justice system.” *Id.* citing *Strickler*, 527 U.S. at 281; *see also Brennan*, 117 Wn.App. at 804 (“[A] prosecutor has the duty to learn of evidence favorable to the defendant that is known to others acting on behalf of the government in a particular case, including the police.”). “The disclosure obligation exists ... not to police the good faith of prosecutors, but to ensure the accuracy and fairness of trial by requiring the adversarial testing of all available evidence bearing on guilt or innocence.” *Id.* quoting *Carriger*, 132 F.3d at 480. Therefore, the prosecution “cannot avoid *Brady* ‘by keeping itself in ignorance, or compartmentalizing information about different aspects of a case.’” *Id.*, ¶31 quoting *Carey v. Duckworth*, 738 F.2d 875, 878 (7th Cir.1984). “Without this rule, ‘prosecutors

could instruct those assisting them not to give the prosecutor certain types of information, resulting in police and other investigating agencies acting as the final arbiters of justice.”
Id. at ¶24 citing Brennan, 117 Wn.App. at 805.

In *Davila*, the court imputed constructive knowledge of the forensic scientist, Ms. Olson, problems to the prosecutor because the WSP had issued the report on Ms. Olson nearly a year before trial, her supervisor, who had devised her job improvement plan, testified at trial, and because she was a key witness in the case, the court held that “her knowledge of the WSP report must be imputed to the prosecutor.” *Id.*, ¶31. Hence, because the “prosecutor had constructive possession of the information”, it was “wrongfully suppressed.” *Id.*, ¶32. Similarly, in *Carriger*, the prosecution had the obligation to “review the witness’s criminal record, including his corrections file, and to treat its contents in accordance with the requirements of Brady and Giglio.” *Carriger*, 132 F.3d at 480.

The prosecutor likely had construction knowledge of a prior recantation of rape by the victim. First, according to the Beaverton detectives report on the 2011 incident, he reviewed footage of a Skamania County dependency proceeding wherein the 2011 false rape allegation had been raised. *See Exhibit #.*¹ Although it is possible, albeit unlikely, that the report from the Beaverton Police Department had been transmitted to Skamania County but never reviewed, the fact that it was transmitted to Skamania County, either to the Sheriff’s Office, DSHS casework, the prosecutor, or some combination thereof, is sufficient to charge the prosecutor with constructive knowledge of its contents,

¹ According to the Oregon detective, the attorney questioning ricciardi references by Cause Number the false rape allegation, a separate and distinct incident from the Grand jury perjury dealt with in Motions in Limine at the Defendant’s trial.

particularly given the overlapping nature of the criminal and dependency proceedings involving Julie Ricciardi and Scott Ekman. Similarly, the fact that Richard Helm's stepped forward and either spoke to or attempted to speak to Deputy Mike Hepner, regarding seeing Ricciardi on the couch with the Defendant, clearly falls within the constructive knowledge of the prosecutor in this case. Because these two reports were suppressed, the Defendant must be granted a new trial.

In this case, Russell Helm's testimony appears to have been known, at least in part, to Officer Hepner. Indeed, Hepner was the officer who had initially interviewed Eaglespeaker when he was taken into custody at the jail. The fact that Hepner may not have realized the importance of this information is immaterial in the fact that he testified at trial yet failed to relay an encounter with Helms, and potentially exculpatory statements, to Defense Counsel at any time prior trial.

Because the prosecutor is charge with information known to law enforcement officers working on his behalf, in this case Deputies Hepner and, potentially Garrity or other attorneys working for the State, this information was suppressed and therefore constitutes a *Brady* violation necessitating a new trial pursuant to CrR 7.8(b)(5).

3. The Victim's Prior Recantation and Exculpatory Witness Testimony are Material.

"Evidence is 'prejudicial' or 'material' if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Mullen*, 171 Wn.2d at ¶35 (Internal citations omitted for clarity). "A reasonable probability is shown if the suppression of the nondisclosed evidence undermines confidence in the outcome of the trial." *Id.* (Internal citations omitted for

clarity). When determining materiality, evidence is considered “collectively, not item by item.” *Id.* (Internal citations omitted for clarity).

Brady requires the prosecution to disclose evidence that is “material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” *Mullen*, 171 Wn.2d at ¶29 quoting *Brady*, 373 U.S. at 87. Evidence is material, and must be disclosed “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Davila*, 183 Wn.App. at ¶35 citing *State v. Thomas*, 150 Wn.2d 821, 850, 83 P.3d 970 (2004)(quoting *Bagley*, 473 U.S. at 682); *see also Kyles*, 514 U.S. at 433. A reasonable exists “when the governments evidentiary suppression’ undermines confidence in the outcome of the trial.” *Id.* quoting *Kyles*, 514 U.S. at 434 (quoting *Bagley*, 473 U.S. at 678).

“Material evidence required to be disclosed includes evidence bearing on the credibility of government witnesses.” *Carringer*, 132 F.3d at 479 citing *Bagley*, 473 U.S. at 676; *Giglio*, 405 U.S. at 154-55. Within the context of impeachment, “Evidence is material if it might have been used to impeach a government witness, because “if disclosed and used effectively, it may make the difference between conviction and acquittal.” *Id.* at 480 quoting *Bagley*, 473 U.S. at 676; *see also Giglio*, 405 U.S. at 154; *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177 (1959) (“The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence”); *see also Kyles*, at 444-52, 115 S.Ct. at 1571-74 (discussing impeaching uses of undisclosed evidence).

In this case, the information is clearly material to the Defendant’s case. First, existence of the Beaverton police report and the existence of an exculpatory witness

would have seriously undermined the credibility of Julie Ricciardi. There is a reasonable probability to believe that, had the jury heard that she had previously recanted a rape accusation, that she may have entered into consensual sex with the Defendant then regretted it after-the-fact, leading to another false accusation. This theory could then have been reinforced by the testimony of Richard Helm that no such forced rape occurred, but rather a consensual encounter. For these reasons, the evidence is clearly material and its suppression constitutes a Brady violation.

PRAYER FOR RELIEF

Because Julie Ricciardi's rape accusation and Richard Helm's exculpatory testimony were only disclosed to the Defendant after trial, the suppression of favorable, material evidence in the State's possession, namely Skamania County Sherriff's Office, constitutes a Brady violation. For that reason, the Defendant respectfully requests that the Court vacate the Judgment pursuant to CrR 7.8(b) and grant a motion for new trial on the charge of Rape in the Second Degree. In the alternative, the Defendant asks for this matter to be remanded to the Superior Court for further fact-finding regarding this matter.

