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NO. 355071 / 356558

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent

v.

LARRY EDWARD SILTMAN,

Appellant,

BRIEF OF RESPONDENT

BRANDEN E. PLATTER
Prosecuting Attorney
237 4th Avenue N.
P.O. Box 1130
Okanogan County, Washington

509-422-7280 Phone
509-422-7290 Fax

Melanie R. Bailey
WSBA #38765
Deputy Prosecuting Attorney

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A. ISSUES FOR REVIEW

1. Whether the Okanogan Superior Court erred in denying Mr. Siltman's Motion for New Trial under CrR 7.5(a)(3) in cause number 16-1-00447-2.
2. Whether the Okanogan Superior Court erred in denying the request by Mr. Siltman to consider his mental health evaluation conducted pursuant to RCW 10.77 in his trial on stipulated facts in cause number 13-1-00361-7.

B. STATEMENT OF THE CASE

The State and Mr. Siltman agree on many of the facts, but the State will recite a condensed version below.

The State likewise will adopt the citation method for the Clerk's Papers ("CP1" and "CP2") and Verbatim Report of Proceedings ("RP1" and "RP2") that was used in the Appellant's Amended Brief. ("CP1" refers to 13-1-00361-7; "CP2" refers to 16-1-00447-2; "RP1" refers to 13-1-00361-7; and "RP2" refers to 16-1-00447-2). See *Appellant's Amended Brief* footnotes 2 and 3, page 2.

On October 9, 2013, Mr. Siltman was charged by information with four counts of Violation of No Contact Order ("VNCO") and one

count of Resisting Arrest under cause number 13-1-00361-7. *CP1* at 108-12. Mr. Siltman had his arraignment on this matter on October 21, 2013, at which time his defense attorney moved for a competency evaluation pursuant to RCW 10.77. *RP1* at 14: 6-7. The evaluation was completed by Dr. Lord-Flynn. *CP1* at 90-91. Mr. Siltman was found competent to proceed with this matter and an order was entered to that effect on February 10, 2014. *CP1* at 90-91.

Eventually a settlement was reached in the 13-1-00361-7 matter in which Mr. Siltman entered into a two-year Stipulated Order of Continuance with the State on July 15, 2015. *CP1* at 19-22.

On October 26, 2016, by information, the State charged Mr. Siltman with Rape in the Second Degree, and Assault in the Fourth Degree, Domestic Violence. *CP2* at 143-144. At the same time, the State also filed its motion to revoke Mr. Siltman's Stipulated Order of Continuance in cause number 13-1-00361-7. *CP1* at 29-30. The Rape in the Second Degree charged was later dismissed by the State. *CP2* at 73-74. The Assault in the Fourth Degree, Domestic Violence proceeded to trial. The State produced eye-witness testimony from Mr. Robert Russell and Mr. James Keller, both of

whom testified that they observed Mr. Siltman kicking the victim, Ms. Manuel-Snidarich, while she was laying on the ground. *RP2* at 189 to 191, 215:13-14. Mr. Siltman was convicted of this charge. *CP2* at 27-28.

Ms. Manuel-Snidarich did not testify at trial and in fact absented herself from the entire process until she appeared at the sentencing hearing. Defense was able to interview her at that point which formed the basis for their motion for new trial. *CP2* at 145-157. During the defense interview with Ms. Manuel-Snidarich, she indicated that she had no recollection of the assault and can only provide that she does not feel like she was assaulted as she did not have the injuries she believes would be present had she been assaulted by Mr. Siltman. *CP2* at 146-147.

After Mr. Siltman was convicted and sentenced for the Assault Fourth Degree, Domestic Violence, the hearing on the revocation of the Stipulated Order of Continuance was held on September 27, 2017. *RP1* at 63–101. At the Stipulated Facts Trial, counsel for Mr. Siltman requested that the trial court consider the results of the mental health evaluation that was conducted on Mr. Siltman on January 13, 2014 pursuant to RCW 10.77, to which the State objected. *CP1* at 83-89, and *RP1* at 72:13 *et seq.* The trial

