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

IN RE THE PERSONAL RESTRAINT PETITION OF:

TYRONE ADDISON EAGLESPEAKER

RESPONSE TO PERSONAL RESTRAINT PETITION

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I. AUTHORITY FOR PETITIONER'S RESTRAINT

Authority for restraint of Petitioner Tyrone Addison Eaglespeaker (Mr. Eaglespeaker) lies within the Judgment and Sentence rendered by the Superior Court of the State of Washington, County of Skamania, on 5/1/14 in Cause No. 12-1-00102-1, upon his conviction after a jury trial of one count of rape in the second degree – forcible compulsion, RCW 9A.56.050(1)(a), committed on or between 12/19/2012 and 12/20/2012, one count of violation of the uniform controlled substance act - Possession of Methamphetamine, RCW 69.50.4013, committed on 12/21/2012, and one count of violation of the uniform controlled substance act – use of drug paraphernalia, RCW 69.50.412(1) committed on 12/21/2012.

II. RESPONSE TO PETITIONER'S CLAIMED GROUNDS FOR RELIEF.

Mr. Eaglespeaker alleges two possible pieces of “new discovered evidence,” and violations of the State's Brady v. Maryland obligations to disclose that information. The first is evidence that the victim in this case had made a previous allegation

of rape that was false. This 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, when the report was disclosed to the Skamania County Sheriff's Office by the victim's in-laws, who were involved in their son's custody dispute with the victim. There is no allegation that the State had actual knowledge of this report prior to the trial, or that the State delayed in disclosing the information once they were made aware of it. Rather, the Mr. Eaglespeaker alleges that the State must be imputed to have knowledge of the Beaverton report because it was mentioned in a dependency proceeding in which both DSHS and the Washington Attorney General appeared to have knowledge of the report. The State disclosed the information as soon as it was received, and knowledge held by DSHS or the Washington Attorney General can't be imputed to the Prosecution.

The second piece of "newly discovered evidence" is a statement made by an alleged witness, Russell Helm, to the State in the context of another prosecution regarding that witness's girlfriend. The victim in this case, Julie Ricciardi, was also the victim in that case. Russell Helm told the State that he was

present with the victim and the Mr. Eaglespeaker the night of the rape in this case, and observed the Mr. Eaglespeaker and the victim together, kissing and snuggling. If true, the Defendant alleges that this evidence would have contradicted the victim's allegations of what occurred the night of the rape. There is no evidence that Helm disclosed this evidence to the State (prosecutor) prior to the trial, as the case against Helm's girlfriend was not filed until after Mr. Eaglespeaker's trial. Mr. Eaglespeaker alleges that Deputy Mike Hepner may have had this information prior to the trial and not disclosed the information. However, the Defendant presents no evidence that Helm actually disclosed this to Deputy Hepner. Rather, Helm only claimed that he "tried telling Deputy Hepner at the time – don't know why he did not speak to me." [Quoted verbatim from prosecutor's notes of interview, but not necessarily a verbatim quote of what Helm alleged.]

There is no actual evidence that the Prosecution violated their Brady obligations and the proposed newly discovered evidence is merely cumulative or impeaching, so this Personal Restraint Petition should be dismissed.

I. FACTS

A. Disputed Material Facts

It is unnecessary for the state to dispute any alleged facts for the purposes of responding to this Personal Restraint Petition.

B. Statement of Relevant Facts

Julie Ricciardi, 25 years old, lived in North Bonneville, Skamania County, Washington since October 2012, with her boyfriend Scott Ekman and three small children. The defendant, Tyrone Eaglespeaker, was the boyfriend of Nicole Nash, a friend of Ricciardi's.

After October 2012, Eaglespeaker "started to come around more often to hang out with Scott [Ekman]. Eaglespeaker and Nash lived together in North Bonneville, Skamania County, Washington, less than a half- mile from Ricciardi and Ekman. Eaglespeaker and Nash came over to Ricciardi's and Ekman's place together "a lot."

Ekman was incarcerated from December 5, 2012 through January 6, 2013, leaving Ricciardi at home alone with her three children, other than one week when Ekman's sister was visiting.

Nash was out of town in late December 2012, leaving Eaglespeaker living at her place in North Bonneville. During this period of time, Eaglespeaker "made passes" at Ricciardi, to which Ricciardi made it clear she was not interested.

While Ekman was incarcerated, Ricciardi let Eaglespeaker borrow Ekman's cell phone, keeping her own cell phone for herself. On the evening of December 19, 2012, Ricciardi engaged in a dialogue by cell phone with Eaglespeaker, the latter using Ekman's borrowed phone. In the dialog, Ricciardi was arranging for Eaglespeaker to arrive at her home to help sell Ekman's truck canopy, which Ekman no longer wanted.

