No. 46963-4

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ROLFE GODFREY and KRISTINE GODFREY, husband and wife and their marital community composed thereof,

Appellants,

v.

STE. MICHELLE WINE ESTATES LTD, dba CHATEAU STE. MICHELLE, a Washington Corporation; and SAINT-GOBAIN CONTAINERS, INC.,

Respondents.

and

ROBERT KORNFELD,

Additional Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE KATHERINE M. STOLZ

BRIEF OF APPELLANTS

SMITH GOODFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

KORNFELD TRUDELL BOWEN & LINGENBRINK, PLLC

By: Robert Kornfeld
WSBA No. 10669

3724 Lake Washington Blvd. N.E.
Kirkland, WA 98033
(425) 893-8712

Attorneys for Appellants

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 3

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR 4

IV. STATEMENT OF FACTS 5

A. Rolfe Godfrey suffered a devastating hand injury when a wine bottle manufactured by Saint Gobain and bottled by Chateau Ste. Michelle shattered while he was opening it. 5

B. A newly assigned judge denied Mr. Godfrey's affidavit of prejudice, reasoning that signing two stipulated orders (including one it did not actually sign) was an exercise of discretion. 6

C. After Ste. Michelle filed a Joint Statement of Evidence incorporating Mr. Godfrey's draft, the trial court sanctioned Mr. Godfrey for not filing a separate statement by admitting all of Ste. Michelle's exhibits and excluding every exhibit to which Ste. Michelle objected. 7

D. After a bench trial at which it excluded nearly all of Mr. Godfrey's evidence establishing Ste. Michelle's liability, the trial court entered judgment in favor of Ste. Michelle. 14

V. ARGUMENT 16

A. The trial court erred in rejecting the affidavit of prejudice as untimely because it had signed a stipulated order extending witness disclosure deadlines. 16

1. Approving stipulations does not invoke a court's discretion. 19

2. Addressing ministerial matters such as discovery deadlines affecting only the parties does not invoke a court's discretion. 22

B. The trial court necessarily abused its discretion by excluding nearly all of Mr. Godfrey's exhibits establishing Ste. Michelle's liability without satisfying the strict *Burnet* requirements. 25

1. Mr. Godfrey did not willfully violate any discovery rule or court order. 28

2. Ste. Michelle was not substantially prejudiced. 31

3. The trial court did not consider lesser sanctions. 36

C. Mr. Godfrey's experts' opinions were admissible under ER 703 regardless whether the evidence underlying those opinions was admissible under the trial court's sanction order. 38

D. Mr. Godfrey is entitled to a new judge and to renew his jury demand if this Court remands for a new trial. 40

VI. CONCLUSION 42

TABLE OF AUTHORITIES

CASES

Barr v. MacGugan,
119 Wn. App. 43, 78 P.3d 660 (2003) 30

Blair v. Ta-Seattle E. No. 176,
171 Wn.2d 342, 254 P.3d 797 (2011) 26-27, 34

Burnet v. Spokane Ambulance,
131 Wn.2d 484, 933 P.2d 1036 (1997) ..... *passim*

Custody of R.,
88 Wn. App. 746, 947 P.2d 745 (1997) 41

Deep Water Brewing, LLC v. Fairway Res. Ltd.,
152 Wn. App. 229, 215 P.3d 990 (2009), *rev. denied*, 168 Wn.2d 1024 (2010) 39

Dependency of Hiebert,
28 Wn. App. 905, 627 P.2d 551 (1981) 23

Dependency of M.P.,
185 Wn. App. 108, 340 P.3d 908 (2014) 31, 36-37

GMAC v. Everett Chevrolet, Inc.,
179 Wn. App. 126, 317 P.3d 1074, *rev. denied*, 181 Wn.2d 1008 (2014) 41

Hanno v. Neptune Orient Lines, Ltd.,
67 Wn. App. 681, 838 P.2d 1144 (1992) 23

Harbor Enterprises, Inc. v. Gunnar Gudjonsson,
116 Wn.2d 283, 803 P.2d 798 (1991) 17-18

In re Hall,
184 Wn. App. 676, 339 P.3d 178 (2014) 18

Jones v. City of Seattle,
179 Wn.2d 322, 314 P.3d 380 (2013) ..... *passim*

Marriage of Hennemann,
69 Wn. App. 345, 848 P.2d 760 (1993) 23

Magana v. Hyundai Motor Am.,
167 Wn.2d 570, 220 P.3d 191 (2009)..... 32

Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC,
161 Wn. App. 249, 254 P.3d 827 (2011)..... 27, 30

Marine Power & Equip. Co. v. Indus. Indem. Co.,
102 Wn.2d 457, 687 P.2d 202 (1984) 18

Peluso v. Barton Auto Dealerships, Inc.,
138 Wn. App. 65, 155 P.3d 978 (2007) 26

Rivers v. Washington State Conference of Mason Contractors,
145 Wn.2d 674, 41 P.3d 1175 (2002).....36-37

Spring v. Department of Labor & Indus.,
39 Wn. App. 751, 695 P.2d 612 (1985)..... 42

State ex rel. Floe v. Studebaker,
17 Wn.2d 8, 134 P.2d 718 (1943).....19

State v. Clifford,
65 Wash. 313, 118 P. 40 (1911) 18

State v. Dennison,
115 Wn.2d 609, 801 P.2d 193 (1990)..... 19, 21

State v. Guajardo,
50 Wn. App. 16, 746 P.2d 1231 (1987), *rev. denied*,
110 Wn.2d 1018 (1988)..... 20

State v. Jones,
111 Wn.2d 239, 759 P.2d 1183 (1988) 20

State v. Lopez,
74 Wn. App. 264, 872 P.2d 1131, *rev. denied*, 125 Wn.2d 1004 (1994)..... 20

State v. Parra,
122 Wn.2d 590, 859 P.2d 1231 (1993) .....*passim*

State v. Sledge,
133 Wn.2d 828, 947 P.2d 1199 (1997) 41

State v. Torres,
85 Wn. App. 231, 932 P.2d 186, *rev. denied*, 132
Wn.2d 1012 (1997) 22

Teter v. Deck,
174 Wn.2d 207, 274 P.3d 336 (2012).....27, 37

Tye v. Tye,
121 Wn. App. 817, 90 P.3d 1145 (2004) 23-24

Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.,
122 Wn.2d 299, 858 P.2d 1054 (1993)..... 32

Wilson v. Horsley,
137 Wn.2d 500, 974 P.2d 316 (1999)..... 42

STATUTES

RCW 4.12.050 .....*passim*

RCW ch. 7.72..... 6

RULES AND REGULATIONS

CR 2A 21

CR 26.....21

CR 35.....21

CrR 3.3 20-21

ER 703.....2, 4, 38-39

ER 904 ..... 11, 29

KCLR 4 30

KCLCR 40 30

PCLR 3 30

PCLR 16 ..... 9, 12, 28-30

I. INTRODUCTION

Appellant Rolfe Godfrey sued after suffering a devastating injury that deprived him of effective use of his hand when a wine bottle manufactured by respondent Saint Gobain and bottled by respondent Chateau Ste. Michelle shattered while he was opening it. Pierce County Superior Court Judge Katherine Stoltz, newly assigned to the case, denied Mr. Godfrey's affidavit of prejudice, ruling that she had exercised discretion in signing stipulated orders that extended the deadline for witness disclosures and required a CR 35 exam.

But the trial court did not approve the CR 35 stipulation – a commissioner did. And affixing its signature to a stipulation extending witness disclosure deadlines did not require the court to analyze any law, review any evidence, or weigh any factors. Because Mr. Godfrey's affidavit of prejudice was timely under RCW 4.12.050, the trial court erred in refusing to recuse.

This error alone mandates a new trial. But after denying the affidavit of prejudice, the trial court excluded nearly all of Mr. Godfrey's liability evidence, as well as his expert testimony based on that evidence, while admitting every exhibit offered by respondents,

as a sanction for failing to file a "separate" Joint Statement of Evidence that is not required by any rule of court.

The trial court erroneously accused Mr. Godfrey of engaging in a "*Perry Mason*-esque trial by ambush" to justify its crippling sanction. In fact, Mr. Godfrey had sent respondents a draft Joint Statement of Evidence that listed as exhibits documents that were disclosed to the defense *on three separate occasions before* the due date for the parties' Joint Statement of Evidence: 1) on summary judgment, 2) in exchanging witness and exhibit lists, and 3) in ER 904 designations. Moreover, respondents incorporated Mr. Godfrey's draft statement into the separate "Defendants'" Joint Statement of Evidence that they filed unilaterally when Mr. Godfrey's counsel was incapacitated by emergency surgery on the eve of trial.

