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Division III
State of Washington
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35627-2-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

MARY FAUCETT, Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF FRANKLIN COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:
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Prosecuting Attorney



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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Franklin County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the conviction and sentence of the Appellant.

III. ISSUES

1. May the Defendant challenge the order denying the Motion to Enforce the Plea Agreement where the Defendant subsequently entered into a new plea agreement and pled guilty, waiving any claims?
2. May the Defendant challenge the order filed July 25, 2017 denying the Motion to Enforce the Plea Agreement where the notice of appeal was filed more than thirty days after this order and where the notice only seeks review from the “judgment and sentence” of September 14, 2017?

IV. STATEMENT OF THE CASE

The Defendant/Appellant Mary Faucett has been convicted by

guilty plea of manslaughter in the first degree. CP 120-29; 132-45.

In November and December of 2014, DeShawn Anderson was engaged in a feud with the F-13 (Florenxia) street gang. CP 153-54. His family and friends egged him on.

On November 18, 2014, believing that some F-13 members were laughing at him in the casino, he contacted his friends Raquel Acosta and Francisco (Psycho) Muñoz. CP 35, 153. Instead of calming him down, the two assisted Mr. Anderson in stalking the men to a house and then shooting them in their parked car. CP 35-36.

The next day, there was a retaliatory, drive-by shooting outside of Mr. Anderson's mother's house. CP 42, 153. Mr. Anderson's cousin Marshawn Brown was shot and his friend Anthony (Ant) Guerrero was killed. CP 90-91. The third vehicle occupant was Jaime Valdivia-Escamilla. CP 90. Mr. Anderson believed Florenxia was responsible. CP 91.

On the night of December 3, 2014, Mr. Anderson spotted a distinctive, old model, orange Mustang parking at the Albertson's and watched Lorenzo Fernandez Jr. walk into the store. CP 33, 36, 42. (Mr. Fernandez was formerly with Florenxia, but was turning his life around after spending some time in jail. CP 33, 43, 91.) Again Mr.

Anderson stalked him, this time with the assistance of his cousin Kenyatta Bridges and Mr. Bridges' wife, the Defendant Mary Faucett. CP 33, 36. Rather than deterring Mr. Anderson, the couple assisted Mr. Anderson in a plan to ambush Mr. Fernandez. CP 33, 36-37, 42-43. The Defendant approached Mr. Fernandez in a store, flirted with him, and got his phone number. CP 33, 36-37, 43-44.

Mr. Anderson was carrying a large handgun, a 1911 .45, in his lap. CP 45-46. He arranged to purchase an additional weapon. *Id.* The group drove to a laundromat in Pasco to pick up the go-between. *Id.* They then drove to a gas station and purchased the gun, possibly with counterfeit bills. *Id.* Mr. Anderson then provided the gun to Mr. Bridges to back him up. CP 45.

They drove around for a while, when at 11 PM the Defendant decided to call Mr. Fernandez and arranged to meet him at the Stonegate Apartments. CP 33, 36-37, 44. She tried to get Mr. Fernandez to bring one of his "homies" along, saying that she would bring a cute girl for him. CP 44. In the car, the three laughed about having set up Mr. Fernandez, and Mr. Anderson displayed his new gun. CP 36-37. Mr. Anderson talked about putting in "work," an expression which means criminal activity in the service of one's gang.

CP 44; *State v. DeLeon*, 185 Wn.2d 478, 482, 374 P.3d 95 (2016).

When the group arrived at Stonegate at 11:40 PM, Mr. Bridges had become very scared. CP 44. Mr. Anderson was trying to fire himself up by repeating, "I got you Ant[hony], I got you." *Id.* The Defendant called Mr. Fernandez again and told him to meet her by the mailboxes. *Id.* Mr. Anderson took out his gun and racked it, saying, "All mine, all mine, all mine, I got you Ant, I got you Ant." *Id.* He yelled for Mr. Bridges to follow, and Mr. Bridges grabbed his own gun and a second magazine clip, saying, "[t]hese ones are going to fly, too." *Id.* Shortly after the two men exited the car, Mr. Fernandez called the Defendant. CP 34, 44. When she hung up, she told Mr. Amaya that Mr. Fernandez sounded nervous. CP 44. She called Mr. Fernandez "this scrap kid," which is a derogatory term for a Sureño gang member. *Id.* Then they heard the gunshots. *Id.*

Mr. Amaya began to panic, but the Defendant was "a cold ass bitch." *Id.* "She didn't give a fuck, like it was nothing." *Id.* After the shooting, she "asked Anderson if he did what she told him to do." CP 45. She had told him to collect Mr. Fernandez's phone which had her phone number in the call log. CP 45-46.

