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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 355071 / 356558

**COURT OF APPEALS, DIVISION NO. III
OF THE STATE OF WASHINGTON**

State of Washington,

Respondent,

v.

Larry Edward Siltman,

Appellant.

APPELLANT'S AMENDED BRIEF

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A. INTRODUCTION

COMES NOW Appellant Larry Siltman, by and through his undersigned attorneys of record, and appeals the denial of his Motion for New Trial in Okanogan County Superior Court Cause number 16-1-00447-2, as well as the Superior Court's denial of his motion to stay proceedings in 13-1-00361-7.

In October of 2013, Mr. Siltman was charged with four counts of Violation of a No Contact Order (VNCO) and one count of Resisting Arrest. In July of 2015, the State and Mr. Siltman entered a Stipulated Order of Continuance (SOC) that was to last for two years.

In October of 2016, Mr. Siltman was charged with one count each of Rape in the Second Degree and Assault in the Fourth Degree. The Rape charge was dismissed prior to trial, but a jury convicted Mr. Siltman on the Assault charge. On this basis, the State moved to revoke Mr. Siltman's SOC.

At the sentencing hearing on the Assault charge, held July 20, 2017, the victim, who did not appear or testify at trial, unexpectedly appeared. The Defense requested to interview the victim, and subsequently moved for a new trial based on her statements in the interview. Additionally, because of the unusual posture of the case, Mr. Siltman moved to stay proceedings on

the SOC revocation pending appeal on the Assault conviction and denial of a Motion for New Trial.

Now, Mr. Siltman appeals his convictions in both cases.

B. ISSUES FOR REVIEW

- (1) Whether the Superior Court erred in denying Mr. Siltman’s Motion for a New Trial under CrR 7.5(a)(3) (newly discovered evidence) in 16-1-00447-2.
- (2) Whether the Superior Court erred in refusing to consider Mr. Siltman’s mental health evidence in the trial on stipulated facts in 13-1-00361-7.

C. STATEMENT OF THE CASE

On October 9, 2013¹, Mr. Siltman was charged by information with four counts VNCO and one count Resisting Arrest. *Clerk’s Papers, 13-1-00361-7 (“CP1”)* at 108-12. Mr. Siltman appeared for a preliminary hearing on October 10, 2013, and arraignment was set for October 21, 2013. *Verbatim Report of Proceedings, 13-1-00361-7 (“RP1”)* at 8:13-15. At arraignment, Mr. Siltman’s attorney moved for a competency evaluation pursuant to Chapter 10.77, RCW. *RP1* at 14:6-7.

¹ On some older pleadings, the Clerk’s stamp is in the format day/month/year. On newer pleadings, the Clerk’s stamp shows the three-letter abbreviation for the month, and the date of filing is clear.

² “CP1” refers to 13-1-00361-7; “CP2” refers to 16-1-00447-2.

³ “RP1” refers to 13-1-00361-7; “RP2” refers to 16-1-00447-2.

The 10.77 Evaluation conducted by Dr. Lord-Flynn described a diagnosis of unclassified psychosis, but with resolved symptoms. *CPI* at 84. Dr. Lord-Flynn's review of Mr. Siltman's records indicated that he had been treated in both 2009 and 2013 for delusional beliefs and hallucinations pertaining to his late wife, Bonnie. *Id.* at 85. This review also included a review of records from Okanogan County Corrections; these records contained "clear indications" that Mr. Siltman was "highly agitated and delusional" while in jail in September and October of 2013. *Id.* at 86. He was prescribed Risperdal, an antipsychotic medication, that "resulted in considerable improvement of his symptoms." *Id.*

The 10.77 evaluation was ordered on October 21, 2013, but the evaluation was not performed until January 13, 2014, at which point Mr. Siltman was no longer experiencing symptoms of psychosis. *See CPI* at 104-07; 83-89. Thus, an order adjudicating him competent to proceed to trial was entered on February 10, 2014. *Id.* at 90-91.

On July 6, 2015, a settlement was reached in the VNCO and Resisting case. *Id.* at 81. On July 15, 2015, a Stipulated Order of Continuance was entered; the case was continued upon stipulation for two years with an agreement to amend the felony VNCO counts to misdemeanor VNCO, with suspended sentences on all five (VNCO and Resisting) counts.