The trial court further erred in excluding the testimony of Mr. Godfrey's experts because ER 703 allows experts to explain the basis of their opinions regardless whether those bases are admissible in evidence. This Court should vacate the trial court's orders and remand for a new trial before a new judge.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its March 7, 2014, Order Denying Plaintiffs' Affidavit Of Prejudice To Recuse Judge Stolz. (CP 205-06) (App. A)

2. The trial court erred in entering its March 21, 2014, Order Denying Plaintiffs' Motion For Reconsideration Of The Court's March 7, 2014 Order Denying Plaintiffs' Motion For Change Of Judge. (CP 244-45)

3. The trial court erred in entering its October 8, 2014, Order Granting Defendants' Motion For An Award Of Sanctions Re: Plaintiff's Failure To File Joint Statement Of Evidence. (CP 587-88) (App. B)

4. The trial court erred in excluding the testimony of Mr. Godfrey's experts. (RP 201-04, 331-40, 464-76)

5. The trial court erred in entering its November 7, 2014, Findings of Fact and Conclusions of Law. (CP 688-702)

6. The trial court erred in entering its December 1, 2014, Order Granting Petition For Award Of Fees And Costs Pursuant To Court's Order On Motion For An Award Of Sanctions Re: Plaintiff's Failure To File Joint Statement Of Evidence. (CP 761-62)

7. The trial court erred in entering its December 1, 2014, Final Judgment dismissing Mr. Godfrey's claims with prejudice. (CP 765-66)

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Is an affidavit of prejudice timely under RCW 4.12.050 when the trial court has taken no action other than signing the parties' stipulation extending the deadline for disclosure of witnesses?

2. May a trial court exclude nearly all of a plaintiff's liability evidence, while also admitting all of defendants' exhibits without ruling on plaintiff's objections, as a sanction for plaintiff's failure to submit a "separate" joint statement of evidence, without finding 1) that the plaintiff willfully violated a court order, 2) that the violation substantially prejudiced the defendants, and 3) that lesser sanctions would not have sufficed, as required by *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997)?

3. Does a trial court err in refusing to allow expert witnesses to explain the bases for their opinions under ER 703 on the grounds those bases are not themselves admissible in evidence?

IV. STATEMENT OF FACTS

A. Rolfe Godfrey suffered a devastating hand injury when a wine bottle manufactured by Saint Gobain and bottled by Chateau Ste. Michelle shattered while he was opening it.

Rolfe Godfrey worked as a bartender at the Olive Garden for nearly twenty years. (RP 1108)[1] On February 13, 2010, a wine bottle manufactured by Saint-Gobain Containers, Inc. and bottled by Chateau St. Michelle (RP 479, 1142) shattered when Mr. Godfrey began removing the cork, lacerating his left hand and the flexor pollicis longus tendon that provides motor function to the thumb. (RP 249, 265, 714, 1149)

Mr. Godfrey's injury required three surgeries that left Mr. Godfrey still with a significant disability and limited use of his left thumb. (RP 308-09) He cannot perform simple tasks such as tying his shoes or a tie, preparing foods, or buttoning his collar (RP 1180-82) and suffers from constant pain that interferes with his daily activities as well as his sleep. (RP 249-51, 288, 1187) To manage his pain, Mr. Godfrey must take three medications that have significant

---

[1] The Verbatim Report of Proceedings is consecutively paginated with the exception of the proceedings on October 15, 2014. Citations to "RP ___" are to the consecutively paginated VRP, while citations to "10/15 RP ___" refer to the separately bound October 15th proceedings.

side effects. (RP 1186-87) Mr. Godfrey's injury prevented him from returning to work as a bartender; he now works as a host. (RP 1193) His injury also significantly limits his ability to sort through client papers and files in his part-time work as a tax preparer. (RP 1195-96)

B. A newly assigned judge denied Mr. Godfrey's affidavit of prejudice, reasoning that signing two stipulated orders (including one it did not actually sign) was an exercise of discretion.

On September 20, 2012, Mr. Godfrey sued Ste. Michelle and Saint-Gobain (collectively "Ste. Michelle"), under the Washington Products Liability Act, RCW ch. 7.72, asserting manufacturing and design defects and claims based on failure to warn and breach of warranties. (CP 1-8)[2] On December 19, 2013, the case was reassigned to Pierce County Superior Court Judge Katherine Stolz ("the trial court"). (CP 157) On January 6, 2014, Judge Stolz signed, ex parte, a stipulated order extending the deadline for disclosure of defendants' witnesses and the parties' rebuttal witnesses. (CP 158-59) (App. C) The next day, Commissioner Robyn Lindsay signed, ex

[2] Mr. Godfrey's wife Kirstine Godfrey was originally a plaintiff, but dismissed her claims after becoming estranged from Mr. Godfrey in the course of this lawsuit. (CP 804-06; RP 1019)

parte, a stipulated order setting the terms of a CR 35 examination of Mr. Godfrey. (CP 160-64) (App. D)

On March 3, 2014, Mr. Godfrey filed an affidavit of prejudice seeking a new judge under RCW 4.12.050. (CP 791-94) Although Commissioner Lindsay and not Judge Stolz had signed the CR 35 stipulation, Judge Stolz denied Mr. Godfrey's affidavit of prejudice, ruling that the affidavit of prejudice was not timely believing she had "signed two orders of discretion in this case." (CP 205-06) (App. A) Judge Stolz then denied Mr. Godfrey's motion for reconsideration. (CP 244-45)

C. After Ste. Michelle filed a Joint Statement of Evidence incorporating Mr. Godfrey's draft, the trial court sanctioned Mr. Godfrey for not filing a separate statement by admitting all of Ste. Michelle's exhibits and excluding every exhibit to which Ste. Michelle objected.

At the end of July 2014, the parties filed cross-motions for summary judgment. In support of his motion, Mr. Godfrey's expert, Eric Heiberg, explained in his declaration that the bottle was misshaped in two key respects. (CP 808-09, 828) The bottle was "out-of-round" (oval shaped) and had a "rocker" (uneven) bottom. (CP 808-09, 828) These defects caused the bottle to lean during the bottling process, so that metal machine parts inserted into the bottle

to rinse, fill, and cork it damaged the top of the bottle. (CP 808-10, 834-40, 847; *see also* CP 53-56)

Mr. Heiberg's examination of Ste. Michelle's maintenance records showed that its bottling line had significant problems around the time it processed the bottle that injured Mr. Godfrey. Work orders showed that bottles "were bouncing and some of them breaking" on the day Ste. Michelle processed the bottle. (CP 884) On the next day, a "bad centering cone" on the corking machine was damaging bottles. (CP 909) Mr. Heiberg further supported his conclusions with a "Consumer Concern Log" listing similar breakages of Ste. Michelle bottles. (CP 916-78)

Mr. Heiberg also conducted experiments on 72 exemplar bottles to rebut Ste. Michelle's theory that Mr. Godfrey had caused the bottle to break by striking the inside of the bottle with his corkscrew. Mr. Heiberg tested the exemplar bottles and found that he could not scratch the bottles with a soft steel corkscrew like the one Mr. Godfrey used, and that the amount of force required to remove a cork is a tenth of that required to shatter a non-defective bottle. (CP 814, 832)

On August 22, 2014, the trial court partially granted Ste. Michelle's summary judgment motion, dismissing all but Mr.

Godfrey's manufacturing defect claim. (CP 304-05) Under the case scheduling order, a bench trial was set for September 29, 2014, with a Joint Statement of Evidence ("JSE") due August 29, 2014.[3] (CP 450)

On August 25, 2014, Mr. Godfrey sent Ste. Michelle his witness and exhibits lists, as well as copies of all exhibits.[4] (CP 337-41, 483, 488) The next day Mr. Godfrey sent Ste. Michelle a draft JSE, listing all of his exhibits and witnesses. (CP 483, 490, 508) On August 29, 2014, the parties exchanged ER 904 disclosures. (CP 306-13, 342-49, 483)

In connection with his ER 904 disclosure, Mr. Godfrey again produced to Ste. Michelle the exhibits he intended to use at trial, including summaries identifying by bates number the specific Ste. Michelle maintenance records and consumer complaints on which he would rely. (CP 342, 345; Exs. 22-23) These were the same

---

[3] Under PCLR 16(b)(4), "the parties shall file a Joint Statement of Evidence containing (A) a list of the witnesses whom each party expects to call at trial and (B) a list of the exhibits that each party expects to offer at trial" as well as a "notation for each exhibit as to whether all parties agree[] as to the exhibit's authenticity and admissibility."