On December 11, 2014, before going on the run, the

Defendant met with the detective to try to find out what police knew. CP 17. On December 15, an information was filed charging the Defendant with rendering criminal assistance in the first degree, and a warrant issued. CP 1, 155. At that time, police only knew that the Defendant had participated by surveilling the residences of rival gang members, by offering Mr. Anderson a place to stay while police were searching for him, by traveling with him outside of the area, and by disposing of evidence. CP 91, 153-54. They also provided Mr. Anderson with prepaid credit cards purchased with counterfeit bills. CP 91.

She was arrested in Spokane on December 25th, and posted \$25,000 bond soon after. CP 24-25, 155-56. Out of custody, she continued to contact the detective, this time to try to learn the details of her husband's confession. CP 1, 24-27, 155-56. In a recorded interview, she claimed the murder had been carried out by Mr. Anderson and another man (not her husband), that she had no involvement in Mr. Fernandez's killing, and that she had not been with Mr. Anderson in the hours preceding the murder. CP 26-27. The detective knew the Defendant was lying to him. CP 25-29 (Mr. Anderson and Mr. Bridges confessed in December, shortly after they

were taken into custody). Her offer to tell the truth in exchange for a plea deal was rejected. CP 28-29.

A few days later, the Defendant contacted the detective again, claiming she had valuable information to trade for a plea deal. CP 29. After consulting with the prosecutor, the detective told the Defendant that, if she admitted her complete involvement and spoke the absolute truth, omitting no fact regarding her own involvement, she would not be charged with any type of murder charge. CP 29, 32. The Defendant agreed to the terms and gave another recorded interview. CP 29, 32-34. She spun a tale in which was she had protected Mr. Fernandez from Mr. Anderson and was trying to broker peace.

The Defendant's January 5, 2015 statement. The Defendant said she was tired of all the violence that was going on. Exh. 2 @ 31:55-32:05. Because Mr. Anderson would not shoot if there was a chance she could be injured, she followed Mr. Fernandez into the 7-Eleven, exited with him, and did not leave his side until they had lost Mr. Anderson. Exh. 2 @ 12:46-13:00, 5:29-15:36.

She claimed that she learned from Mr. Fernandez that Jaime Valdivia-Escamilla was his cousin. Exh. 2 @ 16:36-18:20. She said this gave her the idea that the two could make peace. Exh. 2 @ 16:36-

18:20; CP 90. She said Mr. Anderson chose the meeting location, and that she believed he was just going to ask Mr. Fernandez for information on Mr. Guerrero's killers and then proceed on the information with others in that area. Exh. 2 @ 33:24-33:55. She claimed it would be unreasonable for Mr. Anderson to expect her husband to ever get involved in a gang fight. Exh. 2 @ 40:26-41:05.

She claimed, she did not know the two men were going to kill Mr. Fernandez when they left the car. Exh. 2 @ 37:50-37:59. After hearing the gun shots, she called Mr. Fernandez's phone repeatedly, purportedly "to see if he was okay." Exh. 2 @ 52:14-52:24.

Alternately, she would claim that she and her husband were Mr. Anderson's pawns, then that Mr. Anderson neither premeditated nor even intended to kill, and even that Mr. Anderson acted in self-defense. Exh. 2 @ 57:14-57:17 ("fell into a trap"); Exh. 2 @ 1:10:48-1:11:06; Exh. 2 @ 1:13:15-1:13:22 ("maybe Shawn [thought Mr. Fernandez was] gonna come back"). According to her, she was only guilty of naively wanting to bring peace. Exh. 2 @ 50:30-50:52.