Dated this 23rd day of February, 2016.



GREGORY S. CHENEY, WSBA #44174
Attorney for Defendant

EXHIBIT A

**BEAVERTON POLICE DEPARTMENT
CASE 11-00049**

On 1/3/11 at approximately 1126 hrs I was dispatched to an assault call at the Hunters Run Apartment Complex located at 16135 SW Schendel Ave Apt #30H, Beaverton, Washington County, Oregon.

Dispatch advised the caller identified as Ricciardi, Julie stated an unknown group of suspects forced entry into the apartment and assaulted herself and her infant son.

Upon arriving at the above mentioned location Ofc Bastinelli and I contacted Julie in regards to the incident. I knocked on the front door to the residence and did not hear a response. I knocked loudly and announce ourselves. I heard a Julie inside the apartment advised the door was not locked and we needed to come inside.

The apartment is located on the third floor of the building. The apartment has two bedrooms and one bathroom. The front door is located in the eastside of the building. The family / living room is locate just inside the front door to the west. The kitchen is located to the left of the front door. The master bedroom is located on the west side of the building. The other bedroom is located on the north side of apartment directly across from the bathroom.

I opened the door and observed Julie kneeling against a black in color coffee table. I observed Julie to have blood on her chest and face area. Julie was wearing a white in color t-shirt with black in color underwear. Julie began yelling she needed me to retrieve some pants for her. I cleared remaining rooms inside the residence and gave her some grey in color sweatpants. Julie was hysterical and began yelling that her son identified as Ricciardi, Antonio J had been sprayed with pepper spray and needed medical attention.

Ofc Bastinelli and I observed Antonio face down on the north side of the family room near patio. Antonio was motionless but I could hear him whimpering. Ofc Bastinelli and I quickly went to Antonio's location and began to assess his injuries. I observed Antonio to alert but crying heavily. Moments later Metro West and TVF&R arrived at our location.

Ofc Bastinelli and I took Antonio downstairs and advised the paramedics of the incident. I then went back upstairs and contacted Julie. While speaking with Julie I observed a large amount of pepper spray / mace in the air. I then asked Julie if I could check out the apartment for any evidence possibly left by the suspects, she said, "Yes." While searching the bathroom I observed a pair of black in color scissors on the floor. I observed a small amount of blood on the scissors. I also observed small amounts of blood near the bathroom and on the carpet of the master bedroom.

Metro West and TVF&R stated Julie and Antonio were going to be transported to St. Vincent's hospital.

Ofc Haugen and Ofc Crosslin contacted the surrounding neighbors and photographed the scene. A short while later Washington County Crime Scene Technician's arrived at the residence to process the evidence.

I followed Antonio and Julie up to St Vincent's hospital to continue my investigation. Upon arriving at St Vincent's I interviewed Julie in room #16.

I asked Julie what time the incident happened, she said, "I don't really know it wasn't long after John (her husband identified as Ricciardi, Jonathn) left to go work out." I asked Julie what time exactly the incident took place. Julie stated approximately 5-10 minutes before she called the police.

Julie told me she heard a knock at the door. Julie looked through the peep hole and saw a small blonde female. She asked the girl what she wanted. Julie stated the blonde female identified herself as a neighbor who wanted to welcome her to the apartment complex.

Julie told me the female was approximately 5'2 and skinny. The female was approximately 25-30 years old, with blonde hair and was "pretty." Julie told me the girl was wearing a pink pair of winter gloves, but was unable to describe her clothing.

Julie told me she opened the door and the female extended her hand for a handshake. Julie told me she shook the female's hand, and the next thing she knew two males came around the corner and pushed her (Julie) back inside her apartment.

Julie described the first male suspect as a light skinned black male approximately 25-30 years old, with short black hair. Julie informed me the light skinned black male was the same suspect involved in Beaverton Case #10-08696. This case involved a light skinned black male forcing entry to her residence and assaulting her. Julie informed me she was unable to remember what clothing the light skinned black male was wearing.

Julie described the other suspect was a light skinned Hispanic male approximately 25-30 yrs old with brown hair. The Hispanic male was wearing a large black in color puffy / down jacket with blue jeans. Julie did advise me both male suspects were wearing dark colored winter type gloves.

Julie told me once inside the apartment the males pushed her to the ground. Julie stated she attempted to get her pepper spray which was located by the front door to the residence, but the black male grabbed it before she could. Julie told me the black male said, "You want to pepper spray someone. Watch this."

Julie told me the Hispanic male held her down while the black male went to where Antonio was located. I asked Julie where Antonio was, she said, "He was in his car seat by the patio door. The black male then sprayed Antonio with pepper spray while he was seated inside the car seat.

Julie told me she got away from the Hispanic male and ran toward the bathroom to where she left her phone. Julie told me all three suspects ran after her. Julie told me once in the bathroom the suspects again held her down. Julie told me she could hear Antonio crying and she kept yelling, "I need to check my baby! I need to check my baby!"

Julie told me the suspects then burned her neck with her curling iron. Julie said, "My curling

iron was on 450 degrees I was getting ready to go run errand with Jonathan.” After being burned each time by the curling iron the suspects sprayed her with pepper spray.

Julie stated the suspects went to the kitchen and grabbed a pair of scissors as well as a glass cup. Julie told me, “They cut me in the bathroom with the scissor and then broke the cup and cut my face.” Julie stated the female suspect yelled, “Make her ugly, so he won’t like her anymore.”

Julie told me the suspects then pulled her pants down. I asked Julie how they pulled her pants down. Julie replied, “I don’t remember, they just came down.” Julie stated she started screaming, “Help me! Help me!” Julie told me, “They took my pants off and raped me with scissors.” I asked Julie if the scissors penetrated her vagina, she said, “Yes! They raped me with the scissors.”

Julie told me while this was going on the males were grabbing her breast and buttocks. I asked Julie which suspect was “raping her with the scissors?” Julie replied, “I don’t remember.” Julie told me after a few moments the males said, “Hey let me get some.” The female suspect began yelling, “No! Stop being pigs.”

Julie told me while the group was arguing she ran into the bedroom to get away. The black male ran after her tackling her from behind. Julie told me she ended up on her knees and the black male grabbed a nearby electrical cord and began choking her from behind. Julie told me she was seeing black spots and starting to lose consciousness. Julie stated, “I thought I was going to die.”

Julie stated he Hispanic male said, “Stop this isn’t what we came for.” Julie told me, “I could hear my baby coughing and choking.” Julie told me after being choked all three suspects left. Julie told me, “I heard the Hispanic male say, we need to leave the cops are coming.”

