Supreme Court No. 102911-0
COA No. 84330-3-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SOREN OLSEN,

Petitioner.

PETITION FOR REVIEW

ON APPEAL FROM THE SUPERIOR COURT
FOR SKAGIT COUNTY

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A. IDENTITY OF PETITIONER

Soren Olsen was the defendant in Skagit County No. 21-1-00753-3 (29), and the appellant in COA No. No. 84330-3-I.

B. COURT OF APPEALS DECISION

Soren Olsen was the defendant in Skagit County No. 21-1-00753-3 (29), and the appellant in COA No. No. 84330-3-I. He is the petitioner herein, seeking review of the Court of Appeals decision issued January 22, 2024. Appendix A (Decision). A motion to reconsider was denied on February 27, 2024 (Appendix B).

C. ISSUES PRESENTED ON REVIEW

1. Based on evidence located on Mr. Olsen's person and during a warrant search of the car he was temporarily residing in, charges were leved for possession of methamphetamine and fentanyl with intent to deliver, and unlawful possession of a firearm. Mr. Olson was held in Monroe on a DOC violation, and only then later arraigned in Superior Court on the criminal charges. Three days after Mr. Olsen was appointed a defense

lawyer and one day after he was arraigned, the police impound lot released the car and allowed it, and all remaining evidence in it, to be towed away and destroyed, after taking photographs.

Is review by the Supreme Court warranted under RAP 13.4(b)(3) to determine whether the State may ignore, with impunity, a written defense request to preserve all evidence in a criminal case, and allow the crime scene to be destroyed before the accused has any apportunity to examine it and subject it to testing, or do such actions violate the Fourteenth Amendment and Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988), which provide that Mr. Olsen has a right to Due Process of Law?

2. Should the Supreme Court accept review to determine whether a defendant demonstrates police destruction of potentially useful evidence in "bad faith" under Youngblood where Mr. Olsen admitted that he briefly possessed the drugs that were found when police made him exit the car, but the wrongful destruction of the car and its contents prevented Mr.

Olsen from conducting testing on the vehicle to prove false the prosecutor's wrongful claim that he was a drug dealer - allegedly because he was using a box of baking soda in the car to "cut" controlled substances and maximize his drug profits?

Was bad faith also shown where the destruction of the car also prevented Mr. Olsen from supporting his testimony that the gun found, a black powder Civil War pistol, was a family heirloom that his son had told him he placed in a storage box in the trunk, rather than where it was found under the driver's seat?

3. Is review warranted where the trial court, in coflict with established case law, ruled that it was "speculative" whether certain destroyed evidence was potentially useful, where such evidence, under Youngblood, includes by definition evidence that the defense could have subjected to future testing to assess its full value?

4. Is review warranted where the trial court erred as a matter of law in ruling in favor of the State's unsupportable

claim that the victims' rights statute, RCW 7.69.030, authorized destruction of the car and the uncollected evidence left inside, rather than recognizing that destruction of the car three days after Mr. Olsen's lawyer requested that all evidence be preserved is the very epitome of "bad faith"?

D. STATEMENT OF THE CASE

1. Facts.

(a). Arrest. Mr. Olsen was arrested on December 1, 2021 after Officer Jonathan Flaherty knocked on the window of the car where he and his wife Mrs. Olsen were sleeping, in the cold of winter, in a parking lot in Mount Vernon. CP 17. Officer Flaherty knew that Mr. Olsen had a Department of Corrections (DOC) arrest warrant. After Officer Flaherty directed him to exit the vehicle, Mr. Olsen informed the officer that he had an antique firearm in the car, which he thought the firearm was in the trunk where his son had told him he put it in a secure storage box. 6/13/22RP at 953; 6/13/22RP at 914, 997, 1007, 1091; CP 3, 17.

(b). Search. In a search of Mr. Olsen incident to arrest, the officer located a plastic packet of suspected methamphetamine in one of Mr. Olsen's pants pockets, and a plastic packet of blue fentanyl pills that were either in Mr. Olsen's other pocket, or fell from the car when he exited the front seat. Mr. Olsen also had $420 in cash in his wallet. CP 3, 17-18.

After his arrest, Mr. Olsen went into DOC custody in Monroe, Washington, for an outstanding violation of community custody where he had been given permission to visit his ill wife months previously, but had not checked back in with his DOC approved placement. CP 16-17.

In a search of the car pursuant to a warrant, officers located a zippered DeWalt bag on the driver's side floorboard. CP 24. It contained quantities of methamphetamine and pills of fentanyl, unused small plastic bags, rubber bands, and also an antique black powder pistol from 1861 with no gunpowder sachets. CP 3; 6/13/22 at 955. A box of baking soda was found

in the front passenger compartment, which the State's expert would later claim - in a case where the evidence of intent to deliver was ambiguous and evanescent - showed a typical drug dealer's intent to cut drugs for sale with an inert substance. See 6/9/22RP at 738 (officer's testimony that "typically, to make more money, they use a variety of things, such as baking soda, baking powder").

Mr. Olsen was subsequently released from DOC, to custody on the pending criminal charges. CP 16-17. Defense attorney Jason Weiss was appointed to represent Mr. Olsen on January 31, 2022. Mr. Weiss filed a Notice of Appearance and Request for Discovery on February 1, 2022, demanding that all evidence be preserved. CP 716 - 717 (Feb. 1, 2022) (attached hereto as Appendix C).

2. Denial of motion to dismiss for bad faith destruction of crime scene and physical evidence.

Despite the written request to preserve, the next day, February 4, 2022, the Mount Vernon Police Department property custodian released the car and all uncollected evidence

inside it from the property lot, for destruction. CP 18. Prior to trial, Mr. Olsen filed a Fourteenth Amendment due process motion to dismiss under Arizona v. Youngblood, 488 U.S. 51, 57-58, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988), based on bad faith destruction of the car, as the crime scene, and its contents. The motion to dismiss was denied. 5/2/22RP at 95.

E. ARGUMENT IN FAVOR OF GRANT OF REVIEW

Mr. Olsen's right to Due Process under Youngblood was violated when the State allowed the car to be destroyed, an act which, under all the circumstances, amounted to bad faith.

(1). Supreme Court review is warranted under RAP 13.4(b)(3) to make clear the standards that apply where government destruction of evidence becomes a violation of constitutional due process rights.