[4] PCLR 16(b)(2) separately provides for the exchange of witness and exhibit lists between the parties, and provides that "[a]ny witness or exhibit not listed shall not be used at trial, unless the court orders otherwise for good cause and subject to such conditions as justice requires."

records and consumer complaints Mr. Godfrey had relied on in opposing summary judgment. (*Compare* CP 884-85, 909-14, 916-78 *with* Exs. 22-23)

Also on August 25, 2014 (the day Mr. Godfrey sent Ste. Michelle his exhibit and witness lists), Mr. Godfrey's lead counsel, Robert Kornfeld, underwent dental transplant gum surgery. (CP 484) While recovering from the surgery, Mr. Kornfeld developed a massive infection. (CP 484) He had emergency outpatient surgery on September 3, 2014. (CP 484) The next day, Mr. Kornfeld was rushed to the Overlake Hospital Emergency department when his infection worsened, leaving his mouth, nose, and upper jaw swollen. (CP 484) As a result of the surgery and medication, Mr. Kornfeld was delirious and could not work until September 9th. (CP 484)

On September 2, 2014, while Mr. Godfrey's counsel was incapacitated, Ste. Michelle unilaterally filed a "Joint Statement of Evidence Submitted by Defendants," which included Mr. Godfrey's exhibits but not his objections to Ste. Michelle's exhibits. (CP 314-36) Mr. Godfrey provided his objections to Ste. Michelle after his counsel Mr. Kornfeld returned to work on September 12, 2014, in response to Ste. Michelle's August 29th ER 904 disclosure. (CP 350-

62, 484; *see also* ER 904(c) (objections to a party's exhibits must be served "[w]ithin 14 days of notice"))

Although Ste Michelle had filed a "Defendants'" JSE, the parties continued to cooperate in paring down the exhibits that would be used at trial, contemplating that an amended JSE would be filed. On September 3 and 16, 2014, Mr. Kornfeld's paralegal emailed defense counsel that "we still have a lot of work to do on the Joint Statement of Evidence and will likely be working on it up until the time of trial" to "exclude duplicative exhibits." (CP 496-98, 509; *see also* CP 502) Defense counsel's paralegal responded on September 17, 2014, that he would go through exhibits to eliminate duplicates. (CP 500) A week later, on September 23, 2014, defense counsel's paralegal emailed Mr. Kornfeld's paralegal withdrawing 34 duplicative exhibits. (CP 504) The defense did not claim any prejudice in working on a JSE after Ste. Michelle filed its unilateral JSE on September 2, 2014.

On September 22, 2014, the parties filed trial briefs. (CP 363-409, 421-34) Consistent with his summary judgment motion, Mr. Godfrey argued that the "perfect storm" of the misshapen bottle and problems on the Ste. Michelle bottling line combined to damage the bottle, again highlighting maintenance records and consumer

complaints. (CP 365-66, 369, 373-77, 385, 393-96) Reflecting its familiarity with the evidence supporting Mr. Godfrey's theory of the case, Ste. Michelle argued that the bottle's "out-of-round" and "rocker bottom" conditions would not have caused it to be damaged, and disputed Mr. Godfrey's previously disclosed allegations of "maintenance and adjustment problems on Ste. Michelle's bottling line." (CP 422, 428)

On September 26, 2014, the Friday before the Monday trial was scheduled to begin and on less than the required six-days' notice, Ste. Michelle filed a motion alleging that Mr. Godfrey violated the case scheduling order by not filing a "separate" JSE under PCLR 16. (CP 437-42) Arguing that "prejudice is not a prerequisite to the court's exclusion of witnesses as a sanction" (CP 440), Ste. Michelle asked the trial court to admit all of its exhibits listed in the JSE filed on September 2, without consideration of Mr. Godfrey's objections, including his objections to defense exhibits that had not been disclosed in discovery. (CP 442; *see* 10/15 RP 85-91; CP 350, 354, 357) Ste. Michelle also moved to exclude all of Mr. Godfrey's exhibits to which it had objected in its defendants' JSE (including Ste. Michelle's own maintenance records) and to sanction Mr. Godfrey and his attorney with an award of fees. (CP 442)

Although Mr. Godfrey had disclosed to Ste. Michelle all of his exhibits and witnesses multiple times, including in the draft JSE he provided to Ste. Michelle on August 26 and incorporated in Ste. Michelle's JSE (CP 466-81), the trial court granted Ste. Michelle's motion for sanctions on the first day of trial, September 29, 2014. As a sanction, the trial court admitted all of Ste. Michelle's exhibits and excluded all of Mr. Godfrey's exhibits objected to by Ste. Michelle in the JSE it had filed. (RP 83-86, 161-70)

The trial court analogized the absence of a separate JSE from Mr. Godfrey to the last minute disclosure of a key document or witness in the *Perry Mason* show. (RP 83-84 ("In *Perry Mason* . . . there was always the secret surprise witness that came rushing into the courtroom, waving documents or something which changed the whole case")) The trial court also accepted Ste. Michelle's contention, not raised in its motion for sanctions, that it was prejudiced because the draft JSE provided by Mr. Godfrey did not list as separate exhibits Ste. Michelle's maintenance records or its record of consumer complaints, and instead included them as part of two exhibits that included other documents produced by Ste. Michelle. (RP 161-67, 469-73)

On the second day of trial, September 30, 2014, Mr. Godfrey filed a separate "Plaintiff's" JSE, listing the same exhibits that Ste. Michelle had listed in the JSE it had filed a month earlier. (CP 527-86)

D. After a bench trial at which it excluded nearly all of Mr. Godfrey's evidence establishing Ste. Michelle's liability, the trial court entered judgment in favor of Ste. Michelle.

The trial court presided over a 14-day bench trial,[5] during which it excluded nearly all of Mr. Godfrey's liability exhibits under its sanctions order and admitted all of Ste. Michelle's exhibits without allowing Mr. Godfrey to object. The trial court excluded maintenance records from Ste. Michelle's bottling line, manuals for the machines on the bottling line, as well as videos and photos of the bottling line. (RP 202-06, 328-34, 392, 446, 1512, 1583; *see also* 10/15 RP 129) The trial court also excluded consumer complaints involving similar bottle breakages, which Mr. Godfrey had offered to refute Ste. Michelle's contention that had the bottle been damaged on its bottling line it would have broken immediately rather than in the hands of a consumer. (RP 227, 1309; 10/15 RP 113)

---

[5] On the seventh day of trial, the trial court entered an order confirming its oral sanctions ruling. (CP 587-88) (App. B)

The trial court also ruled that Mr. Godfrey's experts could not testify in reliance on any of the excluded evidence in reaching their opinions, including Mr. Heiberg's testing of exemplar bottles that demonstrated that a soft steel corkscrew could not scratch a bottle or that the amount of force generated by removing a cork is an order of magnitude lower than that necessary to shatter a non-defective bottle. (RP 201-04, 331-40, 464-76) The trial court refused to consider Mr. Godfrey's experts' testimony that due to malfunctions on Ste. Michelle's bottling line, the misshapen bottle was more probably than not defective when it left Ste. Michelle's control. (RP 337-38, 352, 515-16) Mr. Godfrey presented this, and other excluded evidence, in an offer of proof. (RP 337, 352, 474-76, 498, 502, 515-16, 1005-17)

The trial court found that the bottle was not defective when it left Ste. Michelle's control. (CP 688-702) The trial court entered judgment in favor of Ste. Michelle (CP 765-66) and awarded Ste. Michelle $10,000 in attorney's fees, payable by Mr. Godfrey's counsel, as an additional sanction for not filing a separate JSE. (CP 761-62)

Mr. Godfrey and his counsel, Robert Kornfeld, timely appealed. (CP 768-90)

V. ARGUMENT

A. The trial court erred in rejecting the affidavit of prejudice as untimely because it had signed a stipulated order extending witness disclosure deadlines.

The trial court erroneously rejected Mr. Godfrey's affidavit of prejudice, holding that it exercised "discretion" in signing a stipulated order that extended the deadline for witness disclosures.[6] Signing this agreed order did not require the court to analyze any law or evidence, weigh any factors, or engage in any other action that could have alerted either party to the trial court's disposition towards the case. Because Mr. Godfrey filed his affidavit of prejudice before the trial court exercised discretion, it was timely and deprived the trial court of authority to preside over this action. This Court should reverse and remand for a new trial in front of a different judge.

RCW 4.12.050(1) grants any party or the party's attorney the absolute right to establish the prejudice of a judge by filing an

[6] The trial court inexplicably based its decision to deny the affidavit in part on its belief that it had signed the stipulated order setting the terms for a CR 35 exam, when in fact that order was signed by Commissioner Lindsay. (CP 163, 206 ("The Court having signed *two* orders of discretion") (emphasis added); *see also* CP 222 (trial court: "I didn't have to agree that, you know, you could do a CR 35 exam")) The trial court could not exercise discretion in signing an order it did not actually sign.

affidavit stating his or her belief that the judge cannot be fair and impartial:

> Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial before such judge.

RCW 4.12.050(1) places no limits on the right to file such an affidavit of prejudice, except that the affidavit must be filed before the judge has made a ruling involving discretion:

> PROVIDED, That such motion and affidavit is filed and called to the attention of the judge before he or she shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made any order or ruling involving discretion . . . .

The statute makes clear that "the arrangement of the calendar . . . shall not be construed as a ruling or order involving discretion within the meaning of this proviso." RCW 4.12.050(1).

