

No. 74300-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CITY OF KIRKLAND,

Respondent,

v.

HOPE STEVENS,

Petitioner.

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Court of Appeals
Division I
State of Washington

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Douglass North

MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

Pursuant to RAP 2.3(d), Petitioner Hope Stevens asks this court to grant review of the decision designated below in Part II of this motion.

II. DECISION BELOW

Petitioner seeks review of the Superior Court's decision of October 2, 2015 remanding the case to the Kirkland Municipal Court and finding an abuse of discretion by the lower court. (Appendix A).

III. ISSUES PRESENTED

1. Is it error for a Superior Court, sitting as an appellate court in a RALJ appeal, to reverse because the trial judge failed to enter written findings of fact and conclusions of law, when RALJ 9.1(b)(2) states that the appellate court "shall accept those factual determinations . . . that may be reasonably inferred from the judgment" of the court of limited jurisdiction?
2. Did the Superior Court so far depart from the normal course of proceedings as to call for review by this Court when it ignored both RALJ 9.1(b) and the well settled test for determining whether a trial court had abused its discretion?

IV. STATEMENT OF THE CASE

On June 23, 2014, the City charged Stevens with assaulting Teresa Obert and C.O. (Appendix B). Stevens maintains that C.O. (her 6'9", 280 pound, 17 year-old nephew), *attacked her* with a broomstick handle, and that she did not assault anyone. *Decl. Maybrown*, ¶¶2-4. (Appendix C).

A. November 4: Order Granting Defense Motion for Depositions.

The two alleged assault victims retained their own attorney, and

refused to cooperate in arranging to be interviewed by defense counsel Todd Maybrown. After Maybrown made several unsuccessful attempts to interview them, he filed a motion for an order permitting him to depose them. (Appendix D). On November 4th the Municipal Court *granted* that motion and issued an order stating that “the defense may schedule depositions with witnesses T.O. and C.O. at counsel’s discretion.” (Appendix E). Trial was postponed from November to January.

B. December 2: Witnesses’ First Failure to Appear and Stevens’ Subsequent Motion to Dismiss, or for Alternative Relief.

Maybrown noted the depositions of Obert and C.O. for November 25th. (Appendices F & G). At the prosecutors’ request, Maybrown rescheduled their depositions for December 2nd. (Appendix C, ¶¶16-17). Copies of new notices of deposition for the new date were emailed to the attorney for Obert and C.O. and their attorney confirmed their receipt. (Appendix C, ¶17). But on the morning of December 2nd both Obert and C.O. failed to appear. (Appendix C, ¶18).¹

On December 9th Stevens’ counsel filed a motion to dismiss, or in the alternative, for an order precluding the witnesses from testifying at the upcoming January trial. (Appendix H). The motion was noted for

¹ Their attorney sent an e-mail stating that her clients were refusing to appear because they had not been served with subpoenas. Maybrown responded that CrRLJ 4.6 did not require a subpoena, merely a notice of deposition, and he protested the attorney’s behavior of accepting the notices, and then disregarding them two weeks later on the ground that they were not accompanied by a subpoena. (Appendix C, ¶¶18-20).

December 30, 2014.

C. December 19: Prosecution Witnesses Appear for a Deposition But Refuse to Answer Key Questions.

Before the December 30th hearing could take place, on December 11th the City prosecutors contacted Maybrown and informed him that the two witnesses were now willing to appear and be deposed, but they could not do that until December 19th. (Appendix I, ¶2). Maybrown reset the deposition again, and this time, on December 19th the two witnesses did appear, but they refused to answer many questions. *Id.*, ¶¶ 3, 4 & 10.

For example, witness C.O. acknowledged that he was on medication both at the time of the deposition and at the time of the alleged assaults; but when asked to identify the medication his counsel told him to refuse to answer the question. *Id.*, ¶5. When asked why he failed to appear at the December 2nd deposition, C.O. said that he was in the hospital, and that this hospitalization was related to Stevens' alleged assault, but he refused to answer any questions about that hospitalization. *Id.*, ¶6. He also refused to answer any questions about his history of mental health problems, his supposed head injuries, and his prior statements and text messages regarding the charged incident. *Id.*, ¶10. Similarly, Obert refused to answer questions about C.O.'s alleged "traumatic brain injury" that was allegedly inflicted by Stevens. *Id.*, ¶11.

Portions of their deposition testimony were radically different from

the statements they initially made to police. For example, Obert originally stated she was in a bathroom and did not witness the alleged assault on her son; but at the December 19th deposition she testified that she was present and did witness it. (Appendix I, ¶20. Similarly, both Obert and C.O. testified that Stevens pushed Obert down a flight of stairs, although neither had ever made that claim before. *Id.*, ¶22. They claimed that the police reports of their initial statements were false. RP I, 6.²

Since inconsistencies between statements can be powerful impeachment evidence, Maybrown made a discovery request for copies of the prosecutors' notes of their own witness interviews. *Id.*, ¶24-28. The City refused to produce these notes, claiming that they were protected by the work-product privilege, and the City persisted in this refusal even after defense counsel cited them to *State v. Garcia*, 45 Wn. App. 132, 724 P.2d 412 (1986). *Id.*, ¶25 and attached Letter of December 23, 2014. *Garcia* specifically *rejected* the argument that a prosecutor's notes of a witness interview were *per se* work product. *Id.* at 138.

Finally, in the course of the December 19th depositions, defense counsel learned that critical physical evidence had been destroyed. Although Stevens told Kirkland police officers that C.O. had hit her on the

² RP I refers to the Municipal Court hearing of December 30, 2014; RP II and RP III refer to the Municipal Court hearings of January 6 and January 15, 2015. RP IV is a transcription of the oral argument held before the Superior Court on October 2, 2015.

head with a stick, the officers never collected this piece of evidence and never even photographed it; at his deposition, witness C.O. disclosed that he had recently burned the stick. *Id.*, ¶¶29-30. On the date of the incident, believing that C.O. may also have handled a gun during the incident, police asked C.O. to show them his gun, but he claimed he couldn't find it. At the December 19th deposition, C.O. acknowledged that he had found the gun but he had destroyed it so it no longer existed. *Id.*, ¶¶31-32.

D. December 30: The Municipal Court defers ruling, orders a second deposition, gives the witnesses another chance, and orders the prosecutors to produce its interview notes.

In light of the witnesses' refusals to answer at their December 19 depositions, Stevens supplemented her motion to dismiss, noting that (1) the scheduled trial date was fast approaching; (2) one of the witnesses had destroyed evidence; (3) the City prosecutors were refusing to disclose documentary impeachment evidence; and (4) that the witnesses were refusing to answer highly relevant questions. On December 30th the Municipal Court considered Stevens' motion to dismiss. The City did not produce any evidence at this hearing and thus did not dispute anything stated in the declarations submitted by Stevens' counsel. RP I, 3.³

³ Nevertheless, the City argued that the Court should not rely on attorney Maybrown's declaration as to what happened at the December 19th depositions, and faulted him for not supplying the Court with transcripts of them: "He has provided no transcript of the deposition, and therefore everything he is stating under his declaration is hearsay. ...

(Footnote continued next page)

The prosecutors acknowledged that they had refused to provide defense counsel with copies of their notes from the interviews that they had conducted with the witnesses stating: “Our notes are our work product. They contain trial strategy and preparation materials, and the defendant is not entitled to them.” RP I, 23. The City did not respond to Stevens’ citations to the *Garcia* case and to CrRLJ 4.7(a)(i);⁴ nor did it discuss its obligations under the due process clause.⁵ Nor did the State offer to submit its interview notes for in camera review so the Court could determine if there was any work product within it that should be redacted.⁶ Finally, the City argued that while it had been difficult to arrange for defense counsel interviews of the witnesses, since they had ultimately been deposed on December 19th the delay in providing that discovery had not caused Stevens to suffer any prejudice. RP I, 19-20.⁷ Without either

there is no transcript of what they said . . . we haven’t seen those, and your Honor hasn’t had a chance to review those. . . [they] have not been provided.” RP I, 16-17.

⁴ *Garcia* holds, “Our courts, in interpreting CrR 4.7, have also refused to insulate materials from discovery simply because a statement was taken or notes compiled by an attorney.” *Garcia* at 138, citing *State v. DeWilde*, 12 Wn. App. 255, 257, 529 P.2d 878 (1974) (witness White’s statement “was taken by a deputy prosecuting attorney” but was not disclosed to the defendant. “We agree that the deputy prosecuting attorney erred.”). See also RP I, 24 (“Criminal Rule 4.7 says that they’re required to provide all oral statements of their witness – of these witnesses. And *State v. Garcia* says, and I’m quoting: Notes taken by prosecutors are not work product.”)

⁵ See *United States v. Bagley*, 473 U.S.667, 676-77 (1985).

⁶ See *Garcia*, at 139.

⁷ “[H]e’s got his impeachment evidence. That is what the purpose of these meetings and depositions are . . . and he’s now received that information, because the depositions lasted for an hour and a half of each of the individual people, and he had more than ample opportunity to delve into the facts . . . and get his impeachment evidence.”

admitting or denying that the witnesses had refused to answer several questions, the City argued that defense counsel had “conducted a successful deposition of the witnesses with regard to any and all facts of that happened that night” RP I, 21. Stating that the depositions had “already happened,” and ignoring the witnesses' refusals to answer, the City argued that no additional depositions were necessary. RP I, 23. The City claimed that since the trial was scheduled for January 20th the defense had plenty of time to complete its trial preparation. RP I, 15.

Attorney Maybrow concluded by stating that he would happily provide the court with the transcripts of the depositions as soon as he received them,⁸ but that given the short amount of time remaining before the trial date he believed that the Court should either dismiss the case, or at the very least exclude the testimony of the alleged victims. RP 23-25.

The trial court judge then made his ruling. He did *not* grant Stevens' motion for dismissal at that time. But the judge stated that defense counsel had acted properly and promptly⁹ and he specifically recalled that he had already ruled (“back on November 4th”) that the defense was entitled to take depositions because of the “repeated refusal of

⁸ See also RP I, 12: “I’ve asked that they be expedited, and if the court wants to see them, we’d ask to provide them ex parte so the court could review them.”

⁹ “Defense counsel properly issued written notices of the depositions confirming the date and time. Those were provided to all counsel involved in this case” RP I, 25.

the material witnesses to sit for a reported interview.” RP I, 25. The Court further noted that when the prosecution asked if they could reschedule the depositions, as a professional courtesy defense counsel did as requested, and sent new notices to all counsel resetting the date to December 2nd. RP I, 25-26. Noting that the witnesses then failed to show up for the deposition on that day, the Court then faulted the prosecutor for not promptly responding to defense counsel’s request to set still another date for the depositions. RP I, 26. He noted that it was not until the defense had filed a motion to dismiss that the prosecutors took any action:

On December 11th, 2014, *after* the court scheduled this hearing to address defense counsel’s motion to dismiss, *the prosecutors called defense counsel* indicating that the witnesses *would now agree* to a deposition on December 19th, 2014. That deposition took place.

RP I, 26-27 (emphasis added).

Furthermore, the Court specifically *rejected* the City’s argument that the depositions had provided the defense with ample opportunity to prepare for trial, ruling that the City’s witnesses had improperly refused to answer relevant questions as to whether C.O. was using his medication at the time of the assault, or at the time of the deposition,¹⁰ and whether his

¹⁰ “These are relevant inquiries Just as it is relevant to know whether a witness is under the influence of intoxicants at the time he or she is testifying in court or at a deposition or at the time he or she is witnessing an event, so it is relevant to know if a witness is under the influence of medication” RP I, 27.

recent hospitalization was related to the charged incident.¹¹

Although he *rejected* the City's contention that the defense had been given a fair opportunity to prepare for trial, the Court ruled that it would not yet make any ruling on Stevens' motion for a dismissal. The Court deferred any ruling until it had reviewed the deposition transcripts,¹² but at the same time, the Court issued several "remedial orders."

- Noting there had been substantial changes in the witnesses' version of the events, the Court ordered "all prosecutor notes and recordings, if any, concerning those [prosecutor] interviews be turned over to defense counsel by today at 4:30 p.m." RP I, 29.
- Rejecting the City's argument that the December 19th depositions had been adequate to comply with the discovery rules and due process, the court ordered the City's witnesses to submit to "a second deposition . . . to take place this Friday, January 2nd, at 8:30 a.m., here at Kirkland Municipal Court The prosecutors are to be present and assist with the interview." RP I, 29-30.
- Finally, the Court made it clear that the City's witnesses were to answer all relevant questions.¹³ RP I, 30.

¹¹ "This, likewise, was a relevant inquiry. If the material witness went to the hospital as a result of the alleged assault ..., the doctor's assessment and other physical and mental conditions having to do with this hospital stay are relevant and discoverable." RP I, 28.

¹² "The City is resisting the motion, arguing ... that this court should not make a ruling concerning the alleged obstructionist efforts of government witnesses until this court has reviewed the transcripts of the deposition. Still defense counsel mentions in his briefing that he presents some summaries of the deposition for the court as an officer of the court. *The prosecuting authority has not denied the validity or substantive language of the defense summaries presented to this court in her briefing. The court will nonetheless delay ruling on defense motions until transcripts are available.*" RP I, 29 (emphasis added).

¹³ "At the deposition this Friday, so long as the inquiries are relevant, the interview should be unfettered. This will include inquiries concerning the witnesses' use of alcohol, drugs or prescribed medicines at the time of the incident, mental health issues, hospital stays that occurred as a result of this case, et cetera." RP I, 30. *See also Order on Def's Motion to Dismiss or For Alternative Relief*, dated 12/30/14 (Appendix J).

E. December 30: The City Amends Its Witness List to Add Four New Witnesses, Including Two Expert Witnesses.

On the same day as the hearing on Stevens' motion to dismiss, the City amended its witness list by adding four new witnesses, including two expert witnesses. (Appendix K). As the trial judge later noted, the City never offered any explanation as to why these witnesses were not identified until six months after charging. RP IV, 13.

F. January 2: Renewed Defense Motion to Dismiss.

On January 2, 2015, Stevens filed a renewed motion for dismissal of the case. (Appendix L). She argued that "the City's handling of this case as it has proceeded to trial constitutes gross mismanagement warranting the imposition of an extraordinary remedy." *Id.* at 1-2. In her motion she noted that:

- the City had no basis to claim that any of the four new witnesses were "only recently 'discovered'";
- the January 14th readiness hearing was now 12 days away;
- the defense could not possibly interview the four new witnesses before the time of trial; and
- the defense would be unable to find and identify potential defense rebuttal expert witnesses in the time remaining before trial.

Id. at 2. Stevens also noted that while the City prosecutors had complied with the Court's order to produce its interview notes, the notes showed that the prosecutors' witness interviews had been conducted on October 24th and yet they were not turned over until the afternoon of December

30th when the Court ordered them disclosed. (Appendix M, ¶¶ 4-6).

G. January 2: The City's Witnesses Fail to Appear for Deposition.

Also on January 2nd witnesses Obert and C.O. failed to appear for the second court-ordered deposition. RP II, 4 & Appendix M, ¶7-9. A prosecutor confirmed that she had notified Obert of the deposition date and that Obert had replied, "I don't know if we can make that." *Id.*, ¶22.

