No. 97487-0

COA #51173-8-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EDWARD M. OLSEN,

Petitioner/Appellant.

ON REVIEW FROM
THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION TWO, AND THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
KITSAP COUNTY,
the Honorable Judge Jeanette M. Dalton

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Edward Olsen, the appellant below, asks the Court to review the decision referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of a portion of the decision of the court of appeals, Division Two, in State v. Olsen, __ Wn. App. 3d ___ (2019 WL 2598201), issued June 25, 2019. The opinion is attached hereto as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does the CrR 3.1(b)(2) right to counsel at an evidentiary hearing held on a motion for a new trial include the right for the defendant to be physically present at that hearing to assist?

   Should the Court grant review under RAP 13.4(b)(3), because these are issues of first impression of serious public importance upon which this Court should rule?

   If the Court rules that Mr. Olsen was entitled to be present as part of the rule-based right to counsel, should the Court also hold that counsel was ineffective in failing to be aware of CrR 3.2(b)(2) and this Court's holding in State v. Robinson, 153 Wn.2d 689, 107 P.3d 90 (2004)?

2. Where a defendant was convicted of attempted second-degree murder and felony harassment based on testimony from two witnesses about threatening acts and statements he made, is it an abuse of discretion to deny a motion for a new trial when those specific acts and threatening statements were are later recanted but were the sole evidence establishing guilt for those charges, under this Court's holding in State v. Rolax[1] and its progeny?

3. Does a trial court err in determining the credibility of a recantation of testimony given at age 13 about events at

[1] 84 Wn.2d 836, 838, 529 P.2d 1078 (1974), overruled in part and on other grounds by, Wright v. Morris, 85 Wn.2d 899, 540 P.2d 893 (1975).

age 12 which involved a youth parroting his mother's version of events in support of her when the trial court fails to consider that youth and the vulnerabilities of the child at the time of his testimony and how that affected the reliability of his recantation as an adult?

D. STATEMENT OF THE CASE

Petitioner Edward M. Olsen was acquitted of a charge of attempted first-degree murder but convicted of attempted second-degree murder of Bonnie Devenny, first-degree burglary of her home, felony harassment of her and third-degree malicious mischief for breaking into her home. CP 18-37. All the charges came with domestic violence special allegation and a domestic violence sentencing aggravator. CP 36-47, 52-54. He was ordered to serve an exceptional sentence and an initial direct appeal was unsuccessful. See State v. Olsen, 175 Wn. App. 269, 309 P.3d 518 (2013), affirmed, 180 Wn.2d 468, cert. denied, __ U.S. __, 135 S.Ct. 287, 190 L. Ed. 2d 210 (2014).

This Petition is an appeal from a CrR 7.8 motion for a new trial Mr. Olsen filed after the two eyewitnesses recanted. It was alleged that Petitioner had broken a window on a car, gotten the garage door opener and gone into the home of his "ex," Bonnie Devenny, with whom he had a child, J, then about 12 years old. RP 581-82. At trial, the charge of attempted second-degree murder was based on allegations that, after he broke into the home, Petitioner had gone into the bedroom where J and Devenny were awakened, "doused" Devenny with gas and threatened that she was going to die. RP 584-85. J testified at trial that he did not originally recognize his dad but *did* see the gas can and saw the person pouring gas on his mom. RP 989. For her part, Devenny also

said Olsen had poured gas on her - and that he had a lighter in his hand, and that he had told her it she was going to "die this time." RP 626, 674. J would later parrot that threat and say he heard it, too. RP 986-78.

Much was made at trial about the lighter, with Devenny denying that she ever had lighters in her bedroom at that time and a photo showing a lighter in the room admitted into evidence. RP 626, 674. When police had asked just after the incident if Olsen had any lighter or flame, however, Devenny had told them "[n]o." RP 246, 262, 277.

Olsen admitted that he had broken the car window and had gone into the house, but denied pouring gas or having a lighter or making threats. See State v. Olsen, 175 Wn. App. at 276. He also said he had thrown some gas on the dog and the dog had run into the bedroom and jumped on the bed, which was how gas had gotten on Devenny and J. Id.

In the direct appeal, the court of appeals described the convictions for attempted second-degree murder and felony harassment as having been "for pouring gasoline on and threatening to kill Bonnie Devenny." Olsen, 175 Wn. App. at 173-74.

Several years later, in his motion for a new trial, Olsen attached sworn affidavits from Devenny and J saying that they had lied at trial. CP 87-94. Devenny admitted she had lied when she had claimed Olsen had poured gas on her. CP 87-90. She lied when she claimed he had made threats. CP 87-90. She lied when she said he had a lighter, and in claiming she never had lighters in her room (thus giving the impression the lighter shown in a police photo of her bedroom was likely Olsen's). CP 87-90. J also admitted he had lied when he claimed to have seen

Olsen pour something on his mom, also admitting he never saw a lighter and had not actually heard any threats. CP 91-94.

Devenny's deception was, she admitted, because she was in a new relationship and did not want her "ex" around to ruin things. CP 88. J, who had been just 12 at the time of the incident, had believed his mom's claims about what had happened. CP 91-93. She did not tell him to lie but he had in support of her essentially embellished what he said happened to fit what she had said occurred. CP 91-94.

The first hearing on the motion for a new trial was held without counsel or Mr. Olsen present and the judge set the schedule for briefing but was unsure whether argument or evidence would be heard. 1RP 2-3. At the second hearing, the judge admitted she did not know what the standards were but thought she was required to find "corroboration" for the recantations, although she was "not clear" on what needed to be corroborated. 3RP 2. The judge was concerned that there was "significant corrobation" of the original testimony at trial, but counsel noted that there was no corroboration other than the testimony of J and Devenny about the pouring of gas, lighter and alleged threats. 3RP 3-4.

At that point, the judge declared it was necessary for the witnesses to be called into the courtroom for the judge to hear and for the prosecutor to cross-examine them. 3RP 3-4. Again, she said "the law doesn't tell me what I need to corroborate." 3RP 6-7.