Mr. Olsen defended that he was not a drug dealer and testified at trial that the DeWalt bag was not his bag. 6/13/22RP at 1001, 1004, 1007-08, 1079. But this defense failed, after the court denied his argument of bad faith destruction of evidence by the State in violation of the Fourteenth Amendment. He argued that Due Process was

violated, requiring dismissal of criminal charges with prejudice, where the police cause evidence that is potentially useful to the defense to be lost or destroyed, if the police acted in "bad faith." U.S. Const. amend. XIV; Arizona v. Youngblood, 488 U.S. 51, 57-58, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988); State v. Wittenbarger, 124 Wn.2d 467, 474-77, 477, 880 P.2d 517 (1994); CP 15-47, CP 53-98; 5/2/22RP at 44-58, 75-89, 91-96.

On appeal, review of this constitutional issue is *de novo*. State v. Burden, 104 Wn. App. 507, 512, 17 P.3d 1211 (2001) (constitutional questions of whether evidence was plainly exculpatory, or potentially useful, and whether the police acted in bad faith, are matters the appellate court reviews *de novo*) (citing United States v. Manning, 56 F.3d 1188, 1197-1198 (9th Cir.1995)).

(2). The police destroyed evidence that was potentially useful to the defense.

Three days after Soren Olsen's lawyer filed a notice of appearance and request for discovery, the State allowed the car Mr. Olsen was arrested in, and the uncollected physical

evidence remaining in it, to be destroyed forever. 5/2/22RP at 49-50; CP 18 (affidavit of defense counsel). These facts are undisputed. 5/2/22RP at 77-78 (statement of deputy prosecutor Sebens).

Whether the loss or destruction of evidence violates Due Process depends on the nature of the evidence. Wittenbarger, 124 Wn.2d at 475-77. There are two levels of possible Due Process violation. First, evidence is materially exculpatory - so as to establish innocence - if its exculpatory value was apparent before the evidence was destroyed, and the nature of the evidence leaves the defendant unable to obtain comparable evidence, in which case dismissal is required with no "bad faith" requirement. Wittenbarger, 124 Wn.2d at 475. Second,

> [i]f the evidence [is] "potentially useful" to the defense, failure to preserve the evidence [violates] due process [if] the criminal defendant can show bad faith on the part of the State. Wittenbarger, 124 Wn.2d at 477, 880 P.2d 517 (citing Arizona v. Youngblood, 488 U.S. 51, 58, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988)).

State v. Burden, 104 Wn. App. at 512.

Here, the evidence lost was potentially useful and Mr. Olsen must, and did, show bad faith. Vital physical evidence that was potentially useful to the defense was lost when the car was allowed to be destroyed. The car itself, in which Mr. Olsen lived, was the very crime scene. CP 20. This means that the car was the precise location where Mr. Olsen allegedly committed the claimed offenses of possession of controlled substances with intent to deliver, and enhancements, and the offense of unlawful possession of a firearm. 5/2/22RP at 54-55 (emphasizing that "the car destroyed so quickly was in fact the crime scene.").

The car was not only the general scene of the offenses, but the positions of multiple pieces of evidence were crucial to the crimes charged, and indeed to the firearm enhancements that the prosecutor added when Mr. Olsen sought to show his innocence at trial and refused a plea offer. See CP 668-69; CP 660; 5/2/22RP at 45-47, 6/9/22RP at 827-28, 835 (defense motions and argument that firearm's location was crucial to the

question of unlawful possession of a firearm, and "nexus" for enhancement purposes under RCW 9.94A.533(3)); 6/13/22RP at 952-53 (defendant's testimony that his son had told him that gun was secured in a box truck for storage and sale to an antique dealer).

Further, crucial physical evidence was lost in the form of the ability to test the floor and footwell area of the vehicle for the presence of baking soda. CP 20; 5/2/22RP at 55-56. Mr. Olsen and his wife are homeless - a fact known to the State for months before the present case even arose. 6/9/22RP at 849 (testimony of DOC officer Bailey Larsen). They lived in the vehicle, although they did not own even that - it was borrowed. CP 17; 6/9/22RP at 747. The car's floor had become moldy, and the baking soda that police found in the car was used to deodorize the floor and the air. Mr. Olsen's wife testified that

> if you sprinkle baking soda all over the carpet, and you leave it for 24 hours, and then you vacuum out the car, then all of it would come up, including the smell.

6/13/22RP at 914-15, see 6/13/22RP at 990. But the defense was unable to test the floor and floorboard carpet of the car to show that this was why there was a box of baking soda in the vehicle. CP 19-20; 5/2/22RP at 55.

The State's argued that photographs taken by the police were an adequate substitute for the destruction of the crime scene. CP 53-98. But as Officer Flaherty testified, there was a pink lighter, and a suboxone pill bottle in the DeWalt bag that was prescribed to Tabitha Tibbets, Mr. Olsen's son's girlfriend. 6/8/22RP at 489-91. (Ms. Tibbetts' name appears in the transcript as such; the pill bottle in the DeWalt bag spells her name as "Tabatha Tibbits." CP 422). Officer Flaherty had had occasion to arrest Ms. Tibbetts several times in the past. 6/8/22RP at 491, 591. Yet, in addition to these items, the police photographs show that another pill bottle, with the identifiers obscured except for the "(206)" area code, was located with the rubber bands in the car's trunk that the State claimed were packaging materials used by Mr. Olsen as the drug dealer the

prosecutor labeled him as. Supp. CP ___ (Exhibit list, exhibit 22).

The State's notion that photographs of various items taken by the police before the car and its contents were destroyed eliminates any Due Process concerns is in error, and the trial court should not have accepted that reasoning. 5/2/22RP at 81-83, 91-92.

The car should not have been destroyed, but it was. As a result, the defense could only point to their witness testimony, as a counter to the State's claim that the importance of the baking soda, drilled into the jury's minds by the prosecutor, was that it was a tool of the trade of drug dealers. 6/2/29RP at 738-39 (eliciting testimony that finding baking soda is "consistent . . . with someone also in possession of methamphetamine" with intent to deliver). The prosecutor used the baking soda to cast Mr. Olsen as not a user of drugs, but a calculating drug seller, eliciting from a police officer that baking soda is used as "one of the cutting agents that is used for

specifically that -- for meth" to increase profit. 6/9/22RP at 739.