Three days after the Defendant's statement, on January 8, Ms. Acosta gave a recorded interview in her attorney's presence pursuant to an immunity agreement. CP 35-37; Exh. 1. On February 10, 2015,

the information against the Defendant was amended to add a charge of conspiracy to commit murder in the first degree, and the bail was increased to \$40,000. CP 6-9; RP (2/10/15) 5. The Defendant bonded out again. CP 159-61. On March 3, 2015, the Defendant filed a motion challenging the amendment of the information, claiming she had fulfilled her end of the agreement. CP 11-15; RP (2/10/15) 3. The next day, Mr. Amaya provided a full statement to police. CP 41. The State's response included that statement. CP 41-46.

On March 10, 2015, the court heard the Defendant's motion and reviewed the recorded interviews of the Defendant and Ms. Acosta. CP 47-49; RP (3/10/15) 2-4, 6. The Defendant alternately claimed that the only information she withheld was her "motivation" or that Ms. Acosta was unreliable. RP (3/10/15) 9-10. The Defendant acknowledged that she had made contradictory statements and withheld the fact that she was aware Mr. Anderson was in possession of a second gun, newly purchased. RP (3/10/15) 11-12.

The prosecutor outlined the omissions in the Defendant's statement. CP 16-46. The Defendant lied about her husband's involvement, her contact with Mr. Anderson, and about her own knowing participation. CP 17-18. She failed to tell police that: she

knew Mr. Anderson was highly agitated about the murder of his friend immediately before he exited the car to kill Mr. Fernandez; she had witnessed Mr. Anderson purchase a firearm earlier in the day; and she heard Mr. Anderson say he almost “capped” Mr. Fernandez outside the grocery store. CP 43; RP (3/10/15) 16. She lied to police when she represented that she obtained Mr. Fernandez’s phone number and arranged the meeting without knowing what was going to happen. *Id.* The prosecutor argued the Defendant’s “motivations” were part and parcel of the conspiracy and demonstrated the parties’ premeditation and complicity. RP (3/10/15) 17-18. “[T]he truth of the matter is that if the defendant had not received Lorenzo Fernandez’s cell phone number, called him and lured him to the Stonegate Apartments on December 3rd of 2014, he very well might be alive.” RP (3/10/15) 18.

The judge denied the defense motion. RP (3/10/15) 20-21.

In May 2015, the prosecutor made a motion to revoke the Defendant’s conditions of release. CP 50-57. The Defendant had been arrested in Coeur d’Alene on allegations of prostitution and had violated probation in a Spokane theft case. CP 53. Defendant’s bail was increased to \$150,000. CP 50-57.

Over the next two years, Mr. Bridges would plead guilty and Mr.

Anderson would be found guilty at trial. State's Objection to Motion to Compel at 6-7.

On April 20, 2017, John Crowley filed a notice of substitution. RP (4/20/17) 10. On July 25, 2017, Mr. Crowley signed off on the findings and conclusions on the order denying motion to enforce plea agreement. CP 105-07; RP (7/25/17) 13. The written findings include:

7. The Defendant's statements given on January 5, 2015 are directly conflicted in significant ways by the statements of Raquel Acosta and Luis Amaya.
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3. The Defendant did not speak to the detective with absolute truth regarding her full involvement in this case.
4. The State's agreement with the Defendant became null and void when she was dishonest.

CP 106. The Defendant did not appeal from this order, timely or otherwise. She does not assign error to the findings or conclusions therein.

As the trial date approached, the information was amended to one count of murder in the first degree with a firearm enhancement, conspiracy to the same, and rendering criminal assistance in the first degree. CP 103-04. The State filed its trial memorandum setting out the details of the case and a further memorandum explaining that Ms. Faucett's multiple statements to police would be admissible against her

at trial. CP 86-99, 108-10. Lengthy motions in limine set forth the State's expectations that Ms. Faucett's likely defenses would be inadmissible. CP 77-85. The State filed a motion to compel defense counsel to either file a witness list or acknowledge that no witnesses would be called in the defense case. CP 111-17.

Despite the significant evidence of Ms. Faucett's premeditation and direction, the State agreed to allow the Defendant to plead guilty to a single count of manslaughter with an agreed upward recommendation of 130 months. CP 118-29. By pleading guilty, the Defendant waived her right to challenge the State's evidence of her guilt and her right to present evidence in her defense. CP 120-21.