The right to file an affidavit of prejudice is a "substantial and valuable right." *Harbor Enterprises, Inc. v. Gunnar Gudjonsson*, 116 Wn.2d 283, 291, 803 P.2d 798 (1991). "[T]here is no discretion

in granting a timely motion" and once exercised, "the statutory right deprives that particular judge of jurisdiction." *Harbor Enterprises*, 116 Wn.2d at 291; *see also Marine Power & Equip. Co. v. Indus. Indem. Co.*, 102 Wn.2d 457, 461-62, 687 P.2d 202 (1984) ("The statute permits of no ulterior inquiry; it is enough to make timely the affidavit and motion, and however much the judge moved against may feel and know that the charge is unwarranted, he may not avoid the effect of the proceeding by holding it to be frivolous or capricious.") (quotation omitted). Requiring that the affidavit be filed before the judge has exercised discretion prevents parties from "waiting to see the disposition of the judge before asserting the right." *State v. Parra*, 122 Wn.2d 590, 599, 859 P.2d 1231 (1993) (citing *State v. Clifford*, 65 Wash. 313, 316, 118 P. 40 (1911)).

A court's failure to recuse itself after a timely affidavit is filed is reversible error requiring a new trial. *Harbor Enterprises*, 116 Wn.2d at 293. Whether a judge erred in refusing to recuse under RCW 4.12.050 is a question of law reviewed de novo. *In re Hall*, 184 Wn. App. 676, 681, ¶ 11, 339 P.3d 178 (2014).

1. Approving stipulations does not invoke a court's discretion.

A court does not exercise discretion within the meaning of RCW 4.12.050 in accepting stipulated orders on preliminary matters. For example, in *State ex rel. Floe v. Studebaker*, 17 Wn.2d 8, 134 P.2d 718 (1943), the judge signed a stipulated order consolidating two cases and continuing one of them. The Supreme Court held that the order did not involve discretion, reasoning that "[w]e do not believe it can be said that the court is required to exercise discretion when asked to make an order involving preliminary matters such as continuing a case, or for consolidation, where all the parties have stipulated that such order be made." *Floe*, 17 Wn.2d at 17. *See also Parra*, 122 Wn.2d at 599-600 ("The distinction drawn in *Floe* relating to stipulations makes sense. . . . If the parties have resolved . . . issues among themselves . . . then the parties will not have been alerted to any possible disposition that a judge may have toward their case.").

A stipulation invokes the discretion of a judge only if relevant authority directs the judge to perform an independent evaluation before rejecting or accepting the stipulation. For example, in *State v. Dennison*, 115 Wn.2d 609, 620, 801 P.2d 193 (1990), the Supreme

Court held that the judge had exercised discretion when it granted a stipulated motion to continue the trial date under CrR 3.3(h)(1) because the rule provided that "[c]ontinuances or other delays *may* be granted . . . [u]pon written agreement of the parties." *See State v. Jones*, 111 Wn.2d 239, 244, 759 P.2d 1183 (1988) (emphasis added).[7] Whether to grant a stipulated continuance of the trial date under CrR 3.3 requires the exercise of discretion because – even if the parties agree – the judge must still "consider various factors, such as diligence, materiality, due process, a need for an orderly procedure, and the possible impact of the result on the trial." *State v. Guajardo*, 50 Wn. App. 16, 19, 746 P.2d 1231 (1987), *rev. denied*, 110 Wn.2d 1018 (1988); *State v. Lopez*, 74 Wn. App. 264, 268-69, 872 P.2d 1131 (reviewing for abuse of discretion order granting agreed continuance under CrR 3.3; "Where speedy trial rights arising from CrR 3.3(h) are involved . . . a trial court's grant of a continuance will not be disturbed absent a manifest abuse of discretion."), *rev. denied*, 125 Wn.2d 1004 (1994).

[7] The current version of CrR 3.3(h)(1), as amended in 2003, is CrR 3.3(f)(1), which similarly provides that "Continuances or other delays *may* be granted" "[u]pon written agreement of the parties." (emphasis added).

Here, the parties' stipulation extending the deadline for disclosure of witnesses did not call upon the trial court to exercise discretion under RCW 4.12.050(1). (CP 158-59) Unlike the criminal rule in *Dennison*, which called upon the court to exercise independent discretion in light of the constitutional right to a speedy trial, the civil rules encourage parties to resolve preliminary matters such as witness disclosure deadlines without independent oversight from the court. *See, e.g.*, CR 2A (providing for enforcement of stipulations); CR 26 (providing that party must state that it "has made a reasonable effort to reach agreement" before moving for a discovery conference). Even had the trial court, and not a commissioner, signed the CR 35 stipulation, CR 35 expressly provides that the parties may determine the terms of an exam "by agreement" and, unlike CrR 3.3, does not give the court discretion to decide that it "may" reject or accept the agreement.

Where a court exercises discretion, it is typically because it ruled on a *motion*, as opposed to approving a stipulation. *Parra*, 122 Wn.2d at 601 ("To either grant or deny a motion involves discretion"; ruling on unopposed omnibus motions involved discretion because "[r]ather than presenting a stipulation, the parties each submitted motions to the court for its ruling"); *Dennison*, 115 Wn.2d at 620

(trial court granted motion to continue trial date). The statute itself emphasizes that ruling on a motion is the hallmark of discretion. RCW 4.12.050(1) (affidavit must be filed "before [the court] shall have made any ruling whatsoever in the case, either *on the motion* of the party making the affidavit, or *on the motion* of any other party") (emphasis added); *see also State v. Torres*, 85 Wn. App. 231, 234, 932 P.2d 186 (order allowing material witness to leave jurisdiction did not involve discretion because it "was not a motion by any party to the action, as contemplated by RCW 4.12.050"), *rev. denied*, 132 Wn.2d 1012 (1997).

Here, because there was no motion before the court, the trial court did not exercise discretion. Had the trial court refused the parties' stipulation to extend witness disclosure deadlines, they would have been free to then bring a motion inviting the court to exercise discretion. *Parra*, 122 Wn.2d at 601 ("If the court refuses to accept a stipulation . . . [e]ach party is then free to seek resolution of the issue through a motion").

2. Addressing ministerial matters such as discovery deadlines affecting only the parties does not invoke a court's discretion.

RCW 4.12.050(1) also recognizes that a judge does not exercise discretion when addressing ministerial matters, such as the

extension of witness disclosure deadlines in this case. "[T]he arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso." RCW 4.12.050(1).

Orders addressing ministerial matters, especially those setting pretrial deadlines, do not involve the exercise of discretion. For example, in *Tye v. Tye*, 121 Wn. App. 817, 821, 90 P.3d 1145 (2004), the court held that there was no discretion involved in "the ministerial acts of entering *uncontested* case scheduling orders." (emphasis added). *See also Marriage of Hennemann*, 69 Wn. App. 345, 347, 848 P.2d 760 (1993) (no discretion in signing form order setting trial date, deadlines for submission of various documents, and dates for settlement and pretrial conferences); *Hanno v. Neptune Orient Lines, Ltd.*, 67 Wn. App. 681, 683, 838 P.2d 1144 (1992) (no discretion in signing standard order that set dates for mediation, the plaintiff's settlement demand, and the pretrial conference); *Dependency of Hiebert*, 28 Wn. App. 905, 911, 627 P.2d 551 (1981) ("routine appointments and setting the case for trial d[o] not involve discretion").

The stipulated extension of witness disclosure deadlines was a ministerial pretrial matter that involves "arrangement of the calendar" akin to the uncontested case scheduling order in *Tye*, and thus did not involve the exercise of discretion. RCW 4.12.050(1). Such ministerial pretrial matters can, and should, be resolved by agreement of the parties without fear of forfeiting the valuable right to file an affidavit of prejudice. *Parra*, 122 Wn.2d at 601, 603 ("[s]tipulations are favored by courts"; matters "affecting only the rights or convenience of the parties, not involving any interference with the duties and functions of the court, may be the subject of a stipulation").

Prior to Mr. Godfrey's affidavit of prejudice, the trial court's sole act was its acceptance of the parties' stipulation on a ministerial calendaring matter that affected only them. Accepting this stipulation did not require discretion. The trial court erred in refusing to recuse. Mr. Godfrey is entitled a new trial before a different judge.

B. The trial court necessarily abused its discretion by excluding nearly all of Mr. Godfrey's exhibits establishing Ste. Michelle's liability without satisfying the strict *Burnet* requirements.