In closing argument, the prosecutor mocked the notion that the baking soda was for cleaning or deodorizing the car. 6/13 4/22RP at 1058-59 (arguing to the jury that the baking soda showed that Mr. Olsen was a drug dealer who planned to use a "cutting agent . . . to increase your profits as a dealer" and urging the jury to reject, as not credible, the claim that the baking soda was being used as a deodorizer).

Because the car was destroyed, the State was able to engage in this argument with impunity. The trial court ruled that Mr. Olsen's arguments that needed evidence was destroyed was "speculative." 5/2/22RP at 95. In so reasoning, the court wrongly applied principles applicable to the loss of facially exculpatory evidence, to this case which involves potentially useful evidence. This was wrong as a matter of fact, and the wrong legal standard. It was not speculation for the defense to carefully note that certain of the evidence that was destroyed

could have been tested, and that its destruction prevented the defense from developing specific facts that could establish reasonable doubt.

And applying a wrong legal standard is an abuse of discretion. State v. Rafay, 167 Wn.2d 644, 655, 222 P.3d 86 (2009). As Mr. Olsen correctly noted, he "d[id] not need to prove that the evidence destroyed was exculpatory." (Emphasis added.) CP 19 (defense motion to dismiss). The court conflated the Due Process standard for material exculpatory evidence (which plainly exculpates the defendant), with that for *potentially* useful evidence. The Youngblood category expressly includes evidence that is the sort which, if tested, could provide exculpatory evidence. Youngblood, 488 U.S. at 57 (DNA evidence lost when clothing was destroyed was potentially useful because it might, or might not, have shown the defendant was not the attacker, if it had been preserved for testing). Under Youngblood, all that need be shown is that the

government destroyed "potentially useful evidence." United States v. Bohl, 25 F.3d 904, 910 (10th Cir.1994).

What matters is that the evidence indeed could be helpful to the defense – if tested. For example, lost video of the very crime scene itself is by definition "potentially useful" because, if examined, it may exculpate the defendant. People v. Alvarez, 229 Cal. App. 4th 761, 774-75, 176 Cal. Rptr. 3d 890, 901 (2014), review denied, (Nov. 25, 2014) (lost video of parking lot crime scene was potentially exculpatory). The court erred in deeming the argument under Youngblood as "speculative."

(3). Destroying the crime scene and the uncollected evidence in the car immediately after arraignment and request for preservation of evidence is bad faith.

As the defense argued, when the State fails to comply with evidence preservation requests and allows evidence to be destroyed rapidly after the accused secures a lawyer appointed to protect his fair trial rights, the actions of the State were in patently bad faith. CP 19-20; 5/2/22RP at 57-58. See State v. Boyd, 29 Wn. App. 584, 588, 629 P.2d 930 (1981); see also

Kordenbrock v. Scroggy, 889 F.2d 69, 85 (6th Cir.1989) (destruction of tape of confession after transcription impermissible if defense counsel requested preservation); cf. United States v. Richard, 969 F.2d 849, 853-54 (10th Cir.1992) (no bad faith where appellant did not request preservation of certain boxes containing marijuana preserved for trial), cert. denied, 506 U.S. 887, 113 S.Ct. 248, 121 L.Ed.2d 181 (1992).

These cases apply. The request to preserve evidence, filed by Mr. Olsen's counsel as part of the notice of appearance, was by definition generalized. But the police destroyed the crime scene and the evidence so fast that counsel found himself to have been played for a fool when he emailed the prosecutor less than two weeks after being appointed to represent Mr. Olsen at arraignment, in order to ensure preservation of the car. CP 18 (affidavit of defense counsel, at paragraph 16). Mr. Weiss was only then informed that the car had been towed away from the lot for subsequent destruction. CP 19 (affidavit of defense counsel, at paragraph 17).

A defense request for preservation of evidence of the crime scene followed by its destruction could not be a stronger demonstration of "bad faith." See People v. Newberry, 652 N.E.2d 288, 292 (Ill. 1995). The request to preserve evidence in that case asked for "all tangible objects that had been seized| from" the defendant). Newberry, 652 N.E.2d at 290. The subsequent destruction of collected powder that could be cocaine or an inert powder violated due process. Newberry, 652 N.E.2d at 290. The fact that the request was general does not absolve the State. The language of the request to preserve evidence in Mr. Olsen's case was completely the same in substance to that which the Newberry Court relied on. The State was on notice here, as was the State in Newberry. Decision, at pp. 4-5.

(4).The statute cited as justification for the car's destruction is entirely inapplicable to the present case.

The trial court wrongly ruled that there was no bad faith, apparently accepting the State's argument that a statute, RCW

7.69.030, which "protects the rights of victims, survivors, and witnesses," determined the issue. 5/2/22RP at 79.

This statute does not validate the State's wrongful argument that the car could be destroyed the instant Mr. Olsen secured a lawyer on the grounds that "[i]ndividuals have a right to have their property back from law enforcement if it's seized in a crime once the property has been documented." 5/2/22RP at 79. In fact, RCW 7.69.030 is an important statute entitled, "Rights of victims, survivors, and witnesses" Subsection (7) of RCW 7.69.030 states that these classes of individuals have the right to return of property when it is no longer needed as evidence:

> "[Victims and witnesses have the right to] have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken[.]

RCW 7.69.030(7). Notably, as a general proposition, our Supreme Court has made clear that crime victims' rights statutes "must be read in conjunction with precedent protecting a defendant's due process rights." State v. MacDonald, 183 Wn.2d 1, 17, 346 P.3d 748 (2015) (crime victim's rights statute did not allow state's agent to advocate for a sentence above that which the prosecution agreed to recommend).

In any event, the statutory provision is wholly inapplicable to what occurred here - neither the owner of the vehicle nor its reported recent buyer, from whom the Olsen's were borrowing it, was a victim or a witness. In any event, the car and the items therein were plainly needed as evidence. Photographs can substitute for some items that are returned to a victim or a witness - but not the crime scene and all the other items that were still needed as evidence.