In October of 2016, the State charged Mr. Siltman in 16-1-00447-2 with Rape 2nd Degree and Assault 4th Degree, Domestic Violence. *CP2* at 143-44. At the same time, the State filed a motion to revoke Ms. Siltman's SOC in cause 13-1-00361-7. *CP1* at 29-30. The Rape count was dismissed by the State at the Defendant's *Knapstad* hearing on April 13, 2017, but the *Knapstad* motion as to the Assault charge was denied. *RP2* at 4:5-8; 35:1-2.

Thereafter, the Assault 4 charge proceeded to trial on July 12, 2017, wherein Mr. Siltman was convicted. *RP2* at 314:12-24. Ms. Manuel-Snidarich, the victim, did not testify at trial. *See RP2*. In fact, Ms. Manuel-Snidarich's absence persisted through the case. This formed part of the basis for the State's dismissal of the Rape charge. *CP2* at 81. Her continued unavailability was the subject of a Defense motion in limine at trial seeking to exclude her testimony. *RP2* at 99:5-100:8.

However, she *did* unexpectedly appear at sentencing; because of this, sentencing was set over to July 26, 2017 so the Defense could interview Ms. Manuel-Snidarich. *See RP2* at 321:15-322:1. The results of this interview formed the basis for Defendant's Motion for New Trial. *See CP2* at 145-157.

Ms. Manuel-Snidarich's statements in her interview following trial brought critical information to light.

At trial, the State admitted evidence of ‘cuts that we found from her lower back to her shoulders” and “more marks on her back leading up more towards her shoulder and the bottom of her neck.” *RP2* at 131:19-132:4. However, Ms. Manuel-Snidarich stated in her interview that she has worked physical jobs in the past and is constantly getting bruises and scrapes. *See CP2* at 147; 10-13. She also stated that she would have had bruises if she had been kicked because she bruises easily, particularly when drinking. *Id.*

Ms. Manuel-Snidarich also made statements that would be impeaching evidence against the State. She stated that: on the day following this incident, an officer attempted to coax her into stating that she had been kicked by the Defendant, though not kicked in a way that would harm her; she stated that this officer was a Sargent, and a larger (though not fat) gentleman who was white with dark hair; she stated that she was particularly bothered by this. *CP2* at 147; 10-13.

Ms. Manuel-Snidarich also made impeaching statements about another State’s witness: she stated that she also has an issue with Officer Schaefer because he blew her off when she made a report of a theft that devastated her earlier in 2016. *Id.* at 147.0 She also stated that she mentioned someone else to Officer Schaefer the next day; she stated she has no recollection of telling Officer Schaefer anything about the Defendant; and she opined that Officer Schaefer does not listen. *Id.* at 148.

Finally, when asked about some of her statements to law enforcement officers, Ms. Manuel-Snidarich invoked her Fifth Amendment right against self-incrimination. *Id.* Specifically, she invoked this right in relation to whether the Defendant had caused the marks on her back; whether the Defendant had used a cat'o'nine tails or flogger on her; and whether the Defendant had assaulted her with belts. *Id.* at 149.

This Motion was denied on July 26, 2017. *RP2* at 351:12-13.

However, Ms. Manuel-Snidarich was present, and moments later stated:

I have no ill will towards Mr. Siltman. I do not feel that he kicked me that day. I certainly would've been hurt had I been lifted my person off the ground [sic]; I'm 160 lbs. It would take quite a bit of force for someone to kick me and physically lift my person off of the ground. It would've hurt somewhere and nothing happened that day.

RP2 at 354:20-355:6. The Court imposed a sentence of sixty days on the charge of Assault 4, DV. *Id.* at 358:13-16. Consideration of the State's pending petition to revoke was continued until August 16, 2017. *Id.* at 366:21.