H. January 6: The Court gives the City's witnesses a third chance and orders they submit to deposition on January 8th.

On January 6th yet another hearing was held. The Court was informed that the City's alleged victim-witnesses failed to appear for deposition on January 2nd. RP II, 5. The Court noted that the readiness hearing was now only one week away, and that it was conceded by all parties that the two witnesses who had failed to appear were the only witnesses to the alleged assaults. RP II, 25-26. The Court said it wanted to read the transcripts of the depositions where the witnesses had refused to answer pertinent questions, and that it was going to give the witnesses yet another chance before it ruled on the motion to dismiss. RP II, 27. For the third time the Court again ordered the witnesses to appear for a deposition. RP II, 27-28. The Court ordered them to appear at the Municipal Court on January 8th for a deposition. RP II, 29. One of the prosecutors said she was unaware of any reason why the witnesses could not appear on that day, and said she had "no reason to understand that they

would not follow the court's order at this point." RP II, 28.

The Court also directed defense counsel to make every effort to interview the City's recently disclosed expert witnesses. RP II, 30.

I. January 8: The City's Witnesses Again Fail to Appear.

On January 8th the two alleged victim-witnesses again failed to appear at a court ordered deposition. RP III, 3 & Appendix N, ¶5.

J. January 13th: Municipal Court Grants Dismissal Motion.

At the readiness hearing on January 13th the Court was told that the City's witnesses had failed to appear on January 8th. RP III, 3. The Court was also informed that defense counsel had attempted without success to interview the City's recently disclosed new expert witnesses. An attorney representing the two medical experts had told defense counsel that the doctors could not and would not submit to an interview because (1) they had no patient release authorizing them to speak to defense counsel and also because (2) neither doctor had been subpoenaed for trial by the prosecution. (Appendix N, ¶8). As to the City's two new lay witnesses, one of them failed to appear at the time scheduled for his defense interview and the other told the defense investigator that she currently lives in Florida and had not yet decided whether she would agree to attend the scheduled trial. *Id.*, ¶10.

After listening to argument, the trial judge granted Stevens' motion

to dismiss. RP III, 15-16. In his oral ruling the trial judge specifically found fault with the City for disclosing four new witnesses two weeks before the readiness hearing, one of whom had left the State. RP III, 12-14. The court's complete oral ruling is attached as Appendix O. The Court entered a written order dismissing the charges with prejudice, and which specifically stated that "IN REACHING THIS DECISION the Court further incorporates its oral rulings of November 6, 2014, December 30, 2014, January 6, 2015 and January 13, 2015." (Appendix P).

K. Superior Court Vacates Municipal Court's Dismissal Order On Ground That Municipal Court Made No Finding of Fact That City Engaged in Willful or Grossly Negligent Conduct.

At the oral argument of the RALJ Appeal, the City argued that the trial court judge did not expressly find that the City willfully or negligently violated the discovery rules: "[W]e don't believe that the trial court made any findings whatsoever that . . . it was the City's behavior [that prejudiced the defendant]." RP IV, 5-6. The City agreed that its two victim-witnesses had acted improperly, but claimed that the Municipal Court never made any finding "that the City did something wrong" which prejudiced the defendant. RP IV, 7.

Stevens argued that the prosecution's delay in waiting to identify four new witnesses until less than two weeks before the readiness hearing was governmental misconduct that "deprived the defense of any fair

opportunity to prepare the case for trial, and the Court so found.” RP IV, 7. The Superior Court judge did not agree, and faulted the Municipal Court for not entering any written findings of fact and conclusions of law:

COURT: Well, I guess I’m, *I’m not sure the Court so found.* The Court certainly said that the defense was presented with enormous difficulties by this case. *But obviously one of the problems we have here is there weren’t actual written findings and conclusions entered. There are oral statements by the judge* in making his decision. And certainly he substantially agrees with you, Mr. Maybrown, that there were enormous difficulties presented to the defense. *I’m not sure that he actually made a finding that it, that it prevented the defense from, from going forward.*

RP IV, 7-8 (emphasis added).

Stevens’ counsel replied noting that the RALJ rules required the Superior Court to accept the “implicit” findings made by the trial court:

MR. MAYBROWN: Well, first of all, under the RALJ rules, because the courts of limited jurisdiction are somewhat less formal than these provisions, *there’s a very specific rule, 9.1B that says the Court must accept all findings, both explicitly made and implicit in the Court’s findings.*

Here what the Court very clearly found is that endorsing these witnesses six months after the trial had been set, less than two weeks before readiness without any explanation or justification was mismanagement.

RP IV, 8 (emphasis added). Defense counsel also noted that the City had foregone the opportunity to have written findings entered. RP IV, 8.¹⁴

¹⁴ “[At the hearing] I asked whether the court wanted to enter written findings or conclusions ... [T]he prosecutor did not want to be heard on this so the prosecutor did not seek the entry of findings.” The transcript of the January 13, 2015 hearing bears this out:

(Footnote continued next page)

Defense counsel reiterated that if the Superior Court thought “it would benefit this Court to have more explicit findings we could go get more explicit findings,” but argued that that was unnecessary. RP IV, 8. The Superior Court suggested that there was an available alternative to dismissal: the striking of the two witnesses who had refused to answer all relevant questions at the court ordered deposition and refused to appear for the rescheduled deposition. RP IV, 10.¹⁵ But defense counsel noted that the City had previously conceded that if these two witnesses were stricken then the City would have no way of proving the charges and the case would have to be dismissed. So striking the witnesses would necessarily lead to a dismissal anyway:

MR. MAYBROWN: . . . Both parties have argued and I believe testified that the police have acknowledged, there’s no other witness to this case. So it would have been, it would have been the same essentially. . . .

So I think that, *we could go back and the court could make more explicit and you could have these beautiful detailed findings, which would get us to exactly the same place.*

“MR. MAYBROWN: Your Honor, I have an order which reflects what the court has considered and incorporates the court’s oral ruling. If that would be sufficient with the court, that would be sufficient with the defense. *If the court wants us to prepare findings, we would prepare findings and conclusions.* I’m satisfied either way, but I’ll defer to the court. And perhaps the prosecutor would have –

THE COURT: *Does the prosecutor wish to be heard?*

MS. McELYEA: *No, Your Honor.*

THE COURT: *Then I’ll sign your order, Counsel.*” RP III, 16-17 (emphasis added).

¹⁵ MR. MAYBROWN: . . . I think the Court certainly was authorized to strike these witnesses given their refusal to cooperate. And – COURT: Right. And I agree with you that, that’s a potential thing. But that’s not, of course, what he did.” RP IV, 10.

RP IV, 10-11 (emphasis added).

The Superior Court replied that it was not yet clear that there was no other remedy, because if the trial judge had given the witnesses a *fourth* chance to be deposed and to answer all questions, maybe then the witnesses would then have answered fully; and if not *then* the trial judge could have dismissed the case. It is not clear that the Superior Court understood that there had been *three* hearings before the Municipal Court judge, for he spoke as if he thought there had been only one.¹⁶

Defense counsel argued that the issue before the Superior Court was whether the trial court judge had abused his discretion when he determined that it was no longer possible, in the time remaining, for the defense to have a fair opportunity to prepare for trial. Defense counsel stated the time-honored test for abuse of discretion and the Superior Court *disagreed* with his formulation of the test. The Superior Court concluded that the Municipal Court judge abused his discretion because he did not

¹⁶ “[W]hat happened was, of course, that you initially moved for dismissal on the ground that they refused to be interviewed by you, and I understand why you would do that. [¶] And, but, of course, by the time we got the hearing on it there actually had been a deposition. There had been an assertion at the hearing of a refusal to answer certain questions on the grounds of medical privilege. . . . [¶] . . . The judge ruled against [the witnesses] on that, but, I think at that point *you need to go back and, and, uh, and find out whether that [sic] you can get the answers or not.* Now, I realize that, that you were up against time pressures. But I don’t think that just because it’s gotten that close it just automatically means that we go to the nuclear option and, and dismiss the case. . . .” RP IV, 13-14 (emphasis added).

(But the defense *had* gone back and *had* attempted to find out if the witnesses would answer all relevant questions and *twice* the witnesses had simply refused to appear.)

make an explicit finding of governmental misconduct:

MR. MAYBROWN: . . . *[T]he question is whether any reasonable judge in Washington, faced with these circumstances, could have reached the decision it [the Municipal Court] reached.*

COURT: *No, that's not the proper...* I realize that there are cases that articulate the standard that way but that, *that's a fundamental misstatement of what, what the, abusive [sic] discretion means.* It's a decision made for untenable grounds or for untenable reasons. And *the untenable grounds here is that there is no finding by the trial court* of a governmental misconduct or arbitrary action.

RP IV, 15 (emphasis added). The Superior Court then entered this order:

The above entitled court having heard a motion to remand this case back to the trial court for an abuse of discretion under 8.3 and 4.7.

IT IS HEREBY ORDERED THAT this case be remanded back to the trial court for a trial. Court finds there was an abuse of discretion.

(Appendix A).

V. WHY REVIEW SHOULD BE ACCEPTED

A. THE SUPERIOR COURT ERRONEOUSLY REJECTED THE ESTABLISHED TEST FOR DECIDING IF THERE WAS AN ABUSE OF DISCRETION. (RAP 2.3(d)(1) & (d)(4)).

The test for deciding whether an abuse of discretion has occurred is well established: “An appellate court finds abuse of discretion only when no reasonable judge would have reached the same conclusion.” *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989). This test

has been around for a long time and is often cited.¹⁷ Stevens' counsel said that this was the applicable standard. But the Superior Court said that it was *not* the proper the test, and that even though “there are cases that articulate the standard that way, but that, that’s a fundamental misstatement of what” the term abuse of discretion means.” RP IV, 15.

The Superior Court was wrong. That standard is not a misstatement of the proper appellate test for determining whether an abuse of discretion has occurred. The Superior Court’s rejection of this test is contrary to dozens of Washington decisions and his refusal to apply this test was a radical departure from the usual course of proceedings which calls for discretionary review.

B. THE RALJ COURT VIOLATED THE RULE SPECIALLY CRAFTED FOR APPELLATE REVIEW OF MUNICIPAL COURT DECISIONS WHICH REQUIRES THE ACCEPTANCE OF ALL FINDINGS, INCLUDING ALL UNSPOKEN FINDINGS THAT CAN REASONABLY BE INFERRED FROM THE LOWER COURT’S DECISION. (RAP 2.3(d)(3) & (d)(4)).

The Superior Court was fixated on what it erroneously saw as a “problem”: “[T]here weren’t actual written findings and conclusions entered”; there were only “oral statements by the judge” RP IV, 7.

Given the absence of any formal written findings of fact or conclusions of

¹⁷ See, e.g., *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012); *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002); *State v. Woods*, 143 Wn.2d 561, 595, 23 P.3d 1046 (2001); *State v. Bourgeois*, 133 Wn.2d 389, 406, 945 P.2d 1220 (1997); *State v. Perez*, 184 Wn. App. 321, 341-42, 337 P.3d 352 (2014).

law, the Superior Court said that the trial judge's decision to dismiss was "made for untenable grounds" because there was "no finding of a [sic] governmental misconduct or arbitrary action." RP IV, 15.

The "no tenable reason" test is merely a different articulation of the "no reasonable judge" test. But the RALJ judge's application of the test makes no sense. The failure to make a written or oral finding of fact does not mean that the trial court judge had no tenable reason. A reason need not be written or spoken to be a "tenable" reason. As RALJ 9.1(b)(2) expressly provides, it need only be something that can be "reasonably inferred" from the trial court's judgment.

RALJ 9.1(b)(2) accommodates the generally informal nature of judging that takes place in the municipal courts. The rule recognizes that it would be completely unworkable to require the judges of these courts to support all their decisions with written FF&CL. Instead of requiring such findings, RALJ 9.1(b)(2) *requires* appellate courts to accept all reasonably inferable findings that could support the judgment of the lower court.

There is only one published decision that makes even a passing reference to RALJ 9.1(b). *State v. Basson*, 105 Wn.2d 314, 714 P.2d 1188 (1986) states that because the Superior Court was sitting as an appellate court, RALJ 9.1(b) applied, and thus it was improper for the Superior Court to make its own evaluation of the evidence. But *Basson* only

addresses subsection (b)(1) which requires acceptance of all findings “supported by substantial evidence;” it does not address subsection (b)(2) which requires acceptance of all “reasonably inferred” findings.

Because there is no published opinion analyzing subsection (b)(2), this case presents a question of substantial public interest. In the absence of a published decision, other Superior Court judges are likely to make the same mistake and will fail to follow the mandate of RALJ 9.1(b)(2).

In the present case, the record is replete with facts that support the trial court judge’s decision and from which a finding of governmental mismanagement of the case can reasonably be inferred.¹⁸ The Superior Court’s decision remanding this case for trial ignores all these oral statements, all these reasonable inferences, and the clear command of the applicable appellate rule.

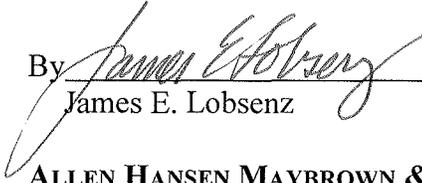
VI. CONCLUSION

For the reasons stated above, Petitioner Stevens asks this Court to grant discretionary review of the Superior Court’s decision.

¹⁸ For example, there was un rebutted evidence that the police failed to collect physical evidence that supported the self-defense defense; and the prosecutors delayed the deposition of their witnesses; failed to promptly reschedule them when the witnesses failed to appear; refused to provide discovery of their own interview notes; defended their refusal with a frivolous claim of work-product privilege; waited for six months to identify four new witnesses just two weeks before the readiness hearing; failed to subpoena their belatedly disclosed experts; and failed to provide their experts with medical releases thus making it impossible for defense counsel to interview them.

Respectfully submitted this 12th day of January, 2016.

CARNEY BADLEY SPELLMAN, P.S.

By  _____
James E. Lobsenz

**ALLEN HANSEN MAYBROWN &
OFFENBECHER, P.S.**

By  _____
Todd Maybrown

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Counsel for Petitioner Stevens:

Todd Maybrown
Allen Hansen Maybrown & Offenbecher, P.S.
600 University Street, Suite 3020
Seattle, WA 98101
Todd@ahmlawyers.com

Counsel for Respondent City of Kirkland:

Tamara L. McElyea
Moberly & Roberts, PLLC
12040 98th Avenue NE, Suite 101
Kirkland, WA 98034-4217
tmcelyea@moberlyandroberts.com

DATED this 12th day of January, 2016.



Deborah A. Groth, Legal Assistant

No. 74300-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CITY OF KIRKLAND,

Respondent,

v.

HOPE STEVENS,

Petitioner.

FILED
Jan 12, 2016
Court of Appeals
Division I
State of Washington

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Douglass North

APPENDICES TO MOTION FOR DISCRETIONARY REVIEW

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OFFENBECHER, P.S.
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APPENDICES
(separately assembled)

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Counsel for Petitioner Stevens:

Todd Maybrow
Allen Hansen Maybrow & Offenbecher, P.S.
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Todd@ahmlawyers.com

Counsel for Respondent City of Kirkland:

Tamara L. McElyea
Moberly & Roberts, PLLC
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Kirkland, WA 98034-4217
tmceleya@moberlyandroberts.com

DATED this 12th day of January, 2016.