On September 14, 2017, the Defendant was sentenced per the plea agreement. CP 132-45. On October 13, 2017, the Defendant filed a notice of appeal, seeking review "of the judgment and sentence entered 9/14/2017." CP 150.

V. ARGUMENT

A. THE DEFENDANT'S FAILURE TO ADDRESS THE WAIVER ISSUE IN HER OPENING BRIEF PREJUDICES THE STATE'S ABILITY TO RESPOND.

When the Defendant attempted to compel the superior court

clerk to copy exhibits for this appeal, the State made clear its position that the exhibits were irrelevant on appeal after a plea of guilty.

By pleading guilty, in the Statement of Defendant on Plea of Guilty, Ms. Faucett waived her right to challenge the State's evidence of her guilt and her right to present evidence in her defense.

In preparing for this appeal, Defendant's counsel insists that it is necessary, despite the guilty plea, to review the State's discovery, in particular two DVDs that were entered into evidence as exhibits.

State's Objection to Motion to Compel at 8. Despite this cautioning, the Defendant does not address the waiver issue in her appeal at all.

If the Defendant argues for the first time in reply that she has a right to the appeal despite the guilty plea, the State may request the argument be stricken or at least may request permission to file a supplemental response. *King v. Rice*, 146 Wn.App. 662, 673, 191 P.3d 946 (2008) (argument raised for first time in reply brief comes too late); *State v. Goodin*, 67 Wn.App. 623, 628, 838 P.2d 135 (1992), *review denied*, 121 Wn.2d 1019 (1993) (noting that the court generally will not consider arguments raised for first time in reply brief); *State v. Peerson*, 62 Wn.App. 755, 778, 816 P.2d 43 (1991), *review denied*, 118 Wn.2d 1012 (1992) (striking reply brief and holding that a reviewing court was not obliged to address errors

raised for the first time in reply); *State v. Bell*, 10 Wn. App. 957, 963, 521 P.2d 70 (1974) (rules do not permit second briefing; delays and additional expense of second brief is undesirable).

B. BY PLEADING GUILTY, THE DEFENDANT HAS WAIVED ANY RIGHT TO CHALLENGE THE COURT'S PRETRIAL ORDER TO DENY A MOTION TO DISMISS.

After a plea of guilty, a defendant's right of review is limited. *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980) (“[A] plea of guilty constitutes a waiver by the defendant of his right to appeal”); *State v. Olson*, 73 Wn. App. 348, 353, 869 P.2d 110, 113 (1994) (“A guilty plea is ‘more than an admission of conduct; it is a conviction’ and ‘nothing remains but to give judgment and determine punishment’”) (quoting *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711–12, 23 L.Ed.2d 274 (1969)). The Defendant's guilty plea did not waive challenges to any errors in the sentence. CP 120-21. But in her appeal, the Defendant does not challenge her sentence.

The only other matters that a defendant may appeal after a guilty plea are collateral questions “such as the validity of the statute, sufficiency of the information, jurisdiction of the court, or the circumstances in which the plea was made,” such as the

voluntariness of the plea. *Id.*; *State v. Knotek*, 136 Wn. App. 412, 422, 149 P.3d 676 (2006).

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.

Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 1608, 36 L. Ed. 2d 235 (1973). But here the Defendant does not challenge the voluntariness of her guilty plea or any other appropriate collateral matter.

She challenges the validity of an immunity agreement. It is a pretrial issue that was litigated two years before she negotiated a plea deal for manslaughter. The Defendant properly compares an immunity agreement to a plea agreement. CP 14; Brief of Appellant (BOA) at 14. Her change of plea waived her right to challenge the court's denial of her motion to dismiss. This Court must summarily deny the challenge.

If a defendant wants to preserve a legal issue for appeal while

avoiding a lengthy, painful trial, she may proceed by way of a stipulated facts trial on the charged information. *State v. Mierz*, 127 Wn.2d 460, 469, 901 P.2d 286 (1995). “A stipulated facts trial is substantively different from a guilty plea proceeding.” *State v. Smith*, 134 Wn.2d 849, 853, 953 P.2d 810, 811 (1998).