court denied the request and found Mr. Siltman guilty of one count of VNCO and one count of Resisting Arrest. *RP1* 96:23-24 and 98:9-10. In so doing, the trial court found that Mr. Siltman was served with the no contact order on September 14, 2013, and that he was prohibited from contacting the protected party, Ms. Sheryl Pickard. *RP1* at 95:21-25 and 96:1-7. The trial court found the violation based on Mr. Siltman making a phone call to the protected party, who received the message on September 21, 2013, and identifying who he was talking to as “Sheryl” and stating that she should “go ahead and call the cops”. *RP1* 96:6-9, 16-21. Likewise, the reports make clear that Mr. Siltman knowingly resisted arrest when contact by law enforcement on October 6, 2013. *CP1* at 40. Mr. Siltman repeatedly told the officer that he had done mothering wrong and actively tried to prevent the officer from arresting him. *Id.* Mr. Siltman was sentenced for these two offenses on October 20, 2017. *CP1* at 1-11.

C. ARGUMENT

1. The Trial Court did not err in denying the Motion for New Trial based on Newly Discovered Evidence.

A motion for new trial was made in this matter pursuant to CrR 7.5(a)(3), alleging new evidence discovered post-conviction. It

is well established that a trial court has broad discretion in granting or denying a motion for new trial. *State v. Williams*, 96 Wash.2d 215, 221, 634 P.2d 868 (1981). "The exercise of that discretion will not be disturbed on appeal absent an abuse of discretion." *Id.* citing *State v. Marks*, 71 Wash.2d 295, 301-02, 427 P.2d 1008 (1967). "A court abuses its discretion when an order is manifestly unreasonable or based on untenable grounds." *State v. Larson*, 160 Wash.App. 577, 586, 249 P.3d 669, citing *State v. Roche*, 114 Wash.App. 424, 435, 59 P.3d 682 (2002). "A 'discretionary decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.'" *Larson*, 160 Wash.App. at 586, 249 P.3d 669, citing *State v. Quismundo*, 164 Wash.2d 499, 504, 192 P.3d 342 (2008). "A trial court's ruling on a motion for new trial will not be disturbed absent a manifest abuse of discretion, and a much stronger showing of abuse of discretion is ordinarily required to set aside an order granting a new trial than one denying new trial." *State v. York*, 41 Wash.App. 538, 543, 704 P.2d 1252 (1985).

A trial court may grant a new trial under CrR 7.5(a)(3), based on newly discovered evidence, only when the defendant shows the

evidence “(1) will probably change the results 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.” *Larson*, 160 Wash.App. at 586, 249 P.3d 669 (2011), citing *State v. Williams*, 96 Wash.2d at 223, 634 P.2d 868 (emphasis omitted). “The absence of any one of these five factors is grounds to deny a new trial.” *Id.*

Under the first prong, when the court is 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. *Id.* at 587, 249 P.3d 669 (2011), citing *State v. Barry*, 25 Wash.App. 751, 758, 611 P.2d 1262 (1980).

“Moreover, a new trial is not warranted unless the moving party can demonstrate that the new evidence will probably change the results of the trial.” *State v. Sellers*, 39 Wash.App. 799, 807, 695 P.2d 1014 (1985) review denied, citing *State v. Koloske*, 100 Wash.2d 889, 898, 676 P.2d 456 (1984).

“Where...the state has produced strong and convincing evidence of guilt and the defendant little or no evidence of innocence, a new trial should not be granted on unsupported,

uncorroborated testimony of an accomplice or codefendant, nor upon the offer of any new evidence unless it appears that the newly discovered evidence is of such significance and cogency that it will probably change the results of the trial." *State v. Peele*, 67 Wash.2d 724, 732, 409 P.2d 663 (1966). "Hardly a case can be supposed but what, by diligent search, some additional evidence will be found that would, if offered at trial, have been admissible on one theory or another. But to grant a new trial on the showing merely that such evidence could not by reasonable diligence have been discovered before trial would leave the law in a state where there would be virtually no end to the litigation of an issue of fact, for each succeeding trial inevitable leaves new avenues for investigating the facts anew. The test, therefore, that the newly discovered evidence must be the kind that will probably change the result of the trial, is a sensible one and essential to the efficient administration of justice." *Id.* at 732-33, 409 P.2d 663 (1966).