Deborah A. Groth, Legal Assistant

APPENDIX A

FILED
KING COUNTY, WASHINGTON

OCT 2 - 2015

SUPERIOR COURT CLERK
BY Jon Schroeder
DEPUTY

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

~~STATE OF WASHINGTON~~
City of Kirkland
Plaintiff

NO. 15-1-01772-8 SCA

vs.

ORDER ON CRIMINAL MOTION

Stevens, Hugo A

Defendant

The above entitled court having heard a motion to remand this case
back to the trial court for an abuse of
discretion under 8.3 and 4.7.

IT IS HEREBY ORDERED that this case be remanded
back to the trial court for a trial. Court
finds there was an abuse of discretion

DATED: Oct. 2, 2015.

Douglas A. North
Judge Douglas A. North

[Signature]
Deputy Prosecuting Attorney/WSBA#

42466 Tamara L. McElya

copy received

Attorney for Defendant/WSB #

APPENDIX B

FILED

JUN 23 2014

KIRKLAND MUNICIPAL COURT

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IN THE MUNICIPAL COURT FOR THE CITY OF KIRKLAND
STATE OF WASHINGTON FOR KING COUNTY

CITY OF KIRKLAND,

Plaintiff,

NO. 38384

v.

COMPLAINT
2 COUNTS

STEVENS, HOPE A.,

Defendant,

(Assault in the Fourth Degree-Domestic
Violence/Assault in the Fourth Degree-
Domestic Violence)
Gross Misdemeanor

COUNT I

The Prosecuting Attorney for the City of Kirkland, in the name and by the authority of the City of Kirkland, does accuse the defendant of the crime of Assault in the Fourth Degree (domestic violence), committed as follows:

That the defendant in the City of Kirkland, Washington, on or about 06/21/2014, did intentionally assault, Teresa L. Obert (DOB: 12/10/1971), a family or household member as defined in RCW 10.99.020.

Contrary to KMC, adopting by reference RCW 9A.36.041, and against the peace and dignity of the City of Kirkland.

COUNT II

And the Prosecuting Attorney, does further accuse the defendant of the crime of Assault in the Fourth Degree, Domestic Violence, a crime of the same or similar character as based on the same conduct as based on a series of acts connected together with Count I, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

COMPLAINT- I
(Assault in the Fourth Degree- Domestic
Violence/Assault in the Fourth Degree-DV)

MOBERLY & ROBERTS, PLLC
12040 98th Avenue NE, Suite 101
Kirkland, WA 98034
425-284-2362
425-284-1205(f)

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That the defendant in the City of Kirkland, Washington, on or about 06/21/2014, did intentionally assault, C.J.D.O. (DOB: 05/28/1997), a family or household member as defined in RCW 10.99.020.

Contrary to KMC, adopting by reference RCW 9A.36.041, and against the peace and dignity of the City of Kirkland.

AND COMES NOW PLAINTIFF, CITY OF KIRKLAND, AND HEREBY DEMANDS A JURY TRIAL IN THE ABOVE-ENTITLED CAUSE. SUCH DEMAND IS MADE PURSUANT TO CrRLJ 6.1.1(B).

Moberly & Roberts, PLLC

DATED: 6/23/2014

By: 
Assistant Prosecuting Attorney, WSBA # 42466

The above-signed Prosecuting Attorney certifies, under penalty of perjury of the laws of the State of Washington, that there are reasonable grounds to believe, and the attorney does believe, that the defendant committed the offense contrary to law.

APPENDIX C

1 police reports do not include a description of C.J.D.O. In fact, C.J.D.O. is much larger than
2 Ms. Stevens – approximately 6’9” in height and 280 pounds in weight. On June 21, C.J.D.O.
3 took offense to a comment that was made by Ms. Stevens. C.J.D.O. became enraged and he
4 attacked Ms. Stevens. As his anger grew, C.J.D.O. grabbed a broom stick handle and
5 repeatedly hit Ms. Stevens over the head with the stick. C.J.D.O. used such great force during
6 these blows that he broke the stick in half.
7

8 4. Ms. Stevens has consistently – and persistently – denied any claim that she
9 assaulted the City’s complaining witnesses. In fact, when first speaking with police
10 investigators, Ms. Stevens denied the claims of assault and told the officers that she was the
11 “victim” and that “[C.J.D.O.] hit me with a stick.” Ms. Stevens told the officers that C.J.D.O. is
12 a “scary person and that she was protecting herself.” She also explained that C.J.D.O.’s mother,
13 Teresa Obert, always protects her son. When the police officers advised Ms. Stevens that she
14 was under arrest, Ms. Stevens repeatedly asked for an explanation and told the officers that she
15 was the victim. Later, when being transferred to the police station, Ms. Stevens again asked why
16 she was being arrested and denied the claim of assault.
17

18 5. Should this case proceed to trial, the defense is confident that we will
19 demonstrate it was C.J.D.O., and not Ms. Stevens, who was the true aggressor during this
20 incident. The defense will also present testimony to demonstrate that Ms. Stevens was seriously
21 injured on account of his attack. The defense will present testimony to show that Ms. Stevens
22 suffered a concussion on account of C.J.D.O.’s unlawful conduct.
23

24 6. The defense has attempted to investigate this case over the last several months.
25 To that end, defense counsel has interviewed each police officer who was present at the Obert
26 home following the incident of June 21, 2014. These officers have each confirmed that there is

1 no independent evidence, other than the self-serving claims of C.J.D.O., that Ms. Stevens was
2 somehow the first aggressor during the incident.¹

3 7. The complaining witnesses in this case, Teresa Obert and C.J.D.O., have
4 retained an attorney to represent them in these matters. That attorney, Mary Gaston, is
5 employed by the Perkins Coie law firm in Seattle.
6

7 8. Over the last several months, I have made countless attempts to schedule
8 defense interviews and/or depositions with Teresa Obert and C.J.D.O. The defense has been
9 thwarted in these efforts and no interview and/or deposition has been completed as of today's
10 date.

11 9. This obstruction was focused solely on defense counsel. I was advised that the
12 complaining witnesses agreed to meet with the assigned prosecuting attorneys to discuss the
13 case and that such a meeting was to be held on October 22, 2014. Before that meeting, one of
14 the prosecuting attorneys wrote and advised me that I would not be permitted to attend any
15 meeting between these witnesses and the prosecutor. *See Appendix A.* The City has yet to
16 produce any discovery materials relating to that meeting.
17

18 10. This Court initially scheduled a readiness hearing in this case for November
19 12, 2014 and a motion hearing for November 4, 2014. Unfortunately, these hearings needed
20 to be continued because Teresa Obert and C.J.D.O. had refused to cooperate with defense
21 counsel. Accordingly, the defense filed a motion for leave to conduct depositions pursuant to
22 CrRLJ 4.6.
23

24
25
26 ¹ The police reports indicate that Teresa Obert has claimed that she was not present during the
start of this altercation, so she would not be able to shed much light on this crucial issue.

1 11. The parties appeared before this Court on November 4, 2014. After hearing
2 argument, the Court granted the defendant's motion and ordered that the defense was
3 authorized to depose the two complaining witnesses. *See Appendix B* (Order of November 4,
4 2014). Counsel for the complaining witnesses was present when the Court issued this ruling,
5 so there can be no doubt that the complaining witnesses had fair notice of the Court's
6 decision.
7

8 12. Over the last month, I have expended considerable efforts in an attempt to
9 arrange the depositions of Teresa Obert and C.J.D.O. Yet, as discussed further below, these
10 depositions have not been completed and it now appears that the "witnesses" will not comply
11 with any Orders of this Court.
12

13 13. CrRLJ 4.6(b) sets forth the procedure for arranging depositions in a criminal case.
14 The rule provides that the party scheduling the deposition must prepare a "written notice" and
15 that such notice must state "the time and place for taking the depositions." *Id.*
16

17 14. On November 5, 2014, I wrote to Ms. Gaston and asked if she would accept
18 notices on behalf of her clients. Ms. Gaston responded that she would agree to accept such
19 notices. *See Appendix C.* Ms. Gaston asked for me to arrange a date for these depositions
20 with the assigned prosecutors.
21

22 15. On November 13, 2014, I wrote to all counsel and explained that I was hoping
23 to schedule depositions for the afternoon on November 25. *See Appendix D.* In that
24 correspondence, I advised the parties that it was imperative that we complete the depositions
25 sometime during the week of November 24. Having heard no objections, I served all parties
26 with written notice for these depositions on the following day. *See Appendix E.* These same
27 notices were filed with the Court.

1 16. But no deposition went forward on November 25 as scheduled. Rather, on
2 November 14, 2014, one of the assigned prosecutors contacted me by email and asked if I
3 would reschedule the depositions for a later date. In particular, the prosecutor asked if I
4 would agree to set the deposition for the afternoon of December 2. As a matter of
5 professional courtesy, I agreed to reschedule the depositions for December 2.
6

7 17. On November 17, 2014, my assistant emailed a copy of the amended notices to
8 counsel for all the parties. *See Appendix F.* These notices were surely received by Ms.
9 Gaston. In fact, later that same date, Ms. Gaston responded to my assistant and confirmed her
10 receipt and explained that she did not need to receive hard copies. *See id.*
11

12 18. But, once again, no deposition went forward on December 2. On the morning
13 of December 2, Ms. Gaston emailed a “notice of unavailability” in which she explained that
14 her clients had never received subpoenas for any deposition. *See Appendix G.* I immediately
15 responded to Ms. Gaston and explained that I was shocked by her claims. Along with that
16 email message, I sent Ms. Gaston a copy of all emails relating to the deposition – including
17 her confirmation of receipt of the notices.
18

19 19. Later that same date, Ms. Gaston’s assistant wrote to me and explained that
20 Ms. Gaston was not in the office. She then claimed, for the very first time, that her clients did
21 not intend to appear for depositions based upon her contention that the notices she received
22 were somehow defective. Apparently, citing CR 45 (rather than the appropriate criminal
23 rules), Ms. Gaston decided to make an 11th hour claim that her clients would not appear unless
24 they were given subpoenas.
25

26 20. Ms. Gaston’s claim is untenable – and simply another example of
gamesmanship. Accordingly, I promptly wrote to the prosecuting attorneys and explained:

1 As you know, this is a criminal case and the criminal rules of procedure
2 apply. CrRLJ 4.6 does not require service of a subpoena. To the
contrary, the rule requires a “notice,” and nothing more:

3 (b) Notice of Taking. The party at whose instance a
4 deposition is to be taken shall give to every other party
5 reasonable written notice of the time and place for
6 taking the deposition. The notice shall state the name
7 and address of each person to be examined. On motion
of a party upon whom the notice is served, the court for
cause shown may extend or shorten the time and may
change the place of taking.

8 *Id.* Moreover, the thought that Ms. Gaston would accept service of
9 these notices on November 17 and then “lay in the weeds” for two
10 weeks so that she could offer up this sort of bogus objection is
remarkable.

11 Once again, I am forced to file a motion with the court.

12 *See Appendix H.*

13
14 21. One of the prosecutors wrote back and, quite remarkably, she suggested that
15 Ms. Gaston’s claim might have some merit. She also asked Ms. Gaston to consider another
16 possible date for these depositions. To this point, Ms. Gaston has failed to respond to that
17 message.

18 22. Defense counsel cannot fairly or effectively prepare this case for trial without
19 completing the depositions of Teresa Obert and C.J.D.O. in a time and manner that would
20 allow for follow-up investigation. *See, e.g., State v. Ray*, 113 Wn.2d 531, 548 (1991)
21 (“Failure to investigate or interview witnesses, or to properly inform the court of the
22 substance of their testimony, is a recognized basis upon which a claim of ineffective
23 assistance of counsel may rest.”); *State v. Jury*, 13 Wn.App. 256, 264 (1978) (Sixth
24 Amendment violated where defense counsel failed to interview the State’s witnesses). These
25
26

1 interviews are critical to the defense and must be completed before the defense can complete
2 its investigation and file pre-trial motions.

3 23. This Court has previously authorized defense counsel to depose Teresa Obert
4 and C.J.D.O. regarding these matters. Yet, after more than a month of efforts, both of these
5 witnesses have refused to appear for a deposition. This intransigence and obstructionism is
6 unfathomable – particularly so given that these witnesses have voluntarily met with the
7 prosecuting attorneys at a time that the prosecuting attorneys refused to allow defense counsel
8 to be present.²

9
10 24. Under CrR 4.7(g), this Court is authorized to manage the discovery procedures
11 in any case. These rules are designed to ensure that each side – not just the prosecuting
12 attorney – is provided a fair opportunity to investigate a case.

13
14 25. In cases involving violations of the discovery rules, CrRLJ 4.7(g)(7)(i)
15 provides that the Court may enter such “order as it deems just under the circumstances.”
16 CrRLJ 4.7(g)(7)(ii) specifically provides: “The Court may at any time dismiss the action if
17 the court determines that failure to comply with an applicable discovery rule or an order
18 issued pursuant thereto is the result of a willful violation or of gross negligence and that the
19 defendant was prejudiced by such failure.” *Id.*

20
21 26. The defense has been seriously prejudiced by the actions of the City’s
22 witnesses in this case. Although defense counsel has repeatedly advised the prosecutors and
23 counsel for these witnesses that “time was of the essence” and that we needed to complete
24 these depositions as soon as possible, the witnesses have chosen to thumb their nose at these
25
26

1 requests. In fact, it now appears that these witnesses will never cooperate or appear for
2 depositions. Because of these actions, the witnesses have made it virtually impossible for
3 counsel to prepare for pre-scheduled hearings and trial.

4 27. This Court is also authorized to dismiss this action pursuant to CrRLJ 8.3,
5 where the defense is prejudiced due to “arbitrary action” relating to the proceedings. In one
6 significant case, *State v. Michielli*, 132 Wn.2d 587 (1997), the Washington Supreme Court
7 explained that a defendant suffers significant prejudice if she is forced to request a
8 continuance (and to waive her speedy trial rights) due to the improper action of another
9 participant in the litigation. That principle applies with great force given the circumstances of
10 this case.

11
12 28. As the Court knows, Ms. Stevens is a professional athlete. The defense has
13 made great efforts to proceed with this case in an expeditious fashion to ensure that Ms.
14 Stevens’ professional obligations were not compromised. Unfortunately, due to the
15 intransigency of the City’s complaining witnesses, the trial in this case was continued to
16 January 2015. Now, in light of the continued intransigence of the City’s complaining
17 witnesses, the defense has been deprived of an opportunity to prepare the case for the January
18 hearings. This Court should not force the defense to continue these matters a second time.
19 Rather, consistent with CRLJ 4.7 and 8.3, this case should be dismissed. Such a dismissal is
20 consistent with the interests of justice.

21
22 29. At a minimum, and in the alternative, this Court should conclude that Teresa
23 Obert and C.J.D.O. will not be permitted to testify at any trial of these matters.
24
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26

² To this point, the prosecuting attorneys have failed to provide any discovery information regarding these interviews in violation of CrRLJ 4.7(a)(1)(i) which requires production of “the

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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

DATED at Seattle, Washington this 9th day of December, 2014.

ALLEN, HANSEN & MAYBROWN, P.S.



Todd Maybrown, WSBA #18557
Attorney for Defendant

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent by mail / ~~email~~ / messenger a copy of the document to which this certificate is affixed to Tamara McElyea and Lacey Offutt

Dated: 12/10/2014
[Signature]

substance of any oral statements” of the witnesses.