Counsel then asked about scheduled his client's return and said he needed his client nearby to be prepared and might want Olsen to testify. 3RP 12. The judge declared that Olsen would not be allowed to

testify and had nothing relevant to say. 3RP 12. While the judge was ultimately willing to have Olsen transferred to be in jail nearby so counsel could take to him, she was clear Olsen would not be allowed to "be here in the courtroom for the motion for a new trial." 3RP 13. The prosecutor told the judge this was proper because Olsen had no rights of any kind in the hearing and it was all at the court's discretion. 3RP 13.

On the date for the scheduled hearing, DOC had failed to transport Olsen. 4RP 2-3. Counsel objected again that Olsen should be present for the evidentiary hearing. 4RP 2-3. Although the court had given counsel time to "brief the issue about his attendance at a reference hearing," counsel he had not found anything so far. 4RP 2-3. The judge was sure she had absolute discretion whether to allow Olsen to be present during the evidentiary hearing but willing to reconsider. 4RP 2-3.

A few weeks later, counsel was still objecting but had not found any cases. 5RP 2. He argued that he needed Olsen present in the courtroom during the hearing in order for counsel to be able to consult with him "if unexpected things happen." 5RP 2-3. He maintained that the court's ruling excluding Olsen was thus impairing not only Olsen's right to be present but his rights to counsel. 5RP 2-3. The judge thought that having counsel present without Olsen was sufficient to guarantee Olsen's "interests in the courtroom." 5RP 3-4.

One of the witnesses asked the court why the judge would not allow Olsen there, asking what it would harm, but the judge said it did not matter "whether it's good, bad, or in the alternative," saying, "I'm

not going to have him brought up." 5RP 6. Olsen was not present at the evidentiary hearing on the motion for a new trial and counsel noted and objected again for the record. 6RP 1-2.

At the hearing, Devenny explained that she had lied because she wanted Olsen to go away for a long time as she just kept ending up back with him if he was around and she thought her new relationship was the "one." 6RP 8, 14, 23. She did not exonerate Olsen of breaking the window in her car, entering her home or even of scuffling with her in the bedroom. 6RP 8-9, 22-23. But she admitted she had lied when she had claimed to have seen him pouring gas on her, and when she said he had a lighter, when she claimed she had no lighters in the room at all, and when she said he had threatened to kill her. 6RP 7-10, 22-24.

For his part, J, now an adult, said he had lied when he had parroted his mom's claims of a threat and when he claimed to have seen "dousing." 6RP 44-45. He made it clear that his mom had not asked him to lie - no one had. 6RP 45-49. J talked about being young, how traumatic the incident was and how he had heard his mom say her version of events to police. 6RP 45. For the then 13-year-old, J said, what his mom said occurred "became my reality of the situation" and that was why he had testified as he had. 6RP 48-50.

Once Devenny had confessed her lying to her kids, they had told her she had to make things right. 6RP 46-49. She and J started reaching out trying to correct their testimony and had only just found an attorney willing to take the case for the motion for a new trial. 6RP 46.

In ruling on the motion for a new trial, the judge found first that

the evidence was newly discovered and material and admissible, also finding that the testimony was not "merely impeaching." See App. A at 7. The court found the recantations not credible, however, because they were not corroborated by the other evidence at trial and did not seem consistent or reasonable in light of the other evidence. See App. A at 7-8.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THE COURT SHOULD GRANT REVIEW TO ADDRESS WHETHER A DEFENDANT IS ENTITLED TO BE PHYSICALLY PRESENT AT AN EVIDENTIARY HEARING ON A MOTION FOR A NEW TRIAL, BECAUSE THE ISSUES WERE DECIDED AS A MATTER OF FIRST IMPRESSION BY THE COURT OF APPEALS AND ARE OF SUCH SUBSTANTIAL PUBLIC IMPORT THAT THEY SHOULD BE DECIDED BY THIS COURT

CrR 3.1(b)(2) provides, in relevant part, that "[a] lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review." This Court held in State v. Robinson, 153 Wn.2d 689, 107 P.3d 90 (2004), that the rule is not absolute when it applies to post-conviction proceedings, such as the CrR 7.8 motion for a new trial, such as the one Petitioner filed below. Instead, the Court declared:

> The broad, sweeping language of [CrR 3.1(b)(2)] is not without limit, and must be read in context with related court rules. With respect to the right to counsel for postconviction review, we have imposed a limitation that requires, in the case of PRP's, for the chief judge of the Court of Appeals, and in the case of crR 7.8 motions, for the superior court judge, to initially determine whether the petition or motion establishes grounds for relief. If it does not establish grounds for relief, the judge may dismiss the petition or deny the motion without a hearing on the merits. If it does establish grounds for relief, counsel may be provided if not already available.

Robinson, 153 Wn.2d at 696. Thus, under Robinson, where, as here, the trial court has decided that the defendant's motion for a new trial is sufficiently meritorious that an evidentiary hearing is to be held, the defendant has a CrR 3.2(b)(2) right to counsel.

Counsel below was unaware of this holding of this Court, or the relevant court rule, as his failure to cite it to the lower court shows. See 3RP 13, 4RP 2-3. As a result, the trial court believed it had what the prosecution called absolute discretion in the conduct of the evidentiary hearing. 5RP 4. The court of appeals affirmed, holding that Olsen had retained counsel at the hearing, that there was "no violation of CrR 3.1(b)(2)." App. A at 10. It also declared, without discussion, that CrR 3.1(b)(2) does not provide "a right to be present at the hearing." App. A at 10.

This Court should grant review to address this issue of first impression under RAP 13.4(b)(3). Where a defendant's rule-based right to counsel under CrR 3.(b)(2), has attached under Robinson, does that right include the right for the defendant to be physically present to assist counsel during the evidentiary hearing?