I asked Julie if she could provide me with any other suspect information, she said, “No.”

I collected all of Julie and Antonio’s clothing and entered it into BPD evidence. See property receipt #125914 for details. I spoke to doctor who examined Julie and asked if she sustained any injuries to her vaginal area. The doctor told me he did not observe any injuries on Julie’s lower extremities or in the vaginal area.

I spoke to the Julie’s nurse who informed me there was no evidence of any pepper spray on either her (Julie’s) or Antonio’s clothing.

A short while later Detectives Coulson and Valenzuela arrived at my location and took over the investigation. See their reports for details.

I have nothing further to report at this time.

SUMMARY

On January 3, 2011 Julie Ricciardi reported she was assaulted at her residence of 16135 NW Schendel Apartment #30H in Beaverton, Oregon.

Mrs. Ricciardi would later admit to having fabricated the whole incident and actually self inflicted the extensive injuries to herself.

ACTION TAKEN

On January 3, 2011 at about 12:15pm Det. Sgt. Jim Shumway requested that Det. Coulson and I respond to St. Vincent's Hospital to contact the reported victim of an assault and possible rape.

Upon our arrival we first made contact with Officer Lutu for a debriefing. Officer Lutu explained that Mrs. Ricciardi reportedly was at her apartment when a female knocked on the door. When Mrs. Ricciardi opened the door she was then confronted by two males and subsequently assaulted (see Ofc. Lutu's report for full details).

Officer Lutu informed Det. Coulson and I that Mrs. Ricciardi had reportedly been attacked one week before (12/27/2010) by an unknown assailant and that incident had been investigated by himself and Beaverton Police Officer Haugen (BPD Case #10-8696).

Det. Coulson and I introduced ourselves to Mrs. Ricciardi and her husband, later identified as Jonathan Ricciardi. Mrs. Ricciardi was loudly complaining that the hospital was taking too long and that she was in severe pain. Det. Coulson and I explained that we were there to assist in the investigation but Mrs. Ricciardi was distracted by the fact that the staff at the hospital was "taking too long". Mrs. Ricciardi said that if they did not help her soon she was going to leave.

I tried to explain to Mrs. Ricciardi that it was up to her but that it would be best if she simply waited and the hospital staff would see her as soon as they possibly could. Mrs. Ricciardi continued to complain and said she needed pain medication as she was in extreme pain because they "raped her with scissors".

I asked Mrs. Ricciardi to explain briefly what happened as we looked at the injuries on her body and face. Mrs. Ricciardi explained that she was

attacked in her apartment by two males and a female. She said that her 5 month old son, Antonio, was sitting in the living room in his car seat because he had been eating earlier in the car seat. She said that Antonio was close to the living room window. She said once the assailants entered her apartment they "sprayed the baby" with pepper spray and she watched them spray directly into the baby's face. She said she was trying to get to her baby but they physically forced her into the bathroom. I asked her where they sprayed the baby at in the house and she said by the window in the living room.

She said that the males pushed her into the bathroom and as the female was screaming for them to "cut her and make her ugly" the males held her down and sliced her face and chest. She said they also burned her with her curling iron which she had plugged in to style her hair. She made it a point to tell me that the curling iron was 450 degrees.

Mrs. Ricciardi had multiple burns to the left side of her neck that were at an angle with the high point being at the back of her neck. There were also multiple burns in the same pattern on her left forearm but the burns were horizontal to her forearm and had equal spacing in between them. This struck me as odd given that Mrs. Ricciardi was describing a struggle between her and the assailants as they cut and burned her. The curling iron had a black rounded plastic tip and the end of the metal curling iron portion was a straight edge. Det. Coulson and I noticed that the burns on Mrs. Ricciardi had a rounded end to them which did not seem to match the shape one would expect if burned with this curling iron. *Det. Coulson later plugged the curling iron in to heat up and was able to replicate the curved end shape by burning heat sensitive paper with the flap, moving portion of the curling iron as opposed to using the primary body of the curling iron.*

Mrs. Ricciardi had a couple of scratches to the right cheek which were at an angle with the high point being towards the ear. Both scratches were continuous and had no signs of disruption. The scratches were about 2" long. The blood on her right cheek was completely dry. Mrs. Ricciardi described the assailants as cutting her with glass and a pair of scissors. Mrs. Ricciardi showed Det. Coulson and me the scratches on her chest that she said the assailants also did while holding her down. The scratches were at an angle and formed a "V" formation with the bottom of the "V" being between her breasts.

Mrs. Ricciardi said one of the males held her down on the ground as the other forcibly removed her pants and then penetrated her vagina with the kitchen scissors. Mrs. Ricciardi told me that she was bleeding from her vagina as a result of this penetration. I asked Mrs. Ricciardi if she was completely nude or nude from the waist down when this occurred and she said she was nude from the waist down.

Mrs. Ricciardi said after they began to cut her she ran into the back bedroom and one of the assailants wrapped a black cord around her neck, twice, and choked her. She said that she was choked so hard she was getting dizzy and almost lost consciousness. She said that after she was choked the assailants left her apartment and she was able to crawl back to the bathroom and get her cell phone to call 9-1-1. She said that she waited for the police to get there and once they got there she was able to get some clothes on to be transported to the hospital.

I checked all around Mrs. Ricciardi's neck and found no signs of choking marks left on her neck. I asked Mrs. Ricciardi if she knew what they wrapped around her neck and she said she thought it was a cell phone charger cord. Mrs. Ricciardi said I would see it if I went to her apartment because it was lying on the floor in the hallway coming out of the bedroom.

Officer Lutu told Det. Coulson and me that Officer Haugen was still at the crime scene and Washington County Forensics had been called to the scene to process it. I asked Mr. and Mrs. Ricciardi if it would be okay with them if Det. Coulson and I obtained a key from one of them and went to their apartment to assist in processing the crime scene. Mr. Ricciardi told me that the police were still at the location and I did not need a key to get in. I explained to him that I wanted to make sure and have a key to secure the scene in case we needed to leave the apartment prior to their return. Mr. Ricciardi said that was okay and handed me his key. Mrs. Ricciardi was present when consent was obtained and did not voice any opposition.

Det. Coulson and I went to the apartment where Officer Haugen was present with Criminalist Clark. Criminalist Clark was photographing the scene when we arrived.

The first thing Det. Coulson and I noticed was the strong odor of what smelled like oleoresin capsicum (OC) spray. The odor was still strong enough to cause discomfort in my throat to the point of coughing. The front and

patio doors were propped open to help with ventilating the apartment.