APPENDIX A

Todd Maybrow

From: Tammy McElyea <tmcelyea@moberlyandrobarts.com>
Sent: Wednesday, October 22, 2014 2:01 PM
To: Todd Maybrow
Cc: Lacey Offutt
Subject: Re: Hope Stevens Discovery

Hello;

It is our understanding that Ms. Gaston has provided you with two different opportunities to interview both Teresa and C██████████. One on Friday October 17th and then this coming Friday October 24th. Based on that information we would be objecting to a motion for depositions. Under 4.6 (a) a deposition is only appropriate where "upon showing that a prospective witness...refuses to discuss the case with either lawyer..." That clearly is not the case in this situation. If you are not planning to attend the scheduled 11:00 interview on Friday then I suppose you have that option to contact the court. But understand we will argue to the court that you have been given two different occasions to interview the victims and have chosen not to take advantage of those opportunities. We know that having a third attorney involved is difficult but that is the hand we have been dealt in this situation. We have little to no control over that obstacle. So please let us know if you plan on attending on Friday.

In addition, you will not be involved in our meeting with our witnesses. Our meeting is designed for trial prep and as you are very aware that is considered "work product" and is not subject to the discovery rules. I will assure you that if any exculpatory evidence that was not previously disclosed comes to light, we will provide you that information in writing.

Thank you.

Tammy

On Wed, Oct 22, 2014 at 12:59 PM, Todd Maybrow <Todd@ahmlawyers.com> wrote:

Please see attached. We will send a package with the interview transcripts via hard mail.

Todd

Todd Maybrow

Allen, Hansen & Maybrow, P.S.

One Union Square

600 University Street, Suite 3020

Seattle, Washington 98101-4105

APPENDIX B

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FILED
NOV 10 2014
KIRKLAND
MUNICIPAL COURT

IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

[PROPOSED] ORDER RE
DEFENDANT'S MOTION FOR
DEPOSITIONS

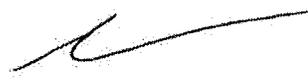
This matter came before the above-entitled Court upon Defendant's Motion for Depositions. The Court having reviewed the pleadings filed herein and heard oral argument, does hereby ORDER that Defendant's Motion for Depositions is Granted.

The defense MAY schedule depositions
with witnesses TO & CO AT counsel's
discretion.

DONE in open court this 4 day of November, 2014.



Municipal Court Judge
Michael J. Lambo

Presented by:


Todd Maybrown, WSBA #18557
Attorney for Defendant

[PROPOSED] ORDER RE DEFENDANT'S
MOTION FOR DEPOSITIONS - 1

Allen, Hansen & Maybrown, P.S.
600 University Street, Suite 3020
Seattle, Washington 98101
(206) 447-9681

APPENDIX C

Paula Smeltzer

From: Gaston, Mary P. (Perkins Coie) <MGaston@perkinscoie.com>
Sent: Thursday, November 06, 2014 12:52 PM
To: Todd Maybrown
Cc: Paula Smeltzer
Subject: Re: Depositions

Yes. I assume you will coordinate with us on the date. Thanks. M.

Mary P. Gaston

On Nov 5, 2014, at 1:21 PM, Todd Maybrown <Todd@ahmlawyers.com> wrote:

Mary:

Will you accept service of deposition notices for your clients? Please let me know.

Todd

Todd Maybrown
Allen, Hansen & Maybrown, P.S.
One Union Square
600 University Street, Suite 3020
Seattle, Washington 98101-4105
(206) 447-9681 - Phone
(206) 447-0839 - Fax

www.ahmlawyers.com[\[ahmlawyers.com\]](http://ahmlawyers.com)

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

APPENDIX D

Todd Maybrow

From: Todd Maybrow
Sent: Thursday, November 13, 2014 9:14 AM
To: 'Tammy McElyea'; Lacey Offutt; Gaston, Mary P. (Perkins Coie)
Cc: Paula Smeltzer
Subject: Depositions of CO and TO

Counsel:

I am planning to schedule the court-ordered depositions as follows:

Witness: CO
Location: Law Office of Allen, Hansen & Maybrow, PS
Date: November 25, 2014
Time: 1:00 PM

Witness: TO
Location: Law Office of Allen, Hansen & Maybrow, PS
Date: November 25, 2014
Time: 2:30 PM

I may be able to adjust the date – as I am also available on November 24 and 26 – but the depositions will need to be completed during the week of November 24. Unless I hear back by close of business today, I will send notices to all counsel. Ms. Gaston has previously agreed to accept service of the notices on behalf of the witnesses.

Todd

Todd Maybrow
Allen, Hansen & Maybrow, P.S.
One Union Square
600 University Street, Suite 3020
Seattle, Washington 98101-4105
(206) 447-9681 - Phone
(206) 447-0839 - Fax

www.ahmlawyers.com

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APPENDIX E

Todd Maybrown

From: Sarah Conger
Sent: Friday, November 14, 2014 10:47 AM
To: mgaston@perkinscoie.com
Cc: tmcelyea@moberlyandrobarts.com; loffutt@moberlyandrobarts.com; Todd Maybrown; Paula Smeltzer
Subject: City of Kirkland v. Hope Stevens, No. 38384
Attachments: NOTICE OF DEPOSITION (Teresa Obert).pdf; NOTICE OF DEPOSITION (C██████████ O██████████ O██████████).pdf

Ms. Gaston:

Attached please find copies of the Notices of Deposition for Teresa Obert and C██████████ O██████████ O██████████. A hard copy is being delivered to your office today via legal messenger.

Thank you for your attention to this matter.

Take care,

Sarah Conger
Legal Assistant
Allen, Hansen & Maybrown, P.S.
600 University Street, Suite 3020
Seattle, WA 98101
Phone: 206-447-9681
Fax: 206-447-0839

IMPORTANT: Emails to clients of this office presumptively contain confidential and privileged material for the sole use of the intended recipient. Emails to non-clients are normally confidential and may also be privileged. The use, distribution, transmittal or re-transmittal by an unintended recipient of any communication is prohibited without our express approval in writing or by email. Any use, distribution, interception, transmittal or re-transmittal by persons who are not intended recipients of this email may be a violation of law and is strictly prohibited. If you are not the intended recipient please contact the sender and delete all copies.

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: Teresa Obert
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of Teresa Obert will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on November 25, 2014, commencing at the hour of 2:30 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 14th day of November, 2014.

Todd Maybrown b. J. Cooper
Todd Maybrown, WSBA #18557 / *Jennifer*
Attorney for Defendant #10290

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: ~~Christina O...~~
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of ~~Christina O...~~ will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on November 25, 2014, commencing at the hour of 1:00 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 14th day of November, 2014.

Todd Maybrown by *Casper Offutt*
Todd Maybrown, WSBA #18557 | #18690
Attorney for Defendant

APPENDIX F

Todd Maybrow

From: Sarah Conger
Sent: Monday, November 17, 2014 1:17 PM
To: mgaston@perkinscoie.com
Cc: loffutt@moberlyandrobarts.com; tmcelyea@moberlyandrobarts.com; Todd Maybrow; Paula Smeltzer
Subject: RE: City of Kirkland v. Hope Stevens, No. 38384
Attachments: Notice of Deposition (Teresa Obert - 12.2).pdf

Ms. Gaston:

Attached please find a new Notice of Deposition for Teresa Obert which contains the new deposition date. Please let me know if you require a hard copy delivered to your office.

Thank you,

Sarah Conger
Legal Assistant
Allen, Hansen & Maybrow, P.S.
Phone: 206-447-9681

From: Sarah Conger
Sent: Monday, November 17, 2014 9:22 AM
To: Todd Maybrow
Cc: 'loffutt@moberlyandrobarts.com'; 'tmcelyea@moberlyandrobarts.com'; 'mgaston@perkinscoie.com'; Paula Smeltzer
Subject: RE: City of Kirkland v. Hope Stevens, No. 38384

Counsel:

This morning I spoke with Jeff from Kirkland Municipal Court. He needed something to replace the notice that contained C.O.'s full name. Attached is a copy of the new Notice of Deposition (which also contains the new date) that will be replacing the one that was sent to the Court on Friday. The notice containing C.O.'s full name will be destroyed, having never been entered into the file.

Thank you,

Sarah Conger
Legal Assistant
Allen, Hansen & Maybrow, P.S.
Phone: 206-447-9681

From: Sarah Conger
Sent: Friday, November 14, 2014 2:25 PM
To: Todd Maybrow

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: C.O.
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of C.O. will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on December 2, 2014, commencing at the hour of 1:00 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 17th day of November, 2014.

Todd Maybrown by Cooper Offutt
Todd Maybrown, WSBA #18557
Attorney for Defendant #40690

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: Teresa Obert
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of Teresa Obert will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on December 2, 2014, commencing at the hour of 2:30 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 17th day of November, 2014.

Todd Maybrown by Cooper Offutt, Esq.
Todd Maybrown, WSBA #18557 #240690
Attorney for Defendant

Sarah Conger

From: Gaston, Mary P. (Perkins Coie) <MGaston@perkinscoie.com>
Sent: Monday, November 17, 2014 1:19 PM
To: Sarah Conger
Subject: Re: City of Kirkland v. Hope Stevens, No. 38384

No hard copy is necessary. Thank you.

On Nov 17, 2014, at 1:16 PM, Sarah Conger <Sarah@ahmlawyers.com> wrote:

Ms. Gaston:

Attached please find a new Notice of Deposition for Teresa Obert which contains the new deposition date. Please let me know if you require a hard copy delivered to your office.

Thank you,

Sarah Conger
Legal Assistant
Allen, Hansen & Maybrown, P.S.
Phone: 206-447-9681

From: Sarah Conger
Sent: Monday, November 17, 2014 9:22 AM
To: Todd Maybrown
Cc: 'loffutt@moberlyandrobarts.com'; 'tmcelyea@moberlyandrobarts.com'; 'mgaston@perkinscoie.com'; Paula Smeltzer
Subject: RE: City of Kirkland v. Hope Stevens, No. 38384

Counsel:

This morning I spoke with Jeff from Kirkland Municipal Court. He needed something to replace the notice that contained C.O.'s full name. Attached is a copy of the new Notice of Deposition (which also contains the new date) that will be replacing the one that was sent to the Court on Friday. The notice containing C.O.'s full name will be destroyed, having never been entered into the file.

Thank you,

Sarah Conger
Legal Assistant
Allen, Hansen & Maybrown, P.S.
Phone: 206-447-9681

APPENDIX G

Todd Maybrown

From: Gaston, Mary P. (Perkins Coie) <MGaston@perkinscoie.com>
Sent: Tuesday, December 02, 2014 5:55 AM
To: Todd Maybrown
Cc: Lacey Offutt; Tammy McElyea
Subject: Notice of Unavailability

Dear Todd,

I have confirmed with my clients and my office that the Oberts still have not been subpoenaed for depositions. Please be advised, I will be out of the country and unavailable from Dec 10-16. I will have at best only sporadic email during that time. Therefore, please let this serve as my notice of unavailability during that period and my notice that I will be unable to accept service of subpoenas on behalf of my clients during that time. Accordingly, if you wish to serve subpoenas on the Oberts for depositions during that period please use one of the normal means of service under Rule 45 so that the Oberts are assured of timely notice.

Thank you,

Mary

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

APPENDIX H

Todd Maybrown

From: Todd Maybrown
Sent: Tuesday, December 02, 2014 11:59 AM
To: 'Tammy McElyea'; Lacey Offutt
Cc: Sarah Conger; Paula Smeltzer
Subject: FW: Mary Gaston email

Importance: High

Tammy and Lacey:

As you know, this is a criminal case and the criminal rules of procedure apply. CrRLJ 4.6 does not require service of a subpoena. To the contrary, the rule requires a "notice," and nothing more:

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the place of taking.

Id. Moreover, the thought that Ms. Gaston would accept service of these notices on November 17 and then "lay in the weeds" for two weeks so that she could offer up this sort of bogus objection is remarkable.

Once again, I am forced to file a motion with the court.

Todd

Todd Maybrown
Allen, Hansen & Maybrown, P.S.
One Union Square
600 University Street, Suite 3020
Seattle, Washington 98101-4105
(206) 447-9681 - Phone
(206) 447-0839 - Fax

www.ahmlawyers.com

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DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on 12-12-14 I sent this document via United States mail, first class, postage prepaid, to the address of the witness indicated below.

Signed by [Signature] in Kirkland, WA on 12-12-14

FILED

DEC 15 2014

KIRKLAND
MUNICIPAL COURT

IN THE MUNICIPAL COURT FOR THE CITY OF KIRKLAND
STATE OF WASHINGTON FOR KING COUNTY

CITY OF KIRKLAND,

Plaintiff,

NO. 38384

v.

SUBPOENA FOR DEPOSITION

STEVENS, HOPE A.,

Defendant.

TO: Teresa Obert

In the name of the City of Kirkland, State of Washington, you are required to appear on December 19, 2014, at 2:30 p.m., at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington for oral examination in the above-titled case.

YOU ARE ADVISED THAT YOUR FAILURE TO APPEAR HEREIN MAY RESULT IN A CONTEMPT OF COURT

Given under my hand this 12th day of December, 2014.

Moberly & Roberts, PLLC

By: [Signature]
Assistant Prosecuting Attorney, WSBA # 42466

MOBERLY & ROBERTS, PLLC
12040 - 98th Avenue NE, Suite 101
Kirkland, WA 98034
425-284-2362
425-284-1205()

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on 12/12/14 I sent this document via United States mail, first class, postage prepaid, to the address of the witness indicated below.

Signed by YGR in Kirkland, WA on 12/12/14

FILED
DEC 15 2014
KIRKLAND
MUNICIPAL COURT

IN THE MUNICIPAL COURT FOR THE CITY OF KIRKLAND
STATE OF WASHINGTON FOR KING COUNTY

CITY OF KIRKLAND,

Plaintiff,

v.

STEVENS, HOPE A.,

Defendant.

NO. 38384

SUBPOENA FOR DEPOSITION

TO: C.O.

In the name of the City of Kirkland, State of Washington, you are required to appear on December 19, 2014, at 1:00 p.m., at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington for oral examination in the above-titled case.

YOU ARE ADVISED THAT YOUR FAILURE TO APPEAR HEREIN MAY RESULT IN A CONTEMPT OF COURT

Given under my hand this 12th day of December, 2014.

Moberly & Roberts, PLLC

By: [Signature]
Assistant Prosecuting Attorney, WSBA # 42466

MOBERLY & ROBERTS, PLLC
12040 - 98th Avenue NE, Suite 101
Kirkland, WA 98034
425-284-2362
425-284-1205(f)

APPENDIX D

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

MOTION FOR DEPOSITION

COMES NOW the defendant, Hope Stevens, through her attorney Todd Maybrown, and moves pursuant to CrRLJ 3.6 for an order compelling the deposition of C.O. and T.O., the alleged victims who have refused to be interviewed or cooperate with defense counsel as evidenced by the Declaration of Todd Maybrown and attachments thereto.

DATED this 23rd day of October, 2014.



Todd Maybrown, WSBA #18557
Attorney for Defendant

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent by ~~mail~~ / email / messenger a copy of the document to which this certificate is affixed to Tamara McElhca
Meberly & Roberts
Dated: 10/23/14
T. Maybrown

APPENDIX E

APPENDIX F

FILED

NOV 14 2014

KIRKLAND
MUNICIPAL COURT

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: Teresa Obert
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of Teresa Obert will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on November 25, 2014, commencing at the hour of 2:30 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 14th day of November, 2014.