In the meantime, Ms. Manuel-Snidarich moved to rescind the no-contact order entered at Mr. Siltman's sentencing hearing. *RP2* at 369 *et seq.* In doing so, she made various statements concerning the case, including that she did not feel she was the complaining witness (*Id.* at 371:7-9); that she felt the prosecution of Mr. Siltman was wrong (*Id.* at 372:1-2); and that

there was “no possible way” that Mr. Siltman could have assaulted her as described because she “wasn’t injured whatsoever.” *Id.* at 373:16-20.

The August date was later continued to September 8, 2017, because Mr. Siltman moved to stay the proceedings on the SOC revocation in 13-1-00361-7 pending the appeal of his conviction in 16-1-00447-2. The danger raised was that because the SOC revocation was based on a conviction that was pending appeal, any sentence imposed following a stipulated facts trial on the SOC revocation could never be undone, even if this Court later ordered a new trial. *CPI* at 23-28. The trial Court denied this motion as well. *RPI* at 59:9-13.

On September 27, 2017, the Court held a stipulated facts trial in cause 13-1-00361-7. *Id.* at 63, *et seq.* Based on the guilty verdict in 16-1-00447-2, the Court found a violation of the SOC conditions. *Id.* at 65:4-8. Based on notice and service defects, two counts of VNCO were dismissed. *Id.* at 81:4, 82:5. Following argument, another count of VNCO was dismissed. *Id.* at 88:13-16. Mr. Siltman was convicted of the remaining two counts – one count VNCO and one count resisting arrest. *Id.* at 95:21 *et seq.*

At the stipulated facts trial, counsel for Mr. Siltman requested that the Court consider the results of the 10.77 evaluation pursuant to the parties’ stipulations in the SOC, to which the State objected. *Id.* at 72:13 *et seq.* The relevant stipulation in the record states:

The parties stipulate that the police reports and **documents that were provided in discovery**, physical evidence seized in this case, and any expert analysis of that physical evidence, **shall be admitted and considered by the judge without objection...**

CPI at 38 (emphasis added). The evaluation had been filed in the Court's record (*See CPI* at 83 *et seq*) and Mr. Siltman's counsel at the time (in January of 2015) notified the State of a potential diminished capacity issue. *See RPI* at 76:4-6.

On October 20, 2017, Mr. Siltman's mental health was again raised at sentencing. *Id.* at 106:2-10. Mr. Siltman was sentenced to the low end of his applicable range: 12+ months in custody with the Department of Corrections, followed by 12 months community custody, as well as legal-financial obligations of \$975.50. *Id.* at 114:17-25.

D. SUMMARY OF ARGUMENT

Herein, Mr. Siltman argues that the trial Court erred in denying his Motion for a New Trial based on newly discovered evidence. Such Motions under CrR 7.5(a)(3) are subject to a five-factor test. Mr. Siltman argues that because Ms. Manuel-Snidarich was unable to be located throughout the pre-trial and trial process, her interview is new evidence discovered since trial that could not diligently have been discovered prior to trial. Further, the substance of her statements indicates a likelihood that they would probably

change the outcome of the trial; neither was it *merely* cumulative or impeaching.

Next, Mr. Siltman argues that the trial Court improperly refused to consider the results of the 10.77 evaluation. The stipulation of the parties was that discovery documents shall be admitted and considered by the judge without objection. The 10.77 evaluation is a discoverable document that was created explicitly for the purposes of this litigation, was distributed to all parties, and was a part of the Court's record. It should have been considered at the stipulated facts trial.

As a result of these errors, Mr. Siltman's convictions in both cases should be set aside and remanded for new trial.

E. ARGUMENT & AUTHORITY

1. The Trial Court Erred in Denying the Motion for New Trial Based on Newly Discovered Evidence.

Motions for new trial are governed by CrR 7.5. At issue here is whether the newly discovered evidence meets the five-factor test for granting new trials on this basis.