There is no question the rule-based rights to counsel contained in CrR 3.1 are, in general, more limited than the constitutional rights to counsel. See, e.g., State v. Fedorov, 183 Wn.2d 669, 355 P.3d 1088 (2015). If anything, however, the fact that the rule based right to counsel has been circumscribed by different rules than constitutional rights is an argument for this Court to take review to ensure that the scope of the rule-based right is clear. In Fedorov, for example, the Court granted

review to determine the scope of the CrR 3.1 right to counsel after arrest, in the context of taking a breath alcohol concentration (BAC) test. 183 Wn.2d at 576.

This Court's decision in Robinson established the right to counsel at an evidentiary hearing on a motion for a new trial based on a recantation about which all the parties were unaware here. Left open, however, is the questions of whether the rule-based right entitles a defendant to be present to assist counsel at the hearing.

This Court should grant review to address the issue and provide guidance. Notably, there is some confusion of the caselaw even prior to the enactment of CrR 3.1 or CrR 7.8. This Court declared, in *dicta*, in 1895, that a court could hear a motion for a new trial in the defendant's absence. State v. Greer, 11 Wash. 244, 39 P. 874 (1895). But it has also held that, where a hearing on a motion for a new trial is held, it is "nevertheless one of the most important rights relating to the introduction of evidence" to allow the defendant or his counsel to be there. State v. Ward, 135 Wash. 482, 239 P.11 (1925). And it held, in 1930, State v. Hager, 157 Wash. 664, 290 P. 230 (1930), citing Greer, that the accused need not be present during a motion for new trial.

A few years later, however, the court of appeals discussed the issue in State v. Walker, 13 Wn. App. 545, 536 P.3d 657, review denied, 86 Wn.2d 1005 (1975), in the context of post-trial motions and the due process right to be present at a competency hearing. In that context, the court of appeals distinguished Greer as involving hearings where there was no evidentiary hearing or testimony. Walker, 13 Wn. App. at 546-47.

The court of appeals held, "in this jurisdiction as in others," evidence should not be taken in the absence of the defendant, who had the right to "participate and be present to contradict the witnesses who testified and to assist counsel by bringing to his counsel's attention matters which might be known only to the defendant." Id.

It is settled law that a post-conviction motion for a new trial is not a "critical phase" of a criminal trial proceeding. See Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990, 95 L.Ed.2d 549 (1987); In re the Personal Restraint of Bonds, Jr., 165 Wn.2d 135, 196 P.3d 672 (2008). In our state, however, the rules and practices of post-conviction review are more broad than in others, and include rights which are not provided by constitution. See In re the Personal Restraint of Runyan, 121 Wn.2d 432, 439, 835 P.2d 424 (1993); In re the Personal Restraint of Tsai, 183 Wn.2d 91, 103, 351 P.3d 138 (2015). Further, where, as here, the state has created a rule-based right to counsel, "it must. . .act in accord with the dictates of the Constitution, and, in particular, in accord with the Due Process Clause." Evitts v. Lucey, 469 U.S. 387, 394, 105 S. Ct. 830, 83 L.Ed. 2d 821 (1985). While a rule-based right to counsel may be more limited than a constitutionally-based right, it must still comport with minimal due process standards of adequacy of counsel.

Under Robinson, Mr. Olsen had a CrR 3.1(b)(2) right to counsel at the hearing. His counsel argued that he needed Olsen present. This Court should grant review under RAP 13.4(b)(3) as the final arbiter of the meaning of the rule-based right to counsel, in order to determine whether that right includes the right to be present to assist counsel at an

evidentiary hearing being held on a motion to dismiss.

Finally, because counsel failed in being aware of Robinson or CrR 3.1(b)(2), this Court should decide whether that failure and the resulting failure to argue relevant limits to the absolute discretion the trial court thought it had below was ineffective assistance. The right to counsel includes the right to have counsel aware of controlling case law and rules. See, State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987); Strickland v.Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Ermert, 94 Wn.2d 839, 850, 621 P.2d 121 (1980). Had counsel cited the correct rule and provided the judge copies of Robinson, the trial court would have been aware that the rule-based right to counsel applied and might well have ruled differently. The court of appeals did not address this, having first misunderstood and thought that the issue was only whether counsel was in court, not whether it Mr. Olsen had a right as part of his rule-based right to counsel to be present and assist at the evidentiary hearing.

2. REVIEW SHOULD ALSO BE GRANTED BECAUSE THE TRIAL COURT AND COURT OF APPEALS USED THE WRONG STANDARD AND THE RESULTING DECISION RUNS AFOUL OF THE RULES OF ROLAX

The Court should also grant review under RAP 13.4(b)(1), to address whether the rules of Rolax apply where, as here, the motion for a new trial was based on recantation of verbal "facts" and testimony which was necessary to support two convictions, and whether the trial court erred in determining "credibility." In Rolax, this Court held that, where a defendant is convicted based solely on the testimony of a now recanting

witness, it is an abuse of discretion to deny the motion for a new trial. Rolax, 84 Wn.2d at 838. It is only when independent evidence corroborates the recanting witness' testimony that "the decision whether to grant a new trial lies within the sound discretion of the trial court." State v. Smith, 80 Wn. App. 462, 909 P.2d 1335 (1996).

The court of appeals here relied on the superior court's determination of the credibility of the recanting witness, even while agreeing that the trial court must consider not only the circumstances of the facts of the trial but also the "recanting witness's age, reasons for recanting, relevant facts at the time of recantation, and the time between the testimony and the recantation." App. A at 11-12. Division Two further admitted that the existence of independent corroborating evidence to support the *original* testimony was not controlling. App. A at 12.

But the court of appeals then dismissed the trial court's failure to consider in its ruling any of the questions regarding potential influence, pressure to recant - or **whether** "**there was no evidence other than the recanted evidence**" to support the convictions based on the "die" comments from both recanting witnesses. App. A at 13-14 (emphasis added).

This Court should grant review. It is not a "credibility determination" whether there was other evidence besides the recanted testimony to prove the case. That inquiry is instead the Rolax inquiry, of whether a trial court abuses its discretion in failing to grant a new trial where the convictions depend upon recanted testimony. See Rolax, 84

Wn.2d at 838.