There is no new evidence in this matter. In fact, the victim, who is now willing to testify, actually has no recollection of the assault in question and the only thing she can offer for testimony is what she thought happened and how she believes she lacks

sufficient injury to have been assaulted. See *CP2* at 146 to 147. Therefore, this “newly discovered evidence” will not change the results of the trial as she has no first hand recollection of the events. This was likewise the decision reach by the trial court, after having reviewed the affidavit of defense counsel submitted for the original motion for new trial, and specifically found that the victim, Ms. Manuel-Snidarich’s, testimony is “not credible or significant in light of her lack of memory and in light of the evidence admitted at trial.” *CP2* at 5. At trial, the State produced testimony of two eye-witnesses to the assault, both of whom testified that they saw Mr. Siltman kicking the victim while she lay on the ground. *RP2* at 189 to 191, 215:13-14. The information from the victim, Ms. Manual-Snidarich, does not overcome the evidence and testimony elicited at trial. In fact, due to lack of memory, she cannot even contradict the testimony.

The second and third prongs of the test for a new trial are whether the evidence was discovered since the trial and whether this evidence could have been discovered before trial by the exercise of due diligence. There is no dispute that the victim absented herself from this matter and that she did not make herself

available until after the trial. What is of concern is there is mention by the witness, Mr. Bucsko, that he saw the victim at the defendant's residence since this incident took place. *CP2* at 4. However, the record is replete with numerous comments regarding Ms. Manual-Snidarich's unavailability and attempts to subpoena and/or locate her, all to no avail. Based on the above, it appears that these two prongs are satisfied.

The fourth prong is whether this new evidence is material. Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the results of the proceedings would have been different. A 'reasonable probability...is a probability sufficient to undermine confidence in the outcome.'" *State v. MacDonald*, 122 Wash.App. 804, 809-810, 95 P.3d 1248 (2004) (citation omitted). The information provided by Ms. Manual-Snidarich is not material as it is not likely to change the outcome of this trial. Again, Ms. Manual-Snidarich has no recollection of the assault that was witnessed by no less than two other individuals who testified at trial. *CP2* at 146-47, and *RP2* at 200-33. It may be argued that the lack of injury is significant and material as new evidence, but it is not. There is ample eye-witness

accounts of Mr. Siltman kicking Ms. Manual-Snidarich while she lay prone on the ground. The lack of injury has absolutely no bearing on whether an Assault in the Fourth Degree took place as it is well settled that no injury is necessary to establish the elements of Assault Fourth.

The fifth, and final prong, is whether the new evidence is merely cumulative or impeaching. "When the only purpose of new evidence is to impeach or discredit evidence produced at trial, a new trial cannot be properly granted." *Sellers*, 39 Wash.App. at 807, 695 P.2d 1014 (1985) review denied, citing *State v. Edwards*, 23 Wash.App. 893, 898, 600 P.2d 566 (1979). In the case at hand, this new evidence is clearly being used for impeachment of the State's witnesses. As stated previously, Ms. Manual-Snidarich has no recollection of the assault that took place; however, there are eye witnesses that saw Mr. Siltman kicking Ms. Manual-Snidarich. It is hard to imagine what other relevance, or use, Ms. Manual-Snidarich's testimony regarding lack of injury days later would be used for if not to impeach the testimony of the eye-witnesses in this matter.

Based on the above reasoning, it is clear that the trial court did not abuse its discretion when it denied Mr. Siltman's motion for new trial as there is clearly no new evidence to be submitted, and the information that is being thrust to the forefront as new evidence is merely statements, which lack credibility, that may be used to attempt to impeach the State's witnesses after the jury has convicted Mr. Siltman. Mr. Siltman has failed to carry his burden and meet prongs 1, 4 and 5 of the test and therefore the motion for new trial was properly denied.

2. The Trial Court did not err in refusing to admit and consider the Mental Health Evaluation conducted pursuant to RCW 10.77 in the Violation of No Contact Order Stipulated Facts Trial.

In this type of case, the court's role primarily consists of assuring procedural regularity. *State v. Marino*, 100 Wash.2d 719, 724, 674 P.2d 171 (1984). "The trial court's fact-finding role is the same as in any other type of evidentiary hearing, whether it be a suppression hearing or a trial for breach of contract." *State v. Kessler*, 75 Wash.App. 634, 638-39, 879 P.2d 333 (1994), (Citation omitted). The court's findings of fact are reviewed by the usual standard of sufficiency of the evidence. *Id.* "Evidence is sufficient to support a conviction if, taking the evidence in light most favorable

to the State, it allows any rational trier of fact to find the essential elements of the case beyond a reasonable doubt.” *State v. Sisemore*, 114 Wash.App. 75, 78, 55 P.3d 1178 (2002), citing *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992).