Later on, Ekman called Ricciardi from prison, and the two of them "got into a really, really bad argument." During that argument, Eaglespeaker came over to Ricciardi's home "a couple times," but when Ricciardi answered the door, Eaglespeaker realized she and Ekman were still arguing, so he left. Ricciardi later texted Eaglespeaker, "I feel like throwing up," because she was so upset with Ekman.

Ricciardi then texted Eaglespeaker, "Why are you ignoring me?" because he had come over while she was arguing with

Ekman “obviously to say something” but then would not respond to her text. Eaglespeaker responded with, “I’m waking up, U up, sorry?” but later corrects that to, “I just woke up. I’ll be over in a few.”

The dialog continued with Eaglespeaker texting, “Do you miss me?” Ricciardi, feeling the comment was inappropriate when both of them had significant others and feeling there was no reason to miss him since she had “just seen him a few hours before,” responded, “How is Nikki doing?” referring to Eaglespeaker’s girlfriend. Eaglespeaker responded, “I don’t know why that you always have to talk shit.”

Eaglespeaker continued with a question, “How’s Scott [Ekman] and Kevin?” Kevin was another friend. Ricciardi replied that neither was doing well. She also wrote, “I’m over it. He [i.e., Ekman] wants to be with me for all the wrong reasons,” based on her just concluded argument with Ekman over the phone. Eaglespeaker asked if she meant Ekman or “Kevin,” and Ricciardi clarified that she meant Ekman, replying, “It’s 11 p.m. and my kids are still awake. I was only up the night before. Kevin’s just a friend.”

Ricciardi continued the conversation by texting, "You can go back to sleep if you want." Eaglespeaker responded with "I need to shower, WBU?" meaning "What about you?" Ricciardi responded, "Yeah, but I always wait until my kids are asleep." Eaglespeaker then replied, "Okay, well if you want me to come over then let me know." Thinking the conversation was getting to an inappropriate area, Ricciardi replied, "Sweet dreams." The conversation continued as follows:

Eaglespeaker: Yeah, don't let the meth bugs bite.

Ricciardi: What's up with you. You're either really nice or really mean, confusing.

Eaglespeaker: Really mean, but my album's incredible. Are you ready to hump?

Ricciardi: No, but at least now I know that's the only reason that you wanted to hang out, not surprising, happens a lot.

Eaglespeaker: Okay, you're such an ass. You make me feel like an animal or is it cuz I'm an Indian. Well call it what you want, that's what normal people do. To me it seems there's no mutual attraction. You brush me and push me away, tease me. I'm man plus an addict, so you don't have to treat me like I'm being put through a test a time. I don't mean to want to fuck you but you are so attractive to me. Wish you felt like I did and not want me for the wrong reasons. I'm leaving your phone on your doorstep, I'm frustrated.

Ricciardi: Why does it have to revolve around sex? You're being stupid right now. You're totally tripping. Who cares if you're an addict, who isn't? WTF, I didn't do anything to deserve this. You're being a brat so if I don't fuck you then you don't want to hang out? Real

mature, I didn't think you were that shallow. Wow, I can't fucking believe you."

Eaglespeaker: I'm not shallow. I'm a man who has hung out with you for days and get no affection or attention hardly so naturally I feel like I'm just a reject. I have never been so lonely in a long time and you and your patience style is driving me in such as I crazy. If I can't have it my way, I don't want it at all. That's just the way I am. I want you so bad. I waited for days to be stalled. Excuse me for naturally feeling this way. I'm just lonely and I have no real person to be my remedy. I'll be your friend but I'd rather waste my time elsewhere because I have blue balls. LOL [i.e. laughing out loud]

Ricciardi: I'm speechless basically if I don't fuck you I'm not worthy of being your friend. I deserve more respect than that and I won't expect anything less. You are being pretty shallow, shallow, shallow. I bet ugly girls don't have to worry about people pretending to care just because they want to fuck. Waste your time elsewhere if want. I won't be my loss, that's for damn sure.

After a gap of time, Eaglespeaker again texted Ricciardi, "You up still?" to which Ricciardi replied, "Yep, kids just fell asleep." After this, Ricciardi herself fell asleep in her bedroom (the master bedroom) at around 3:30 AM (on December 20, 2012).