As soon as you walked into the apartment the living room was to the right and if you went left you could go into a small dining area or enter into the kitchen. There was a wrap around bar that ran the length of the kitchen and the counter was gray in color with speckled dots to have the appearance of stone. The bar had an orange substance in a spray pattern visible to the eye. There was some orange substance on the wall below the bar but most of it was on the counter. If you followed the path of the spray you could see the pattern spread out and it was visible on the kitchen counter, on the kitchen floor and had sprayed completely across to the other side of the kitchen on the cabinet. The one thing that was most noticeable about this is that there was no break in the spray pattern to indicate someone had been sprayed and instead the spray pattern was continuous without any type of obstruction or break of any kind. On the kitchen counter there was a small smudge of blood and there was a small smudge of blood on the bar edge but it was on the edge facing the kitchen.

Once you walked into the hallway directly to the left was a short hall to the bathroom. To the right was the children's room and there was a laundry area (washer and dryer) inside of an enclosed closet with folding doors down the hall. At the end of the hall was another bedroom which Mrs. Ricciardi later identified as her and Mr. Ricciardi's bedroom. It was not an obvious bedroom as there was no bed or furniture in the room and instead there was just clothing strewn about.

In the hallway there was a pair of blue jeans lying on the floor just before you would turn left to go into the bathroom. Upon closer inspection you could see various blood stains on the inside of the thigh area which struck us as odd given that Mrs. Ricciardi reported that the assailants took her pants off and then penetrated her and cut her inner thighs. The blood stains did not appear to be drops of blood and instead had the appearance of transfer staining. I asked Ofc. Lutu to confirm with Mrs. Ricciardi what pants she had on and she confirmed they were Lee blue jeans which matched the above pants.

Mrs. Ricciardi reported the assailants held her down as they removed her pants but these pants were right side out and when I lifted the pants it appeared they had been dropped as they were stacked up and not thrown or inside out. Det. Coulson and I noticed a large orange stain on the carpet

that had a U or V shape to it. I got on the ground and smelled the orange stain and it smelled like OC as well.

Det. Coulson and I noticed there was blood on the carpet leading to the bathroom and on the bathroom floor. Lying at the entryway was a black can of OC spray. Just inside the bathroom was a black pair of Kitchen Aid scissors and there was what appeared to be dried blood on the blades. The blood was so dry that some of the blood was flaking off in a large piece. There was a variety of items strewn about on the floor but directly in front of the vanity was a white kitchen trash bag that had miscellaneous bathroom items such as lotion, hairspray, and a blow dryer spilling out of the bag and onto the floor. Mrs. Ricciardi would later confirm they had just moved into the apartment which is why these items were collected in a bag.

The vanity door leading to underneath the sink was ajar and there was a cord from a curling iron between the door and the vanity. The curling iron was pink on the handle and silver by the heated portion. The curling iron was sitting right side up on the counter and just to the left of the curling iron was 4-5 drops of blood. The drops of blood were circular in shape and did not have any shape distortion which would lead us to believe the person bleeding was not moving at the time the blood was dripping from them.

The curling iron cord then went downward and the bottom of the trash bag that was on the floor with miscellaneous items was actually wrapped around the cord which ended at the plug in. This struck me as odd given that Mrs. Ricciardi described being burned as she struggled with the assailants and was thrown to the ground.

There was also a drip of blood on this same door and it was long but had dripped straight down based on the angle of the drip. There was a blue towel thrown on the floor directly in front of the vanity and there were bloodstains on the towel but they were not drip marks and instead had the appearance of having been wiped onto the towel.

On the counter of the vanity there was quite a few items that were all upright and had not been tipped over as one would expect during a struggle as reported by Mrs. Ricciardi. First of all there was a bottle of cologne and a bottle of powder that was about 2" from the edge of the vanity to the left of the sink but they were both upright. To the right of the sink there was a large plastic coffee beverage, with the contents mostly consumed, from

McDonalds and it still had moisture on the outside from being cold. The sticker on the McDonald's drink was stamped 9:46 and Mr. Ricciardi would later confirm he had gone to McDonald's and bought breakfast/drinks before he went to the gym. There was also a spray bottle of hairspray right next to it. Both these items were still upright and had not been tipped over. There was also a metal pump soap dispenser and a plastic pump soap dispenser on each side of the faucet and both were upright and still on the ledge of the sink next to the faucet.

On this same side of the sink further back against the back ledge was an empty glass container that appeared to match the container to the right of it which had a silver metal top and cotton balls still in it. The reason this seemed so strange was inside the sink was a metal top, like the cotton ball container, and there were q-tips inside the sink along with some broken glass.

Upon closer inspection of the broken glass Det. Coulson was able to determine that the glass actually matched the drinking glasses from the kitchen which he found inside the dishwasher. These glasses had a vertical linear pattern. Furthermore when he opened the dishwasher he found that there was a total of 11 glasses with the same pattern (4 each of 2 different sizes and 3 of another size) and there was a space where one glass appeared to be missing. When he checked the cupboards to see if there were any more glasses he did not find any.

Det. Coulson also found that in the kitchen was a Kitchen Aid butcher block and there was a slot where a pair of kitchen scissors would go but they were missing.

I inspected the walls inside the bathroom and did not find any blood on the walls that would indicate a moving bloody struggle. The only blood found inside the bathroom was on the floor and on the vanity door and counter. Given that Mrs. Ricciardi described being forced to face away from the vanity as the assailants began to cut her and then being forced to the ground as the assault continued the blood evidence in the bathroom was not supportive of this version of events.

Det. Coulson picked up the largest piece of broken glass from within the sink, which had the base of the glass intact, and on the corner of the glass you could see a piece of what appeared to be human skin on one corner and

a very small amount of red substance believed to be blood. The glass did not have any smears or drips of blood on the outside portion of the broken glass and aside from the above skin and blood drop the glass was rather clean. If in fact this glass were used to assault someone in the manner in which Mrs. Ricciardi was describing one would expect some blood to have dripped and/or smeared on the glass.

On the vanity counter to the left of the sink was a rectangle shaped pill split into two pieces. Det. Coulson would later identify these as Alprazolam 2mg. What seemed odd is that another piece of a pill was found on the bar and there appeared to be a red substance on the pill, possibly blood.

Det. Coulson would later find more prescription medications in their containers for Julie Ricciardi to include Oxycodone, Clonazepam, Pristiq, etc. For full details on those see Det. Coulson's report.