In a stipulated facts trial, the judge or jury still determines the defendant’s guilt or innocence; the State must prove beyond a reasonable doubt the defendant’s guilt; and the defendant is not precluded from offering evidence or cross-examining witnesses but in essence, by the stipulation, agrees that what the State presents is what the witnesses would say. Furthermore, in a stipulated facts trial the defendant maintains his right to appeal, which is lost when a guilty plea is entered.

State v. Johnson, 104 Wn.2d 338, 342–43, 705 P.2d 773, 775–76 (1985).

The Defendant did not do this. If she had proceeded by way of a stipulated facts trial, she would have faced a minimum term of 25 years on the first count alone. CP 103; RCW 9.94A.510; RCW 9.94A.515; RCW 9.94A.533(3)(a). Instead, she negotiated a deal with the prosecutor and pled guilty to the reduced charge of manslaughter and a term of ten years.

By her guilty plea, she is precluded from making this challenge.

C. THE APPEAL MUST BE DISMISSED WHERE THE DEFENDANT DID NOT SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF A NOTICE OF APPEAL AS RELATES TO THIS MATTER.

“[T]o be effective, a notice of appeal must fulfill two requirements; (1) it must be timely, and (2) it must contain specified information.” *State v. Sorenson*, 2 Wn. App. 97, 100, 466 P.2d 532, 534 (1970). The party “must” designate the decision or part of the decision which she wants reviewed and “should” attach that decision to the notice. RAP 5.3(a). A notice of appeal “must” be filed within 30 days of the entry of the decision that the party filing the notice wants reviewed. RAP 5.2(a).

The party must designate the proper order in the notice of appeal so that, as a preliminary issue, this Court’s commissioner can determine whether the appeal may proceed under RAP 2.2 and RAP 5.2. 2A Wash. Prac., Rules Practice RAP 5.3 (8th ed.) An appellate court must not review an order from which no appeal has been taken. *Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 144, 298 P.3d 704, 708 (2013).

The notice indicates that the Defendant is seeking review of

the judgment and sentence. CP 150. But this is not the case. She is not challenging her guilt or sentence. According to the Brief of the Appellant, the Defendant is only seeking review of the order denying the motion to dismiss. The judgment and sentence does not rely upon the order of dismissal. It relies upon the Defendant's decision to negotiate a favorable plea deal and plead guilty.

The court may overlook a violation of RAP 5.3(a)(3) if the violation is technical only. For example, in *State v. Olson*, 126 Wn.2d 315, 317-18, 893 P.2d 629 (1995), the state filed an appeal from an order of dismissal and then assigned error in the opening brief to the suppression order. This was held to be a technical error only. "The notice of appeal did not specifically refer to the suppression order, but the dismissal order, which was attached to the notice of appeal, clearly stated that the dismissal was based on the suppression of evidence by the trial court." *State v. Olson*, 126 Wn.2d at 318. "[T]he violation is minor and results in no prejudice to the other party and no more than a minimal inconvenience to the appellate court." *State v. Olson*, 126 Wn.2d at 316.

In our case, the violation is more than technical. If the Defendant had designated the order of dismissal in the notice of

appeal, the matter would have been dismissed by the court commissioner as unappealable, as explained *supra*, and untimely. Circumventing the commissioner is more than minimal inconvenience. Sidestepping the procedural questions to go right to the merits prejudices the respondent where the procedural bars are decisive of the matter.

The notice is untimely, filed more than thirty days after the order denying dismissal. CP 105, 150. The timely filing of a notice of appeal is a jurisdictional matter. *State v. Sorenson*, 2 Wn. App. 97, 99, 466 P.2d 532 (1970). [Insofar as the Defendant may argue that an appeal may not be dismissed as untimely unless the State can demonstrate a voluntary waiver, her unchallenged guilty plea is her waiver.]

The appeal fails to assign error to any factual finding. Failure to assign errors to findings render them verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). The Defendant has also failed to assign error to any conclusion of law therein. BOA at 1. Failure to assign error to the relevant ruling until after the court accepted review will result in dismissal of the appeal. *State v. Cruz*, 189 Wn.2d 588, 594-96, 404 P.3d 70, 74 -75 (2017).

This Court should dismiss the appeal under RAP 5.2, RAP 5.3, and RAP 10.3(a)(4).