In these circumstances it is an unusual straddle for the State to attempt to argue, as it did, that law enforcement impound properly releases vehicles to be destroyed if the

registered owner or buyer, notified by the police in this case, does not come and pick up the car from impound. See 5/2/22RP at 79-80, 83-84. RCW 7.69.030(7) certainly does not transform those facts into permission to destroy evidence. According to the Mount Vernon Police Department, the police knew by the end of the day on December 1, 2021 that the registered owner of the car was Mount Vernon resident Maryann Maestas, and there was a bill of sale showing Juan Garcia as the recent buyer of the car. CP 17.

The operative fact is that the car was destroyed shortly after Soren was arraigned and three days after his lawyer filed a notice of appearance and request for discovery. 5/2/22RP at 49-50; CP 18 (affidavit of attorney Weiss); see Notice of Appearance and Request for Discovery). Nothing in RCW 7.69.030 remotely justifies what occurred here.

The trial court reasoned that the car was destroyed properly, and not in bad faith, accepting the State's incorrect contentions in this respect - ruling that it made a difference that

the car was not the defendant's, that it was destroyed after photographs were taken, and that the defense could question the police about the procedures or protocols they relied on to release the car. 5/2/22RP at 92-93. This ruling was abuse of discretion for the reasons argued above. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (a trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds).

As to the latter reasoning, the court shunted a constitutional issue for the court to decide as a matter of law and deemed it for the jury to assess, which is not what Youngblood dictates. Youngblood addresses the requirement of dismissal where potentially useful evidence is lost, and the doctrine is particularly applicable to destroyed latent physical evidence which must be subjected to scientific testing in order to ascertain its exculpatory value. See, e.g., Youngblood, 488 U.S. at 54 (semen samples); United States v. Bohl, supra, 25

F.3d at 910-11 (chemical composition of steel). These are not jury questions, legally or practically.

In this case, Mr. Olsen argued a straightforward proposition - the egregious timing of the State was "bad faith, because they have a duty to preserve evidence, and if you're literally destroying the crime scene the day after someone is arraigned, you're giving the defense attorney absolutely no opportunity to conduct an investigation." 5/2/22RP at 57. The trial court, at first, appeared to recognize this Due Process violation - asking the State, " [T]hese dates are not good dates, from the state's perspective. So expand on that. Why do you think that that's okay?" 5/2/22RP at 79. But the court was ultimately persuaded by untenable arguments made by the prosecutor. The court should have rejected those arguments.

Mr. Olsen, under Youngblood, is entitled to dismissal of the charges. See Armstrong v. Daily, 786 F.3d 529, 552 (7th. Cir.2015) (bad-faith destruction of evidence is an immediate constitutional violation under Youngblood "because the

resulting prejudice to the defense is permanent. Whatever unfairness results from the destruction will infect all future proceedings" because the evidence will "continue to be unavailable.").

E. CONCLUSION

This Brief contains 4,079 words in font Times New Roman 14 font.

Based on the foregoing, this Court shouldreverse Mr. Olsen's judgment.

Respectfully submitted this 28th day of March, 2024.

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APPENDIX A

FILED
1/22/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SOREN RICHARD OLSEN, II, Appellant.	No. 84330-3-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Soren Olsen challenges his convictions of two counts of possession of a controlled substance with intent to deliver, each with a firearm enhancement, and one count of unlawful possession of a firearm in the first degree. He argues the trial court erred by denying his motion to dismiss those charges based on law enforcement's failure to preserve the car in which Olsen was found with the controlled substances and the firearm. He also argues the evidence was insufficient to prove intent to deliver. Olsen raises additional issues in a statement of additional grounds for review. We affirm.

I. FACTS

In late 2021, Officer Jon Flaherty of the Mount Vernon Police Department (MVPD) arrested Olsen on a Department of Corrections (DOC) warrant after finding him asleep in a car. Flaherty later testified that in a search incident to arrest, he found in Olsen's pockets a significant amount of cash and a large quantity of

drugs, which tested positive for methamphetamine and fentanyl. In a subsequent search of the car, Flaherty found paraphernalia that he testified is typically associated with drug sales, including an unopened box of baking soda, which can be used to dilute methamphetamine. He also found a revolver inside a bag in front of the driver's seat, where Olsen had been sitting.

The State charged Olsen with one count of possession of fentanyl with intent to manufacture or deliver, while armed with a firearm (Count I), one count of possession of methamphetamine with intent to manufacture or deliver, while armed with a firearm (Count II), one count of escape in the second degree (Count III), and one count of unlawful possession of a firearm (UPOF) in the first degree.

In April 2022, Olsen moved to dismiss the charges against him. He argued that dismissal was required because MVPD allowed the car to be declared abandoned and towed from MVPD's lot three days after Olsen's counsel appeared and requested discovery.[1] The trial court denied the motion and a jury found Olsen guilty as charged. He appeals.

II. ANALYSIS

A. Motion to Dismiss

Olsen argues the trial court erred by denying his motion to dismiss based on MVPD's failure to preserve the car. Because Olsen does not establish that MVPD acted in bad faith, we disagree.

"The Fourteenth Amendment [to the United States Constitution] requires

[1] Although Olsen's trial and appellate counsel suggest the car was "destroyed," and at least one witness suggested it was sent to "salvage," the record before us does not identify the ultimate fate of the car.

that criminal prosecutions conform with prevailing notions of fundamental fairness, and that criminal defendants be given a meaningful opportunity to present a complete defense." State v. Wittenbarger, 124 Wn.2d 467, 474, 880 P.2d 517 (1994). To comport with due process, the prosecution has a duty to preserve evidence for use by the defense. Id. at 475.

This duty, however, is not absolute. Id. (observing that the United States Supreme Court "has been unwilling to 'impos[e] on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution.' " (quoting Arizona v. Youngblood, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988))). If evidence is "material exculpatory evidence," the State's failure to preserve it requires dismissal. State v. Groth, 163 Wn. App. 548, 557, 261 P.3d 183 (2011). But if evidence is merely "potentially useful"—i.e. evidence " 'of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant' "—then the State's failure to preserve it requires dismissal only if the State acted in bad faith. Id. (quoting Youngblood, 488 U.S. at 57). We review de novo whether evidence was materially exculpatory or merely potentially useful. State v. Burden, 104 Wn. App. 507, 512, 17 P.3d 1211 (2001).

