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No. 51915-1-II

Skamania County Superior Court No. 12-1-00102-1

IN RE THE PERSONAL RESTRAINT PETITION OF:
TYRONE ADDISON EAGLESPEAKER

REPLY TO
RESPONSE TO PERSONAL RESTRAINT PETITION

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I. ARGUMENT

A. Eaglespeaker Should Be Allowed to Question the Victim's Newly Discovered False Rape Allegation Regarding the Effect of Substance Abuse and Mental Health on Her Accusation in Both Instances.

Eaglespeaker's conviction should be vacated and a trial should be granted for newly discovered evidence when the interest of justice requires vacation. RAP 16.4(c)(3). The test for relief resulting from newly discovered evidence in the form of a Personal Restraint Petition is the same as a motion for new trial. *In re Lord*, 123 Wn. 2d 296, 319-20, 866 P.2d 835 (1994) (citing *In re Jeffries*, 114 Wn. 2d 485, 493, 789 P.2d 731 (1990) (citing *State v. Williams*, 96 Wn. 2d 215, 223, 634 P.2d 868 (1981)), clarified by *In re Personal Restraint Petition of Lord*, 123 Wn. 2d 737, 870 P.2d 964 (1994). The defendant must show the evidence "(1) will probably change the outcome 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. Williams*, 96 Wn. 2d 215, 223, 634, P.2d 868 (1981).

The State concedes that the victim's admission to prior false rape allegations, contained in the Beaverton police report, is newly discovered evidence. *Response to Personal Restraint Petition* ("Response"), p. 5 ("The information, in the form of a police report from Beaverton Oregon,

was first disclosed to the Defendant by the State after Mr. Eaglespeaker was tried, convicted and sentenced. . . "). The State does not dispute Eaglespeaker's argument that the victim's admission to prior false rape allegations will 1) change the outcome at trial, 2) was discovered since trial, 3) could not have been discovered by due diligence, and 4) is material. *See Response*, p. 23. The State's only argument is that the admission to a prior false rape allegation is only "impeachment" evidence and therefore relief should be denied. *Id.*

A defendant is allowed to confront an alleged victim regarding a prior false claim of rape if used for purposes other than simply painting the victim as a liar. *See State v. Lee*, 188 Wn. 2d 473, ¶35, 396 P.3d 316 (2017). For example, a defendant could confront a witness on a prior false statement if "directly relevant to the witness' ability to perceive the events at issue." *Id.* at ¶39 (citing *State v. McDaniel*, 83 Wn. App. 179, 186-87, 920 P.2d 1218 (Div. 1, 1996)). Similarly, prior false statements regarding drug use may be admissible to show how drugs affect the witness's "ability to accurately perceive the events giving rise to the alleged assault." *See id.* at ¶41 (citing *McDaniel*, 83 Wn. App. at 183-84). Similarly, prior false allegations may be admissible to demonstrate a "motivation to lie" by the witness. *Id.* Finally, prior false rape allegations

may be admissible if they “bear[] a strong resemblance to the circumstances giving rise to the allegations at issue” *Id.* at ¶ 50.

Eaglespeaker’s conviction must be reversed so that he has an opportunity to question the alleged victim regarding the parallels between the false rape allegation in Beaverton and the allegation in this case, namely the role of drugs and mental health, as well as motive to lie, in both cases. Both the present rape allegation and the prior false rape allegation involve the potential influence of narcotics. The alleged victim admitted to using narcotics in the present instance whereas in the prior instance numerous narcotics were found where the alleged attack took place. *See Motion for Relief from Judgment (“Motion”), Ex. A., p. 10* (“On the vanity counter to the left of the sink was a rectangle shaped pill split into two pieces ... 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 ... to include Oxycodone, Clonazepam, Pristiq, etc.”). The victim also admitted in the present case that she “didn’t immediately call the police [on the date of the alleged rape] because she had used drugs recently and was concerned about CPS.” *Response*, p. 12. The potential drug usage in both instances are not only relevant to testing her memory and ability to accurately perceive events, but perhaps more