Det. Coulson also located an unfilled prescription from Providence St. Vincent's ER from December 27, 2010 for Julie Ricciardi for Oxycodone and this was prescribed by Dr. Richard SKOGRAND. The other filled prescription for Oxycodone was prescribed by Dr. Linda Cruz.

As Det. Coulson and I moved down the hallway from the bathroom to the bedroom at the end of the hallway we noticed the cord described by Mrs. Ricciardi as lying in the hallway. This cord was not from a cell phone charger and instead it was a computer mouse cord. Mrs. Ricciardi had described this cord as being wrapped around her throat twice and her being choked almost to unconsciousness. The problem with that was that the cord actually still had a twist tie around a part of the cord (as if the mouse cord had never been loosened completely after purchase). Had there been the type of pulling necessary to cause someone to go unconscious the twist tie would not have remained with the cord still tied together.

The mouse portion was near a black and green backpack inside the room. The mouse had dried blood on it and there were also drops of blood on the back pack. Inside the room was a variety of items thrown on the floor to include a large amount of clothing. Upon closer inspection one portion of the strewn items had the appearance of a purse being dumped as there was medicine, mints, and make up to mention a few of the items. There was also a large purple purse near these items.

Inside this purple purse was a Saturn key attached to a key chain holding a

pink OC spray type container. This container was photographed up close by Det. Coulson and there appeared to be orange drops near the nozzle indicating it had been sprayed if not that day at some point. Some of the items on the floor had drops of blood on them and just like the blood drops on the vanity they were round in shape and did not have any deformity in shape to indicate movement.

This seemed odd as Mrs. Ricciardi did not report going into the bedroom where these items were at and instead she said she was choked out by the door and once the assailants left she went to get her phone from the bathroom and called 9-1-1. The above items were as far as 7' from the door.

I contacted Officer Lutu who was still at St. Vincent's with Mrs. Ricciardi and asked him to take photographs of Mrs. Ricciardi's injuries as well as the baby car seat. I also requested Officer Lutu smell the baby car seat for any signs of OC and he told me there was no smell and/or staining as would be expected had the baby been sprayed in his face with OC.

Officer Lutu informed me that the evidence had been collected, specifically clothing, and he was going to maintain control of the evidence which he did until he entered it into evidence. Officer Lutu informed me that Mr. and Mrs. Ricciardi were on their way home so Det. Coulson and I waited at the location for them to arrive.

Upon their arrival I asked Mr. Ricciardi if I could speak with him which he agreed to. Det. Coulson and I asked him to walk us through the day's events. Mr. Ricciardi told us he woke up around 9:00am and cleaned up the house a little bit. He said he went over to McDonald's and bought breakfast for everyone and then came home with it. He said he decided to go to the gym around 10:45am and he took his oldest son, Santino, with him. He said he got home from the gym around 11:30am and that is when he found out what was going on.

Mr. Ricciardi said he currently works at Benchmade Knives and has worked there since November 18, 2010. He said he was supposed to go to work at 1:00pm that day.

Mr. Ricciardi said he has been married to Julie for 4 years and they have two children together. Mr. Ricciardi told me that someone has been stalking his wife and attacking her for the last week. I asked him to tell me what he

knew about the other incident and he gave me the following information.

Mr. Ricciardi told me that last Monday (December 27, 2010) he called home from work like he always does. He said Julie told him that a mixed guy in an electrician's uniform tried to force his way into the apartment but she sprayed him with her mace and he ran off. He explained that he always has mace by the door just in case something like this were to happen. He said that Julie called 9-1-1 that day and then called his father, Salvatore Ricciardi Jr., but she never called him.

Mr. Ricciardi said later that same day the same guy tried to attack her again. He said the guy beat her up and put a big bump on her face and he "tried to rape her". He said that he made the decision after the last attempted rape to stay home with his wife and he took a week off from work. Mr. Ricciardi said today was going to be the first time he returned to work since the attacks on December 27, 2010.

Mr. Ricciardi said he has made a point not to leave Julie at the apartment alone. He said on Tuesday (December 28) he had to go to Fred Meyer so he told Julie to go upstairs to the neighbors (at that point their apartment was ground level) so she would not be alone. He said when he got home he noticed that the back screen door was off and he became suspicious that maybe the previous attacker had returned.

Mr. Ricciardi said the next time he left the apartment was on Thursday (December 30) when he went to the gym. He said he got paged at the gym that he had a phone call. When he got on the phone it was Julie and she told him someone came into the house. He said he went home and Julie told him she was in the bathroom when their dog started growling. She said she went out to the living room to see what was going on and she noticed that the screen door was off again. She also said three of the vertical blinds on the inside of the apartment had been ripped down. He said they talked to the management company at the apartment and they agreed to move them from apartment 17A to their current apartment which is the top floor.

Mr. Ricciardi said the only thing he could think is that a few months back he went to Portland to buy some Cocaine and he ripped the guy off. I asked him how he ripped the guy off and he said he gave him \$200 in fake money. I asked if there was anyone else and he said there was a girl who expressed a desire to be with him but when he did not reciprocate she threatened to

hurt his girlfriend in order to be with him. I asked him if this female knew where he lived and he said she did not. I asked if she had his current phone number and he said she did not.

I asked Mr. Ricciardi if he thought the events over the last 7 days were suspicious and he said he did but he has no idea who it might be. At this point it seemed obvious that Mr. Ricciardi was not suspicious that Julie was fabricating this most current event or any of the previous events. Mr. Ricciardi said there is nothing stressful going on at this point and they make enough money to pay their bills so they have no stressors about money.

Another family member who was at the scene was Mr. Ricciardi's father, Salvatore Ricciardi Jr. I asked Mr. Ricciardi Jr. if I could speak privately with him and he agreed. Mr. Ricciardi explained that he moved to Oregon from New York in 2002 after retiring from the police department. He said that his son joined him in 2004 and then went to the military where he ultimately met his wife, Julie. He said as far as he knows Julie was deployed but he is not clear on the details of where she was deployed to. He said his son was deployed to Afghanistan for a short period.

Mr. Ricciardi Jr. said he has a good relationship with Julie and likes to spend time with his grandsons Santino and Antonio. He said he knows that Julie is on medications for PTSD but he does not really have the details about it. He said that his son goes to work from 3am to 3pm and as far as he knew Julie never had a problem with it. He said that Julie makes enough money from the military and she does not have to work. He said he has never known Julie to be irresponsible and he could not imagine who would be trying to hurt her or why.