The next thing Ricciardi knew, Eaglespeaker "was standing about two feet into the doorway of the master bedroom," maybe a foot away from Ricciardi's bed. Ricciardi was still laying on her bed. Ricciardi had not given him permission to enter, but she

could not recall if she had locked the back door. Eaglespeaker then forced himself on top of Ricciardi, holding her down “diagonally” with one arm while he took his other hand and tried to unbutton her pants. Ricciardi repeatedly told Eaglespeaker to stop and that she didn’t want “to do this,” and resisted his attempts to force himself on her. Ricciardi resisted by trying to push Eaglespeaker off her, and kicked her legs, but couldn’t overcome Eaglespeaker as he would just use more force, the more she resisted. Eaglespeaker was able to get his hand into Ricciardi’s pants and penetrate her vagina with his fingers. The penetration lasted for a couple minutes when Eaglespeaker suddenly stopped and got up, and left.

Ricciardi got up and locked the door after Eaglespeaker left the residence. Her 6 month old child had woken up and she took care of the baby, estimating that Eaglespeaker left at about 6:15 AM. Ricciardi was scared, but didn’t immediately call the police because she had used drugs recently and was concerned about CPS. She did not initially think that Eaglespeaker would return.

Ricciardi acknowledged that it was not unusual for Eaglespeaker to come to her residence and did not recall if she’d

locked her door the night of 12/19/12 or not.

Eaglespeaker returned to Ricciardi's residence about 4 – 5 hours later, asking to borrow her car and offering to pick up baby formula for her. Ricciardi was shocked that he had returned and told him to take the car, not wanting him to be near her. When Eaglespeaker left, Ricciardi attempted to tell a friend what had occurred, and ended up telling an acquaintance, Ruanna Johnson. She also showed Ruanna Johnson the text messages from Eaglespeaker from that night (before). Ricciardi believed that Ruanna Johnson and her friend Nicki would kick Eaglespeaker out of Nicki's home, so he'd have to leave North Bonneville.

Ricciardi received another text message from Eaglespeaker later in the afternoon on December 20th, 2013, while he was still using her car. The text message said: "Okay, I just feel like I violated you, sorry, no drama. It's not easy to be on this elevator up and down, down, down." Ricciardi and Eaglespeaker sent several other texts back and forth the evening of December 20th, as Ricciardi did not want Eaglespeaker to know that she'd told anyone about what he'd done to her the night before. Eaglespeaker made several voice calls to Ricciardi on the evening of December 20th,

also. After returning to Nicki's house and finding out that Ruanna Johnson was attempting to make him leave the residence, he called Ricciardi and told her if she didn't tell Ruanna Johnson that Ricciardi was lying, that he'd call CPS and other threats. He made repeated phone calls about those threats and sounded angry. Later on he called again, while Ruanna Johnson was at Ricciardi's residence, and asked if he could stay at Ricciardi's house because Nicki was kicking him out. When Ricciardi told him that he couldn't stay, after what he'd done to her, Eaglespeaker responded that it wasn't that bad, and that it hadn't gone that far.

Nicole (Nikki) Nash spoke to Ricciardi, Ruanna Johnson, and Eaglespeaker between 12/19/12 and 12/21/12. She initially withdrew her permission for Eaglespeaker to stay at her home, but then later agreed to let him stay, in the span of one night.

Ricciardi had a friend, Randy Pies stay at her house that night to help protect her in case Eaglespeaker tried to return. The next morning Ricciardi learned from Ruanna Johnson that Nicki was not going to make Eaglespeaker leave. Ruanna Johnson suggested Ricciardi call the police, which she did.

Ruanna Johnson overheard a conversation between Julie

Ricciardi and Eaglespeaker on 12/20/13, the night before Ricciardi called 9-1-1 and reported the rape. Johnson described the conversation:

She put her phone speaker phone and she said "what do you want Tyrone?" and then he's all "why you talkin' to me like that?" and then she said "why, you know why" and then he's all "I didn't do nothin' that bad," and then she said "you call ripping off my pants while I'm screaming no, not that bad?" and he's all "No, that wasn't that bad."

Johnson also overheard and described a second conversation:

"I overheard the phone call where he was telling her to call me and tell me she was lying or else he was gonna call the cops and have her kids took away."

Johnson described Ricciardi as "frantic" and "hysterical" around that time, and encouraged her to call the police if she was scared. Ruanna Johnson tried, at Nicole Nash's direction, to get Eaglespeaker to leave Nash's residence, but Nash changed her mind the morning of 12/21/12, and Johnson told Ricciardi that he was still there.

When she realized there was no longer anyone protecting her from a return by Eaglespeaker, Ricciardi called 9-1-1. The fear and trauma that resulted from the previous night's rape made her hysterical and hard to understand on the phone call. She reported to the Skamania County Sheriff's Office what Eaglespeaker had done to her the previous night and the threats he'd made to get her not to report them.