Mr. Siltman's motion was filed on July 21, 2017, within ten days of the July 12, 2017, jury trial. CrR 7.5(b); *See CP2* at 145. The affidavits in support and response were filed with the motions. CrR 7.5(c); *Id.* Finally, the motion was disposed of prior to imposition of sentence. CrR 7.5(e); *Id.*

Motions for a new trial for newly discovered evidence are subject to a five-factor test. The motion will not be granted on this basis 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. Williams, 96 Wn.2d 215, 223, 634 P.2d 868 (1981) (citation omitted). The absence of any one of these factors is grounds for denial of the motion. *Id.* (citations omitted). A trial court's decision on a motion for new trial will not be disturbed absent manifest abuse of discretion, but a much stronger showing of abuse of discretion is required to set aside an order *granting* a new trial than one *denying* a new trial. *State v. York*, 41 Wn.App. 538, 543, 704 P.2d 1252 (1985).

a. The evidence was discovered post-trial and could not have been discovered with due diligence.

The record in this case is replete with mentions of Ms. Manual-Snidarich's unavailability. In short, no party knew where she was or how to locate or contact her, and this is not contested by the State. *See CP2* at 73-74. In her July 20, 2017, interview, she also indicated that she had lived at five separate locations in Oroville and Omak during the pendency of this case. *Id.* at 148. She also stated she was not able to be served with a

subpoena. *Id.* at 149. As noted, the first contact the Defense had with Ms. Manuel-Snidarich was when she unexpectedly appeared at sentencing.

b. The result of the trial is likely to change, and the evidence is neither merely cumulative nor impeaching.

The newly discovered evidence is likely to change the result of the trial. In making this determination, “the trial court considers the credibility, significance, and cogency of the proffered evidence.” *State v. Larson*, 160 Wn.App. 577, 587, 249 P.3d 669 (2011) (citing *State v. Barry*, 25 Wn.App. 751, 758, 611 P.2d 1262 (1980)).

The credibility of the evidence is not particularly at issue here. Ms. Manuel-Snidarich does not recall the putative assault itself and only made statements as to her conclusions of what did or did not occur based on her own physical sensations. The State may argue that she does not recall because she was intoxicated, but she also indicated she suffers bruises more easily while drinking. Moreover, there is nothing in the record to suggest that she is fabricating her statements⁴.

Similarly, the cogency of the evidence is not particularly at issue. Ms. Manuel-Snidarich’s statements are interjected into an already-

⁴ There is, however, some evidence to suggest that she lied to officers at the time of the investigation because she asserted the 5th Amendment in her interview. This is of questionable use, as it may run afoul of the presumption of innocence if there is an inference of lack of credibility because of criminal guilt.

contradictory set of evidence. On the one hand, there is evidence of an assault from the testimony elicited at trial. *See RP2* at 200 *et seq*, 212 *et seq*. On the other, there is evidence in the record from the nurse examination, used in the Defendant's *Knapstad* motion, as to a lack of injuries consistent with being assaulted. *See CP2* at 100-102. Ms. Manuel-Snidarich's statements are consistent with the nurse's examination, but inconsistent with the witness testimony.

The significance of the evidence is what is at issue here. Ms. Manuel-Snidarich's statements strike to the heart of the jury's fundamental credibility-weighting and fact-finding functions. Her statements would have rebutted the State's admission of photographs of her old, prior injuries; would have impeached the State's law enforcement witness; and would have allowed the jury to better assess whether an assault took place – the ultimate issue at trial.

The evidence is likely to change the outcome of the trial because it directly contradicts the State's witnesses who described seeing the assault and would impeach the State's law enforcement witness. This is not *merely* cumulative or impeaching because the evidence is based in large part on Ms. Manuel-Snidarich's own impressions of her physical state, and what she recalls telling law enforcement officers during their continuing investigation on the next day, while sober.

The eyewitnesses who testified at trial lack personal knowledge as to her impressions and recollections and were not present for her conversation with Officer Shaffer the following day. Therefore, her statements cannot be cumulative to the eyewitnesses'. Similarly, her statements concerning an unidentified (but described) law enforcement officer attempting to coax her testimony is not cumulative with any testimony at trial.

c. The evidence is material and admissible.

The testimony of the complaining witness and putative victim is clearly material to a trial for an assault upon the complainant. Specifically, this evidence is material because it the evidence is the putative victim's statement that she does not believe she was assaulted, had no pain, and had no injury. The information that she bruises easily is also material, as this is the source of her opinion that she was not assaulted. She also made statements that constitute impeachable evidence for the State's witnesses, particularly her statement concerning the attempt to coax her testimony.