Todd Maybrown
Todd Maybrown, WSBA #18557 / *by Cooper*
Attorney for Defendant *Allenbecker*
#40290

APPENDIX G

FILED
NOV 17 2014
KIRKLAND
MUNICIPAL COURT

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

NOTICE OF DEPOSITION

TO: C.O.
c/o Mary Gaston, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101-3099

AND TO: Tamara McElyea and Lacey Offutt, Attorneys for Plaintiff

PLEASE TAKE NOTICE that the testimony of C.O. will be taken on oral examination at the instance and request of Defendant Hope Stevens in the above-entitled action, at the Law Offices of Allen, Hansen & Maybrown, 600 University Street, Suite 3020, Seattle, Washington, on December 2, 2014, commencing at the hour of 1:00 p.m., the said oral examination to be subject to continuance or adjournment from time to time or place to place until completed.

DATED this 17th day of November, 2014.

Todd Maybrown by Cooper Offutt
Todd Maybrown, WSBA #18557
Attorney for Defendant #40690

APPENDIX H

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

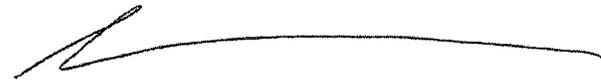
Defendant.

NO. 38384

MOTION TO DISMISS OR FOR
ALTERNATIVE RELIEF

COMES NOW the defendant, Hope Stevens, through her attorney Todd Maybrown, and moves pursuant to CrRLJ 4.7 and CrRLJ 8.3 to dismiss this action or for alternative relief because the City's witnesses have refused to be interviewed and/or deposed as evidenced by the Declaration of Todd Maybrown and attachments thereto.

DATED this 9th day of December, 2014.



Todd Maybrown, WSBA #18557
Attorney for Defendant

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent by mail / ~~email~~ / ~~message~~ a copy of the document to which this certificate is affixed to Tamara Meelyea and Larey Offutt

Dated: 12/10/2014
[Signature]

APPENDIX I

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

SUPPLEMENTAL DECLARATION OF
TODD MAYBROWN IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
OR FOR ALTERNATIVE RELIEF

I, Todd Maybrown, do hereby declare:

1. I am the attorney for the defendant, Hope Stevens, in the above-entitled case.

This declaration is submitted to supplement the Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated. December 9, 2014.

2. On December 11, 2014, after the Court scheduled a hearing on Defendant's Motion to Dismiss, the City's prosecutors notified me that the city's key witnesses, Teresa Obert and C.J.D.O., would agree to appear for depositions on December 19, 2014.

3. These depositions went forward as scheduled. However, as discussed further below, these depositions have not improved the situation in any respect. To the contrary, it is now even more apparent that the defendant is entitled to relief from this Court.

1 4. I do not yet have transcripts of these recent depositions, but I have asked the court
2 reporter to expedite the production of these transcripts. Given the current trial schedule, and
3 acting as an officer of this Court, I will do my best to summarize what transpired during these
4 interviews.
5

6 **Obstructionist Tactics During the Depositions**

7 5. The depositions commenced at approximately 1:10 p.m. on December 19. The
8 first deponent was C.J.D.O. Following introductions and some generalized discussion, I
9 asked C.J.D.O. if he was presently using any medication. C.J.D.O. answered “yes,” but his
10 counsel advised him not to tell me what medication he was using. I asked C.J.D.O. if he was
11 using that same medication on the date of the June 21, 2014 incident. Again the witness
12 answered “yes,” but his counsel advised him not to tell me what medication he was using.
13

14 6. Thereafter, I asked C.J.D.O. why he did not attend the deposition that was
15 scheduled for December 2, 2014. The witness told me he was “in the hospital” at the time. I
16 asked C.J.D.O. if this hospital stay was related to his claims in this case, and he answered “yes.”
17 But, once again, C.J.D.O.’s counsel advised him not to answer any questions regarding his stay
18 in this hospital.

19 7. From the outset, C.J.D.O.’s counsel argued that I was not permitted to ask
20 questions that, in her view, were “outside the scope” of this Court’s Order granting the
21 defense Motion for Depositions. I advised the attorney that she was not a party to these
22 proceedings and that the Court did not set any limits on the “scope” of the depositions. I also
23 advised the attorney that it was improper for her to attempt to make relevancy objections or to
24 obstruct the deposition process.
25
26

1 8. Finally, after about twenty minutes, I went off the record and telephoned the
2 Kirkland Municipal Court in the hope that the Court could be conferenced in to resolve the
3 dispute regarding the witnesses' objections and unwillingness to answer relevant questions.
4 Unfortunately, I was advised that Judge Lambo was not available at that time.

5
6 9. Accordingly, I was faced with a dilemma. I could terminate the depositions and
7 attempt to present these issues to the Court at the hearing scheduled for December 30, 2014. Or I
8 could proceed with the depositions even though it was clear that the witnesses (and their
9 attorney) would make it impossible to obtain critical information relating to the claims in the
10 case. I chose to proceed with the depositions under protest.

11 10. During the remainder of the depositions, the witnesses' attorney and the
12 witnesses refused to answer numerous questions that could assist the defense in preparing the
13 case for trial. For example, the witnesses refused to answer questions regarding: (a) C.J.D.O.'s
14 mental health history, including his recent mental health problems; (b) C.J.D.O.'s history of
15 behavioral problems; (c) C.J.D.O.'s recent 14-day stay at a local hospital; (d) C.J.D.O.'s
16 supposed head injuries; and (e) C.J.D.O.'s statements (and texts) regarding the incident of June
17 14, 2014.

18
19 11. All of this information is material to the defense for several reasons. First,
20 C.J.D.O. and his mother are now claiming that C.J.D.O.'s emotional problems are somehow the
21 result of the incident on June 21, 2014. In fact, during the deposition, C.J.D.O. has claimed that
22 he suffered a "traumatic brain injury" and currently has severe memory difficulties – and that
23 these difficulties were somehow caused by the incident on June 21, 2014. Notwithstanding these
24 claims, C.J.D.O. and his mother refused to answer questions relating to the basis for these current
25 contentions and claims.
26

1 12. The City attorneys made no comments during the entire deposition process.
2 Thus, they offered no assistance and sat silent while the witnesses repeatedly blocked my efforts
3 to obtain information that was obviously relevant to the claims in this case.

4 **The Witnesses' Strategy of Intimidation**

5
6 13. Although the City's witnesses refused to answer questions that were clearly
7 relevant to the claims in this case, these same witnesses frequently interjected irrelevant and
8 unsubstantiated allegations regarding Ms. Stevens. Most all of these scurrilous allegations
9 related to events that occurred long before the alleged incident, and they would never be
10 admissible at any criminal trial. Thus, I will not deign to repeat them here.

11 14. Suffice it to say, as the depositions progressed, it became clear that these
12 witnesses arrived at the depositions with an agenda. The witnesses refused to answer any
13 questions that could be used as impeachment at a trial. At the same time, Ms. Obert repeatedly
14 made malicious claims about Ms. Stevens.

15
16 15. It is my firm opinion that Ms. Obert made a calculated decision to interject this
17 information during the deposition as a form of intimidation. I believe that Ms. Obert presented
18 this testimony in an attempt to frighten Ms. Stevens from proceeding to trial. In essence, Ms.
19 Obert hoped to send a clear message that she would use these proceedings as a forum to damage
20 Ms. Stevens' reputation.

21 **The Witnesses' Newly-Contrived Claims**

22
23 16. The City's key witnesses, Ms. Obert and C.J.D.O., provided written statements
24 to the police shortly after the incident. Both witnesses carefully reviewed their respective
25
26

1 statements and made substantive changes to ensure their accuracy. Then, after completing
2 their review, each witness signed their statement under penalty of perjury.¹

3 17. For the last five months, the defense assumed that the City would proceed on
4 the bases of these allegations. As it now turns out, defense counsel was misinformed, for both
5 of these witnesses are now claiming that their statements to the police were inaccurate and
6 incomplete.
7

8 18. It is unclear whether the City prosecutors were operating under this same
9 misimpression. Although these prosecutors have interviewed the witnesses on at least one
10 occasion, they have steadfastly refused to provide any discovery regarding the interviews.

11 19. To my surprise, both C.J.D.O. and Ms. Obert are now providing radically
12 different statements regarding the alleged incident. I will not document each change in this
13 pleading – as such a process would take numerous pages. Instead, I will summarize a few of
14 the most significant changes for the Court’s consideration.
15

16 20. First, it is noteworthy that C.J.D.O. and Ms. Obert have changed their
17 statements so that they now closely mirror each other.² For example, on June 21, 2014, Ms.
18 Obert told the police that she was in the bathroom and did not know what happened when the
19 altercation between C.J.D.O. and Ms. Stevens commenced. But, Ms. Obert is now claiming
20 that she was present when the altercation commenced.
21

22 21. Second, both C.J.D.O. and his mother are now claiming that C.J.D.O. suffered a
23 “traumatic brain injury” during the incident on June 21, 2014. This is a fantastical claim, but
24

25 ¹ Ms. Obert provided a follow-up statement to Kirkland police officers on June 22, 2014.

26 ² In fact, during the depositions these witnesses repeatedly answered “we” when asked about their own actions during the evening in question.

1 both C.J.D.O. and his mother now contend that Ms. Stevens slammed C.J.D.O.'s head against
2 the concrete 5-10 times at the time of the incident. Neither witness made any similar claim
3 when they spoke to police officers on June 21, 2014. Nor did C.J.D.O. make such a claim
4 when he was seen by a doctor soon after the incident. Notwithstanding this contention, both
5 C.J.D.O. and his mother have refused to provide any details regarding this supposed "new"
6 diagnosis.
7

8 22. Third, both C.J.D.O. and his mother are now claiming that Ms. Stevens pushed
9 Ms. Obert down a flight of stairs during the incident. Neither witness made any similar claim
10 when they spoke to police officers on June 21, 2014.

11 23. It is the defense position that these witnesses have collaborated and concocted
12 these new claims in an effort to respond to the defense claims in this litigation. But, as
13 discussed further below, the prosecution has blocked the defendant's attempts to obtain
14 information pertinent to these matters.
15

16 **The Prosecutors Continue to Withhold Crucial Evidence**

17 24. As previously noted, Ms. Obert and C.J.D.O. agreed to a voluntary meeting
18 with the prosecutors on October 22, 2014. On December 19, each witness testified that these
19 meetings lasted between 90-120 minutes and that at least one prosecutor was taking notes
20 during these interviews. Yet, notwithstanding the clear dictates of CrRLJ 4.7(a)(1)(i), the
21 prosecutors have refused to provide discovery regarding any statements of these witnesses.
22 This failing has severely prejudiced the defendant's effort to prepare for trial
23

24 25. Apparently, the prosecutors would like to claim that these witness statements
25 are protected by work product. This is not the case. *See State v. Garcia*, 45 Wn.App. 132,
26 147 (1986).

1 26. Moreover, in light of the witnesses' newly-minted testimony, it is now clear
2 that these statements are discoverable pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and
3 its progeny. The United States Supreme Court has made clear that the prosecutors are
4 required to produce all evidence that could be used for impeachment purposes. *See, e.g.*,
5 *Giglio v. United States*, 405 U.S. 150 (1972).
6

7 27. The prosecution should have produced these statements well in advance of the
8 depositions. Nevertheless, once again, I have formally requested production of these
9 statements. *See Appendix A*. There is now no doubt that these statements are discoverable
10 pursuant to *Brady*. On the one hand, the defense is entitled to know if the witnesses have only
11 recently changed their testimony regarding the June 21 events. On the other hand, the defense
12 is entitled to know if the witnesses had already provided revised statements when they met
13 with the prosecutors on October 22, 2014 – and how they attempted to justify these
14 inconsistent statements in light of their written statements following the incident.
15

16 28. It is clear that the City has failed to comply with the dictates of CrRLJ. 4.7 and
17 due process principles.

18 **The City's Witnesses Have Destroyed Key Items of Evidence**

19 29. The defense is claiming that C.J.D.O. grabbed a broomstick handle and
20 repeatedly hit Ms. Stevens over the head with the stick. Curiously, although Ms. Stevens'
21 told Kirkland Police officers that she was the "victim" and that C.J.D.O. had hit her with a
22 stick, the police investigators never took custody of this item of evidence following the
23 incident. In fact, the police never even took a photograph of this evidence.
24

25 30. On December 19, 2014, C.J.D.O. testified that the stick he had used in this
26 altercation has recently been destroyed. Apparently, Ms. Obert and C.J.D.O. decided to burn

1 the stick before it could be presented as evidence in this case. Now that the stick has been
2 destroyed, C.J.D.O. is attempting to downplay the violent nature of his attack by claiming that it
3 was not a very big stick.

4 31. In addition, the police reports indicate that C.J.D.O. may have used a gun at some
5 point during the incident. The police investigators also claim that, soon after the incident, they
6 asked C.J.D.O. to show them the gun he had used, but C.J.D.O. claimed he couldn't find it.

7 32. On December 19, 2014, C.J.D.O. testified that the gun has now been
8 destroyed. Apparently, Ms. Obert and C.J.D.O. decided to hide or destroy the gun before it
9 could be presented as evidence in this case.

10 33. Once again, these witnesses have taken affirmative steps to thwart Ms.
11 Steven's attempts to present a defense in this case.

12 Conclusions

13 34. The prosecutors and the City's key witnesses have made it virtually impossible
14 for the defense to prepare for trial. On December 19, 2014, less than 30 days before trial is
15 scheduled to commence, the City's witnesses finally agreed to appear for court-ordered
16 depositions. Yet, even during the deposition process, these witnesses have refused to provide
17 information that is surely relevant to the defense in this case.

18 35. While much of this misconduct was caused by the actions of the City's key
19 witnesses, the City's prosecutors have only exacerbated matters by refusing to disclose necessary
20 discovery information. Moreover, because of the lax nature of the City's investigation, it is now
21 clear that the City's witnesses were permitted to destroy critical items of evidence.

22 36. Given all of these factors, the defense has been deprived of any fair opportunity
23 to defend this case at trial. It is clear that the defense is entitled to additional discovery –
24
25
26

1 including a deposition process in which the City's key witnesses answer all pertinent questions,
2 discovery regarding C.J.D.O.'s recent medical claims, disclosure of all witness statements, etc.
3 Yet, given the delays that have been caused by the City and the City's witnesses, there is no
4 reasonable possibility that this information can be available for the scheduled trial date.
5

6 37. This Court should not force the defense to continue these matters a second
7 time. Rather, consistent with CrRLJ 4.7 and 8.3, this case should be dismissed. Such a
8 dismissal is consistent with the interests of justice.

9 38. At a minimum, and in the alternative, this Court should conclude that Teresa
10 Obert and C.J.D.O. will not be permitted to testify at any trial of these matters.

11 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
12 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST
13 OF MY KNOWLEDGE.