Deputy Christian Lyle responded initially to the call. Ricciardi was hysterical and emotional, crying and was very difficult to understand, but eventually, with Deputy Lyle's assistance after his arrival, calmed down. Ricciardi told Lyle what happened, and showed Lyle several articles belonging to Eaglespeaker. Deputy Lyle also photographed a series of text messages sent to Ricciardi's phone by Eaglespeaker.

Detective Tim Garrity also responded and spoke with Ricciardi and took a recorded statement from her. After taking a statement, Detective Garrity contacted Eaglespeaker at the residence he was staying at and spoke to him briefly. Deputy Gary Manning had read Mr. Eaglespeaker Miranda warnings. Eaglespeaker denied having any sexual contact with Ricciardi, but

admitted that he went to her residence on occasion. He claimed that Ricciardi had propositioned him about taking a shower together, but that he'd rejected her and told her off because he was engaged to another woman (Nicki Nash). He also said he wouldn't want to have sex with Ricciardi because she'd just had a child and suggested that he found that disgusting. Eaglespeaker told Garrity that he didn't like going to Ricciardi's because he found her kids annoying, but he only went there to borrow her car. He also told Garrity that Ricciardi was a drug user.

Garrity questioned Eaglespeaker about his phone and was directed into another room to check it. In that room Garrity discovered methamphetamine.

On 12/21/12, Deputy Gary Manning was the first person to contact Eaglespeaker when he responded to an incomplete 9-1-1 call from another residence in North Bonneville, WA. He contacted Eaglespeaker during a protective sweep of the residence the call came from. Mr. Eaglespeaker was initially detained for officer safety by Deputy Manning during the sweep of the residence and placed in handcuffs, but was not arrested. Eaglespeaker eventually acknowledged having called 9-1-1.

After he was arrested, Eaglespeaker made a request to speak with a deputy. Deputy Mike Hepner contacted Eaglespeaker while he was at the jail. Deputy Hepner did not know why Eaglespeaker was being held in the jail. He contacted Eaglespeaker at his "pod" and then walked with him to the booking area to talk. Eaglespeaker initially told Deputy Hepner that he wanted to "work off" his charges. When Deputy Hepner explained that he didn't even know why Eaglespeaker was incarcerated, Eaglespeaker explained: "well, I'm in here for rape, but I didn't rape anyone, I finger banged her." He made a gesture of his finger going into his fist. Eaglespeaker claimed to Deputy Hepner that at first Ricciardi answered the door naked and asked him to have sex with her. He claimed that he refused, because he had a girlfriend, but agreed to "finger bang" her. After finger banging her, he left, but decided that he wanted to have sex with her, so returned and asked her to have sex with him, and she refused. Eaglespeaker claimed to Hepner that she did want Eaglespeaker to take a shower with her (the second time he went over), but that he was only interested in sex, so he left.

At trial, Ricciardi admitted that she'd previously lied to a

grand jury. She explained that she lied to protect her ex-husband, who was accused of felony unlawful use of a weapon. She explained that she denied that he'd ever tried to stab her with a knife. She described her life at the time as involving "very bad" domestic violence, and that she was still living with her ex-husband at the time and feared him.

IV. ARGUMENT

A. Standard of Review

"Under RAP 16.4, the court will grant appropriate relief to a petitioner if the petitioner is under a 'restraint' as defined in RAP 16.4(b) and the petitioner's restraint is unlawful for one or more of the reasons defined in RAP 16.4(c)." In re Davis, 152 Wn.2d 647, 14, 101 P.3d 1 (2004). "In order to obtain relief through a personal restraint petition, the petitioner must prove either a (1) constitutional error that results in actual and substantial prejudice or (2) nonconstitutional error that 'constitutes a fundamental defect which inherently results in a complete miscarriage of justice.'" In re Personal Restraint of Griffin, Wn.App. 99, 103-04, 325, P.3d 322 (2014) (quoting In re Pers. Restraint of Monschke, 160 Wn.App. 479, 488, 251 P.3d 884 (2010)). "In order to meet this burden, the

petitioner ‘must support the petition with facts or evidence and may not rely solely on conclusory allegations.’” Id. at 104 (quoting Monschke, 160 Wn.App. at 488).

B. There is no evidence the state failed to satisfy its obligations under *Brady v. Maryland*.

Mr. Eaglespeaker does not even make a prima-facie showing that the Prosecution was aware of the “newly discovered evidence” prior to his trial, or that the Prosecution did not immediately disclose the evidence when they became aware of it.