Olsen does not argue that the car was material exculpatory evidence.[2] Instead, he argues that it was potentially useful and we agree. As Olsen points

[2] As such, we need not address those portions of the State's brief that either (1) argue the car was not material exculpatory evidence or (2) appear to conflate the two standards. Because our review is de novo, we also need not defer to the trial court's determination that it was "speculative" whether the car was potentially useful.

out, the car *was* the crime scene, which is often helpful in understanding how evidence relates holistically. Further, additional analysis of the interior of the car could have corroborated Olsen's claim that the baking soda was not used to dilute drugs but had been sprinkled in the car to deodorize it.[3] In short, Olsen potentially could have obtained at least some "exonerating" evidence after testing the car and, to that extent, it was "potentially useful." Youngblood, 488 U.S. at 57-58.

The State does not contest the car was potentially useful and, instead, argues that Olsen had "comparable evidence," including witness testimony and photographs of the car and its contents. But that argument seeks to replace the "potential usefulness" standard with an inquiry into whether this evidence is duplicative or its exclusion prejudicial, which is not the standard and for which the State provides no support.

That said, although the car was potentially useful evidence, Olsen still must show, to be entitled to relief, that the State failed to preserve it in bad faith.[4] Olsen bears the burden to show the State's bad faith. United States v. Dring, 930 F.2d 687, 694 (9th Cir. 1991); see also Wittenbarger, 124 Wn.2d at 477 ("[F]ailure to preserve 'potentially useful' evidence does not constitute a denial of due process

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[3] Olsen also argues the car's destruction prevented him from supporting his testimony that his son told him he placed the revolver in a secure storage box in the trunk. But Olsen did not so testify.

[4] This standard, which derives from Arizona v. Youngblood, 488 U.S. 51, 57, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988), arguably "places defendants in the nearly impossible position of having to prove the State's failure to preserve evidence was an act of bad faith." State v. Ortiz, 119 Wn.2d 294, 317, 831 P.2d 1060 (1992) (Johnson, J., dissenting). Nevertheless, we are bound by Youngblood and by Wittenbarger, in which our Supreme Court held that the Washington Constitution provides no greater protection in the context of the preservation of evidence. State v. Wittenbarger, 124 Wn.2d 467, 481, 880 P.2d 517 (1994).

unless a criminal defendant can show bad faith on the part of the State."). To satisfy this burden, Olsen must show that MVPD's actions were improperly motivated by " 'put[ting] forward specific, nonconclusory factual allegations that establish improper motive.' " State v. Armstrong, 188 Wn.2d 333, 345, 394 P.3d 373 (2017) (quoting Cunningham v. City of Wenatchee, 345 F.3d 802, 812 (9th Cir. 2003)).

Olsen does not make this showing.[5] He relies almost exclusively on the simple fact that the car was towed from MVPD's lot three days after Olsen's counsel filed a notice of appearance and request for discovery. And he cites People v. Newberry, 166 Ill. 2d 310, 652 N.E.2d 288, 209 Ill. Dec. 748 (1995), for the proposition that this timing establishes bad faith "per se." But Newberry is not only nonbinding, it is distinguishable. There, alleged cocaine seized from the defendant was destroyed after defense counsel filed a motion that specifically "[i]ncluded . . . a request to examine all tangible objects that had been seized from [the defendant]." Newberry, 652 N.E.2d at 290. In other words, Newberry made a specific request that put the State "on notice that the evidence must be preserved." Id. at 292. It was that fact that absolved the defense from making a "showing of bad faith," and underlies the presumption which Olsen asks us to create for the first time under Washington law. Id.

Here, by contrast, even Olsen acknowledges that counsel's notice of

[5] Olsen asserts that this court reviews the trial court's bad faith determination de novo. Because the State does not argue that a more deferential standard of review applies, we assume without holding that Olsen is correct, and we apply de novo review.

appearance and request for discovery was "generalized," and he points to nothing therein that can be construed as a specific request to preserve or examine the car. Cf. State v. Boyd, 29 Wn. App. 584, 589, 629 P.2d 930 (1981) (bad faith established where police destroyed a tape recording after the defendant made a specific request for it that identified the tape and gave the prosecutor and police notice of exactly what the defense desired).

Furthermore, our Supreme Court has held that " '[t]he presence or absence of bad faith . . . turn[s] on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.' " Armstrong, 188 Wn.2d at 345 (alteration in original) (quoting Cunningham, 345 F.3d at 812). Olsen points to nothing in the record indicating MVPD believed the car, which had been photographed, still had exculpatory value when it was towed away. It was not registered to Olsen and, as even he acknowledged below, before releasing it, the MVPD property custodian reviewed ownership documents and reached out to the car's apparent owner, "presumably to request the owner to pick-up the car from the MVPD property lot." At most, MVPD was negligent or incompetent in allowing the car to be towed after Olsen's counsel filed his generalized request for discovery, but that is not enough to show bad faith, as defined in our precedent. Id. at 346. The trial court did not err in denying Olsen's motion to dismiss.

B. Sufficiency of the Evidence

Olsen next argues that the evidence was insufficient to prove an intent to

deliver with regard to Counts I and II.[6] Again, we disagree.

The State "bears the burden of proving every element of every crime beyond a reasonable doubt." State v. Chacon, 192 Wn.2d 545, 549, 431 P.3d 477 (2018). When a defendant challenges the sufficiency of the evidence presented to meet this burden, "he or she admits the truth of all of the State's evidence." State v. Cardenas-Flores, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). "Evidence is sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the elements of the charged crime beyond a reasonable doubt." Id.

Flaherty testified that the methamphetamine found on Olsen's was enough for up to "28 different uses," and that the fentanyl was "more than a month's supply." This testimony alone would not have been sufficient to support an inference of intent to deliver. See State v. Zunker, 112 Wn. App. 130, 135, 48 P.3d 344 (2002) (mere possession of drugs, even in an amount greater than is usual for personal use, does not raise an inference of an intent to deliver). But the State also presented evidence that additional items found on Olsen and in the car were consistent with drug sales, including a large amount of cash consisting mostly of twenty-dollar bills, unused baggies, numerous rubber bands, and the firearm, which Flaherty testified could be a source of security because "[y]ou can show it, and word gets around that you have one, then people would be less likely to attempt to rob you." A rational juror could have inferred, based on these additional

[6] Although the State charged Olsen with possession with intent to manufacture or deliver, the jury was instructed only with regard to intent to deliver.

factors beyond the quantity of drugs at issue, that Olsen had an intent to deliver.