importantly also relevant to whether or not drugs affect her mental state to a degree that she feels she must make up false allegations in a desperate call for attention. For example, in the prior false rape allegation, the alleged victim said that she made the false claims regarding a violent attack and rape because "she cut herself/hurt herself in an effort to feel better as she has been suffering from severe depression." *Motion*, Ex. A, p. 14. Here again, the Defendant should be allowed to explore what, if any, depression or anxiety played a role in the present allegations similar to the admitted role depression played in the prior false rape allegation. Also, in both allegations, the victim made allegations of jeans being ripped. *Compare* RP 91, Ins. 19-25 and *Motion*, Exhibit A., p. 7. With respect to the specific allegation that jeans were ripped in both cases, Eaglespeaker should be allowed to explore whether the admitted usage of drugs in this case may have caused her to commingle memories or stories of the prior false rape allegation and the instant allegation.

More broadly, Eaglespeaker, unlike the defendant in *Lee*, had no idea that the prior false rape allegations existed until *after* trial. In *Lee*, the trial court properly allowed the defendant to confront the victim regarding the victim's prior false rape allegations by limiting the inquiry to false allegations rather than false *rape* allegations. 188 Wn.2d at ¶48-49. Here, Eaglespeaker had no meaningful opportunity to explore the similarities

between the two allegations, such as the potential drug use involved and whether the alleged victim was suffering from depression in the present instance as she was in the prior false rape allegations. Because Eaglespeaker was entirely precluded from exploring the potential parallels between the two cases such the tearing of jeans in both cases, the impact of mental health and drug use on both allegations, the conviction should be vacated.

B. Russell Helm's Statements to Law Enforcement Officers are Claiming Knowledge Night's Events are Newly Discovered Evidence

Eaglespeaker's conviction must be vacated because Russell Helm's potential eyewitness testimony is newly discovered evidence regarding Eaglespeaker and the victim's actions that night. *Motion*, Ex. C, p. 1.

The State argues that Russell Helm potential te is not newly discovered evidence because "if [Helm] was with them, then Mr. Eaglespeaker could have and should have informed his attorney of any other witnesses that could contradict the victim's version of events that evening." *Response*, p. 21-22. The State provides no support for its assertion that the Eaglespeaker had actual knowledge that Helm observed the Defendant and victim together. The State also confuses the newly discovered Helm's statements with its discovery obligations, stating "if

Helm did not speak to Deputy Hepner about the allegations he made to the prosecutor about being with Mr. Eaglespeaker and the victim on the evening the rape took place, then Deputy Hepner did not have any exculpatory evidence to disclose." *Id.* at 21. In fact, although not known at the time the *Motion for Relief* was filed in the trial court, Russell Helm signed a declaration stating that he observed the Defendant and victim on the night of the alleged incident and told that to a uniformed officer (presumably Deputy Hepner), several days later. See *Declaration of Gregory S. Cheney* ("Cheney Decl."), ¶ 2, Ex. A.

For the purposes of whether or not a case should be reversed for newly discovered evidence, whether or not Deputy Hepner knew about it prior to trial is not relevant (although it may be relevant under a *Brady v. Maryland* analysis.). Because Helm's eyewitness testimony could lead to a different verdict by establishing critical facts as to the Eaglespeaker and the victim's interactions on the night of the alleged rape, could not have been discovered prior to trial (as there is no evidence Eaglespeaker knew Helm's observed them on the evening in question, is material and not impeaching, the Court should vacate the Defendant's conviction or grant other appropriate relief. Alternatively, if the Court does not believe there is sufficient information regarding the potential testimony of Russell Helm, the Court should send this matter to the superior court pursuant to

RAP 16.11(b) for further determination of the facts regarding Helm's potential testimony.

C. The State had Constructive Knowledge of the Prior False Rape Allegation and Actual or Constructive Knowledge of Russell Helm's Statements

A prosecutor has an obligation 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 v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed 2d 215 (1963)). Whether the State violated its disclosure obligation is entirely independent of the Court's analysis of whether the prior false rape allegation or Russell Helm statements are newly discovered evidence.