In addition, the trial court's "credibility" determination used the wrong standard, by focusing on whether the testimony at trial was sufficient to support the convictions and whether the court thought the recantations were consistent with the other testimony at trial, instead of whether the recantations were themselves credible. "The question is not whether the trial court believes the recanting witness, but, whether the recantation has such indicia of reliability or credibility as to be persuasive to a reasonable juror if presented at a new trial." Smith, 80 Wn. App. at 471.

The state could not have convicted Mr. Olsen of attempted second-degree murder or felony harassment in this case without the testimony from the two recanting witnesses that 1) they had seen him pour, deliberately, the gasoline (as opposed to having it accidentally come from the dog), 2) they had heard him threaten Devenny that she was going to "die," and 3) that Olsen had a lighter in his hand (which he must have brought because Devenny swore at trial she had no lighters in the room).

The prosecutor's closing argument at trial makes this clear. The prosecutor told the jurors to convict for the felony harassment because, "[w]e know that words were spoken that were threats to kill. We had two witnesses testify to that: [Devenney and J]. . . Something to the effect of, 'you are going to die this time, bitch.'" RP 857-58. The prosecutor argued that the threat and pouring of the gasoline created reasonable fear in Devenny required to prove felony harassment,

because there was "no reason why you do this, why you pour gasoline on somebody and waive a lighter around unless you intended to kill them." RP 859, 860, 863.

Further, "intent to kill" for the attempted murder was based on the recanted testimony. The prosecutor emphasized that "pouring" testimony as proof of intent to kill, even referring to a witness who was asked what would have happened if "he would have lit it," meaning the gas. RP 873-74, 878, 884. Those threats to kill, the allegation of having seen Olsen "pouring" and that he had a lighter were all required to prove the state's case - and there was *no* other evidence regarding those facts, because the recanting witnesses were the only people besides Olsen in the room.

Under Rolax, it is an abuse of discretion to fail to grant a new trial when the recanted testimony is the sole support for a necessary part of the evidence supporting the convictions. This Court should grant review under RAP 13.4(b)(1), because the court of appeals decision here failed to follow that mandate.

Finally, in making the "credibility" determination, the trial court did not consider the unique situation of having a child witness who recants as an adult, in light of what we now know about the influential brain development of youth. The court of appeals rejected the idea that the vulnerability of the youth was relevant to the credibility of the later recantation of testimony from a child. App. A. The adult J's testimony at the hearing, however, explained that he had lied at the first trial *because* of these very same traits - wanting to support and believe his mom and

being young and impressionable at the time of trial. 6RP 45, 49.

This Court has recognized that youth suffer from such vulnerabilities as an increased inability to resist pressure from figures of authority including a "need to please," which is directly relevant to evaluating recantations. See, e.g., State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017); see also, Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 825 (2010). The U.S. Supreme Court has recognized that it is "beyond dispute" that children respond differently to authority figures such as a mom or police. See J.D.B. v. North Carolina, 564 U.S. 261, 131 S. Ct. 2394, 180 L.Ed.2d 310 (2011). In fact, in J.D.B., the Court held that a different standard applied for determining whether a 13-year-old would have felt free to walk away from police as opposed to an adult.

Notably, in arguing that jurors should rely on J's testimony at trial, the prosecutor told jurors that he was young and loved his dad but "told us what happened that night," even emphasizing that Devenny and J "[both have the same - - essentially the same version of events," i.e., "[t]hey awoke to the defendant pouring gas on Bonnie, and Bonnie said the defendant was waiving a lighter around and saying something to the effect of "You are going to die this time, bitch." RP 884.

The court of appeals erred in treating this question as irrelevant. This Court grant review to address whether a trial court should consider the cognitive and neurological developmental differences of youth identified by this Court and the U.S. Supreme Court when determining the credibility of a child's later adult recantation.

F. CONCLUSION

For the reasons stated herein, this Court should grant review.

DATED this 25th day of July, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Kitsap County Prosecutor's Office via email at the address registered with the appellate courts for this purpose via the court's filing/service system and caused a true and correct copy of the same to be sent to appellant by deposit in U.S. mail, with first-class postage prepaid at the following address: Edward Olsen, DOC 782316, Stafford Creek CC, 191 Constantine Way, Aberdeen, WA. 98520.

DATED this 25th day of July, 2019.

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Filed
Washington State
Court of Appeals
Division Two

June 25, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. EDWARD MARK OLSEN, Appellant.	No. 51173-8-II UNPUBLISHED OPINION

SUTTON J. — Edward Mark Olsen appeals the superior court's order denying his CrR 7.8 motion for a new trial based on newly discovered evidence. He argues that pursuant to CrR 3.1(b)(2), he has a right to appointed counsel. He also argues that the rule provides him a right to be present at his reference hearing. Lastly, Olsen argues that the superior court abused its discretion by denying his motion for a new trial, by applying the wrong standard of review, and it violated the appearance of fairness doctrine and the code of judicial conduct. He requests that we remand for a new trial before a different judge. Olsen also filed a statement of additional grounds (SAG) asserting the same claims. We affirm.

FACTS

I. BACKGROUND

A. PROCEDURAL HISTORY, TRIAL, AND APPEAL[1]

This case arose out of a 2009 incident of domestic violence perpetrated by Olsen against the mother of his children, Bonnie Devenny, in the presence of their 12-year-old son, JEO.[2] Olsen broke into Devenny's house, poured gasoline on her while she was sleeping, and told her that she was going to die. Police later recovered a lighter near the bed.

The State charged Olsen with attempted first degree murder, attempted second degree murder, first degree burglary, felony harassment, and third degree malicious mischief related to the gasoline incident, and the felony counts included domestic violence aggravators because the crimes occurred in the presence of the victims, Devenny and JEO. At trial, Devenny testified consistent with the above facts. *See State v. Olsen*, 175 Wn. App. 269, 274-75, 309 P.3d 518 (2013). A jury convicted Olsen as charged on all counts except attempted first degree murder, and he received an exceptional sentence.