At this point Det. Coulson and I then asked Mrs. Ricciardi if we could talk with her in more detail about the day's events and she agreed to do so. Mr. Ricciardi Jr. placed a chair in the bedroom so she had a place to sit as there was no furniture in the bedroom. This interview was recorded and is going to be transcribed for accuracy. That will be made a matter of report upon completion.

As soon as Mrs. Ricciardi was confronted with the discrepancies between her version of today's events and the evidence she told us to get out of her apartment.

Given that Mrs. Ricciardi had placed Antonio in a dangerous situation by

spraying the apartment with OC the Department of Human Services had been contacted by Beaverton Police Department. Caseworker Jessica Telling and a second caseworker were waiting outside the apartment to evaluate the family and make a plan for the children to be kept safe and out of harm's way. Given that Mr. Ricciardi admitted buying and obviously using Cocaine within a few months he was also going to be assessed for suitability for maintaining physical custody of the children.

Mr. Ricciardi became irate when told that Mrs. Ricciardi had made the day's events up. Mr. Ricciardi cursed us and told us to leave his apartment as well. I placed the key to the apartment back on the bar upon my arrival and Mr. Ricciardi retrieved it. I asked Mr. Ricciardi if he would like me to walk him through the evidence that led us to this conclusion and he agreed he would like that. Det. Coulson and I walked him through some of the above discrepancies in the story based on evidence at the scene and after being informed of just a handful of the glaring issues he apologized and said he just could not believe she did this.

After DHS Caseworker Telling spoke with Mrs. Ricciardi she was able to determine that Mrs. Ricciardi had fabricated today's events. According to Caseworker Telling Mrs. Ricciardi admitted she cut herself/hurt herself in an effort to feel better as she has been suffering from severe depression (for full details see Caseworker Telling's report). Mrs. Ricciardi mentioned that she heard if she cut herself it would help her feel better which is why she did it.

Mrs. Ricciardi refused to give any further statements to the police and was quite hostile to the police for the duration of our contact. Det. Coulson did ask Mrs. Ricciardi if she harmed herself in an effort to take her own life and she said she did not.

Caseworker Telling was able to put together a safety plan for the children, Santino and Antonio, to be placed with their paternal grandfather Salvatore Ricciardi Jr. and his partner Romnee AUERBACH at 16916 NW Arizona Dr in Beaverton, OR. Caseworker Telling completed her interviews and after she was done the Beaverton Police Department and all representatives cleared the location.

Det. Coulson and I would later enter all the evidence confiscated from the scene into property at the Beaverton Police Department under receipt #

126067 as Items 1-13. Item #14 is a test strip conducted by Det. Coulson showing the burn patterns for the curling item (Item #8) to clarify how Mrs. Ricciardi burned herself on the neck and arm with the curling iron.

All the items of evidence on scene were photographed by either Det. Coulson and/or Criminalist Clark - for full details see photographs. Criminalist Clark also conducted some blood swabs from the evidence and turned them over to the Beaverton Police Department which we later placed onto receipt #126067 as Item #12.

Although Mrs. Ricciardi admitted that she fabricated today's events she would not admit to Caseworker Telling that the events from a week before (10-8696) were fabricated.

ACTION RECOMMENDED

CASE CLEARED UNFOUNDED - EVENTS DID NOT TAKE PLACE

FORWARD A COPY TO DHS - ATTN JESSICA TELLING

FORWARD A COPY TO WASHINGTON COUNTY DA'S OFFICE FOR INFORMATION ONLY AT THIS POINT

EXHIBIT B



PROSECUTING ATTORNEY

ADAM N. KICK, PROSECUTOR

RECEIVED

FEB 24 2014

Washington Appellate Project

February 14, 2014

Marla Leslie Zink
Washington Appellate Project
1511 3rd Avenue, Suite 701
Seattle, WA 98101-3647

Dear Ms. Zink:

Enclosed are the documents and information on the Eaglespeaker case that we have been discussing. Most of these were probably already supplied to you by Mr. Lanz, but what is here should be complete. There are eight packets as follows:

1. Some miscellaneous material on the Eaglespeaker case that came in at the end (after the verdict)--pre-sentence investigation report, Ms. Ricciardi's victim impact statement, and Ms. Ricciardi's restitution request. I was not 100 percent Mr. Lanz got these, so I'm sending them.
2. The reports we discussed on allegations that Ms. Ricciardi engaged in child abuse
3. The reports on an allegation by Ms. Ricciardi that foster parents had marijuana—see the final miscellaneous packet which contains some materials related to this allegation and how it was allegedly false.
4. Materials from criminal case on David Linn where Ms. Ricciardi and her boyfriend were tangential witnesses—I did not include all information on this case, only materials relating to Ms. Ricciardi and her boyfriend. This is pretty tangential. Mr. Lanz also represented Mr. Linn.
5. Materials from criminal case on Lacie Moore, where Ms. Ricciardi is alleged victim. Mr. Lanz also represents Ms. Moore. Ms. Moore is taking a polygraph, and if she passes, we intend most likely to dismiss this case. **This packet contains possibly the most exculpatory material of all—see notes of my conversation with Russell Helm where he claims he was “there” at the alleged rape by Eaglespeaker and that the allegations were all false, etc.**
6. Materials from Oregon Det. Mike Purdy and notes of my conversation with him.

7. Another Oregon report retrieved for me by our Det. Tim Garrity
8. Miscellaneous materials, mostly relating to my conversations with Pilar DeLustro and other relatives of Ms. Ricciardi's ex-husband.

I wanted to make sure information provided was complete which is the reason for this delay. I am sure we will be in touch.

Sincerely,



Yarden F. Weidenfeld
Chief Criminal Deputy Prosecuting Attorney
Office of the Skamania County Prosecuting Attorney