D. THE COURT MADE NO ERROR IN DENYING THE MOTION TO DISMISS.

This Court should not reach the merits. However, in this case, there is no merit to the appeal.

Informal immunity agreements are interpreted using ordinary contract principles. *United States v. Dudden*, 65 F.3d 1461, 1468 (9th Cir. 1995). When assigned error, factual determinations would be reviewed for clear error. *Id.* The burden of proving a breach is mere preponderance of the evidence. *United States v. Mark*, 795 F.3d 1102, 1105 (9th Cir. 2015).

Here the court's factual findings are unchallenged verities. The Defendant lied. CP 106 (CL 3). The agreement required her to be truthful. CP 106 (CL 2). The Defendant did not disclose her full involvement in the case. CP 106 (CL 3). The requirement required her to speak of her own complete involvement. CP 106 (CL 2). She failed to meet the only two conditions required of her.

The Defendant claims she did not lie, but merely failed to tell the whole truth. BOA at 16. Because the court found otherwise, it is

a verity that she lied.

The Defendant argues that a breach must be material. BOA at 14. The Defendant's truthfulness in her final statement was an essential, material requirement of the agreement. A witness who habitually lies, even when granted immunity, is no witness for the State. RPC 3.3(a)(4).

In this case, the Defendant would have been disqualified from testifying against her husband, Mr. Bridges. CP 94; RCW 5.60.060(1); *State v. Chenoweth*, 188 Wn.App. 521, 525, 354 P.3d 13, *review denied*, 184 Wn.2d 1023, 361 P.3d 747 (2015). Her truthful testimony could only have been useful to the state in Mr. Anderson's trial. But her lies, which minimized her and her husband's complicity, inaccurately inflated Mr. Anderson's culpability. Those lies and omissions were a material breach.

The Defendant claimed that Mr. Anderson commanded her actions. Mr. Amaya's statement is otherwise. According to him, the Defendant directed and commanded Mr. Anderson. *She* was the one who decided to get Mr. Fernandez's phone number. CP 37, 43. *She* decided *how* she would obtain it – with an offer of sex. CP 37, 43-44. *She* decided to call him and arrange a date. CP 44. *She* decided to

encourage him to bring a friend, a possible other victim. CP 44. *She* chose the timing of the killing by calling Mr. Fernandez once the group arrived at Stonegate. CP 44. *She* instructed Mr. Anderson to collect the phone. CP 45.

The Defendant claimed she intended to bring Mr. Fernandez and Mr. Anderson together in order that they would make peace. This is not an omission. It is a lie. Neither Mr. Amaya nor Ms. Acosta relate anything of the sort. The three conspirators were laughing at the fool they were making of Mr. Fernandez. The two men left the car hot, intent on killing, and the Defendant's instruction was to bring back Mr. Fernandez's phone so that they might destroy the evidencing linking her and her husband to the victim.

These material lies and omissions would have prejudiced Mr. Anderson if she had testified against him and could have resulted in a reversal or dismissal of the state's case against Mr. Anderson.

The record does not support the Defendant's claim that omissions which favored her and prejudiced Mr. Anderson were "inadvertent." They protected her and her husband. They were intentional.

The Defendant continues to claim that she only failed to

disclose her “motivation.” BOA at 16. This is false. We still do not know what motivated her to kill Mr. Fernandez. The young, immature Mr. Anderson was likely motivated by shame and guilt after having gotten his friend Anthony Guerrero killed. He might have felt compelled to defend the prestige of his gang. But the Defendant did not share Mr. Anderson’s culpability for the November shootings. And she was not immature. In 2015, her two children were eight and nine years old. CP 58. She described herself as highly competent, supporting the family after her husband’s arrest. CP 58-59. She took advantage of Mr. Anderson’s and Mr. Bridges’ passions to avenge family and appear powerful. We do not know what motivated her to destroy so many lives.

What she failed to disclose was her criminal intent, her premeditation, and her conspiracy. These omissions made Mr. Anderson appear more culpable, so she could appear less so. They painted a false picture which could have materially affected the men’s plea negotiations and trials.