Evidentiary errors become prejudicial and require reversal if, within reasonable probability, the error materially affected the outcome of the trial. *State v. Jackson*, 102 Wn.2d 689, 696, 689 P.2d 76 (1984) (citation omitted).

In this matter, there was sufficient evidence to convict Mr. Siltman of the VNCO and Resisting Arrest. Mr. Siltman essentially wants the court to review and consider the mental health evaluation conducted pursuant to RCW 10.77 because he wants to assert a diminished capacity defense. The defense of diminished capacity may be raised when either specific intent or knowledge is an element of the crime. If one of these is an element of the crime charged, evidence of diminished capacity can be considered in determining if the defendant had the capacity to form the requisite mental state. *State v. Thomas*, 123 Wn.App. 771, 779, 98 P.3d 1258 (2004). “Diminished capacity arises out of a mental disorder, usually not amounting to insanity, that is demonstrated to have a

specific effect on one's capacity to achieve the level of culpability required for a given crime." *State v. Gough*, 53 Wash.App. 619, 622, 768 P.2d 1028 (1989), citing *State v. Ferrick*, 81 Wash.2d 942, 944, 506 P.2d 860 *cert. denied*, 414 U.S. 1094, 94 S.Ct. 726, 38 L.Ed.2d 552 (1953), as modified by *State v. Griffin*, 100 Wash.2d 417, 418, 670 P.2d 265 (1983). "Existence of a mental disorder is not enough, standing alone, to raise an inference that diminished capacity exists. *Gough*, 53 Wash.App. at 622, 768 P.2d 1028 (1989), citing *State v. Edmon*, 28 Wash.App. 98, 103, 621 P.2d 1310, *review denied*, 95 Wash.2d 1019 (1981).

In order to raise diminished capacity as a defense the defendant must satisfy three criteria: (1) the crime charged must include a particular mental state as an element; (2) the defense must present evidence of a mental disorder; and (3) expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged. *State v. Atsbeha*, 142 Wn.2d 904, 914 and 921, 16 P.3d 626 (2001). The expert cannot express an opinion on whether the defendant actually possessed that particular mental state at the time of the commission of the

crime as that can only be expressed by lay or expert witnesses who were personally present at the time the crime was committed. *State v. Upton*, 16 Wn.App. 195, 201, 556 P.2d 329 (1976); *State v. Farley*, 48 Wn.2d 11, 20-21, 290 P.2d 987 (1955).

The only evaluation that is in the court records is one ordered under RCW 10.77. Pursuant to RCW 10.77.060(3)(a) through (c) a competency evaluation includes a description of the nature of the evaluation, a diagnosis or description of the current mental status of the defendant, and if there is a mental disease or defect, an opinion as to competency. Of specific importance is that RCW 10.77.060(3)(d) through (e) sets out the way to obtain an opinion regarding a defendant's sanity or diminished capacity. An evaluation or report by an expert or professional must be provided to the appointed expert before they will render an opinion as to a defendant's sanity or capacity to form the mental state necessary, none of which was done in this matter. The evaluation that was conducted and filed with the trial court in this matter was used for the sole purpose to determine Mr. Siltman's competency to assist his counsel in his defense and competency to understand the proceedings pending against him. There is no finding regarding his capacity at the time of the offense or whether he could or could not

form the requisite intent to commit the crime of Violation of the No Contact Order and Resisting Arrest. Additionally, we have no first hand testimony or reports that state on the specific dates of these violations, September 21, 2013 and October 6, 2013, that Mr. Siltman suffered from a mental disorder that effected his ability to form the mental state required for the commission of these crimes. What was reported as the findings of the evaluation was that Mr. Siltman, while being diagnosed with Psychosis, had the capacity to understand the court proceedings and participate in his own defense. *CP1* at 83 to 89. There are no findings in the report that state Mr. Siltman lacked the capacity to form the requisite mental state to commit the crimes charged. Mr. Siltman's request that his mental health evaluation be considered as part of discovery is just a back-door attempt to assert a diminished capacity defense that was not available and therefore not relevant and rightfully disregarded by the trial court.