Olsen disagrees, relying on his testimony that the at-issue drugs belonged to Olsen's son and his girlfriend, that Olsen never intended to sell them, and that the cash was money he and his wife had earned from recent work. But it was up to the jury to resolve any contradictions between Olsen's testimony and the State's evidence, and we will not revisit the jury's resolution of those contradictions. See State v. Campos, 100 Wn. App. 218, 224, 998 P.2d 893 (2000) ("The jury resolves contradictory evidence by making credibility determinations[, and w]e do not redecide credibility determinations."). Thus, Olsen's challenge fails.

C. Statement of Additional Grounds for Review

Olsen has submitted a statement of additional grounds for review (SAGR) under RAP 10.10. A SAGR serves to ensure that an appellant can raise issues in their criminal appeal that may have been overlooked by their attorney. Recognizing the practical limitations many incarcerated individuals face when preparing their own legal documents, RAP 10.10(c) does not require that a SAGR be supported by references to the record or citations to authority. But it does require that the appellant adequately "inform the court of the nature and occurrence of alleged errors" and relieves the court of any independent obligation to search the record in support of the appellant's claims. RAP 10.10(c).

Olsen raises a number issues in his SAGR, but as further discussed below, none establishes an entitlement to appellate relief.

1. "Other Suspect" Theory

Olsen first asserts that various acts and omissions by the court, the

prosecutor, and his own counsel precluded him from advancing an "other suspect" theory that Olsen's son's girlfriend, Tabitha Tibbetts, who also had access to the car, was actually the guilty party. But Olsen's theory is based on an incorrect premise—that only one person could have possessed the items the jury ultimately attributed to Olsen. To the contrary, and as the jury was properly instructed, possession need not be exclusive. State v. Weiss, 73 Wn.2d 372, 374-75, 438 P.2d 610 (1968) (that dominion and control is not exclusive does not preclude a conviction for possession). Consequently, evidence tending to show that Tibbetts had "equal access to [the] vehicle," as Olsen puts it, would not have supported an "other suspect" theory. Cf. State v. Starbuck, 189 Wn. App. 740, 751-52, 355 P.3d 1167 (2015) (other suspect evidence is evidence that someone else was the perpetrator of the crime).

2. Judicial Bias

After the jury returned its verdict, Olsen moved for a new trial. He alleged that the trial judge "may have a conflict" because Olsen previously prevailed against the judge's former law firm in a civil suit. The judge determined there was no conflict. Olsen now renews his argument that judicial bias warrants a new trial; he also argues that once the alleged conflict was raised, the judge should have recused, and trial counsel was ineffective for not seeking recusal. But Olsen's allegations of bias depend on facts outside the record that cannot be considered in this direct appeal. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). And while Olsen speculates based on the trial judge's rulings that he was biased, "[j]udicial rulings alone almost never constitute a valid showing of bias." In

re Pers. Restraint of Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004); see also In re Pers. Restraint of Haynes, 100 Wn. App. 366, 377 n.23, 996 P.2d 637 (2000) (party asserting judicial bias must produce sufficient evidence demonstrating bias, such as personal or pecuniary interest; mere speculation is not enough).

3. Challenges to Statutes of Conviction

Olsen next argues that RCW 69.50.401, the possession statute he was convicted of violating, is unconstitutional because "knowingly is absent in this RCW." He relies on State v. Blake, but the statute at issue in Blake punished simple possession without any *mens rea* or proof of an intent to commit an unlawful act. See 197 Wn.2d 170, 180, 183, 481 P.3d 521 (2021). Blake does not apply to the statute Olsen was convicted of violating, which punishes possession *with intent to deliver*.

Olsen also points out that the firearm he was convicted of possessing was manufactured in 1861, and that the federal UPOF statute contains an exception for antique firearms manufactured before 1898. See 18 U.S.C. § 921(a)(3). He argues his conviction under Washington's UPOF statute violated equal protection. In support, he cites United States v. Aguilera-Rios, 769 F.3d 626 (9th Cir. 2014), United States v. Hernandez, 769 F.3d 1059 (9th Cir. 2014), and United States v. Benamor, 937 F.3d 1182 (9th Cir. 2019). But the issue in Aguilera-Rios and Hernandez was whether a prior UPOF conviction under California law, which does not recognize an exception for antique firearms, could serve as a basis for a removal order and a federal sentencing enhancement, respectively. See Aguilera-Rios, 769 F.3d at 637; Hernandez, 769 F.3d at 1062-63. And the issue in Benamor

was whether the defendant's knowledge of the non-antique status of a firearm was an element of the federal UPOF statute that the government had to prove. 937 F.3d at 1185. None of these cases stand for the proposition that Olsen's conviction under Washington's UPOF statute violates equal protection.

4. Jury Issues

After closing arguments, one of the 12 remaining jurors tested positive for COVID-19, and four others indicated they were unvaccinated or uncertain. The parties discussed options, and Olsen made clear that he would rather proceed with seven jurors than delay things. Olsen signed a written waiver and confirmed on the record that he wished to proceed with a seven-person jury. He now argues that his waiver should not have been allowed. But the prerequisites to a valid waiver, and in particular, "a personal statement from the defendant expressly agreeing to the waiver," were satisfied. State v. Stegall, 124 Wn.2d 719, 729, 881 P.2d 979 (1994).[7]

5. Firearm Issues

Olsen argues that photographic exhibits of the revolver show the State removed rust from it to make it appear operable. But the referenced exhibits are not in the record. See RAP 10.10(c) ("Only documents that are contained in the record on review should be attached or referred to in [a SAGR]."). In any case,

[7] Olsen also asserts that CrR 6.1(c), which allows a defendant to elect to continue with the remaining jurors when "a juror" is unable to continue, does not apply when *multiple jurors* are unable to continue. But given that even the state constitutional right to a 12-person jury can be waived, Olsen's reading of CrR 6.1 as "overriding" his knowing waiver is not persuasive, nor is his clam that trial counsel was ineffective for not advancing that reading of the rule.