14 DATED at Seattle, Washington this 23rd day of November, 2014.

15 ALLEN, HANSEN & MAYBROWN, P.S.

16 

17 _____
18 Todd Maybrow, WSBA #18557
19 Attorney for Defendant
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23
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APPENDIX A

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN
COOPER OFFENBECHER

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December 23, 2014

sent by mail and email

Tamara McElyea, Esq.
Lacey N. Offutt, Esq.
Moberly & Roberts
12040 98th Ave NE, #101
Kirkland, WA 98034-4217

Re: Kirkland v. Stevens, Kirkland Municipal Court No. 38384
Request for Additional Discovery Materials Pursuant to CrR 4.7
Brady v. Maryland, 373 U.S. 83, 87 (1963) and Giglio v. United
States, 405 U.S. 150, 154 (1972)

Dear Ms. McElyea and Ms. Offutt:

In light of the information provided during the depositions on December 19, 2014, I am providing you with the following supplementary discovery request.

I. ADDITIONAL MATERIALS REQUESTED

1. Copies of all notes taken during the meetings with City witnesses, and the substance of any other oral statements

Please provide copies of notes that were taken during the meetings with the City witnesses. Also, please provide a summary of any other oral statements that were made to the City or its agents by the witnesses.

2. Any Other *Brady* Materials:

Although the City's obligations to obtain and disclose *Brady* (*Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)) and *Giglio* (*Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)) materials are self-executing, I write to renew my request for all such materials or information.

II. AUTHORITY

1. CrRLJ 4.7 Requires the City to Disclose All Witness Statements

CrRLJ 4.7 (a)(1)(i) requires the City to disclose to the defense “any written or recorded statements and the substance of any oral statements of” witnesses whom the prosecutor intends to call at trial. I understand that you are claiming that your notes from these meetings are work product.

State v. Garcia, 45 Wn.App. 132, 137, 724 P.2d 412, 415 (1986) addresses this precise issue. In *Garcia*, an eyewitness called the deputy prosecutor and recanted her prior statement regarding a stabbing. The defendant moved for the court to compel the prosecutor to turn over notes from the phone conversation, or in the alternative, to have the notes reviewed in camera. The trial court denied the request on the ground that the notes were work product. *Id.* at 136.

The court found that the “deputy prosecuting attorney failed to comply with CrR 4.7(a)(1)(i), (a)(3), and 4.7(h).” *Id.* at 139. The court highlighted the prosecutor’s discovery obligations with respect to oral witness statements:

The principles behind the broad criminal rules adopted in this state and the express language of CrR 4.7(a)(1)(i) and 4.7(h)(2) required the deputy prosecutor to immediately disclose to defense counsel the substance of the September 14 oral statement made by the only eyewitness to the crime. There is no exception to this obligation to disclose which would allow either the prosecutor or the court to determine whether the statement is false and, if so, to permit nondisclosure. A rule of disclosure which depended on the, perforce, subjective analysis of a deputy prosecutor made during preparation of a case would be meaningless. It is far too tempting to merely dismiss the unfavorable version as false.

Id. at 137.

The Court further disavowed any reliance on the faulty premise that disclosure of witness statements was limited to written statements:

Moreover, the court erred in focusing solely on whether the oral communication was exculpatory. While this is an essential consideration under CrR 4.7(a)(3), the disclosure of the substance of the oral communication was also clearly compelled under CrR 4.7(a)(1)(i). There is no distinction between inculpatory and

exculpatory evidence under this rule, and this court has expressly declined to forge such a distinction.

Garcia, 45 Wn.App. at 137.

Moreover, the court rejected the blanket claim that the prosecutor's notes constituted "work product."

The State argues that a lawyer's notes are per se "work product." Neither federal nor state law supports this contention. Interpreting the Jencks Act, the United States Supreme Court has rejected the argument that the principles underlying the "work product" doctrine exclude a lawyer's writing if it otherwise fits the statutory definition of a producible statement. *Goldberg v. United States*, 425 U.S. 94, 102, 96 S.Ct. 1338, 1344, 47 L.Ed.2d 603 (1976). Our courts, in interpreting CrR 4.7, have also refused to insulate materials from discovery simply because a statement was taken or notes compiled by an attorney. *State v. DeWilde*, 12 Wash.App. 255, 257, 529 P.2d 878 (1974).

Thus, absent a representation by the State that the notes contain the type of material specifically protected by the work product rule, the State's reliance on the exception embodied in CrR 4.7(f) is not well-taken.

Garcia, 45 Wn.App. at 138.

2. The Nature of the City's Obligations Pursuant To State Court Discovery Rules and the State and Federal Constitutions

Washington Court Rules and case law recognize that pre-trial discovery is the foundation for all trial preparation, including the formation of case theories, cross examination of witnesses and selection of rebuttal witnesses. CrRLJ 4.7; *State v. Yates*, 111 Wn.2d 793, 797, 765 P.2d 291 (1988) (citing Criminal Rules Task Force, *Washington Proposed Rules of Criminal Procedure* 77 (West Pub'g. Co., ed. 1971)). Accordingly, Washington law requires comprehensive pre-trial discovery to minimize surprise and to allow attorneys to provide effective representation. *Id.* See also *State v. Dunivin*, 65 Wn.App. 728, 733, 829 P.2d 799 (1992). The Court has broad authority to enforce the discovery rules and to craft appropriate remedies for violation of the rules. CrRLJ 4.7(h)(7)(i); *Dunivin*, 65 Wn.App. at 731.

The City has self-executing obligations to preserve and disclose exculpatory information under the federal and state constitutions as well as

the Rules of Court. U.S. Const. Amends. V, XIV; Wash. Const. Art I, § 3; CrRLJ 4.7 (a)(3). *See, e.g., Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution); *State v. Coe*, 101 Wn.2d 772, 783, 684 P.2d 668 (1984) (state law independently requires the prosecution to disclose any exculpatory information).

3. The Scope of the Prosecutor's Obligation to Disclose Exculpatory Information

Brady holds that the prosecutor violates constitutional due process when he or she fails to disclose material evidence favorable to the accused. The *Brady* rule relies on the principal that a criminal trial is a search for truth. "[T]he State's obligation is not to convict, but to see that, as far as possible, truth emerges." Note, *Brady v. Maryland and the Search for Truth in Criminal Trials*, 63 U. Chi. L. Rev. 1673, 1673-74 (1996), quoting *Giles v. Maryland*, 386 U.S. 66, 98 (1967) (Fortas, J., concurring).

Brady held that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. *Brady*, 373 U.S. at 87.

[U]nder *Brady*, an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment. If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor.

Amadeo v. Zant, 486 U.S. 214, 222, 108 S. Ct. 1771, 100 L. Ed. 2d 249 (1988) (internal quotation and citation omitted). The fact that non-disclosure of conviction records is inadvertent on the part of an individual prosecutor is irrelevant. *See State v. Copeland*, 89 Wn.App. 492, 496-9, 949 P.2d 458 (1998) (prosecutor's failure to disclose impeachable conviction of witness constitutes misconduct requiring reversal of conviction, regardless of inadvertence on the part of the individual prosecutor).

A prosecutor is thus required to disclose all *Brady* material prior to trial, whether or not he or she subjectively believes the evidence is "material" to the defense case. Prosecutors may not justify withholding *Brady* material based on their subjective assessment of the evidentiary value of the item or evidence. *State v. Garcia*, 45 Wn.App. 132, 137, 724 P.2d 412 (1986) (prosecutor's duty

to disclose witness's recantation was not discharged simply because prosecutor believed the recantation was false). Any doubts or "close calls" should be resolved in favor of disclosure. *United States v. Agurs*, 427 U.S. 97, 108, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976); *United States v. Alvarez*, 86 F.3d 901, 903-05 (9th Cir. 1996) (prosecutor wrongfully failed to turn over police officer's notes based on prosecutor's assessment that statements in the notes were untrue).

As to what can be considered "favorable" evidence, any evidence relating to guilt or punishment "and which tends to help the defense by either bolstering the defense's case or impeaching prosecution witnesses" is favorable. *United States v. Sudikoff*, 36 F. Supp.2d 1196, 1199 (C.D. Cal. 1999).

As to what constitutes "evidence" that must be disclosed, the *Sudikoff* court considered and rejected the notion that it is limited only to admissible evidence. *Brady* "requires disclosure of exculpatory information that is either admissible or is reasonably likely to lead to admissible evidence." *Sudikoff*, 36 F. Supp.2d at 1200 (emphasis supplied). See also *United States v. Lloyd*, 992 F.2d 348, 350-51 (D.C. Cir. 1993) (defining "materiality" under Fed.R.Crim.P 16(a)(1)(C) to include information that could play an important role in uncovering admissible evidence); *United States v. LaRouche Campaign*, 695 F. Supp. 1265, 1279 (D. Mass. 1988) (exculpatory evidence under *Brady* includes not only documents or testimony admissible in evidence, but also inadmissible materials which, if defendant had access to them, might lead to admissible materials).

4. Any Information Which May Cast Doubt On the Credibility of a City Witness is Discoverable Under *Brady* and *Giglio*

Impeachment evidence must also be disclosed under *Brady*. *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985); *Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). Accordingly, prosecutors are obligated to disclose criminal records bearing on the credibility of City witnesses. *United States v. Strifler*, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989); See also *East v. Scott*, 55 F.3d 996, 1004 (5th Cir. 1995).

There is a wide variety of other information which might impeach the credibility of a prosecution witness. *Giglio* 405 U.S. at 154. While *Giglio* is commonly understood to require the prosecution to disclose impeaching information such as plea agreements, promises of leniency, inducements to testify, and financial assistance offered by the government, it is not limited to these items. Any material affecting the credibility of a witness is subject to disclosure. See, e.g., *Carriger v. Stewart*, 132 F.3d 463, 479 (9th Cir. 1997) (en

December 23, 2014

Page 6 of 6

banc), *cert. denied*, 523 U.S. 1133 (1998) (“material evidence required to be disclosed includes evidence bearing on the credibility of government witnesses”). The United States Supreme Court has made clear that, for *Brady* purposes, there is no difference between impeachment evidence and any other form of exculpatory evidence. *Bagley*, 473 U.S. at 682.

5. “Information or Knowledge” Is Not Limited To Papers Or Tangible Evidence

The City’s obligation under the State criminal discovery rules and the Constitution includes disclosure of “knowledge as well as tangible evidence.” *State v. Krenik*, 156 Wn.App. 314, 318, 231 P.3d 252 (2010).

III. CONCLUSION

Thank you for your attention to these additional discovery requests. Please contact me if I can provide you any further information regarding these requests or if we need to discuss further your ability to provide these materials.

Sincerely,



Todd Maybrow
Attorney at Law

APPENDIX J

#17

FILED
DEC 30 2014
KIRKLAND
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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

ORDER ON DEFENDANT'S MOTION
TO DISMISS OR FOR ALTERNATIVE
RELIEF

THIS MATTER came on for hearing before the above-entitled Court, and the Court having reviewed and considered the records and files herein, including the Defendant's moving papers, Plaintiff's responsive pleadings, and all documents filed in support of each, and having heard argument,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Dismiss or for Alternative Relief is GRANTED; and further

IT IS ALSO ORDERED that

- ① The prosecution shall produce all notes of recordings from interviews of CO & T.O no later than 4:30 PM today
- ② witness(es) CO & T.O. must appear for a second deposition on January 2, 2015 at 8:30 AM AT

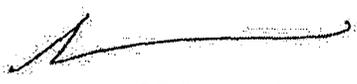
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The Kirkland Municipal Courthouse. The depositions shall be unfiled in accordance with my oral ruling.

DATED this 30 day of December, 2014.


HONORABLE MICHAEL LAMBO
Municipal Court Judge

Presented by:



TODD MAYBROWN, WSBA #18557
Attorney for Defendant

Approved as to Form; Notice of Presentation
Waived; Copy Received:


TAMARA MCELVINA, WSBA #42466
LACEY OFFUTT, WSBA #45655
Assistant City Attorneys

APPENDIX K

12/30
11:30

FILED
DEC 29 2014
KIRKLAND
MUNICIPAL COURT

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IN THE MUNICIPAL COURT FOR THE CITY OF KIRKLAND
STATE OF WASHINGTON FOR KING COUNTY

CITY OF KIRKLAND,

Plaintiff,

vs.

STEVENS, HOPE A.

Defendant.

NO. 38384

CITY'S ADDENDUM TO WITNESS LIST

In addition to the witnesses identified in the pre-trial order, the City intends to call the following individuals and a summary of their intended testimony:

1. Dr. Jing Jin: Immediate Clinic Rose Hill 13131 NE 85th St. Kirkland, WA. 425-702-8002. Will testify to her interactions, observations, and medical diagnosis of Teresa Obert and C.O. on June 21, 2014.
2. Lindsay Taylor, PA-C: Immediate Clinic Rose Hill. (See contact information above) Will testify to her interactions, and observations of Teresa Obert and C.O. on June 21, 2014.
3. Jeff Obert: Will testify to his observations on the morning of June 21, 2014 and to the type of equipment he uses for work. He will testify to the type of broomstick that C.O. grabbed that morning.
4. Cori Parks: Will testify to her observations of Ms. Stevens, Teresa Obert, and C.O. demeanors prior to the assaults.

Moberly & Roberts, PLLC
12040 98th Ave. NE Suite 101
Kirkland, Washington 98034
Tel: (425) 284-2362
Fax: (425) 284-1205

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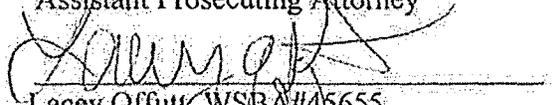
DATED this 29th day of December, 2014.

Respectfully submitted,

Moberly & Roberts, PLLC

By 

Tamara L. McElyea, WSBA #42466
Assistant Prosecuting Attorney



Lacey Offutt, WSBA #45655
Assistant Prosecuting Attorney

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APPENDIX L

FILED
JAN -2 2015
KIRKLAND
MUNICIPAL COURT

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IN THE MUNICIPAL COURT FOR THE CITY OF KIRKLAND
STATE OF WASHINGTON FOR KING COUNTY

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

DEFENDANT'S RENEWED MOTION
TO DISMISS PURSUANT TO CrR 8.3(b)
AND SUPPORTING MEMORANDUM

I. INTRODUCTION

The Court has scheduled pre-trial matters are currently scheduled for January 6, 2015; and a readiness hearing is scheduled for January 14, 2015. Over the last several months, this case has been delayed due to the obstructionist tactics and arbitrary conduct of the City's key witnesses. Moreover, these difficulties have been greatly exacerbated by the failure of the City's prosecutors to provide necessary discovery information.

On December 30, 2014, the parties appeared for a hearing on Defendant's Motion to Dismiss pursuant to CrRLJ 4.7 and 8.3(b). The Court delayed ruling on the defense motion, but ordered remedial relief before issuing any final decision.

That very same day, the defense received notice that the City had filed an "Addendum" to its Witness List. This addendum names four additional witnesses, including two expert witnesses. In light of the history of this matter, the City's handling of this case as it has proceeded to trial constitutes gross mismanagement warranting the imposition of an

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1 extraordinary remedy. Accordingly, the defendant, by and through undersigned counsel, once
2 again moves this Court for an order dismissing this prosecution under CrR 8.3(b).