While the trial court's refusal to recuse, in and of itself, mandates reversal, its sanctions order establishes additional prejudicial error. Only the most extreme discovery violations can justify a sanction depriving a party of the right to present evidence establishing its case. *Jones v. City of Seattle*, 179 Wn.2d 322, 338, ¶ 33, 314 P.3d 380 (2013), *as corrected* (Feb. 5, 2014). Far from engaging in what the trial court characterized as a *Perry Mason*-esque last minute disclosure of evidence, Mr. Godfrey disclosed four times the evidence he would rely on at trial: 1) on summary judgment, 2) in exchanging witness and exhibits lists, 3) in providing a draft of the Joint Statement of Evidence (which Ste. Michelle used to submit its "separate" JSE), and 4) in his ER 904 designations. These disclosures all took place *before* the due date for the JSE. The trial court erred in concluding that Mr. Godfrey engaged in misconduct that could support any sanction, let alone the crippling sanction it imposed. This Court should vacate the trial court's sanctions orders, and reverse and remand for a new trial at which

Mr. Godfrey will be allowed to present all evidence establishing Ste. Michelle's liability.

Because the law favors resolution of cases on their merits, before a court can impose a harsh sanction – such as excluding nearly all a plaintiff's evidence establishing the defendants' liability – it must consider 1) whether the party willfully violated its discovery obligations or court order, 2) whether the violation substantially prejudiced the opposing party, and 3) whether lesser sanctions are insufficient. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997).[8] Only if a trial court answers each of these questions affirmatively can it then impose the sanction. *Jones*, 179 Wn.2d at 343, ¶ 46. A trial court's exclusion of evidence as a sanction is not subject to normal abuse of discretion review, but to a "more rigorous" standard under which a trial court's failure to make the "essential" *Burnet* findings is necessarily an abuse of discretion. *Peluso v. Barton Auto Dealerships, Inc.*, 138 Wn. App. 65, 69-70, ¶¶

[8] *Burnett* applies to any sanctions "that affect a party's ability to present its case." *Blair v. Ta-Seattle E. No. 176*, 171 Wn.2d 342, 348, ¶ 15, 254 P.3d 797 (2011); *see also Peluso v. Barton Auto Dealerships, Inc.*, 138 Wn. App. 65, 67, ¶ 1, 155 P.3d 978 (2007) (*Burnet* applied to sanction of excluding expert witness for "fail[ing] to follow the court's case schedule orders").

10-11, 155 P.3d 978 (2007) (stating that this heightened "difference is now well ensconced in Washington law").

A trial court's *Burnet* analysis must be performed on the record. *Blair v. Ta-Seattle E. No. 176*, 171 Wn.2d 342, 344, ¶ 1, 254 P.3d 797 (2011) ("We reverse because the trial court abused its discretion when it imposed the discovery sanction without setting forth the reason for its sanction on the record, as required by *Burnet*"); *Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC*, 161 Wn. App. 249, 262, ¶ 24, 254 P.3d 827 (2011) (same). Cursory findings are insufficient to avoid reversal and an appellate court cannot make findings for the trial court by declaring the record "speak[s] for itself." *Blair*, 171 Wn.2d at 349-50, ¶¶ 18-19; *Marina Condo.*, 161 Wn. App. at 261, ¶ 22; *see also Jones*, 179 Wn.2d at 341, ¶ 39 (reversing because although trial court conducted colloquies that "evidenced a great deal of careful deliberation . . . they fell short of *Burnet's* requirements"). A trial court's failure to satisfy the strict *Burnet* requirements mandates a new trial. *Teter v. Deck*, 174 Wn.2d 207, 222, ¶ 27, 274 P.3d 336 (2012).

Here, the trial court failed to make **any** of the findings required by *Burnet*, and no such findings could be justified.

1. Mr. Godfrey did not willfully violate any discovery rule or court order.

The trial court provided no statement in its sanctions order or on the record explaining how Mr. Godfrey willfully violated a rule or order. Its sanctions order contains only the conclusory statement that Mr. Godfrey "willful[ly] violat[ed] the Court's Case Scheduling Order and Pretrial Order." (CP 587) That finding cannot support the trial court's harsh sanction that gutted Mr. Godfrey's case.

The trial court nowhere explained how not filing a "separate" **Joint** Statement of Evidence violated its orders or any court rule, much less how it was willful. It is undisputed that a JSE – which included Mr. Godfrey's exhibits – was filed with the Court. The Pierce County local rules do not require each party to file a separate JSE. *See* PCLR 16(b)(4) (providing "*the parties* shall file a Joint Statement of Evidence") (emphasis added). Ste. Michelle could not turn a "joint" Statement into a "separate" Statement by simply omitting any reference to Mr. Godfrey's efforts and labeling it the "Joint Statement of Evidence Submitted by Defendants." (CP 314) Ste. Michelle's filing of a JSE that included Mr. Godfrey's exhibits satisfied the court's orders and the local rule.

Moreover, a JSE is not, as the trial court apparently believed, a mechanism for disclosing evidence or objections between the parties; it is an *index* for the Court of evidence that has been previously disclosed. Under PCLR 16(b)(2), the parties *disclose* evidence by exchanging exhibit and witness lists, just as the parties here did *before* the JSE's due date. Indeed, PCLR 16(b)(2) requires the exchange of witness and exhibit lists under threat of the exclusion of any witness or exhibit not listed or *disclosed.* By contrast, the section requiring the parties to file a JSE contains no similar sanction, reflecting the fact that the JSE is an administrative tool and not a mechanism for discovery. PCLR 16(b)(4).

Mr. Godfrey did not, as Ste. Michelle asserted below, violate (let alone willfully violate) the trial court's scheduling order by sending his objections to Ste. Michelle's exhibits in response to its ER 904 disclosure, rather than providing them in the JSE. Mr. Godfrey provided his objections on September 12, 2014, within the time allowed by ER 904. (CP 362, 484; ER 904(c)) Because ER 904 provides more time for providing objections, the Evidence Rule – not the Pierce County local rule – controls the timing for objections to a

party's exhibits. *See Jones*, 179 Wn.2d at 344, ¶ 47 ("The local rules may not be applied in a manner inconsistent with the civil rules").[9]

Further, even if there were a violation (there was not), there could be no finding of willfulness here, where Mr. Godfrey's lead counsel was indisputably incapacitated following surgery. Pierce County Local Rules preclude the imposition of sanctions for violating a case schedule order if the party has a "reasonable excuse." PCLR 3(k). Mr. Kornfeld was hospitalized after providing a draft JSE to Ste Michelle on August 26, 2014, and was incapacitated from September 2-9, 2014. (CP 483-84, 490) He nonetheless provided all of Mr. Godfrey's objections to the defense exhibits three days after his return to work and two-and-a-half weeks before trial. The trial court's failure to explain how Mr. Godfrey willfully violated its orders in light of his counsel's debilitating illness mandates reversal and remand for a new trial. *Barr v. MacGugan*, 119 Wn. App. 43, 48, 78 P.3d 660 (2003) (severe depression of attorney grounds for relief from dismissal of lawsuit under CR 60(b)(11)); *Marina Condo.*, 161

[9] Indeed, ER 904, not a JSE, is the typical method for exchanging objections, because many counties do not require the JSE to be filed until a week before trial, if they require a JSE at all. *See, e.g.*, KCLR 4(e)(2); KCLCR 40(b)(6)(A)(v). Pierce County is unique in requiring a JSE a month before trial. PCLR 3(g).

Wn. App. at 261, ¶ 22 (reversing because "the trial court failed to make a clear record . . . containing its reasoning" and its "mere conclusions stated in an order were inadequate" under *Burnet*).

2. Ste. Michelle was not substantially prejudiced.

The trial court made no finding that Ste. Michelle was substantially prejudiced by Mr. Godfrey's failure to file a separate JSE that would have been redundant of the one Ste. Michelle had already filed. (CP 587-88) Even a conclusory finding of prejudice cannot withstand appellate review; a court must make a reasoned explanation on the record of the prejudice suffered by nondisclosure. *Dependency of M.P.*, 185 Wn. App. 108, 118, ¶ 18, 340 P.3d 908 (2014). In any event, no finding of prejudice, let alone substantial prejudice, could be justified. Having repeatedly disclosed the evidence he would rely on at trial, Mr. Godfrey did not hinder Ste. Michelle's ability to prepare for trial. The trial court's sanctions orders must be reversed.

The exclusion of a party's evidence is a "severe sanction," requiring the trial court to find that the party's violation of a court order "substantially prejudiced" the opposing party's preparation for trial. *Jones*, 179 Wn.2d at 338, ¶¶ 33-34. Examples of misconduct that substantially prejudice the opposing party include concealing

relevant evidence or the last-minute disclosure of key evidence. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 590, ¶¶ 37-38, 220 P.3d 191 (2009); *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 347, 858 P.2d 1054 (1993).