Flaherty denied the revolver was cleaned, attributing its appearance in the photographs to lighting. Olsen's request that this court "look for [it]self" is a request to reweigh the evidence, which we will not do.

Olsen next points out that when the revolver was test fired, a cloth projectile was used, and it could not be found after the test fire. Olsen argues that as a result, the evidence was insufficient to prove that Olsen possessed a "firearm," i.e., "a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder." RCW 9.41.010(20). But both Flaherty and Olsen's weapons expert, who attended the test firing, testified that the revolver successfully discharged the cloth projectile, and that it fired properly. A rational juror could infer from this testimony that the revolver was a firearm. Cf. State v. Tasker, 193 Wn. App. 575, 594, 373 P.3d 310 (2016) ("In order to be a 'firearm' within the meaning of RCW 9.41.010, a device must be capable of being fired, either instantly or with reasonable effort and within a reasonable time.").

Olsen also relies on State v. Gurske, 155 Wn.2d 134, 118 P.3d 333 (2005), for the proposition that the presence, close proximity, or constructive possession of the revolver was not sufficient proof that he was "armed" with a firearm. But the firearm at issue in Gurske was behind the driver's seat in a zipped backpack that was not removable by the driver without exiting the car or moving to the passenger seat. Id. at 143. Here, by contrast, the State presented evidence that the revolver was in front of the driver's seat where Olsen had been sitting, in the same bag as other paraphernalia tending to show an intent to deliver.

Olsen's sufficiency challenges to his UPOF conviction and firearm

enhancements fail, as do his claims that trial counsel was ineffective for not asserting those challenges.

6. Ineffective Assistance of Counsel

In addition to the ineffective assistance claims addressed above, Olsen argues that counsel was ineffective for not bringing to the jury's attention inconsistences between Flaherty's testimony and the written report of Spencer Fox, a DOC officer Flaherty spoke to on the day of Olsen's arrest. But counsel did bring the inconsistences to the jury's attention during his opening statement, Flaherty's testimony, and Fox's testimony. Counsel also relied specifically on the inconsistencies between Flaherty's testimony and Fox's report to argue in closing that Fox's account corroborated Olsen's version of events. While Olsen argues that counsel should have done even more, he does not show that the decision not to was objectively unreasonable. Cf. State v. Stotts, 26 Wn. App. 2d 154, 165, 527 P.3d 842 (2023) (to overcome strong presumption of effective performance, defendant alleging ineffective assistance must show that counsel's representation fell below an objective standard of reasonableness under all the circumstances).

Olsen also argues counsel was ineffective for not bringing an alleged break in the chain of custody for the firearm to the court or the jury's attention. He provides a photo of the firearm, which he avers was trial exhibit 57 or 59, and points out that it shows a paper bag in the background dated December 7, 2021. He then says that because the firearm was seized on December 2, 2021, there is no explanation of its whereabouts from December 3 through 6. But Olsen does not articulate why the presence of a December 7, 2021 date on bag in the photograph

or Flaherty's testimony that he "manipulated" the firearm before logging it into evidence establishes a break in the chain of custody, much less that counsel was deficient for not so speculating. Cf. State v. Wilson, 83 Wn. App. 546, 555, 922 P.2d 188 (1996) ("The chain of custody rule provides that an exhibit is sufficiently identified when it is declared to be in the same condition as at the time of its initial acquisition.").

7. Prosecutorial Misconduct

Olsen argues that the prosecutor committed misconduct by engaging in witness tampering. He relies on an email in which the prosecutor informed multiple law enforcement officers that firearms enhancements had been charged, set out what the State would need to prove to support a guilty verdict on the enhancements, and asked if one of the officers could testify in that regard. To prevail on a claim of prosecutorial misconduct, Olsen must show that the prosecutor's conduct was both improper and prejudicial. State v. Emery, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). It is improper for an attorney, including a prosecutor, to counsel a witness to testify falsely. RPC 3.4(b). And as Olsen correctly points out, attempting to induce a witness to testify falsely constitutes the crime of witness tampering. RCW 9A.72.120(1)(a). But nothing in the prosecutor's email indicates she was urging the officers to give false testimony.

Olsen also argues that the prosecutor misinformed defense counsel about the State's theory as to the nexus between the firearm and Counts I and II. In particular, Olsen relies on defense counsel's representation that during a call with the prosecutor, the prosecutor "noted that maybe the antique gun was going to be

used in trade for drugs," and he argues that the State's failure to correct this "false disclosure" before trial prevented his counsel from properly preparing for trial. But Flaherty stated in a probable cause affidavit filed in December 2021 that he "know[s] it is common for drug dealers to carry firearms for protection." Olsen does not show that the prosecutor's later statement prejudiced defense counsel's ability to defend against the theory that the firearm was used for protection and not for trade.

8. Rejected Exhibits

Olsen argues that the trial court erred by not admitting Exhibit 83, which was his weapons expert's report. But the exhibit is not in the record, and Olsen does not reveal why it was rejected or explain why he believes that was error. Thus, he fails to establish a basis for relief.

Olsen also argues that the trial court erred by not admitting Exhibit 84, which also is not in the record. According to Olsen, it was a printout of a website stating that the federal government does not consider a gun manufactured before 1898 to be a firearm. The trial court excluded the exhibit on the basis that there was no proof Olsen ever actually accessed the website in question, but as the State also pointed out in objecting to the exhibit's admission, the printout would have shown at most that Olsen was ignorant of how Washington law defines a firearm. And ignorance of the law is not a defense to a UPOF charge. See State v. Williams, 158 Wn.2d 904, 916, 148 P.3d 993 (2006) (defendant is held to know the legal definitions set forth in the UPOF statute).

9. Challenges to Escape Conviction

Below, Olsen moved to dismiss Count III, the escape charge, arguing that the DOC form he signed upon his release to community custody did not warn him that absconding could lead not only to DOC sanctions, but also to a felony escape charge. The trial court determined that DOC did not mislead Olsen. Olsen argues that this determination was proven untrue at trial by testimony from two DOC officers. But Olsen did not renew his motion to dismiss based on the officers' testimony, and in any case, while the officers testified that Olsen's failure to report could be punished with sanctions, neither testified that sanctions were the *only* potential legal consequences, much less that they told Olsen so.

