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Court of Appeals  
Division II  
State of Washington  
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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**WESTON G. MILLER,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

SARA I. BEIGH, WSBA No. 35564  
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

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## I. ISSUES

- A. Is Miller's trial counsel required to follow the procedures of CrR 4.7(h)(3) prior to releasing discovery materials from Miller's client file?
- B. Is the trial court required to file findings of fact and conclusions of law after a motion to compel?

## II. STATEMENT OF THE CASE

Miller was convicted in May 2013, in Lewis County, of Murder in the First Degree and four counts of Unlawful Possession of a Firearm in the Second Degree. CP 28-38. Miller appealed his conviction, which was affirmed, and the Mandate issued in January of 2015. Miller began to seek his client file from his trial counsel, Joseph P. Enbody, in March 2015. CP 1, 6. The purpose of obtaining the client file was to assist Miller with filing a personal restraint petition. CP 2-3, 9. Mr. Enbody and Miller had numerous correspondences, which evidently resulted in Miller not obtaining the documents he was requesting. CP 1-14.

Miller filed a motion to compel production of client file and discovery materials in December 2018. CP 1-15. A hearing was held and Mr. Enbody, a deputy prosecutor from the Lewis County Prosecutor's Office, and Miller appeared before the trial court. RP 1-2. Miller explained to the trial court he was seeking his client file, and if none existed, for the trial court to make a finding that Mr. Enbody

had destroyed the file. RP 2. Miller presented his argument, Mr. Enbody responded, the trial court inquired of Miller, and the trial court ultimately denied the motion. See RP; CP 18. Miller timely appeals the trial court's denial of his motion. CP 19-20.

### III. ARGUMENT

#### A. **THE STATE'S LIMITED INTEREST IN MILLER'S APPEAL IS TO ENSURE ANY DISCOVERY MATERIALS RELEASED FROM HIS CLIENT FILE ARE RELEASED PURSUANT TO CrR 4.7(h)(3) .**

The State has consistently maintained to this Court, through its filings, that it is not the appropriate Respondent in this appeal. The State is not privy, and cannot be, to Mr. Miller's client file. RPC 1.6. The State cannot represent Mr. Enbody's interest, as Mr. Enbody is not the State's client and is an adversary. RPC 1.7. Therefore, the State's only interest in the substantive issue on appeal is to ensure that any release of discovery materials from Miller's client file is done pursuant to CrR 4.7(h)(3).

Miller was convicted of Murder in the First Degree and four counts of Unlawful Possession of a Firearm in the Second Degree and sentenced to 360 months in prison. CP 28-31. Therefore, the discovery material provided to Miller's attorney, Mr. Enbody included numerous documents that the prosecuting attorney would be seeking redactions, such as personal information on autopsy reports

and potentially certain photographs. CrR 4.7(a), (h)(3). Whether Mr. Enbody is required to hand over whatever materials he may or may not possess is, as far as the State is concerned, between Miller, Mr. Enbody, and the courts. It is not Lewis County Prosecuting Attorney's Office's place to become involved in attorney-client relationships absent informing the courts of a possible conflict of interest for further inquiry by the court.

Therefore, the State takes no position regarding whether the trial court correctly denied Miller's motion to compel. The State is merely requesting this Court, if it determines the trial court erred, require counsel to comply with CrR 4.7(h)(3) when disclosing discovery materials contained within Miller's client file.

**B. THE TRIAL COURT IS NOT REQUIRED TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

The State continues to maintain it is not the correct Respondent, but whether the trial court is required to file findings of fact and conclusions of law is not a substantive issue, therefore the State will provide a response to this limited issue. Miller cites no authority that requires the trial court to file written findings of fact and conclusions of law following a motion to compel an attorney to hand over the client file and discovery materials, therefore this Court

should not consider his argument and not require further action from the trial court. RAP 10.3(a)(6); Brief of Appellant 11-12.

Miller requested the trial court send him a rough draft of the findings of fact and conclusions of law. RP 6. The trial court responded, "Once it's done, once there is an order entered, it will be in the file and you can request it." *Id.* Miller asked the trial court to please provide him a copy of the order. *Id.* The trial court responded it would not mail Miller anything, he could request the order as any other member of the public could request a document. RP 6-7. Then the trial court stated, "The state might send a courtesy copy to you." The deputy prosecutor replied, "I will." RP 7.

The trial court only required an order denying the motion, which was drafted and entered. RP 6; CP 18. The deputy prosecutor was not asked to prepare any written findings or conclusions, therefore the trial court did not obligate the State or the trial court to send Miller any documentation. See RP. Other than the order the trial court entered, denying Miller's motion, the State did not obligate itself to send Miller any documentation. RP 6-7.

Contrary to Miller's contention he has any and all documentation required or obligated to be sent to him. Miller asserts the trial court somehow erred by failing to enter findings of fact and

conclusions of law, yet cites no authority to support his position the trial court is required to enter written findings of fact or conclusions of law. When a party submits argument to this Court but provides no authority to support its position, the Court “is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *De Heer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). This Court should require nothing more in regard to this matter.

#### IV. CONCLUSION

The State requests this Court limit any discovery materials turned over to Miller from his client file follow the procedures set forth in CrR 4.7(h)(3). Miller cites to no authority that would require the trial court to file findings of fact and conclusions of law for a motion to compel. The State, otherwise, takes no position on the substantive issues raised by Miller in his appeal.

RESPECTFULLY submitted this 2<sup>nd</sup> day of December, 2019.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

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**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: teri.bryant@lewiscountywa.gov)

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2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

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