Olsen appealed and a panel of this court affirmed his convictions and sentence. *Olsen,* 175 Wn. App. at 291. Olsen petitioned for review of his exceptional sentence, and the Supreme Court affirmed.

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[1] Unless otherwise indicated, the following facts are derived from *State v. Olsen*, 180 Wn.2d 468, 469-72, 325 P.3d 187 (2014).

[2] JEO was a minor in 2010; therefore, we use the minor's initials to maintain privacy. *See* RCW 7.69A.030(4).

B. MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE

On January 31, 2017, Olsen, through retained counsel, filed a CrR 7.8(b)(2) motion for a new trial based on newly discovered evidence and attached recantation affidavits of Devenny and JEO dated January 30, 2017. In their recantation affidavits, they both stated that many of the statements they made under oath at the trial in 2010 were not true.

More specifically, Devenny said that Olsen had not poured gasoline on her, did not have a lighter, and had not said anything threatening. JEO admitted that he had not seen Olsen pour anything on Devenny, never saw a lighter, and had not heard any threats. Devenny stated that at that time she was in a new relationship and did not want her ex-husband around to ruin things. She explained that she made up the stuff about Olsen pouring gas, threatening her, and standing over her with a lighter. JEO, who was 12 years old at the time of the incident, had believed Devenny's claims and embellished his story to support what she said had happened.

Olsen also filed two memorandums arguing that the newly discovered evidence warranted a new trial. The State filed a responsive memorandum arguing that the recantations were admissible, but were not credible and thus, the new evidence did not warrant a new trial as the new evidence would not change the outcome.

The parties argued over whether Olsen had the right to be present at the reference hearing and had the right to a court appointed lawyer. The superior court agreed to allow Olsen to be transported from prison to the jail to assist his counsel. The court explained that unless Olsen's counsel provided the court with authority supporting his argument, Olsen would not be allowed at be present at the reference hearing. The superior court requested briefing from Olsen's counsel on the issue of Olsen's right to be present at the reference hearing. At the next court date, the issue

was addressed again and counsel stated that he could not find authority that Olsen had the right to be present. The superior court then ruled that counsel's presence was sufficient to represent Olsen's interests at the hearing.

The reference hearing was held before the same judge who presided over the original trial. At the reference hearing both Devenny and JEO testified. Both were examined by counsel for the State, counsel for Olsen, and the judge. Olsen was represented by retained counsel at the reference hearing. The superior court requested supplemental briefing regarding the admissibility of Devenny's recantation testimony at a retrial and how that would affect the outcome. Both parties filed supplemental briefing.

On November 9, 2017, the superior court entered a written order denying the motion for a new trial. The superior court's order states in relevant part as follows:

> Here, both parties agree that [Devenny] and her son [JEO's] revised statements recanting their trial testimony (both the declarations signed in 2017 and their testimony provided at the hearing on June 27, 2017) meet the requirements of (2)[,] (3)[,] and (4) [In re the Pers. Restraint Petition of Faircloth, 177 Wn. App. 161, 165-66, 317 P. 3d 47 (2013)].
>
> The underlying facts of the case are well detailed in the State's Response to CrR 7.8 Motion to Vacate, pp 2-12 which are incorporated here by this reference. In essence, the "newly discovered evidence" comes from statements made by both [Devenny] and her son, which recant their trial testimony that Mr. Olsen was "pouring" gas on [Devenny] as she lay in bed, that he said "Die, Bitch" as he was doing so, and that he appeared to have a lighter in his hand. The new statements indicate that Olsen came into the bedroom after [Devenny] and son fell asleep and that his presence startled them awake. [Devenny] says she was trying to quickly get out of the bed, her legs got caught up in the covers and she believes she kicked the gas can that Mr. Olsen was holding. The son says he was startled awake, tackled the intruder and did not realize it was his father until the son heard Olsen's voice. [Devenny] testified at the hearing that she told her family that she had lied some time ago and that she decided to lie when the police contacted her because she wanted Olsen out of her life. Her son testified that he told the police what he heard his mother tell them because he was only twelve, and that between the event and

> the trial he and his mother discussed the event so much that "it became like a real memory" to him.
>
> When confronted with this type of testimony it is for the trial court to determine whether the original testimony of a recanting witness was perjured and, if so, whether the jury's verdict was likely influenced by it. *State v. Macon*, 128 Wn.2d 784, 801, 911 P.2d 1004 (1996).
>
> It is notable that both [Devenny's] and her son's testimony was corroborated at trial by other witnesses who described her demeanor—that she was shaking and terrified. There were several witnesses who described the strong smell of gas in the bedroom, that the bed's comforter was wet, that both [Devenny] and her son were taken to the fire station first for decontamination from the gas; that [Devenny's] legs were red and irritated and that she also wore shorts that were wet and smelled of gas. Several people described her excited utterances naming her ex-husband as the perpetrator, that he was "pouring" gas on her, and that he said "die bitch, die." Also corroborating was the fact that Olsen broke into [Devenny's] home; and that there was a red gas can with a small amount of gas remaining in it near the foot of her bed nearest the door, and that the bathroom window screen was lying outside of the house—consistent with her crawling out that window screaming and in fear. [Devenny's] credibility was also attacked at trial by both her older son and by Mr. Olsen's mother.
>
> Given the substantial corroboration at trial for the initial statements made by both [Devenny] and her son, later testified to at trial, this Court finds that it is unlikely that either's testimony at trial was perjured. Additionally, the newly discovered statements, if true, are not only not corroborated by the other evidence presented at the trial, they are not consistent with the behavior described, the observations from other objective witnesses, or [Devenny's] own statements about the event, and do not seem reasonable in light of all the other evidence.
>
> The inconsistencies of the new statements, coupled with the Court's observations of both witnesses' trial testimony and their "recanting" testimony lead this Court to the conclusion that neither [Devenny's] nor her son's new statements are credible. This Court cannot therefore conclude that the outcome of the trial would probably be changed by the new statements.

Clerk's Papers (CP) at 384-85.

On December 8, the superior court entered findings of fact and conclusions of law which state in relevant part:

FINDINGS OF FACT

I.