Olsen also points out that on July 13, 2021, he phoned his community corrections officer (CCO) to inform her he was stranded in Skagit County, and he asserts that under RCW 72.09.310, the statute he was convicted of violating, a person can avoid liability simply by contacting their CCO. The statute makes it unlawful for an inmate on community custody to "willfully discontinue[ ] making himself . . . available to [DOC] for supervision . . . by *failing to maintain contact* with [DOC]." RCW 72.09.310 (emphasis added). And although Olsen contacted his CCO by phone on July 13, 2021, the CCO testified that she otherwise never saw him or had another phone call with him. The evidence supports a finding that Olsen failed to maintain contact.

10. Alleged *Brady* Violations

In his final ground for review,[8] Olsen asserts the State violated Brady[9] by suppressing evidence. He first claims that the State suppressed Exhibits 19 and 22, which were both photographs. But the record reflects that both photographs were part of the discovery produced by the State before trial. Olsen also argues the State should have further searched a bag in the car for exculpatory evidence, but "the State has no duty to search for exculpatory evidence." In re Pers. Restraint of Gentry, 137 Wn.2d 378, 399, 972 P.2d 1250 (1999).

Next, Olsen asserts that a "Flaherty Report Feb 26 2022" indicated documents belonging to Tibbetts were in the car, and that these documents, which had exculpatory value as "other suspect evidence," were improperly destroyed. But for reasons already discussed, Olsen's "other suspect" theory was not viable even if there was evidence that Tibbetts also had access to the car. Olsen also refers to an iPhone that was "confirmed on record to exist" in an April 12, 2022 email from the prosecutor to defense counsel. But nothing in the referenced email or Olsen's SAGR shows that the phone—which the email indicates defense counsel was aware of—was improperly suppressed by the State. Olsen refers to another phone that he says was also referenced on the record, but the cited portion of the record does not contain any reference to a phone, much less show that any such phone was under the State's control or

[8] On page 36 of his SAGR, Olsen provides a list of "additional unfair issues." This list of conclusory allegations does not provide a basis for appellate review under RAP 10.10(c).
[9] Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

improperly suppressed.

Finally, Olsen again refers to Fox's report that was inconsistent with Flaherty's testimony. But as Olsen himself acknowledges, the decision not to admit Fox's written report was made by the court. The State did not suppress the report, and thus, its suppression is not a basis for a Brady claim.

III. CONCLUSION

We affirm.

Díaz, J.

WE CONCUR:

Smith, C.J.

Dwyer, J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SOREN RICHARD OLSEN, II, Appellant.	No. 84330-3-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Counsel for appellant, Soren Richard Olsen, II, filed a motion for reconsideration of the opinion filed on January 22, 2024 in the above case. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Díaz, J.

Judge

APPENDIX C

SKAGIT COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, vs. OLSEN, SOREN II, Defendant.	**No. 21-1-00753-29** **NOTICE OF APPEARANCE** **REQUEST FOR DISCOVERY** **DEMAND FOR EXPERTS** **DEMAND FOR SPEEDY TRIAL**

TO: THE CLERK OF THE ABOVE-ENTITLED COURT; and
TO: PROSECUTING ATTORNEY:

YOU AND EACH OF YOU are notified that JASON R. WEISS hereby appears in the above matter on behalf of Defendant herein. Please direct all notices, papers and pleadings, exclusive of original pleadings, to this office at the address listed below.

FURTHER, Defendant, by and through counsel, hereby demands that this office be provided with the following information:

1. The reporting officer's report and all materials acquired, produced or held by the police, jail and/or prosecuting authority regarding this matter, as well as copies of all "911", "CAD", "MCD", telephone records, dispatcher's tapes and logs or any similar or related material regarding the Defendant or this matter.

2. Any books, papers, forms, photographs and or other documents (hereinafter, "item") presented or read to Defendant, any items signed by Defendant and a copy or summary of any statement attributed to Defendant or any Co-Defendant herein and a copy of any item that the prosecuting authority intends to use or refer to at trial or hearing.

3. A list of all witnesses Plaintiff intends to call at trial or hearing, together with each witness' address and all telephone numbers for that person. All written statements made by or for each said witness, a written summary of their testimony and any and all records of criminal convictions of any witness or Defendant herein, which record is known or available to Plaintiff or Plaintiff's agents, employees or co-agencies.

LAW OFFICES OF JASON R. WEISS
1511 26TH Street
Everett, WA. 98201
Ph: (206) 898-5688
Email: jason.weiss@comcast.net

4. All information referred to in CrRLJ 4.7 and/or CrR 4.7 and materials known to or reasonably discoverable by Plaintiff, which may be relevant to this matter, which tend to indicate the innocence of the Defendant or the guilt of another including, but not limited to, any and all video and/or audio recording of the defendant's person, vehicle, home, surroundings or voice and any video or audio recording of any police officer, jailer, or agent of the police who is in any way involved in observing, recording, conducting surveillance, investigating, detaining, attesting, booking, processing, questioning, advising or offering defendant any item, test, paper or document regardless of who may be in possession of said items.

5. Pursuant to CrRLJ 4.7 and/or CrR 4.7, the Defendant specifically requests the prosecuting authority to attempt to obtain and provide the following material from the Washington State Patrol (WSP), the WSP Toxicology Laboratory, the WSP Breath Test Section and the manufacturer or vendor of any instrument; A copy and/or specific description of the software program employed by the BAC machine and copies of the database, repair records, certifications, quality assurance reports, memoranda, emails, instructions and information concerning any scientific, medical, mechanical, chemical or biological test, measurement or experiment performed with regard to this matter and a statement of the uncertainty of any test result or measurement along with the underlying data and formulae used in calculating this statement.

FURTHER, the Defendant hereby demands the production of all expert witnesses and the summary of any expert's proposed testimony after entry of a pretrial or omnibus order, or as required by court rules.

FURTHER, the Defendant demands an arraignment notice, trial date and notice as required by court rules.

DATED:___2/1/22__.

By: /s/ *Jason Weiss*
Jason R. Weiss, WSBA # 33202
Attorney for Defendant

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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 84330-3-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Nathaniel Block
[nblock@co.skagit.wa.us]
Skagit County Prosecuting Attorney
[skagitappeals@co.skagit.wa.us]

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: March 28, 2024

WASHINGTON APPELLATE PROJECT

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