This was not a case such as *Magana* or *Fisons*, where a party purposefully hid critical evidence. Mr. Godfrey repeatedly, and timely, disclosed both the exhibits and witnesses he would use at trial. As early as December 2, 2013, Mr. Godfrey disclosed his witnesses to Ste. Michelle. (CP 33-42) On August 25, 2014, four days before the JSE was due, Mr. Godfrey provided Ste. Michelle with his witness and exhibit lists, as well as a copy of his exhibits, many of which were Ste. Michelle's own records. (CP 337-41, 483, 488) The next day, he provided Ste. Michelle with plaintiff's proposed JSE, again listing all of his exhibits and witnesses. (CP 483, 490, 508) Two days later he timely provided his ER 904 disclosures listing all his documentary exhibits and again produced those exhibits – the same maintenance records and consumer complaints that Mr. Godfrey relied on during summary judgment – to Ste. Michelle. (CP 306-13, 342-49, 483, 884-85, 909-14, 916-78; Exs. 22-23) The "separate" JSE Mr. Godfrey allegedly failed to file would have listed the same exhibits and witnesses as Mr. Godfrey's previous

disclosures. The trial court's analogy to the surprise evidence of *Perry Mason* was entirely off the mark. (RP 83-84)

Ste. Michelle's allegation of prejudice based upon Mr. Godfrey's failure to provide his objections to Ste. Michelle's exhibits by August 29 also fails. (CP 441-42; RP 78, 83) Ste. Michelle had received Mr. Godfrey's objections pursuant to ER 904 17 days before trial and just ten days after defendants filed their JSE. (CP 362) During those ten days Mr. Godfrey's counsel was not studying Ste. Michelle's objections to gain an advantage; he was recovering from surgery. (CP 484)

In its September 26 sanctions motion, Ste. Michelle asserted only a single allegation of prejudice – that it could not "prepare for and respond to Plaintiff's evidentiary objections," despite having received those objections two weeks earlier, when Mr. Godfrey responded to its ER 904 disclosure on September 12. (CP 350-62, 441-42) Then, on the second day of trial, Ste. Michelle alleged that it was prejudiced – not by the absence of a separate JSE – but by the fact that Mr. Godfrey combined numerous Ste. Michelle documents into two exhibits when Mr. Godfrey provided his exhibit list and his portion of the "separate" JSE filed by Ste. Michelle. (RP 159) This complaint had nothing to do with, and therefore cannot support a

sanction for, Mr. Godfrey's alleged failure to file a separate JSE. (CP 587 ("Order Granting Defendants' Motion For An Award of Sanctions Re: Plaintiff's Failure to File Joint Statement of Evidence.")) *See Blair*, 171 Wn.2d at 350, ¶ 19 (exclusion of witnesses under first order could not be supported by subsequent discovery abuse).

Ste. Michelle's post-hoc assertion that it was prejudiced by the way in which Mr. Godfrey combined into two exhibits the documents produced by Ste. Michelle and Saint Gobain, does not withstand even cursory scrutiny. Mr. Godfrey had repeatedly disclosed the specific portions of those exhibits he would rely on at trial. He had attached the specific maintenance records and consumer complaints to the declaration of his expert on summary judgment and identified those records as exhibits at the deposition of another expert. (CP 884-85, 909-14, 916-78; RP 163) Mr. Godfrey again identified specific records, by bates number, in the summaries he provided to Ste. Michelle as part of his exhibits on August 25 and 29, 2014. (Exs. 22-23) Mr. Godfrey then highlighted those summaries in his trial brief. (CP 365-66, 369, 373-77, 385, 393-96)

Indeed, Ste. Michelle itself affirmed that it understood Mr. Godfrey's theory of the case, succinctly summarizing in its motions

in limine his theory "that the incident bottle . . . had a 'rocker bottom' or was 'out of round' such that it was more susceptible to becoming damaged during bottling and did become damaged during bottling, resulting in a 'latent defect' that caused the bottle to break upon opening six months later." (CP 984) Ste. Michelle was amply prepared to meet that theory at trial, calling experts that testified the bottle was within prescribed specifications, that even if the bottle had defects that exceeded specifications it could not have been damaged by Ste. Michelle's bottling line, and that the bottle broke because Mr. Godfrey struck the inside of it with his corkscrew when opening it. (10/15 RP 59-137; RP 1276-1323, 1456-1512)

If Ste. Michelle believed it was prejudiced by the manner in which Mr. Godfrey listed his exhibits, it would have complained when it received Mr. Godfrey's exhibit list on August 25. But, instead, defense counsel continued to work with Mr. Kornfeld's paralegal in narrowing down the exhibits that would be used at trial until Ste. Michelle realized that it could obtain a litigation advantage by capitalizing on opposing counsel's unfortunate emergency surgery to allege the "failure to file" a document that had already been filed. (CP 496-504) Ste. Michelle suffered no prejudice, much less substantial prejudice, from the absence of a separate JSE.

3. The trial court did not consider lesser sanctions.

The trial court also failed to satisfy the third *Burnet* requirement – an on the record explanation of why lesser sanctions would not suffice. The trial court's order contains no discussion of lesser sanctions and the punishment here is not commensurate with the violation, assuming one actually occurred. (CP 587-88) The trial court refused to consider Mr. Godfrey's suggestion of lesser sanctions, including admitting Ste. Michelle's exhibits without excluding his own,[10] insisting that the near total exclusion of Mr. Godfrey's liability evidence was the only sanction that would suffice.

"Generally, the purpose of sanctions is to deter, to punish, to compensate, to educate, and to ensure that the wrongdoer does not profit from the wrong." *Dependency of M.P.*, 185 Wn. App. 108, 117, ¶ 17, 340 P.3d 908 (2014). Any "sanction imposed should be proportional" to the violation and should be "the least severe sanction that will be adequate to serve its purpose in issuing a sanction." *Rivers v. Washington State Conference of Mason*

---

[10] Mr. Godfrey did not concede that this sanction, or any sanction, was warranted, but suggested it as an alternative after the trial court ordered that it would impose *some* sanction based on the absence of a separate JSE. (RP 164-65, 467)

Contractors, 145 Wn.2d 674, 695, 41 P.3d 1175 (2002); *Teter v. Deck*, 174 Wn.2d 207, 216, ¶ 16, 274 P.3d 336 (2012). The failure to consider lesser sanctions is an abuse of discretion. *Rivers*, 145 Wn.2d at 696.

The trial court excluded nearly all Mr. Godfrey's evidence establishing Ste. Michelle's liability and admitted every one of Ste. Michelle's exhibits – a punishment far more severe than necessary to serve the deterrence and compensatory purpose of sanctions. Any "prejudice" from the minor delay in receiving Mr. Godfrey's objections to Ste. Michelle's exhibits could have been cured by admitting Ste. Michelle's exhibits as a sanction without excluding Mr. Godfrey's. (RP 164-65, 467) The trial court erred in ignoring that suggestion without providing any explanation why that remedy would not address the "prejudice" alleged by Ste. Michelle. *Dependency of M.P.*, 185 Wn. App. at 117, ¶ 17 (trial court erred in not explaining why suggested alternative sanction was insufficient).

Likewise, a much narrower sanction would have addressed any inconvenience arising from the way in which Mr. Godfrey listed his exhibits – an allegation unrelated to the failure to file a JSE. The trial court excluded every exhibit Ste. Michelle objected to for any reason and admitted all of Ste. Michelle's exhibits, including

photographs of bottle fractures (as well as other evidence) that had never been disclosed to Mr. Godfrey, without allowing Mr. Godfrey to raise any objections. (CP 350, 354, 357; 10/15 RP 85-91) The trial court failed to consider any of the *Burnet* factors before excluding the critical evidence supporting Mr. Godfrey's product liability case, including the exemplar bottles Mr. Godfrey's expert tested to conclude that the force generated by a corkscrew is ten times less than that necessary to shatter a wine bottle, as well as videos and photos of Ste. Michelle's bottling line. (RP 392, 464-76) This Court should reverse and remand for a new trial.

C. Mr. Godfrey's experts' opinions were admissible under ER 703 regardless whether the evidence underlying those opinions was admissible under the trial court's sanction order.

The trial court's sanctions order could not, in any event, justify its exclusion of the opinions of Mr. Godfrey's experts. The trial court extended its sanction for an alleged "failure" to disclose *evidence*, to also exclude *opinions*. The trial court conflated the admission of evidence with the basis for an expert's opinion under ER 703. Regardless of the validity of the trial court's sanction, its erroneous exclusion of Mr. Godfrey's experts' opinions requires a new trial.

ER 703 allows experts to offer opinions based on inadmissible evidence so long as the evidence is "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." Under ER 703, "the trial court may allow the admission of hearsay evidence and otherwise inadmissible facts for the limited purpose of showing the basis of the expert's opinion." *Deep Water Brewing, LLC v. Fairway Res. Ltd.*, 152 Wn. App. 229, 275, ¶ 117, 215 P.3d 990 (2009), *rev. denied*, 168 Wn.2d 1024 (2010). ER 703 thus allows an expert to rely on evidence that would not be admissible at trial.