That on December 21, 2010, defendant Edward Mark Olsen was convicted of attempted second degree murder, first degree burglary, felony harassment, and third degree malicious mischief each conviction including a jury finding of domestic violence.

II.

That this court presided over Mr. Olsen's trial in 2010 and that in the present matter this court has been provided with transcripts of the testimony in that trial, including transcripts of the testimony of victims Bonnie [Devenny] and her son, [JEO], and that this court carefully reviewed the trial transcripts and considered the demeanor of both witnesses during both instances of testimony in this case.

III.

That on June 27, 2017, this court held an evidentiary hearing at which this court heard the testimony of [Devenny] and [JEO]. (Footnote omitted).

IV.

That [Devenny] and [JEO] had testified at trial that, *inter alia*, late one night Mr. Olsen had come into the bedroom where [Devenny] and [JEO] were sleeping (in the same bed), had poured gasoline on the bed and on them, and had stood over the bed with a lighter and said to [Devenny] words to the effect of "die bitch."

V.

That the trial testimony of the two victims was substantially corroborated by the circumstances, the testimony of investigating police, and the admissible excited utterances of the victims, including that [Devenny] was described at the time as shaking and terrified, that she and [JEO] had gasoline on their skin and clothing, that they and the bedroom smelled strongly of gasoline, that [Devenny] and [JEO] had been taken to a nearby fire station in order to shower the gasoline off of them, that [Devenny] identified Edward Olsen as the assailant and told other witnesses, while shaking and terrified, that Edward Olsen was "pouring" gasoline on her and saying "die, bitch, die," and that she had fled this attack by climbing out the bathroom window.

VI.

That this court finds no indication that the trial testimony of [Devenny] and [JEO] were perjured.

VII.

That the primary difference in the recantation testimony is that it was alleged that Edward Olsen was not pouring gasoline on them and the gasoline had gotten on them when [Devenny] was startled awake and kicked the gas can, that Edward Olsen did not say "die, bitch," and that Edward Olsen was not holding a lighter. [Devenny] alleged that she had lied at trial because she wanted Edward Olsen out of her life.

VIII.

That this court and the parties agree that in deciding this matter, this court will apply the five factors used to consider newly discovered evidence, to wit, that the new evidence must (1) be such that it would probably change the result of the trial, (2) be discovered since trial, (3) not have been discoverable before trial through the exercise of due diligence, (4) be material and admissible, and (5) not be cumulative or impeaching. And that absence of any of the five factors is sufficient to deny a new trial. *In re Faircloth,* 177 Wn. App. 161, 165-66, 311 P.3d 47 (2013).

IX.

That this court and the parties agree that items (2), (3), and (4) are established in that these recantations were discovered since trial, that the recantations did not exist at the time of trial and therefore could not have been discovered by the exercise of due diligence, and that the recantations address material matters and are admissible.

X.

That the recantation testimony is not cumulative and although it may be used in an impeaching manner at retrial, the recantation testimony is not merely impeaching.

XI.

That the newly discovered statements are not only not corroborated by the other evidence at trial, they are not consistent with the behavior described, the observations from other objective witnesses, or [Devenny's] own testimony about the event, and do not seem reasonable in light of all the other evidence.

CONCLUSIONS OF LAW

I.

That the above-entitled Court has jurisdiction over the parties and the subject matter of this action.

II.

That the recanting testimony of [Devenny] and [JEO] are not credible.

III.

That because the recanting statements are not credible, this court cannot conclude that those statements would probably change the result of the trial.

IV.

That therefore, as ordered in this court's Order of November 9, 2017, Edward Olsen's motion for new trial is denied.

CP at 389-92.

Olsen appeals.

ANALYSIS

I. LEGAL PRINCIPLES

CrR 7.8(b)(2) allows relief from a judgment for "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for new trial under [CrR] 7.5." CrR 7.8(c)(1) states that the motion must state the grounds upon which relief is sought "and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based."

We review a superior court's ruling on a CrR 7.8(b) motion for an abuse of discretion. *State v. Robinson*, 193 Wn. App. 215, 217, 374 P.3d 175 (2016). The superior court abuses its discretion when its decision is "manifestly unreasonable or based on untenable grounds or reasons." *Robinson,* 193 Wn. App. at 217-18.

Our review of an order denying a CrR 7.8(b) motion is limited to the record and evidence presented at the CrR 7.8 hearing, and on appeal a defendant cannot raise issues regarding the validity of the underlying judgment and sentence. *State v. Schwab*, 141 Wn. App. 85, 96-97, 167 P.3d 1225 (2007). We review whether the superior court's denial of the motion for a new trial based on newly discovered evidence was proper. *State v. Gaut*, 111 Wn. App. 875, 881, 46 P.3d 832 (2002).

II. RIGHT TO COUNSEL AND RIGHT TO BE PRESENT

Olsen argues that once the superior court determined that his CrR 7.8 motion for a new trial was not frivolous and that it would hold a hearing, he had the right to appointed counsel under CrR 3.1(b)(2) and *State v. Robinson*.[3] He also argues that the rule gave him the right to be present at the hearing. He further argues that his retained counsel's failure to cite to CrR 3.1(b)(2) or to *State v. Robinson* interfered with his right to counsel.

The State argues that Olsen never raised the issue of the right to counsel below and Olsen was represented by retained counsel who filed the motion for a new trial and also represented him at the hearing. The State also argues that Olsen does not have the right to be present under CrR 3.1(b)(2), and the superior court properly declined to allow him to be present but allowed him to be transported from prison to assist his counsel. We agree with the State.

CrR 3.1(b)(2) provides:

> A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer

[3] 153 Wn.2d 689, 696, 107 P.3d 90 (2005).

> pursuant to section (e) because geographical considerations or other factors make it necessary.

"Because the asserted error is a violation of a court rule (rather than a constitutional violation), it is governed by the harmless error test." *State v. Robinson*, 153 Wn.2d at 697. Reversal is appropriate under the harmless error test only if the error was prejudicial, in that, within reasonable probabilities, if the error had not occurred, the outcome of the motion for relief would have been materially affected. *Robinson,* 153 Wn.2d at 697.