The only evidence Mr. Eaglespeaker has produced regarding the Beaverton report of the prior rape allegation is that the victim was questioned regarding the report at a child custody hearing (prior to trial) on April 10, 2013. However, there is no reason to believe the Prosecution had any knowledge of what was testified at that hearing. Evidence in the hands of DSHS or the Attorney General is not imputed to the Prosecution. See LaVallee v. Coplin, 374 F.3d 41, 44 (1st Cir. 2004) (For purposes of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), New Hampshire Department of Health and Human Services, Division of Children, Youth, and Families (DCYF) “is neither the police nor the equivalent of the police in assisting the prosecution. DCYF was not

the prosecuting agency and is independent of both the police department and the prosecutor's office.”)

The only evidence with regard to the second piece of alleged newly discovered evidence, the statement of Russell Helm, is the disclosure Helm made to the Prosecutor in a witness interview on a different case (See Defendant's "Exhibit C"). In that interview, Helm claims only that he tried to speak with Deputy Hepner, but admitted that he did not speak to him. 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. The evidence was disclosed to the Mr. Eaglespeaker immediately after the Prosecutor learned about it from Mr. Helm. There is no evidence that anyone from the Prosecution or the Sheriff's Office knew of Helm's statement before that.

Moreover, the very nature of the evidence Helm purports to give suggests that *if* it was true, that Mr. Eaglespeaker would have been aware of it. Helm claims that he was with Mr. Eaglespeaker and the victim the night of the rape. If he 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. Even if the state did have constructive or imputed knowledge of Helm's statement through Deputy Hepner, evidence is not considered to have been suppressed within the meaning of the Brady doctrine if the defendant or his attorney "either knew, or should have known, of the essential facts permitting him to take advantage of [that] evidence." United States v. Zackson, 6 F.3d 911, 918 (2nd Cir. 1993), quoting United States v. LeRoy, 687 F.2d 610, 618 (2nd Cir. 1982), cert. denied, 459 U.S. 1174 (1983). Because the very nature of Helm's allegations suggest that Mr. Eaglespeaker would have known about them if they were true, they could not have been suppressed by the State in this case.

C. The newly discovered evidence proposed by Mr. Eaglespeaker is merely cumulative or impeaching, and therefore is not a valid basis for a new trial.

Mr. Eaglespeaker proposes two pieces of "newly discovered evidence" that he believes would have changed the result of his trial, the prior rape allegation from Oregon, and the statement from Russell Helm, a witness adverse to the victim, Ms. Riciardi, in another case, who made statements to the Prosecutor regarding Ms. Riciardi's credibility after Mr. Eaglespeaker's trial. Both those

pieces of newly discovered evidence are evidence that's sole purpose and effect would be to impeach the credibility of the victim, Ms. Ricciardi.

The test for whether a new trial should be granted for newly discovered evidence is whether 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 Wash.2d 215, 634 P.2d 868 (1981). If the evidence fails any one of the five factors then a new trial should be denied.

The newly discovered evidence produced here, by the Defendant's own characterization, is impeachment evidence. It is not substantive evidence. So, it does not satisfy the fifth factor, that it not be "merely cumulative or impeaching." In this case, the victim's credibility was attacked in cross examination when she admitted that she had committed perjury in an Oregon Grand Jury. New impeachment evidence is not material, and thus a new trial is not required "when the suppressed impeachment evidence merely furnishes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable." United

States v. Wong, 78 F.3d 73, 80 (2nd Cir. 1996). Furthermore, there was substantial evidence that supported conviction, including the Defendant's own admission, text messages between the Defendant and the victim immediately preceding the rape, and statements the Defendant made to another witness admitting that he had done something "bad" to the victim. See United States v. Rosner, 516 F.2d 269, 273-74 (2d Cir. 1975), cert. denied, 427 U.S. 911 (1976) (additional impeachment evidence was not material where other evidence supported conviction).

Because the newly discovered evidence is merely impeaching and merely cumulative, it does not satisfy the five-part test from State v. Williams, and Mr. Eaglespeaker's request for a new trial should be denied and this personal restraint petition should be dismissed.

V. CONCLUSION

The newly discovered evidence presented by Mr. Eaglespeaker in this case was timely disclosed to him by the Prosecution, who was unaware of the evidence until after Mr. Eaglespeaker's trial and sentencing, therefore the state satisfied their obligations under Brady. Furthermore, the new evidence

presented by Mr. Eaglespeaker is merely cumulative or impeaching, and therefore does not justify a new trial. For those reasons, this Person Restraint Petition should be dismissed.

Respectfully submitted this 1ST day of October, 2018.


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Transmittal Information

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