Here, because Mr. Godfrey's experts reasonably relied on evidence excluded under the sanctions order, *e.g.*, maintenance records, consumer complaints, and exemplar bottles, under ER 703 they were entitled to explain the basis for their opinions regardless whether the underlying evidence was itself admissible. Mr. Godfrey's experts would have explained, among other things, that the bottle must have shattered as a result of a defect because a soft steel corkscrew such as the one Mr. Godfrey used cannot scratch a bottle and because the force needed to remove a cork is an order of magnitude lower than the amount necessary to shatter a non-defective bottle. (RP 201-04, 331-39, 474-76) As Mr. Godfrey

explained after the trial court entered its sanctions order, he did not seek the admission of excluded evidence, but to elicit opinions from his experts. (RP 333 ("I'm not trying to get the documents in. I'm trying to get his opinion admitted"))

The trial court's refusal to consider these opinions as finder of fact was particularly prejudicial. Unable to reference the excluded evidence, Mr. Godfrey's experts could not support with factual evidence their opinion that the bottle that crippled Mr. Godfrey was defective at the time it left Ste. Michelle's control. Ste. Michelle would not have been unfairly prejudiced by the admission of this expert testimony because it had deposed Mr. Godfrey's experts and was well aware of the basis for their opinions. Even if this Court upholds the trial court's sanctions order, it should reverse and remand for a new trial based on the trial court's erroneous extension of its sanction to opinions from Mr. Godfrey's experts.

D. Mr. Godfrey is entitled to a new judge and to renew his jury demand if this Court remands for a new trial.

Because Mr. Godfrey timely filed his affidavit of prejudice, he is entitled to remand to a new judge. (§ V.A) But even if this Court holds the affidavit untimely, Mr. Godfrey is still entitled to a new judge if it reverses and remands for a new trial on other grounds,

given the trial court's preconceived view of this case and bias against Mr. Godfrey and his counsel.

A successful appellant is entitled to a new judge on remand where, as here, the trial court judge has already expressed its view on the proper disposition of the case. *State v. Sledge*, 133 Wn.2d 828, 846 n.9, 947 P.2d 1199 (1997) (providing for a new judge on remand "in light of the trial court's already-expressed views on the disposition"); *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 154, ¶ 97, 317 P.3d 1074 (remanding to new judge "to provide a fresh perspective to the proper and prompt resolution of this case"), *rev. denied,* 181 Wn.2d 1008 (2014); *Custody of R.*, 88 Wn. App. 746, 763, 947 P.2d 745 (1997) (remanding to new judge because trial court told appellant it did not "like what you did"). Here, the trial court has a preconceived view of this case that it will be unable to ignore in any subsequent trial, having already weighed the facts for itself and found against Mr. Godfrey. The trial court also has a strong bias against Mr. Godfrey's counsel that it could not ignore on remand, having sanctioned him personally for the purported failure to file a separate JSE.

In either event, this Court should also hold that Mr. Godfrey, who waived his right to jury trial before the case was transferred to

Judge Stolz, is also entitled to submit a new jury demand on remand. "Allowing the waiver of a jury trial to remain valid for subsequent trials of the same case would impermissibly allow the unintentional waiver of prospective rights" and thus "[p]arties who waive the right to a jury in one proceeding cannot be deemed to have given up the right for all subsequent proceedings." *Wilson v. Horsley*, 137 Wn.2d 500, 511, 974 P.2d 316 (1999) (party could revive a previously waived jury demand following a mistrial); *Spring v. Department of Labor & Indus.*, 39 Wn. App. 751, 756, 695 P.2d 612 (1985) (party could revive a waived jury demand after a case was reversed on appeal and remanded for a new trial).

VI. CONCLUSION

This Court should vacate the trial court's orders, and reverse and remand for a new trial before a new judge, at which Mr. Godfrey will be allowed to fairly present his evidence.

Dated this 1st day of July, 2015.

SMITH GOODFRIEND, P.S.

By:_____
Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210

KORNFELD TRUDELL BOWEN & LINGENBRINK, PLLC

By:_____
Robert Kornfeld
WSBA No. 10669

Attorneys for Appellants

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July, 1 2015, I arranged for service of the foregoing Brief of Appellants, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	___ Facsimile ___ Messenger ___ U.S. Mail ✓ E-File
Robert Kornfeld Kornfeld Trudell Bowen & Lingenbrink PLLC 3724 Lake Washington Blvd. N.E. Kirkland, WA 98033-7802	___ Facsimile ___ Messenger ___ U.S. Mail ✓ E-Mail
Seann C. Colgan Emily J. Harris Corr Cronin Michelson Baumgardner & Preece LLP 1001 4th Ave Ste 3900 Seattle, WA 98154-1051	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
Russell A. Metz Metz & Associates, P.S. 999 3rd Ave., Ste. 2600 Seattle, WA 98104	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
Kenneth W. Masters Masters Law Group PLLC 241 Madison Ave N Bainbridge Island WA 98110-1811	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail

DATED at Seattle, Washington this 1st day of July, 2015.

Amanda K. Norman

12-2-12968-7 42167999 ORDYMT 03-10-14

FILED
DEPT. 2
IN OPEN COURT
MAR - 7 2014
Pierce County Clerk
By DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

ROLFE GODFREY,

Plaintiff(s) ,

vs.

STE MICHELLE WINE ESTATES LTD,
Defendant(s) .

Cause No: 12-2-12968-7

ORDER Denying Plaintiff's
(OR) Affidavit of Prejudice
to Recuse Judge
Stolz

See attached order

DATED this _____ day of _____, 20____.

see next page
JUDGE KATHERINE M. STOLZ

Attorney for Plaintiff/Petitioner
WSBA# 10669

Emily Harris
Attorney for Defendant/Respondent
WSBA# 35763

3/11/2014 3:40 0951

ORDER

THIS MATTER having come on for hearing before the undersigned Judge of the Superior Court of Washington, now, therefore, The Court having heard oral argument

IS IS HEREBY ORDERED tha the Clerk of the Superior Court of the State of Washington for Pierce County shall ~~not~~ reassign this case to another judge. Judge Stolz shall not recuse herself * Plaintiff's Motion is denied; ☆ *

DONE IN OPEN COURT this 7 day of March, 2014.

FILED
DEPT. 2
IN OPEN COURT
MAR - 7 2014
Pierce County Clerk
By DEPUTY

JUDGE/~~COURT COMMISSIONER~~
Katherine STOLZ

Presented by:

ROBERT B. KORNFELD

Robert B. Kornfeld, WSBA No. 10669
Attorney for Plaintiffs

Approved To Form.

* Mr. Kornfeld reserved his objection, after this order was orally entered, to have this Judge hear Plaintiff's Motion for a trial continuance ~~Record~~, reserving his client's right of appeal. The denial of the Motion to recuse & to change Judge Stolz. RK EK

☆ The Court having signed two orders of discretion in this case, finds that the Plaintiff Motion for recusal / affidavit of prejudice was not timely under Rivenburgh v. Seattle Times, 51 Wn. App. 761.

KORNFELD TRUDELL BOWEN
& LINGENBRINK, PLLC
3724 Lake Washington Blvd
Kirkland, Washington 98033
425.822-2200 Telephone
425.822-0783 Fax

12-2-12868-7 43543024 ORRE 10-29-14
0100
10/30/2014 3838

THE HONORABLE KATHERINE M. STOLZ

FILED
DEPT. 2
IN OPEN COURT
OCT - 8 2014
Pierce County Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROLFE GODFREY and KIRSTINE GODFREY, husband and wife and their marital community composed thereof,

Plaintiffs,

v.

STE. MICHELLE WINE ESTATES LTD. dba CHATEAU STE. MICHELLE, a Washington Corporation; and SAINT-GOBAIN CONTAINERS, INC.,

Defendants.

No. 12-2-~~12968~~-7

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR AN AWARD OF SANCTIONS RE: PLAINTIFF'S FAILURE TO FILE JOINT STATEMENT OF EVIDENCE

This matter has come before the Court on Defendants' Motion for an Award of Sanctions re: Plaintiff's Failure to File Joint Statement of Evidence. The Court has reviewed the record and the pleadings in this matter, and has reviewed the documents submitted by the parties. The Court having also heard the oral argument of counsel, and the Court being fully advised, now, therefore, it is HEREBY ORDERED that:

As a result of Plaintiff's willful violation of the Court's Case Scheduling Order and Pretrial Order, (i) Plaintiff shall be precluded from objecting to Defendants' timely-disclosed trial exhibits; (ii) Plaintiff shall be precluded from offering into evidence any exhibit to which Defendants objected in their Joint Statement of Evidence submission; (iii) Plaintiff's counsel shall be required to pay

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

0101

3838

10/30/2014

Defendants' expenses incurred to date as a result of his failure to timely file the Joint Statement of Evidence; ~~and (iv)~~ (KS) Reserved - on issue of total fees (KS)

Defendants shall submit a motion for an award of attorney's fees and costs incurred as a result of Plaintiff's failure to timely file the Joint Statement of Evidence, supported by the declaration of counsel, within fourteen (14) days of the entry of this Order.

IT IS SO ORDERED.

DONE IN OPEN COURT this 8th day of ~~September~~ October, 2014.