Here, Olsen concedes that he has no right to appointed counsel at a post-conviction hearing under either the federal or state constitutions. He also concedes that a post-conviction proceeding is not a critical phase of the proceedings. Olsen argues he had a rule-based right to appointed counsel at the hearing; however, he was represented by retained counsel at the hearing. Thus, there is no violation of CrR 3.1(b)(2).

Olsen argues that CrR 3.1(b)(2) provides him a right to be present at the hearing; however, the rule does not provide him such a right. Further, he does not show prejudice by his failing to be present at the hearing.

Because Olsen had a retained lawyer at the reference hearing to assist him, and he fails to show a rule violation or prejudice, we hold that his claim of a CrR 3.1(b)(2) violation fails.

III. APPLICABLE LEGAL STANDARD

Olsen argues that a new hearing is warranted because the superior court abused its discretion by applying the wrong legal standard when it concluded that the outcome of the trial

would probably not have been changed by the recantation testimony. We hold that the superior court applied the correct legal standard, and thus, Olsen's claim fails. [4]

We review a superior court's application of the law to the facts de novo. *State v. Corona*, 164 Wn. App. 76, 79, 261 P.3d 680 (2011). We review a superior court's ruling on a CrR 7.8(b) motion for an abuse of discretion. *Robinson*, 193 Wn. App. at 217. The superior court abuses its discretion when its decision is "manifestly unreasonable or based on untenable grounds or reasons." *Robinson,* 193 Wn. App. at 217-18.

State v. Macon is the seminal case in Washington on granting a new trial based on newly discovered evidence. 128 Wn.2d 784, 911 P.2d 1004 (1996). The *Macon* court stated,

> To obtain a new trial based upon newly discovered evidence, a defendant must prove that the evidence: (1) will probably change the result of the trial; (2) was discovered after the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching.

128 Wn.2d at 800. The "[a]bsence of any of the five factors is sufficient to deny a new trial." *In re Faircloth*, 177 Wn. App. at 166.

The superior court must make a threshold determination of the reliability of the recantation testimony. *Macon,* 128 Wn.2d at 804. In making that reliability determination, the court may consider the circumstances surrounding the case, including the recanting witness's age, possible reasons for recanting, relevant facts at the time of recantation, and the time between the testimony and the recantation. *Macon,* 128 Wn.2d at 802. The existence of independent corroborating evidence supporting the recanting witness's original testimony is not a controlling factor. *Macon,*

[4] Olsen also raises this same issue in his SAG. For the same reasons explained here, his SAG argument also fails.

128 Wn.2d at 804. The question is whether a reasonable juror would find the recantation reliable, given the circumstances under which it was made. *See Macon*, 128 Wn.2d at 800. "When determining whether the newly discovered evidence will probably change the result of trial, we do not consider what effect the newly discovered evidence may have on the defendant's case, but rather we weigh the newly discovered evidence against the strength of the State's evidence." *In re Faircloth*, 177 Wn. App. at 167-68 (citing *State v. Peele*, 67 Wn.2d 724, 732, 409 P.2d 663 (1966)).

The superior court, not the jury, determines the credibility of the recanting witness. *See State v. Ieng,* 87 Wn. App. 873, 880, 942 P.2d 1091 (1997) (superior court makes own credibility determination without regard to whether a jury might find the witness credible). If the testimony of the recanting witness is the "sole" evidence establishing guilt and the superior court finds the recantation credible, it is an abuse of discretion to deny the motion. *See In re Pers. Restraint of Clements*, 125 Wn. App. 634, 641-42, 106 P.3d 244 (2005).

However, if the superior court determines that the recantation is unreliable and denies the motion for new trial, there is no abuse of discretion. *State v. Gassman*, 160 Wn. App. 600, 609, 248 P.3d 155 (2011). Since "[r]ecantation testimony is inherently questionable" and "does not necessarily, or as a matter of law, entitle the defendant to a new trial," a determination of the issues lies within the sound discretion of the superior court. *Macon*, 128 Wn.2d at 801. Further, when reviewing the superior court's factual findings, we consider only whether substantial evidence supports them and, if so, whether they support the court's conclusions of law. *Macon,* 128 Wn.2d at 799. "Unchallenged findings of fact are verities on appeal." *State v. Rankin*, 151 Wn.2d 689, 709, 92 P.3d 202 (2004). As with all credibility determinations, if the superior court bases its

decision on a determination of credibility, we do not disturb that finding on appeal. *See Morse v. Antonellis,* 149 Wn.2d 572, 574-75, 70 P.3d 125 (2003) (credibility determinations are solely for the trier of fact).

Olsen argues that if the superior court had applied the correct legal standard, it would have found the recantation testimony to be credible and that the newly discovered evidence would "likely affect the verdict" because the only evidence supporting the attempted murder and felony harassment crimes was the "pouring gasoline on and threatening to kill Bonnie Devenny." Br. of App. at 42 (quoting *Olsen*, 175 Wn. App. at 173-74).

Olsen further argues[5] that the superior court applied the wrong legal standard by failing to consider the following relevant factors related to JEO's testimony: (1) JEO's youthfulness at the time as he was 12 at the time of the incident and 13 at trial; (2) JEO's "vulnerabilities of youth;" (3) the pressure from family members who did not believe the initial accusations; (4) JEO's trial testimony that his "instinct" was to protect his mother who he was living with at the time; and (5) JEO's trial testimony that it was very dark, and he "couldn't see much," but still maintained he could see the intruder pouring gas and the color of the gas can, and he was present when his mother talked to the policed officer before he was interviewed. Br. of Appellant at 35-36.