3 **II. BACKGROUND FACTS**

4 On or about June 23, 2014, the prosecuting attorney for the City of Kirkland filed a
5 complaint charging Ms. Stevens with two counts of assault. These charges was based on an
6 incident that occurred on June 21, 2014. Count I alleges that Ms. Stevens assaulted an
7 individual identified as Teresa L. Obert on June 21, 2014. Count II alleges that Ms. Stevens
8 assaulted an individual identified as C.J.D.O. on June 21, 2014. Ms. Stevens has entered a
9 plea of not guilty to each of the charges; and the City has known from the outset that Ms.
10 Stevens contends that she used lawful force in defending herself after she was attacked by
11 C.J.D.O.
12

13 On December 9, 2014, the defense filed a Motion to Dismiss or for Alternative Relief.
14 This motion was supported by: (1) Declaration of Todd Maybrown dated December 9, 2014
15 (with attachments) and (2) Supplemental Declaration of Todd Maybrown dated December 23,
16 2014 (with attachments). These declarations documented the obstructionist tactics and
17 arbitrary conduct of the City's key witnesses. These declarations also emphasized the
18 prosecutions failure to comply with basic discovery rules.
19

20 On December 29, 2014, the City filed its Response to the Defendant's Motion. The
21 City did not submit any evidence to contradict or rebut the factual claims in the declarations
22 submitted by defense counsel. Instead, the City claimed that it should not be blamed for the
23 misconduct of its witnesses and emphasized that the prosecutors had not engaged in
24 misconduct or mismanagement of the case.
25
26

1 The parties appeared for a hearing on the Defendant's Motion to Dismiss on
2 December 30, 2014, at which time the City stressed that the prosecutors had not engaged in
3 any delaying tactics or improper conduct. The Court delayed ruling on these matters, and
4 ordered certain remedial relief in light of the concerns that were raised by the unrebutted
5 evidence. Among other things, the Court directed the prosecutors to produce all notes and
6 recordings of their interviews of the City's key witnesses. The Court also directed the City's
7 key witnesses to appear for a second deposition on January 2, 2015.
8

9 That very same day, the defense received a document entitled City's Addendum to
10 Witness List. *See Appendix A.* In this addendum, the City has now identified four new
11 witnesses it hopes to call at trial: two fact witnesses and two expert medical witnesses. The
12 City has provided a cursory summary of the proffered testimony of these witnesses, but it has
13 failed to provide the defense any reasonable opportunity to prepare for this testimony at trial.
14

15 The City can offer no justification for these 11th hour disclosures. The City cannot
16 seriously claim that it has only recently "discovered" the identities of these witnesses for the
17 City has had full access to the police investigators (and all police reports) since June 21, 2014.
18 Moreover, it is now clear that the City had extensive interviews with its two key witnesses on
19 October 24, 2014. Thus, the City cannot provide any excuse for the failure to identify these
20 witnesses when the parties appeared in Court on November 6, 2014. Nor can the City provide
21 any excuse for the failure to identify these witnesses at this late date – and only after the
22 defense had completed initial depositions of the City's key witnesses and after the City had
23 filed its response to Defendant's Motion to Dismiss.¹
24

25
26 ¹ The City's disclosure of the medical witnesses is particularly hard to fathom in light of the
prosecutions claim during oral argument on December 30, 2014 that the City did not have any medical
release from either Ms. Obert or C.O.

1 The Court has scheduled pre-trial hearings for January 6, 2015. Moreover, a readiness
2 hearing is scheduled for January 14, 2015. It is impossible for the defense to prepare to
3 interview these "new" witnesses at this late date – particularly so since the defense has for
4 months been deprived of any reasonable opportunity to complete interviews/depositions with
5 the City's key witnesses. It is likewise impossible for the defense to consult with potential
6 defense rebuttal expert witnesses and conduct other required investigation regarding the
7 disclosed witnesses, such as obtain transcripts from prior trial testimony and other
8 impeachment evidence.
9

10 III. ARGUMENT

11 1. General Principles

12 CrRLJ 8.3(b) provides that:

13
14 **(b) On Motion of Court.** The court, in the furtherance of justice, after notice
15 and hearing, may dismiss any criminal prosecution due to arbitrary action or
16 governmental misconduct when there has been prejudice to the rights of the
accused which materially affect the accused's right to a fair trial. The court
shall set forth its reasons in a written order.

17 This rule is virtually identical to its cognate, CrR 8.3(b), which is found in the Superior Court
18 rules.

19 A long line of appellate decisions in Washington has interpreted this rule to provide
20 for dismissal of criminal charges, pursuant to CrR 8.3(b), where governmental misconduct, or
21 even mismanagement, has prejudiced the defense.
22

23 For example, in *State v. Stephans*, 47 Wn.App. 600 (1987), the Court reasoned that
24 dismissal is appropriate where there has been:

25 a showing of some governmental misconduct or arbitrary action materially
26 infringing upon a defendant's right to a fair trial. The purpose of the rule is to
ensure that, once an individual has been charged with a crime, he or she is
treated fairly.

1
2 *Id.* at 603. And in *State v. Sulgrove*, 19 Wn.App. 860, 863 (1978), the Court stated:

3 It should be noted that governmental misconduct need not be of an evil or
4 dishonest nature; *simple mismanagement* also falls within such a standard.

5 *Id.* at 863 (emphasis supplied). Accord *State v. Dailey*, 93 Wn.2d 454 (1980); *State v. Wright*,
6 87 Wn.2d 783, 790–91 (1976) (“of course, in circumstances where the entire body of material
7 evidence in a case has been disposed of . . . dismissal is warranted.”).

8 More recently, in *State v. Brooks*, 149 Wn.App. 373, 383 (2009), the Court reiterated
9 that, while CrR 8.3(b) requires a showing of “arbitrary action or governmental misconduct,”
10 such misconduct “need not be of an evil or dishonest nature, simple mismanagement is
11 enough.” And in *State v. Michielli*, 132 Wn.2d 229 (1997), the Washington Supreme Court
12 explained:

13 Two things must be shown before a court can require dismissal of charges
14 under CrR 8.3(b). First, a defendant must show arbitrary action or
15 governmental misconduct. . . . Governmental misconduct, however, “need
16 not be of an evil or dishonest nature; *simple mismanagement is sufficient.*”
Blackwell, 120 Wn.2d at 831, 845 P.2d 1017. . . .

17 *Id.* at 239-240 (emphasis in original).

18 Washington Courts have not been shy to impose dismissal as a sanction when the
19 mismanagement so impedes the defendant’s right to a fair trial. See, e.g., *State v. Brooks*,
20 149 Wn.App. 373 (2009) (State’s failure to provide timely discovery and dumping large
21 amounts of discovery on defendant the day of trial was mismanagement which satisfied the
22 requirements of the rule for a dismissal in that it affected the defendant’s right to a speedy
23 trial); *State v. Dailey*, 93 Wn.2d 454, 457 (1980) (multiple discovery violations and delays by
24 State resulted in Supreme Court affirming dismissal of prosecution, the Court explaining:
25 “we have made it clear that ‘governmental misconduct’ need not be of an evil or dishonest
26

1 nature, simple mismanagement is sufficient"); *State v. Sulgrove*, 19 Wn.App. 860 (1991)
2 (State not being prepared for trial as well as charging a defendant under an improper statute
3 was sufficiently careless to be grounds for dismissal in the furtherance of justice where the
4 trial court properly concluded that the State's being unprepared, which conflicted with the
5 speedy trial rule, was grounds for dismissal); *State v. Martinez*, 121 Wn.App. 21, 30 (2004)
6 (trial court was justified in dismissing first degree assault case prior to retrial, where the State
7 failed to disclose exculpatory evidence until the middle of the first trial, and where the jury
8 hung 10-2 in favor of acquittal).

9
10 2. Blatant Disregard for the Defendant's Constitutional Right to
11 Adequately Prepare for Trial within the Speedy Trial Period is
12 Sufficient to Warrant Dismissal

13 While the defendant must show that such misconduct prejudiced his right to a fair
14 trial, "such prejudice includes the right to a speedy trial and 'right to be represented by
15 counsel who has had sufficient opportunity to adequately prepare a material part of his
16 defense.'" *State v. Michielli*, 132 Wn.2d 229, 240 (1997). As *Michielli* explains:

17 [d]efendant's being forced to waive his speedy trial right is not a trivial event.
18 This court, "as a matter of public policy, has chosen to establish speedy trial
19 time limits by court rule and to provide that failure to comply therewith
20 requires dismissal of the charge with prejudice." *State v. Duggins*, 68
21 Wn.App. 396, 399-400, 844 P.2d 441 (1993). The State's delay in amending
22 the charges, coupled with the fact that the delay forced Defendant to waive his
23 speedy trial right in order to prepare a defense, can reasonably be considered
24 mismanagement and prejudice sufficient to satisfy CrR 8.3(b).

25 *Id.* at 245 (emphasis supplied).

26 Likewise, in *State v. Sherman*, 59 Wn.App. 763, 770-71 (1990), the Court of Appeals
affirmed a trial court's dismissal of a complex felony theft case where, among other missteps,

1 the State filed a motion to add a previously undisclosed expert witness on the day of trial.

2 The Court stated

3 We agree that if the State inexcusably fails to act with due diligence, and
4 material facts are thereby not disclosed to defendant until shortly before a
5 crucial stage in the litigation process, it is possible either a defendant's right to
6 a speedy trial, or his right to be represented by counsel who has had sufficient
7 opportunity to adequately prepare a material part of his defense, may be
impermissibly prejudiced. Such unexcused conduct by the State cannot force
a defendant to choose between these rights.

8 *State v. Sherman*, 59 WnApp. 763, 770 (1990) (quoting *State v. Price*, 94 Wn.2d 810, 814
9 (1980)) (emphasis in *Sherman*). Significantly, the *Sherman* Court clarified that the Court
10 need not grant a continuance where the discovery violation is a blatant violation of the
11 defendant's right to a speedy trial with adequate time to prepare for trial:

12 we disagree with *Coleman* to the extent that it arguably stands for the
13 proposition that the appropriate remedy for discovery problems must be a
14 continuance. See 54 Wash.App. at 750, 775 P.2d 986. We believe that the
15 question of whether dismissal is an appropriate remedy is a fact-specific
determination that must be resolved on a case-by-case basis.

16 *Sherman*, 59 Wn.App. at 770-71.

17 3. The City's Mismanagement of this Case Calls for Dismissal

18 The defense is well aware that "dismissal is an extraordinary remedy" and reserved
19 only for select cases involving serious mismanagement. *State v. Wilson*, 149 Wn.2d 1, 9
20 (2003). Nevertheless, as discussed above, Washington Courts have not hesitated to impose
21 this remedy in appropriate circumstances.
22

23 The City's gross mismanagement in this case calls for the extraordinary remedy of
24 dismissal. The case has been pending since June 2014 and the defense has made clear, on
25 numerous occasions, that time was of the essence.
26

1 Despite these many months of proceedings, it was not until December 30, 2014 that
2 the City finally notified the defense that it intended to call these several new witnesses. The
3 defense cannot be prepared to effectively represent Ms. Stevens at trial given these wholly
4 inadequate disclosures at the very last minute.
5

6 Because of the City's mismanagement, Ms. Stevens has been place in the untenable
7 position of being forced to proceed to trial unprepared to meet expert testimony, or waive his
8 speedy trial rights to accommodate the significant continuance required to meet the City's
9 new witnesses. He is put in this position solely because of the City's dilatory handling of this
10 matter. "Such unexcused conduct by the [prosecution] cannot force a defendant to choose
11 between these rights." *Sherman*, 59 Wn.App. at 770.
12

13 **V. THERE IS NO "JUST CAUSE" FOR A CONTINUANCE**

14 The City's failure to prepare its case in a timely fashion does not provide "just cause"
15 for a continuance of the trial date. Moreover, Ms. Stevens has been preparing for trial on
16 January 20, 2015 and any further continuance would severely prejudice the defense.

17 In the alternative, should this Court decline to order dismissal pursuant to CrRLJ
18 8.3(b), the Court should strike the State's last-minute witnesses. Such a remedy is certainly
19 appropriate and consistent with CrR 4.7 and due process principles.
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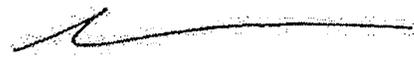
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VI. CONCLUSION

For the foregoing reasons, and in the interests of justice, this Court should dismiss this case with prejudice.

DATED this 31st day of December 2104

Respectfully submitted,



Todd Maybrown, WSBA #18557
Attorney for Defendant

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CERTIFICATE OF SERVICE

I certify that on the 31st day of December, 2014, I caused a true and correct copy of the foregoing document to be served on the following:

By Email

Tamara McElyea, Esq.
Lacey Offut, Esq.
City of Kirkland Prosecuting Attorney's Office



By: Todd Maybrown, Attorney for Defendant

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APPENDIX M

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

SECOND SUPPLEMENTAL
DECLARATION OF TODD MAYBROWN
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS

I, Todd Maybrown, do hereby declare:

1. I am the attorney for the defendant, Hope Stevens, in the above-entitled case.

This declaration is submitted to further supplement the Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated December 9, 2014, and the Supplemental Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated December 23, 2014. This declaration is also submitted in support of the Defendant's Renewed Motion to Dismiss dated December 31, 2014.

2. On December 30, 2014, the parties appeared before this Court for hearing on Defendant's Motion to Dismiss. After hearing argument, the Court deferred its ruling on Defendant's Motion.

1 3. Nevertheless, in light of the very significant difficulties that the defense has
2 faced over the last several months, the Court ordered certain “remedial” relief. First, the
3 Court directed the City prosecutors to disclose all notes and recordings from the interviews
4 with the City’s key witnesses, Teresa Obert and C.O. Second, the Court ordered these
5 witnesses to appear for a second deposition at the Kirkland Justice Center on January 2, 2015.
6

7 **The City’s Notes Include Compelling Impeachment Evidence**

8 4. On December 30, 2014, the City prosecutors disclosed approximately 20 pages
9 of handwritten notes as directed by the Court. These notes included several pages of notes
10 that purported to document the City prosecutors’ interviews of Ms. Obert and C.O. on
11 October 24, 2014.
12

13 5. These notes include a considerable amount of impeachment evidence that only
14 further undermines the claims of the City’s key witnesses in this action. By way of example, the
15 witnesses are contending that Ms. Stevens was intoxicated at the time of the June 21 incident and
16 that she had been drinking (and was presumably intoxicated) before she entered the Obert home.
17 This contention is false and it is belied by the notes of the City prosecutors on October 24, 2014.
18 A note from the interview of C.O. includes the following information: “Tell she had been
19 drinking? No, tired and had been crying.”
20

21 6. I have identified many other notes that include similar inconsistencies and I
22 planned to question the City’s witnesses regarding these matters during the January 2
23 depositions. I feel strongly that the defense should have received all notes from the interviews
24 of October 24, 2014 soon after the interviews were completed. Such information was clearly
25 discoverable under CrRLJ 4.7. Moreover, and perhaps more importantly, disclosure of this
26 information was compelled by the Due Process Clause of the United States Constitution.

1 **The City's Witnesses Did Not Appear at the Court-Ordered Depositions**

2 7. Following the December 30 hearing, I made considerable efforts to prepare for
3 the January 2 depositions. First, I arranged for a court reporter to appear at the second
4 depositions. Second, I changed travel plans that otherwise required me to be present in
5 Spokane on January 2. Third, I reviewed all available discovery information and prepared
6 questions for the second depositions.
7

8 8. On January 2, 2015, I appeared at the Kirkland Justice Center at approximately
9 8:25 a.m. to conduct these second depositions. The City's prosecutors and a court reporter
10 were also present. Neither Teresa Obert nor C.O. appeared for their second depositions.