All of this information is admissible. Her own statements to lack of pain and the ease at which she bruises while drinking are statements of then-existing physical conditions. ER 803(1)(3) (specifically discussing pain and bodily health). The impeachment statements offered against the State are admissible as rebuttal evidence, and, had the Defense been aware of the

statements, could have necessitated giving an instruction as to the State's failure to call the described law enforcement officer as a witness. *See WPIC* 5.20.

The information is material as well. Materiality for purposes of CrR 7.5 must mean something short of the *Brady* materiality standard; otherwise, the test on motions for new trial would collapse the materiality and "likely to change the outcome" prongs. *See e.g. State v. MacDonald*, 122 Wn.App. 804, 809-10, 95 P.3d 1248 (2004)⁵.

Mr. Siltman argues that, in fact, materiality in the new trial context is a lower burden than relevance. Relevant material must have a tendency to make the existence of a material fact more or less probable. ER 401; *Black's Law Dictionary*, "relevant evidence" (10th Ed. 2014). Material evidence, on the other hand, need only share a logical connection to the facts of the case or the legal issues presented. *Black's Law Dictionary*, "material evidence" (10th Ed. 2014). Thus, in accordance with ER 401, "material evidence" is evidence of the "existence of any fact that is of consequence to determination of the action." *See* ER 401. Relevant evidence is evidence that is probative of the probable truth or untruth of material evidence.

⁵ Discussing the disclosure of "material evidence favorable to the accused." *Id.* However, the standard therein notes that evidence is 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." *Id.* This is no different from "likely to change the outcome of the proceeding."

The new evidence herein clearly meets the materiality threshold – there is a logical connection to the facts and legal issues presented in the case. Additionally, the evidence surpasses this and meets the relevance threshold because it makes the existence of a material fact (the putative assault) less likely. ER 401.

2. The Trial Court Erred in Refusing to Admit and Consider Mr. Siltman’s Mental Health Condition in the VNCO Trial.

Revocation of stipulated orders of continuance and similar agreements is controlled by the *Marino-Kessler* framework. *See State v. Marino*, 100 Wn.2d 719, 674 P.2d 171 (1984) (disagreed with on other grounds by *State v. Dent*, 123 Wn.2d 467, 479, 869 P.2d 392 (1994)); *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994). In this context, the Court’s role consists primarily of assuring procedural regularity. *Marino*, 100 Wn.2d at 724.

This procedural regularity function includes following the terms of the agreement between the State and the Defendant. This is not to say that the Court is bound by *every* term in the agreement, however. For example, the parties could not abscond with the Court’s sentencing discretion by agreeing on an *actual* sentence to be imposed upon violation (as compared to an agreed *recommendation*).

The only relevant Court Rule to discuss stipulations in the criminal context is related to stipulations at the time of omnibus hearing. It states: “Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.” CrR 4.5(g). This indicates that the Court should abide by the parties’ stipulations unless they violate the interests of justice.

The stipulation⁶ herein to evidence at a trial on stipulated facts references the “documents that were provided in discovery” but does not state what “documents” means, nor specify who provided the document. *CPI* at 38. The stipulation goes on to state that these documents “shall be admitted *and considered* by the judge *without objection*.” *Id.* (emphasis added).

The 10.77 evaluation was filed with the Court and delivered to both parties. *CPI* at 83 *et seq.* Immediately upon obtaining possession thereof, the document would be discoverable under CrR 4.7(a)(1)(iv) or CrR 4.7(b)(2)(x). The 10.77 evaluation is “discovery” within the meaning of the stipulation, and it was provided to the parties and to the court following a Court-ordered evaluation of Mr. Siltman’s mental condition.

⁶ Mr. Siltman argues alternatively that, because this specific SOC would have resulted in a conviction for misdemeanor offenses and requires a later plea of guilt even if successfully completed, that it is in reality a plea bargain.