EXHIBIT C

CONVERSATION WITH RUSSELL HELM ON MOORE CASE

- Problems with these people, ridiculous, over the top; not reported a month later; vindictive—thinks D (my girl-friend) called CPS—that is true
- Eric (Daniels Anthony)—made third statement six months later; altercation—him and Deputy Scheyer when tried to give statement—ended up arrested—wanted Malt (?)—on heroin at the time; drug-tested; no surprise
- Suspicious activity there—people in and out all night—told police—started problems—not square people—tried to be friends
- D (pregnant)—befriended Ricciardi because pregnant—soft spot
- She (?) took right away; allowed into our home and life until found out what was going on
- Tried telling Deputy Hepner at the time—don't know why he did not speak to me—I had information on the other case (i.e. Eaglespeaker)—I was there at supposed rape—she was hanging out with Eaglespeaker the whole time—every night—when her boyfriend was in jail—an hour before—no 10:30 PM—the night of the supposed rape—she was sitting on the couch cuddling and kissing Eaglespeaker—hanging out for two weeks with him—shocked me
- Julie Ricciardi is not a very credible person—she is a liar—minh (?—can't read my notes)
- Situation on this case is ridiculous
- Happened six months ago—not reported until a month after the incident—the day after her kids were taken away; all is vindictive/vengeful
- All statement (?)—Eric was never even there—all added there; only in situation were four of us (?)—standing between—making sure not touch—no physical contact
- Eric was staying with people on other side of 6=5—stan (?) and —have fire in North Bonneville—displaced; guess he opened door and walked off—don't know if in living room—over there hanging out doing something
- Lacey (D) knocked —locked earlier—when returned dish—Ricciardi slammed and locked; 20-30 minutes there; all stuff—never got—still have it

- D knocked; Eric opened door and walked off when Ricciardi was up—D wanted back—started yelling; I was right there; I wanted that they not put hands on each; neither did Scott (Ekman) want this—we were civil/neighborly; nobody ever touched anybody
- So many problems—moved because all doing/causing
- Want to know what kind of people these are
- Hostages in our own home; not outside—argument over something; accuse us; cops—said throw dog shit; gone all day; just wanted us in trouble; don't know how found out—all talk—all druggies—process of elimination?
- Ricciardi (?) says only do because took my kids
- No want remember know people—such crooked business—shocked me; so long
- Even Deputy Hepner—when Ricciardi called and said saw me throw dog shit —b: at school all day; Deputy Hepner came and said this will not help your (Ricciardi this way? Like no believe
- I go to Clackamas Community College—water and environmental program—ca schedule—certified; finish degree
- Confrontation—all year (?)
- There was no physical contact by D to Ricciardi; D did not cross into threshold of anyone's home
- **It's a travesty—Eaglespeaker did not rape her—I know that from the bottom of my heart—not prove; Eaglespeaker was there for two weeks hanging out with Ricciardi every day—he stayed there—Ricciardi found out Scott (Ekman—her boyfriend) was out of jail early two or three weeks—not month—I wish there was a statement from me before the Eaglespeaker trial—Ekman (?) was home the very next day; that night was the incident; Ricciardi tried calling me and Lacey before the police—I need help, come over; I am—no, not know help (?); Ricciardi was not frantic, hysterical—just said can you come over and help with something; I found the next morning she said it was rape**
- I am not friends with Eaglespeaker; not saying this for him; not want to say another hu (?)—trouble too (?); not do; not friends; the only reason is that Ricciardi is a liar and will manipulate any situation into her favor; after living next door about six months (from November 2012)—we were out in mid-May; we know what kind of people Ricciardi and Scott

Ekman are; we love North Bonneville; we hated the six months there near Ricciardi and Scott Ekman

EXHIBIT D

On June 4th 2013 I met with Regina Rizo and Salvatore "Sal" Ricciardi at the Beaverton Police Department. Rizo had called me and set an appointment to provide me evidence that Julie Ricciardi had perjured herself at a grand jury hearing in Washington County in an assault case involving Jonathan Ricciardi that I investigated. See case number 11-608737 for details on the assault investigation.

We met in a conference room in the detective division and spoke for about a half an hour. Rizo told me that Julie Ricciardi had moved to Skamania County in Washington State. And that Julie Ricciardi was still in a relationship with Scott Ekman. She stated Julie Ricciardi had her children taken away by the state because of multiple calls of child neglect and methamphetamine use.

Rizo told me there had been another case where Julie Ricciardi was a purported sexual assault victim in Skamania County and the suspect in that case had been arrested and since convicted and sent to prison. Rizo was concerned that Julie Ricciardi may have not told the truth during that proceeding as well. She told me Det Tim Garrety was the investigator on the case.

Rizo also provided me with the name and phone number of Julie Ricciardi's child welfare case worker, Vicky Larsen, 509-427-0799 ext 704.

Rizo and Sal Ricciardi provided me with a copy of a video from a child dependency hearing where Julie Ricciardi testified that she perjured herself at a grand jury hearing in Washington County. They told me that Julie Ricciardi admits to perjuring herself at 3:32pm on the recording. I made a digital copy of the disc they had explaining that I would have to order a certified copy for it to be regarded as evidence.

Rizo and Sal Ricciardi also provided me with five pages of Skamania County Sheriff's Office, CAD Master Call Tables, which I have attached to this report.

On July 9th 2013 Sal Ricciardi came to see me and inquire on the status of this investigation. I told him that I had been extremely busy and I would get to the case soon. Sal Ricciardi provided me with two motions from the Superior Court of Washington for Skamania County. He told me the motions concern Julie Ricciardi admitting to perjury at the hearing they had told me about. I have attached those motions to this report as well.

On July 17th 2013 I reviewed the video and saw the hearing took place on April 10th 2013. I did not watch the entire child custody hearing. I only watched the section leading up to where Julie Ricciardi stated she lied to a grand jury in Oregon. Julie Ricciardi was being questioned about her military service overseas and an article 15 proceeding for drinking alcohol in a combat theatre by an attorney representing Jonathan Ricciardi.

An article 15 is non judicial punishment and refers to certain limited punishments which can be awarded for minor disciplinary offenses by a commanding officer or officer in charge to members of his/her command under the Uniform Code of Military Justice (UCMJ).

Julie Ricciardi stated was discharged from the military in April of 2007 and received a general under honorable conditions discharge. There was some discussion of what the discharge from the military meant. The questioning transitioned to Julie Ricciardi's medical treatment in the military and whether or not she used illegal narcotics in the military. She talked about being drug tested in the military and never being notified that she failed any of the tests.

At about 3:29pm the questioning transitioned to "some sort of incident" that occurred in Beaverton Oregon. The attorney referred to Beaverton Police case number 11-600049, that occurred on January 3rd 2011, where Julie Ricciardi reported she was attacked and raped during a burglary at her apartment, which she later admitted did not happen. When Julie Ricciardi was responding to the attorney she asked if he was referring to the incident where Jonathan Ricciardi attacked her prior to going to the gym and then told her to tell the police that someone else did it or the incident earlier where he tried to slit her throat with a paring knife and she went to the grand jury and lied for him. Upon further questioning Julie Ricciardi stated she had lied about what happened because Jonathan Ricciardi told her to and so the forensic evidence did not support her lies.

The attorney continued by questioning Julie Ricciardi about burn marks on one of her children. Julie Ricciardi responded by saying the marks were on her child's knees from playing outside and that she had never burned her children. She went on to say how she would protect her children from anything like that happening to them.