But, even if the trial court erred by not considering the mental health evaluation, it is not an error that would require reversal as it is not prejudicial nor is it an error that materially affected the outcome of the trial. The VNCO for which Mr. Siltman

was convicted occurred on September 21, 2013. *CP1* at 45. In the police report, the voicemail message for which the violation is based on makes clear that Mr. Siltman knew who he was calling and that he was in violation of an order since he tells the protected party that she should call the police. *Id.* Likewise, the reports for the Resisting Arrest make clear that Mr. Siltman knowingly resisted arrest when contacted by law enforcement on October 6, 2013. *CP1* at 40. Mr. Siltman repeatedly told the officer that he had done nothing wrong and actively tried to prevent the officer from arresting him. *Id.*

Finally, the Stipulated Order of Continuance states that the trial will be conducted on the “police reports and documents 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...” *CP1* at 20-21. While Mr. Siltman argues that his mental health report was part of discovery, it is important to note that this report was done pursuant to a request by his defense counsel who had doubts as to his competence. *CP1* at 104 to 107. While it may be considered to be done in preparation of litigation, it truly is prepared for the sole

purpose to determine if the defendant can assist his counsel in his defense and understand the proceedings against him. *Id.*

Additionally, it is not a document that is provided in the regular course of discovery but instead is statutorily ordered to be disseminated to the judge, the parties, the designated crisis responder, and the professional person at the local correctional facility where the defendant is being held. *CP1* at 90, RCW 10.77.065(1)(a)(ii).

Based on the forgoing, it is clear that the trial court properly disregarded the mental health evaluation as the evaluation had no relevance to the defendant's capacity to form the requisite mental state to commit the offenses of VNCO and Resisting Arrest. However, even if it was error to not consider the evaluation, it was not an error that produced prejudice to Mr. Siltman as there was substantial evidence in the police report to meet the essential elements of the crimes of VNCO and Resisting Arrest and review of the evaluation would not change the outcome of the Stipulated Facts Trial since a diminished capacity defense would not have been properly asserted.

D. CONCLUSION

Mr. Siltman has failed to carry his burden and meet the five prong test for a new trial based on his alleged newly discovered evidence. He has failed to meet prongs 1, 4 and 5, because this new information is not likely to change the outcome of his trial as Ms. Manual-Snidarich has no recollection of the assault.

Likewise, this new information is not material when you look at the evidence and testimony elicited at trial from the eye-witnesses to the assault. Also, her lack of memory of the assault taken in conjunction with her assertion that she believes she did not have injuries consistent with having been assaulted by Mr. Siltman, it is clear that this evidence would only be used to impeach the State's witnesses regarding their recollection of the events.

Finally, Mr. Siltman has failed to show that there is a lack of sufficient evidence to support his conviction for Violation of a No Contact Order and Resisting Arrest. While he mistakenly relies on the mental health evaluation, it is clear that there is insufficient evidence for him to assert a defense of diminished capacity. Even if the court should have considered the mental health evaluation this evidentiary error is not so prejudicial as to change the outcome of the Stipulated Facts Trial.

For these reason stated above, this Court should deny the appeal and uphold the convictions in both cause numbers.

Dated this 16th day of October 2018

Respectfully Submitted by:



MELANIE R BAILEY, WSBA #38765
Okanogan Criminal Deputy Prosecutor
Attorney for Respondent

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	COA No. 355071
Plaintiff/Respondent)	
vs.)	CERTIFICATE OF SERVICE
Larry Edward Siltman)	
Defendant/Appellant)	
_____)	

I, Shauna Field, do hereby certify under penalty of perjury that on the 16th day of October, 2018, I caused the original Brief of Respondent to be filed in the Court of Appeals Division III and a true copy of the same to be served on the following in the manner indicated below:

E-mail: ken@millerchaselaw.com
andy@millerchaselaw.com

U.S. Mail
 Hand Delivery
 E-Service via Portal

Kenneth J. Miller
Andrew Chase
Miller and Chase, PLLC
PO Box 978
Okanogan, WA 98840

Signed in Okanogan, Washington this 16th day of October, 2018.



Shauna Field, Office Administrator

BRANDEN E. PLATTER
Okanogan County Prosecuting Attorney
P. O. Box 1130 • 237 Fourth Avenue N.
Okanogan, WA 98840
(509) 422-7280 FAX: (509) 422-7290

OKANOGAN COUNTY PROSECUTING ATTORNEY'S OFFICE

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