Olsen also argues that the superior court failed to consider the following factors related to Devenny's testimony: (1) she was not involved with Olsen and had not been for many years and was not under his influence at the time she recanted; (2) there was no evidence she had any motive or pressure to recant; (3) the recantations only addressed the second degree attempted murder

[5] Olsen assigned error to the superior court's finding of fact XI and conclusion of law II.

conviction, not Olsen's other convictions; and (4) there was no other evidence other than the recanted evidence to support the felony harassment conviction based on Olsen's "die, bitch," comment at the time, overheard by JEO, which she had to reasonably believe would be carried out by him at the time. Br. of Appellant at 39, 41.

But we do not review credibility determinations. *State v. Cross,* 156 Wn. App. 568, 581, 234 P.3d 288 (2010). We limit our review to whether the recantation findings support the superior court's conclusions, and as explained below, we hold that the findings support the court's conclusion, and the superior court did not err.

Regarding JEO's age at trial, Olsen cites *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) and *State v. Houston-Sconier*s, 188 Wn.2d 1, 391 P.3 409 (2017). However, he fails to explain how youthful factors considered at sentencing apply to a youth who recants his earlier trial testimony. Thus, the superior court did not err in this regard.

As to Devenny's recantation testimony, Olsen concedes that Devenny's excited utterances made on the day of the incident are admissible as substantive evidence of his guilt under ER 801(d)(1). The State summarized her statements as follows:

> These statements include that Olsen was in the house unannounced. Each statement includes that [Devenny and JEO] were awoken to this unannounced intruder pouring gasoline on the bed in which they had only moments before been sleeping. Each statement included threatening statements by the assailant. [Devenny] was reasonably certain that Olsen had a lighter when he was pouring and threatening. Police found the lighter next to the bed and [Devenny] testified that she had not put it there – she was "positive" that it was not there before Olsen came into the bedroom.
>
> There is no doubt in this record that [she] had a lot of gasoline on her. She can be heard on the 911 call saying, "I'm burning, I'm burning."

CP at 228.

In response to the motion for a new trial, the State argued:

> If [Devenny] testifies [at a retrial], she will be subject to cross examination concerning her original testimony. That original testimony is inconsistent [with her recanted testimony] and was given under oath in the prior trial. Thus, as not hearsay, her prior inconsistent statements are also admissible as substantive evidence of Olsen's guilt [under ER 801]. . . . [S]hould [she] be "unavailable" as defined by ER 804(a), the former testimony would be admissible under ER 804(b)(1).

CP at 311-12. We agree with the State that Devenny's prior, recanted testimony would be admissible upon retrial.

We determine that the findings support the superior court's conclusion of law "[t]hat because the recanting statements are not credible, this court cannot conclude that those statements would probably change the result of the trial." CP at 391-92. Because the recantation testimony was not credible and would not have probably changed the outcome of a retrial, the superior court's order denying the motion for a new trial was neither untenable nor unreasonable. Accordingly, we hold that the superior court did not abuse its discretion and we affirm the superior court's order.

IV. APPEARANCE OF FAIRNESS

Olsen argues that the superior judge violated the appearance of fairness and the relevant code of judicial conduct by the nature and tone of her questioning of Devenny and JEO at the hearing on his motion. We disagree and hold that the superior court did not violate the appearance of fairness. We decline to consider whether the superior court violated the code of judicial conduct because Olsen fails to adequately brief this claim.

Criminal defendants have a due process right to a fair trial by an impartial judge. WASH. CONST. art. I, § 22; U.S. CONST. amends. VI, XIV. Impartial means the absence of actual or apparent bias. *See State v. Moreno*, 147 Wn.2d 500, 507, 58 P.3d 265 (2002). "'The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.'" *State v. Post*, 118 Wn.2d 596, 618, 826 P.2d 172, 837 P.2d 599 (1992) (quoting *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972)).

The test for determining "whether a judge should disqualify himself where his impartiality might reasonably be questioned is an objective one." *State v. Leon*, 133 Wn. App. 810, 812, 138 P.3d 159 (2006). A court must determine "whether a reasonably prudent and disinterested observer would conclude [the defendant] obtained a fair, impartial, and neutral trial." *State v. Dominguez*, 81 Wn. App. 325, 330, 914 P.2d 141 (1996). But "[w]ithout evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." *Post*, 118 Wn.2d at 619. Further, a defendant who has reason to believe that a judge should be disqualified must act promptly to request recusal and "cannot wait until he has received an adverse ruling and then move for disqualification." *State v. Carlson*, 66 Wn. App. 909, 917, 833 P.2d 463 (1992).

ER 614(b) provides that

> [t]he court may interrogate witnesses, whether called by itself or by a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute a comment on the evidence.

Olsen argues that the superior court's own questioning of Devenny and JEO was improper due to the manner and phrasing of questions, the similarity to cross examination, and tone attacking the witnesses' veracity. Olsen points to several examples during the hearing, and admits he did not object at the time. He cites to the judge's questions to Devenny, asking Devenny why a

stranger would be in her home with a gas can in hand. Olsen claims that the judge confronted Devenny by asking if she colluded with JEO, and the judge also questioned JEO's "reality" and ability to remember, asking, "Is that still your truth?" VRP (June 27, 2017) at 50-52. The judge further asked JEO if he had talked to his dad about the incident.

Olsen takes issue with the nature of the questions asked, the follow-up by the superior court, and the manner of her questions. Olsen ignores that ER 614(b) allows for interrogation by the court as long as the questioning does not constitute a comment on the evidence before the jury. Here there was no jury present. Thus, the superior court's examination of Devenny and JEO was authorized under the rules of evidence. Because Olsen fails to show how the superior court was biased and because the court's findings do not suggest a lack of impartiality, we hold that Olsen's claim that the appearance of fairness doctrine was violated fails.

Olsen also argues that the superior court violated the relevant code of judicial conduct. Olsen fails to adequately brief this issue. We do not consider inadequately briefed argument. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by citation to the record or authority will not be considered). Because Hopwood inadequately briefed this issue, we decline to consider his claim.

CONCLUSION

We hold that the superior court did not abuse its discretion in denying Olsen's motion for a new trial and affirm the superior court's order.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

Melnick, J.

MELNICK, P.J.

Glasgow, J

GLASGOW, J.

RUSSELL SELK LAW OFFICE

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