Another attorney questioned Julie Ricciardi regarding some photographs taken of a purported marijuana pipe in the car belonging to the foster parents on a day of child visitation the proceeding week.

A female attorney then asked Julie Ricciardi if she just testified that she lied to a grand jury in order to protect Jonathan Ricciardi. Julie Ricciardi said she did and she told those lies in 2009. She was asked what lies she told the court that day. Julie Ricciardi stated that she told them she made everything up because she was mad a Jonathan Ricciardi. She was asked if when she was told those lies in court if it was under penalty of perjury and she said it was.

Another attorney asked a question for "redirect" and he asked Julie Ricciardi if she had broken the cycle of violence at that time. Julie Ricciardi responded by saying she had not broken the cycle of violence and that she had stayed with him after the conviction for that offense.

Searching Beaverton Police Department Records I found Case Number 09-605732 that was reported on July 25th 2009. Jonathan Ricciardi was arrested by Assault in the Fourth Degree, Menacing and Unlawful Use of a Weapon. From Julie Ricciardi's testimony this was the case where she reported that she lied to the grand jury.

I also reviewed my report for Beaverton Police Case Number 11-608737 and found in my special report dated 12/15/2009 at 1600hrs that Julie Ricciardi reported to me that she "was not cooperative during the investigation and subsequent trial" for that case.

The statute of limitations for most felonies to include perjury in the State of Oregon is three years. The incident where Julie Ricciardi testified that she perjured herself occurred on July 25th 2009. Grand Jury of that case would have happened within five judicial days for the date of arrest. The latest the grand jury could have occurred was August 6th 2009. Three years from that date would be in August of 2012. The hearing I reviewed in this case occurred on April 10th 2013 which is about eight months after the statute of limitations expired on the possible perjury charge.

I have left messages with Det Garrety of the Skamania County Sheriff's Office, Vicki Larsen, and Chief Deputy District Attorney Yarden Weidenfeld requesting contact regarding this matter.

Additional Information will be made a matter of report.

Det. Michael Purdy
Beaverton Police Department
Desk 503-526-2282

EXHIBIT E

SKAMANIA COUNTY
FILED
APR - 6 2015
SHARON K. VANCE, CLERK
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TYRONE EAGLESPEAKER,

Appellant.

No. 46725-9-II

MANDATE

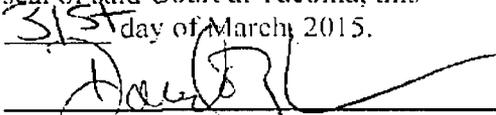
Skamania County Cause No.
12-1-00102-1

The State of Washington to: The Superior Court of the State of Washington
in and for Skamania County

This is to certify that the Court of Appeals of the State of Washington, Division II, entered a Ruling Dismissing Appeal in the above entitled case on February 23, 2015. This ruling became the final decision terminating review of this court on March 26, 2015. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the determination of that court.



IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
seal of said Court at Tacoma, this
31st day of March, 2015.


Clerk of the Court of Appeals,
State of Washington, Div. II

CASE #: 46725-9-II
State of Washington, Respondent v. Tyrone Eaglespeaker, Appellant
Mandate – Page 2

Hon. Brian Altman

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SKAMANIA COUNTY
FILED

MAY 16 2018

GRACE D. CROSS
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR SKAMANIA COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 12-1-00102-1
)	
Plaintiff,)	
)	FINDINGS AND ORDER ON
vs.)	DEFENDANT'S MOTION FOR NEW
)	TRIAL AND CrR 7.8 EVIDENTIARY
TYRONE EAGLESPEAKER,)	HEARING
)	
Defendant,)	
)	

THE ABOVE-ENTITLED CAUSE having come on for a motion before the Judge Brian Altman in the above-entitled court; the State of Washington having been represented by Prosecuting Attorney Adam N. Kick; the defendant appearing in person and having been represented by his counsel, Greg Cheney; the court having reviewed the briefs of the parties, and heard argument, now makes and enters the following findings and order regarding the defendant's motion for a new trial and motion for a reference hearing under CrR 7.8.

A. FINDINGS

1. The defendant has not made even a prima facie case that there was a *Brady* violation by the State with respect to any newly discovered evidence alleged in his motion for a new trial and a hearing to take evidence on this matter would be a fishing expedition.
2. To the extent that anyone was aware, prior to the defendant's trial, of the newly discovered evidence alleged by the defendant, the prosecutor or the prosecution team were not aware of it, and the purported knowledge by either the Attorney General or DSHS can't be imputed to the prosecutor for the purposes of his *Brady* obligations.
3. Regarding the alleged newly discovered information regarding the statements Mr. Helm made to the Deputy Prosecutor after the trial, the substance of those statements

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1 demonstrate that they were not communicated to any law enforcement officer prior to the
2 trial. Also, the substance of the statements suggests that the defendant would have been
3 aware of the information if it was true, and could have communicated that to his attorney
4 prior to the trial.

- 4 4. With regard to the alleged newly discovered information related to prior alleged false
5 allegations of rape, this evidence is “merely cumulative or impeaching” under the *State v.*
6 *Williams* test and would not be substantive evidence in this case. The victim’s credibility
7 was already made an issue in the case when she was questioned about providing prior
8 false testimony under oath to an Oregon grand jury.

7 B. ORDER

8 I.

9 The defendant’s motion for a hearing under CrR 7.8(c)(2)(ii) is denied.

10 II.

11 The defendant has not made a substantial showing that he is entitled to relief under CrR 7.8.

12 III.

13 The defendant’s motion should be transferred to the Court of Appeals for consideration as a
14 personal restraint petition.

15 Signed this 16 day of May, 2018.

16 
17 _____
18 JUDGE RANDALL C. KROG

18 Presented by:

19 _____
20 Adam N. Kick, WSBA # 27525
21 Prosecuting Attorney
22 Skamania County

21 APPROVED AS TO FORM:

22 _____
23 Greg Cheney, WSBA # 44174
24 Attorney for Defendant

SKAMANIA SUPERIOR COURT

May 23, 2018 - 10:48 AM

Filing PRP Transfer Order

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Eaglespeaker, Tyrone Addison
Trial Court Case Number: 12-1-00102-1
Trial Court County: Skamania Superior Court
Signing Judge:
Judgment Date:

The following documents have been uploaded:

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- maureen@washapp.org

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Sender Name: Paula I Diaz - Email: diaz@co.skamania.wa.us

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