11 9. It is my firm belief that Teresa Obert and C.O. had notice of this Court's order
12 of December 30, 2014 and the directive for each of them to appear for a second deposition on
13 January 2, 2015. I understand that the City's prosecutors provided several forms of notice to
14 these witnesses following the December 30 hearing. Moreover, this Court's December 30
15 "remedial" ruling was widely publicized in the national and local news media. Based on the
16 witnesses' previous statements to the prosecutors and their answers during the first
17 depositions, it is clear that the City's witnesses have been very closely following all news
18 coverage regarding this case.¹ Thus, it is the defense position that the City's key witnesses
19 simply refused to abide by this Court's order of December 30 and that they willfully failed to
20 appear for their second depositions.
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26 ¹ In fact, during the deposition of December 19, 2014, Ms. Obert testified that she was
planning to sue certain news media outlets based on their reporting of the case.

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10. Given all of these factors, the defense has been deprived of any fair opportunity to defend this case at trial. The case against Hope Stevens should be dismissed with prejudice.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

DATED at Seattle, Washington this 5th day of January, 2015.

ALLEN, HANSEN & MAYBROWN, P.S.



Todd Maybrown, WSBA #18557
Attorney for Defendant

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent by ~~mail~~ / email / messenger a copy of the document to which this certificate is affixed to Tamara McFlyca and Lacey Offutt

Dated: 1/5/2015

APPENDIX N

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KIRKLAND
MUNICIPAL COURT

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~~JAN 09 2014~~
KIRKLAND
MUNICIPAL COURT

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

THIRD SUPPLEMENTAL
DECLARATION OF TODD MAYBROWN
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS

I, Todd Maybrown, do hereby declare:

1. I am the attorney for the defendant, Hope Stevens, in the above-entitled case.

This declaration is submitted to further supplement the Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated December 9, 2014, the Supplemental Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated December 23, 2014, and the Second Supplemental Declaration of Todd Maybrown in Support of Defendant's Motion to Dismiss or For Alternative Relief dated January 5, 2015. This declaration is also submitted in support of the Defendant's Renewed Motion to Dismiss dated December 31, 2014.

2. On January 6, 2015, the parties appeared before this Court for previously scheduled hearings. After hearing argument, the Court deferred its ruling on Defendant's

*THIRD SUPPLEMENTAL DECLARATION OF TODD
MAYBROWN IN SUPPORT OF MOTION TO DISMISS - 1*

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ORIGINAL

1 Motion to Dismiss. The Court also deferred ruling on the issues that were raised during the
2 Defendant's Renewed Motion to Dismiss.

3 3. During the course of the hearing, the Court also noted that the City's case was
4 dependent upon the testimony of the material witnesses, Teresa Obert and C.O. The Court
5 reiterated that the defense was entitled to answers to all relevant questions prior to trial. In the
6 exercise of caution, the Court afforded the City an additional opportunity to make these
7 witnesses available prior to trial. The Court noted that time was of the essence and that the
8 readiness hearing was scheduled for January 14, 2015. The City's prosecutors assured the
9 Court that the witnesses could be available for interviews this week. After hearing from all
10 parties, the Court entered a third order for depositions and scheduled these depositions for
11 January 8, 2015 at the Kirkland Municipal Court beginning at 8:30 a.m. The Court also
12 directed me to attempt to interview the witnesses that were first disclosed on December 30,
13 2014.
14
15

16 **Once Again, the City's Witnesses Failed to Appear for Depositions**

17 4. Following the January 5 hearing, I made considerable efforts to prepare for the
18 January 8, 2015 depositions. First, I arranged for a court reporter to appear at the depositions.
19 Second, I reviewed all available discovery information and prepared questions for these
20 depositions. Third, I attempted to interview the new witnesses that had been only recently
21 endorsed by the City.
22

23 5. On January 8, 2015, I appeared at the Kirkland Municipal Court at
24 approximately 8:15 a.m. to conduct depositions. The City's prosecutors and a court reporter
25 were also present. Neither Teresa Obert nor C.O. appeared for these depositions.
26

1 6. Once again, it is my firm belief that Teresa Obert and C.O. had notice of this
2 Court's order of January 6, 2015, including the directive for each of them to appear for a
3 second deposition on January 8, 2015.¹ I understand that the City's prosecutors provided
4 several forms of notice to these witnesses following the January 6 hearing. One of the
5 assigned prosecutors, Lacey Offutt, told me that she provided notice to the witnesses'
6 attorney, Mary Gaston, during a phone conversation on January 6, 2015. Thus, once again, it
7 is the defense position that the City's key witnesses simply refused to abide by this Court's
8 order of January 6 and that they willfully failed to appear for their second depositions.
9

10 **The City's New Witnesses Are Unable or Unwilling to be Interviewed**

11 7. As instructed by the Court, I have attempted to interview the City's new
12 witnesses over the last several days. All of my efforts have been unsuccessful.
13

14 8. I have attempted to interview the City's medical witnesses, Dr. Jing Jin and
15 Lindsey Taylor. On January 7, 2015, I was contacted by Sapna Jain who is an attorney
16 representing the Immediate Clinic. Ms. Jain advised me that these medical providers would not
17 (and could not) provide any information regarding their patients since the clinic had no release of
18 information on file. Moreover, Ms. Jain explained that these witnesses had not been served with
19 any subpoena for trial. *See Appendix A* (email of Sapna Jain, Esq.).
20

21 9. On January 6, 2015, I asked the prosecutors to arrange for the interview of Jeffrey
22 Obert. I did not feel comfortable attempting to contact Mr. Obert directly, since he resides with
23 Teresa Obert and C.O. and both of these witnesses are represented by counsel. I specifically
24

25
26 ¹ Also, I am confident that the witnesses were aware of the Court's prior Order and the
directive for them to appear for depositions on January 2, 2015.

1 asked the prosecutors to arrange for me to interview Mr. Obert on January 8 following the
2 depositions of Teresa Obert and C.O. Mr. Obert did not appear for his interview.

3 10. On January 6, 2015, I asked an investigator, Stephen Robinson, to attempt to
4 contact Cori Parks. I now understand that Ms. Parks is related to the Oberts. I also understand
5 that Ms. Parks lives in the State of Florida. Ms. Parks advised Mr. Robinson that she has yet to
6 decide if she will travel to Washington for this trial. Ms. Parks agreed to let us know if she
7 would be available for an interview if she decides to travel to Washington.
8

9 Conclusions

10 11. Given all of these factors, the defense has been deprived of any fair opportunity
11 to defend this case at trial. Accordingly, the case against Hope Stevens should be dismissed with
12 prejudice.
13

14 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
15 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST
16 OF MY KNOWLEDGE.

17 DATED at Seattle, Washington this 8th day of January, 2015.

18 ALLEN, HANSEN & MAYBROWN, P.S.

19 
20 _____
21 Todd Maybrown, WSBA #18557
22 Attorney for Defendant

23 I certify under penalty of perjury under the
24 laws of the State of Washington that on this
25 date I sent by ~~mail~~ ~~small~~ ~~envelope~~ a copy
26 of the document to which this certificate is
affixed to Tamara medley & Lacey
Attoll

Dated: 1/8/2015
Amelotte

APPENDIX A

Todd Maybrowm

From: Jain, Sapna <Sjain@Ensigngroup.net>
Sent: Wednesday, January 07, 2015 4:10 PM
To: Todd Maybrowm
Subject: RE: City vs. Stevens - Request for interviews

Todd,

As I mentioned, to the best of my knowledge, the Immediate Clinic does not have a release for records from the patients and without such authorization, our clinicians would not be able to speak to you without violating privacy considerations. Additionally, Ms. Taylor has not been served with a subpoena to date. Please feel free to contact me if there is any additional information you require regarding the clinic.

Best,

Sapna S. Jain
Associate General Counsel
Ensign Services, Inc.
27101 Puerta Real, Suite 450
Mission Viejo, CA 92691
Direct: (949) 540-2052
Fax: (949) 540-3007
sjain@ensigngroup.net

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From: Todd Maybrowm [mailto:Todd@ahmlawyers.com]
Sent: Wednesday, January 07, 2015 3:02 PM
To: Jain, Sapna
Subject: City vs. Stevens - Request for interviews

Nice speaking with you. Thanks for your help.

Todd

Todd Maybrowm
Allen, Hansen & Maybrowm, P.S.
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600 University Street, Suite 3020
Seattle, Washington 98101-4105
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CASE NUMBER 14-29956

KIRKLAND POLICE DEPARTMENT
STATEMENT FORM

DATE 6-21-14 TIME 0052 PLACE 10615 124th Ave NE
Kirkland, WA 98033

STATEMENT OF: Christian J.D. Obert (NAME) 5-28-97 (DATE OF BIRTH)
10615 124th Ave NE Kirkland, WA 98033 (ADDRESS) 425-786-3509 (PHONE)

CONCERNING THE FACTS OF:

CO pointed it at her and she kept coming at me. She didn't leave but walked around for a while "cornering me like a shark." I then grabbed a mop in order to hit her because I was scared and nothing I did kept her out or got her to leave. CO.

- CO, if correction, ~~she~~ I called her a "cunt face" as soon as she called me fat, then I went to the rec room. CO

CO the gun actually came out before she left initially. I put the gun away because she left. Then she came in started fighting with my mom again and I grabbed the mop. CO

I HAVE READ THIS STATEMENT OF 3/3 PAGES AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT. I AM SIGNING OF MY OWN FREE WILL WITHOUT ANY FEAR, FORCE, THREAT, OR PROMISE OR FAVOR.

WITNESS E Noss #612

SIGNATURE Christian Obert

WITNESS

APPENDIX O

1 witnesses. The witness list included two medical health
2 professionals, a doctor and a physician's assistant. Both
3 apparently took part in examining the alleged
4 victim/witness after the assault.

5 The defense again moved to dismiss charges, citing
6 mismanagement on the part of the prosecutors by waiting
7 over six months to endorse expert witnesses only days
8 before trial. Again, the court chose to reserve ruling and
9 urged defense counsel to attempt to interview the
10 newly-endorsed witnesses with the time left before trial.

11 Today, according to declarations filed by the defense,
12 the two medical professionals have declined to discuss
13 their involvement in this case citing privilege. It's
14 interesting to note that the government has endorsed two
15 doctor witnesses, albeit late, to testify as to the
16 condition of the alleged victim following the altercation.
17 Still, both medical witnesses are refusing to discuss the
18 case with the defense. Consequently, the defendant will
19 hear this crucial testimony for the first time during trial
20 in front of the jury. The testimony, and that of others --
21 this testimony, and that of others, will be a complete
22 surprise to the defendant.

23 According to defense counsel, the third witness endorsed
24 by the City on December 30th, 2014 is Jeffrey Obert.
25 Working with the prosecuting attorney, the defense arranged

1 to interview Mr. Obert on January 8th, immediately
2 following the depositions. Mr. Obert declined to appear
3 for the interview.

4 Interesting to note, according to the declarations filed
5 by the City prosecutors, it was Mr. Obert that answered the
6 door or otherwise talked to police officers prior to the
7 January 8th deposition and advised the police officers that
8 the other witnesses had left the state. Consequently, it's
9 clear to this court that Mr. Obert was at home and
10 available for the interview but declined.

11 The fourth witness added to the government's list on
12 December 30, 2014 is a Corey Parks. According to the
13 declaration filed by the defense, this witness lives in
14 Florida and has also declined to be interviewed over the
15 phone. According to the declaration, Ms. Parks states she
16 has not received a subpoena to appear in court. Apparently
17 Ms. Parks stated to investigators that she will let the
18 defense know if she decides to come to Washington.

19 Consequently, there are four witnesses that have all
20 refused to talk to defense counsel. These witnesses were
21 added to the government's witness list less than two weeks
22 before trial readiness and more than six months after
23 charges were filed. Now trial readiness is tomorrow. All
24 witnesses have refused to speak to defense counsel. There
25 are two witnesses who are avoiding interviews with defense

1 counsel and twice declined a court-ordered deposition.
2 Because the defendant's speedy trial right expires February
3 2nd, 2015, this matter must proceed to trial this month and
4 begin on January 20. Defense counsel has not had a
5 sufficient opportunity to adequately prepare a material
6 part of the defense and the defendant will clearly be
7 impermissibly prejudiced if the trial were to proceed this
8 month.

9 A dismissal of a criminal prosecution is an
10 extraordinary remedy, as both counsel bring up many times,
11 available only if the accused rights have been prejudiced
12 to the degree that the accused right to a fair trial has
13 been materially affected. Here the defendant's right to a
14 fair trial has been materially affected, in that the
15 defendant is now at the point where she is compelled to
16 choose between two distinct rights, either proceed as
17 scheduled and hear testimony from many witnesses for the
18 first time during trial, thereby violating her effective
19 assistance of counsel, right to confront witnesses, and
20 right to fair due process, or give up her right to speedy
21 trial and ask for yet another extension in hopes the
22 witnesses may cooperate. The government simply cannot
23 force a defendant, a criminal defendant, to choose between
24 these rights.

25 Defense motion to dismiss pursuant to Criminal Rule 4.7

1 and 8.3 is granted. All charges are dismissed.

2 MS. MCELYEA: Your Honor, there is a no-contact order in
3 effect for two different people under the same cause
4 number, but so -- but on this particular it doesn't specify
5 the two, so I don't know if we need two separate ones
6 that --

7 THE COURT: We probably should have two separate ones --

8 MS. MCELYEA: Okay.

9 THE COURT: -- that indicate the names of each on the
10 order.

11 MS. MCELYEA: All right, thank you.

12 And, your Honor, in light of your ruling, when -- when
13 could we anticipate it in writing?

14 THE COURT: That's up to counsel. If you want to
15 present an order to me.

16 MS. MCELYEA: Okay.

17 MR. MAYBROWN: Okay, your Honor --

18 THE COURT: Be happy to review it and sign it.

19 MR. MAYBROWN: Your Honor, I have an order which
20 reflects what the court has considered and incorporates the
21 court's oral ruling. If that would be sufficient with the
22 court, that would be sufficient with the defense. If the
23 court wants us to prepare findings, we would prepare
24 findings and conclusions. I'm satisfied either way, but
25 I'll defer to the court. And perhaps the prosecutor would

APPENDIX P

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IN THE KIRKLAND MUNICIPAL COURT, KING COUNTY
STATE OF WASHINGTON

CITY OF KIRKLAND,

Plaintiff,

v.

HOPE STEVENS,

Defendant.

NO. 38384

ORDER ON DEFENDANT'S
RENEWED MOTION TO DISMISS

THIS MATTER came on for hearing before the above-entitled Court, and the Court having reviewed and considered the records and files herein, including the Defendant's moving papers, Plaintiff's responsive pleadings, and all documents filed in support of each, and having heard argument,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Dismiss or for Alternative Relief is GRANTED; and further

IT IS ALSO ORDERED that All charges are
dismissed with prejudice pursuant to
CrRLJ 4.7 and 8.3b.

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IN REACHING THIS DECISION, the Court further incorporates its oral rulings of
November 6, 2014, December 30, 2014, January 6, 2015 and January 13, 2015.

DATED this 13 day of January, 2015.



HONORABLE MICHAEL LAMBO
Municipal Court Judge

Presented by:



TODD MAYBROWN, WSBA #18557
Attorney for Defendant

Approved as to Form; Notice of Presentation
Waived; Copy Received:



TAMARA McELYEA, WSBA #42466
LACEY OFFUTT, WSBA #45655
Assistant City Attorneys