The State does not deny that the victim's prior false rape allegation contained in the Beaverton police report is potentially exculpatory or impeaching and material to the present case. *See Response*, pp. 21-22. The State's sole argument that it did not violate its discovery obligations because the State did not have actual or constructive knowledge of the prior false rape allegations or the Beaverton police report contained in DSHS files. *Id.*, pp. 20-21. However, the victim had prior knowledge of her own false rape allegations when she admitted in a dependency hearing in Skamania County on April 10, 2013 (approximately two weeks before Eaglespeaker's trial) the prior false allegations.

A prosecutor is required to disclose all exculpatory information "in the government's possession or knowledge, whether actual or constructive." *State v. Davila*, 183 Wn. App. 154, ¶ 30, 333 P.3d 459 (Div. 3, 2014) (citing *United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir. 1999); *In re Brennan*, 117 Wn.App. 797, 804, 72 P.3d 182 (Div. 1, 2003)). "An inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment." *Id.* (citing *Strickler v. Greene*, 527 U.S. 263, 288, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). In *Davila*, the court held that the prosecutor was charged with constructive knowledge of a WSP crime lab report regarding the incompetence of the forensic examiner because the witness testifying for the prosecution had direct knowledge the exculpatory report. *Id.*, ¶ 29-31.

In this case, the State violated *Brady* obligations when it failed to disclose prior false allegations of rape by the victim to law enforcement. Here, the State's leading witness, the alleged victim, certainly had direct knowledge of her prior false rape allegations as they involved her own dishonest conduct. Just as in *Davila*, the alleged victim either specifically or inadvertently failed to disclose the prior false rape allegations. As a result of the alleged victim's failure to disclose (either affirmatively or inadvertently) the prior false rape allegations, the State violated its *Brady* obligations. Because the prior false rape allegations are favorable both for

exculpatory purposes, such as state of mind due to depression or narcotics use, and for impeachment purposes, and is prejudicial because it “undermines confidence in the outcome of the trial” by denying Eaglespeaker the ability to explore the factual nuances of the prior false rape allegation, particularly in light of admitted mental health and substance abuse issues of the victim on the present case. *See Davila*, 183 Wn. App. at ¶35 (citing *Kyles v. Whitley*, 514 U.S. 434., 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)).

The State also does not dispute either the potentially exculpatory nature of Helm's potential testimony or its materiality, only that it did not have constructive knowledge, or, if it did have actual knowledge Eaglespeaker knew or should have known of his existence as a potential witness. *Response*, p. 21-22. Again, the State points to no reason as to how Eaglespeaker would have known whether Helm's observed him and the victim on the night of the alleged rape. Rather, Russell Helm's declaration is critical in that he specifically told a “uniformed officer” (presumably Deputy Hepner) about his observations of Eaglespeaker and the victim on the night of the incident. *Cheney Decl.*, Ex. E. That Helm's potential statements were not disclosed, even if inadvertently, constitutes a *Brady* violation because they are potentially exculpatory, material, and raise a fundamental question of fairness in the case.

II. CONCLUSION

Eaglespeaker's conviction should be vacated or other appropriate relief granted because of newly discovered evidence regarding the victim's prior false rape allegations and a new, potentially exculpatory witness. Likewise, the conviction should be vacated or other relief granted because the State failed to disclose the prior false rape allegations made by the victim and the existence of a conversation between a sheriff's deputy and a potential eyewitness which are . In the event that the Petition cannot be determined solely on the record presented, Eaglespeaker would request an evidentiary hearing pursuant to RAP 16.11 and RAP 16.12.

Respectfully submitted this 31 day of October, 2018.


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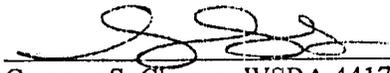
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I, Gregory S. Cheney, certify that I served Petitioner's *Reply to Response to Personal Restraint Petition, Motion to Allow Filing of Declaration of Gregory S. Cheney and Exhibits as an Appendix to Reply to Response to Personal Restraint Petition, Motion to Seal Exhibits (A) and (D) in Defendant's Motion for Relief from Judgment*, and this *Certificate of Service* on October 31, 2018 to:

Adam Kick
Skamania County Prosecuting Attorney's Office
240 Vancouver Ave
Stevenson, WA 98648

DATED this 31 day of October, 2018


Gregory S. Cheney, WSBA 44174

GREGORY S. CHENEY, PLLC

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