Evidentiary errors become prejudicial and require reversal if, within reasonable probabilities, the error materially affected the outcome of the trial. *State v. Jackson*, 102 Wn.2d 689, 696, 689 P.2d 76 (1984) (citing *State v. Robtoy*, 98 Wn.2d 30, 44, 653 P.2d 284 (1982)). The evidence likely would have affected the outcome of the trial, had the Court considered it.

In the 10.77 evaluation, the Doctor notes that Mr. Siltman was experiencing agitation and delusions in September and October of 2013 - the time he is alleged to have violated the no-contact order. *See CPI* at 86. Treatment with antipsychotics improved his condition. *Id.* Also in September of 2013, Mr. Siltman was referred to the emergency room with delusions and hallucinations. *Id.* at 85.

This speaks directly to Mr. Siltman's capacity to willfully violate a no-contact order. In a prosecution therefor, the State must prove the defendant "knew the order existed and willfully, that is, knowingly and intentionally, contacted" the protected party. *State v. Sisemore*, 114 Wn.App. 75, 78, 55 P.3d 1178 (2002).

Mr. Siltman's referrals and treatment for delusions in September and October of 2013 - the same time as the alleged violations - was critical evidence that should have been considered by the trial court. Excluding it was reversible error demanding a new trial.

F. CONCLUSION

Newly discovered evidence in this case militates a new trial. Ms. Manuel-Snidarich, the complaining witness, was unavailable throughout the trial process. Neither the State nor the Defense could locate her, and she ultimately did not testify at trial. When she unexpectedly appeared at sentencing, the Defense interviewed her and learned many new pieces of information about the case that could have been used at trial, had she been able to be located and subpoenaed. Furthermore, her subsequent statements on the record indicate that she does not believe she was assaulted, and she gives her reasoning why. This is critical information for a jury and speaks directly to the “harmful or offensive” requirements to establish an assault.

The five-factor test from *Williams* is satisfied here. The evidence is material, relevant, and admissible; it also could not have been discovered with due diligence prior to trial. In fact, both parties had been looking for Ms. Manuel-Snidarich throughout the trial process. The evidence is not *merely* cumulative or impeaching; some of the evidence is cumulative, and some of it is impeaching, but Ms. Manuel-Snidarich’s statements contain material, relevant, and admissible information that is neither cumulative nor impeaching.

The primary hurdle to clear for Mr. Siltman is whether the evidence will probably change the outcome of the trial. Ms. Manuel-Snidarich’s

statements are significant. Her statements are cogent – they do not internally contradict; and for the most part, her statements do not conflict with other testimony. Finally, her statements are credible, though some of them would allow her credibility to be attacked at trial. Many of her statements are based on her own present-sense impressions and are not subject to credibility attack.

If her statements are admitted upon retrial, the jury would be faced with the same or similar testimony from the eyewitnesses, but would also be called upon to consider Ms. Manuel-Snidarich's statements that she did not believe she was assaulted and had no injury. The jury would also have been able to better gauge the credibility of the State's law enforcement witness, Officer Shafer. And finally, the jury would have heard from the law enforcement officer who attempted to coax her testimony, as the Defense could have identified and subpoenaed him. This is significant evidence that is likely to change the outcome of the trial, or at the very least, serves to cast doubt upon the result of the proceeding.

Mr. Siltman should have a new trial on the assault charges. The assault charge formed the basis for the revocation of the SOC in his older case. However, reversal of the assault case may not necessitate reversal and remand of the VNCO case because the State need not procure a conviction to move forward on an SOC revocation.

But Mr. Siltman challenges his conviction in the VNCO case as well. The stipulation of the parties was that the documents exchanged in discovery shall be admitted and considered by the trial Court. The 10.77 evaluation, a discoverable document that was delivered to the parties, was not admitted or considered by the Court in the stipulated facts trial. Because the stipulated facts proceeding is the product of the stipulated agreement, a deviation from that stipulation is error. Here, the error is reversible because it excludes evidence that directly impacts whether or not the State proved the requisite mental state beyond a reasonable doubt. Inclusion and review of this information would likely change the result of the proceeding.

For the reasons above, Mr. Siltman respectfully requests that this Court reverse his convictions in both cases and remand the same for new trial.

Respectfully submitted this 26th of June, 2018.


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