The Defendant claims that she should be believed over two other witnesses. Because the factual finding on credibility is unchallenged on appeal, the claim is foreclosed. *State v. O’Neill*, 148

Wn.2d at 571 (verity on appeal). Even if the Defendant has assigned error to the factual finding, the claim would fail. Substantial evidence in the record supports the credibility finding. *State v. Lopez*, 190 Wn.2d 104, 116, 410 P.3d 1117 (2018) (substantial evidence standard). The Defendant has a conviction for a crime of dishonesty. CP 134. At the time of the murder, she was engaged in another crime of dishonesty – passing counterfeit money. CP 43 (when Ms. Acosta berated Mr. Anderson for giving her counterfeit money, “Faucett [said] that she had used the fake money and got away with it.”). The Defendant manipulated several attorneys to give her free legal advice under the belief that they would represent her in this case. CP 24 (she had gathered the business cards of six attorneys); CP 26 (“had spoken with several different attorneys,” represented that Scott Johnson’s beliefs about representation notwithstanding, she did not want an attorney). Her relationship with the detective was manipulative from start to finish. CP 25; State’s Objection to Motion to Compel at 6. She was manipulative in her letters to the judge. She lied that she had no pending case in another county in order to obtain pretrial release, after which she traveled out of state and committed more crimes. CP 52-59. She continually minimized her actions and

hid her husband's involvement.

Mr. Amaya and Ms. Acosta on the other hand are believable, because they admitted their own bad acts. The Defendant did not. She told police she had tried to save Mr. Fernandez, and that her only crime had been naively believing that the men would make peace. Mr. Amaya and Ms. Acosta both acknowledged the second gun which Mr. Bridges would use, and their stories are consistent with each other.

The Defendant claims she detrimentally relied upon a promise of immunity. BOA at 21. This is false. She was not harmed by making a statement which would not be used against her. Her conviction is a result of her guilty plea only. She claims that she provided the state with evidence "to convict Anderson and Bridges." BOA at 23. The bare allegation is unsupported in the record because it is, again, false. The Defendant's statements were not useful to or used by the State. Her statement did not lead the police to any new physical evidence. Nor did she provide the State with the identities of any new witnesses.

Both Mr. Anderson and Mr. Bridges had confessed the month before. Their confessions were corroborated by significant physical

evidence and other witness statements. The Defendant would not name Mr. Amaya, calling him only “the Hispanic boy.” Exh. 2. She did not provide any incriminating information against Ms. Acosta, and Ms. Acosta had already been apprehended, appointed counsel, and was in the process of negotiating a plea agreement.

The Defendant did not testify in any trial related to the murder of Mr. Fernandez. She *could not* testify against either co-defendant. If Mr. Bridges had gone to trial instead of pleading guilty, her testimony would have been excluded under rules of spousal disqualification. She was not called to testify in Mr. Anderson’s trial for so many reasons. Certainly she had the constitutional right to refuse to testify, but she was also a documented liar on this subject. Her statement would not be admitted under any hearsay exception, where the conspiracy had concluded. ER 801((d)(2)(v). And her statement was not used even against the Defendant herself. Because she pled guilty, the question of whether her self-serving statement could or would have been used against her at her own trial is foreclosed.

The State received no benefit from entertaining the Defendant’s final false statement.

The Defendant's reliance on *State v. MacDonald*, 183 Wn.2d 1, 9, 346 P.3d 748 (2015) is misplaced. BOA at 24. There the prosecutor and police officer took different positions, making different sentencing recommendations. Here, there is a united front. The State, as represented by both the prosecutor and the investigator, are of the opinion that the Defendant breached the immunity agreement. To make this analysis and to reach this conclusion is not a breach; it's an assessment. The trial court agreed with this analysis, holding that it was the Defendant alone who breached the agreement. CP 106 ("The State's agreement with the Defendant became null and void when she was dishonest"). No error has been assigned to any portion of this order.

The trial court made no error in finding by a preponderance of the evidence that the Defendant breached the immunity agreement. The Defendant conceded the correctness of this decision by negotiating a new plea agreement and pleading guilty, waiving any challenge.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: July 31, 2018.

Respectfully submitted:

SHAWN P. SANT
Prosecuting Attorney



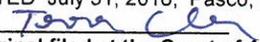
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A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED July 31, 2018, Pasco, WA


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