HONORABLE KATHERINE M. STOLZ

FILED
DEPT. 2
IN OPEN COURT
OCT - 8 2014
Pierce County Clerk
By DEPUTY

Presented by:

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

s/Emily Harris
Emily Harris, WSBA No. 35763
Seann Colgan, WSBA No. 38769
Attorneys for Defendants

Copy received; approved as to form with the understanding that "on issue of total fees" includes whether those fees would even be awarded in the first place.
Roxanne Eble
WSBA #41273

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

12-2-12968-7 41817834 OREXT 01-07-14

ctronic Exparte (2769030) -

THE HONORABLE KATHERINE M. STOLZ

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROLFE GODFREY and KIRSTINE GODFREY, husband and wife and their marital community composed thereof, Plaintiffs, v. STE. MICHELLE WINE ESTATES LTD. dba CHATEAU STE. MICHELLE, a Washington Corporation; and SAINT-GOBAIN CONTAINERS, INC., Defendants.	No. 12-2-12968-7 **STIPULATION AND ~~[PROPOSED]~~ ORDER FOR EXTENSION OF WITNESS DISCLOSURE DEADLINES**

FILED
DEPT. 2
IN OPEN COURT
JAN - 6 2014
Pierce County Clerk
By DEPUTY

STIPULATION

The parties above named by and through their attorneys do hereby stipulate and agree to the following order for extension of the deadline for defendants' witness disclosure and rebuttal witness disclosure, as follows:

Defendants' Disclosure of names, addresses & CVs of Possible Primary Witnesses ..... January 16, 2014

Defendants' Disclosure of Opinions of Primary Possible Witnesses ..... January 31, 2014

Disclosure of All Rebuttal Witnesses ..... February 27, 2014

The parties agree that defendants reserve the right to disclose additional lay and expert witnesses in response to any new or supplemental expert opinions that were not disclosed in

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

- Electronic Exparte (2769030) -

Plaintiffs' Disclosure of Possible Primary Witnesses dated December 2, 2013 with a corresponding right for Plaintiffs to name a rebuttal witness thereto. The parties further agree that the disclosure of the report of Defendants' Examining Physician shall be pursuant to a separate stipulation between the parties.

IT IS SO STIPULATED

DATED this 2nd day of January, 2014.

KORNFELD, TRUDELL, BOWEN & LINGENBRINK, PLLC
Robert B. Kornfeld, Inc., P.S.

Robert Kornfeld, WSBA No. 10669
Attorneys for Plaintiff

CORR CRONIN MICHELSON BAUMGARDNER & PREECE, LLP

/s/Emily Harris
Emily Harris, WSBA No. 35763
Attorneys for Defendants

ORDER

Pursuant to the foregoing Stipulation of the parties, NOW THEREFORE, IT IS SO ORDERED.

DATED this 6th day of January, 2014.

THE HONORABLE KATHERINE M. STOLZ
Pierce County Superior Court Judge

Presented by:

FILED
DEPT. 2
IN OPEN COURT
JAN - 6 2014
Pierce County Clerk
By DEPUTY

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

26795 1787614 140197

12-2-12988-7 41817923 OREX 01-07-14

lectronic Exparte (2769983) -

THE HONORABLE KATHERINE M. STOLZ

FILED
IN OPEN COURT
EX PARTE DEPARTMENT
JAN 07 2014
PIERCE COUNTY, Clerk
By
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROLFE GODFREY and KIRSTINE GODFREY, husband and wife and their marital community composed thereof, Plaintiffs, v. STE. MICHELLE WINE ESTATES LTD. dba CHATEAU STE. MICHELLE, a Washington Corporation; and SAINT-GOBAIN CONTAINERS, INC., Defendants.	No. 12-2-12968-7 **STIPULATION AND [PROPOSED] ORDER FOR EXAMINATION UNDER CR 35**

STIPULATION

The parties above named by and through their attorneys do hereby stipulate and agree to the following order for a CR 35 examination by all Defendants:

1. Plaintiff, Rolfe Godfrey, shall submit to a CR 35 examination on January 7, 2013, at 3:30 p.m. by Dr. Charles Peterson at the following address:

1901 South Union
Allenmore Medical Center, Building A
Suite A-311
Tacoma, WA 98405

2. The scope of this CR 35 examination shall include obtaining a medical history, records review, and performing a physical examination, which shall encompass Plaintiff's alleged

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

orthopedic and/or neurologic hand injuries, his alleged Reflex Sympathetic Dystrophy and his Regional Complex Pain Syndrome, and any alleged disability or vocational limitations related to the same. Defendants shall not be entitled to any other examination regarding these issues, except that Defendants are not prohibited from seeking a Court order for a possible additional examination under CR 35 regarding these issues if the results of the CR 35 examination are materially affected by circumstances not in Defendants' control, including: (i) material change in Plaintiff's medical condition; (ii) interference with the CR 35 examination by Plaintiff or Plaintiff's representative, or lack of cooperation by Plaintiff; (iii) failure by Plaintiff to disclose knowing, material and substantial information relevant to the CR 35 examination; or (iv) other material change in circumstances after the first CR 35 examination. Further, the CR 35 examination shall be limited such that no invasive procedures are performed (e.g., x-rays, MRI's, CT scans).

3. The report of CR 35 examination shall be delivered to Mr. Godfrey's counsel of record on or before February 7, 2014. Defense counsel shall deliver the report to Plaintiff's counsel within five business days after receipt by Defense counsel. After Plaintiff's counsel receives the report, Plaintiff shall have the right to disclose a rebuttal expert.

4. The examiner will not question Mr. Godfrey concerning facts underlying the accident resulting in Mr. Godfrey's injury that concern liability (i.e., who was at fault) and shall limit questions during the examination to facts which are relevant to Plaintiff's physical examination, diagnosis and prognosis of the conditions set forth in paragraph 2.

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

5. The content of the report of examination will comply with CR 35(b) and "shall set [] out the examiner's findings, including results of all tests made, diagnosis and conclusions..." and the information he reviewed and relied upon.

6. The CR 35 examiner's opinions will be limited to the conditions, complaints, sources of pain, etc. that are at issue in this litigation. The examiner may not testify at trial regarding any findings, test results, diagnosis or conclusions not set forth in his examination as required by and set forth in CR 35(b).

7. Mr. Godfrey may have a representative present, and such representative may make an audiotape and videotape recording at no additional charge to Plaintiff. As set forth in CR 35(a)(2), (3), Plaintiff's representative shall not interfere with or obstruct the examination, and the recording shall be made in an unobtrusive manner.

8. The report of examination may be used in this litigation for any purpose.

IT IS SO STIPULATED

DATED this 6th day of January, 2014.

Robert B. Kornfeld, Inc., P.S.	CORR CRONIN MICHELSON BAUMGARDNER & PREECE, LLP
s/ Robert B. Kornfeld (by email authorization)	*s/ Emily Harris*
Robert B. Kornfeld, WSBA #10669	Emily Harris, WSBA # 35763
Attorneys for Plaintiff	*Attorneys for Defendants*

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

ORDER

Based on the foregoing Stipulation, Plaintiff, Rolfe Godfrey, shall submit to an examination, as contemplated by CR 35, subject to the conditions set forth in the Stipulation. IT IS SO ORDERED.

DATED THIS 7 day of January, 2014.

JUDGE/COURT COMMISSIONER

Robyn A. Lindsay
COURT COMMISSIONER

FILED
IN OPEN COURT
EX PARTE DEPARTMENT
JAN 07 2014
PIERCE COUNTY, Clerk
By _____ DEPUTY

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Approved as to form, agreed to and notice of presentation waived by:

Robert B. Kornfeld, Inc., P.S.

s/ Robert B Kornfeld by email authorization
Robert B. Kornfeld, WSBA #10669
Attorney for Plaintiff

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE, LLP

s/ Emily Harris
Emily Harris, WSBA # 35763
Attorney for all named Defendants

968 00001 ea024c297k

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

SMITH GOODFRIEND PS

July 01, 2015 - 4:25 PM

Transmittal Letter

Document Uploaded: 4-469634-Appellants' Brief.pdf

Case Name: Godfrey v. Ste. Michhelle Wine Estates
Court of Appeals Case Number: 46963-4

Is this a Personal Restraint Petition? ○ Yes ◉ No

The document being Filed is:

- ○ Designation of Clerk's Papers ☐ Supplemental Designation of Clerk's Papers
- ○ Statement of Arrangements
- ○ Motion: ____
- ○ Answer/Reply to Motion: ____
- ◉ Brief: Appellants'
- ○ Statement of Additional Authorities
- ○ Cost Bill
- ○ Objection to Cost Bill
- ○ Affidavit
- ○ Letter
- ○ Copy of Verbatim Report of Proceedings - No. of Volumes: ____
  Hearing Date(s): _____
- ○ Personal Restraint Petition (PRP)
- ○ Response to Personal Restraint Petition
- ○ Reply to Response to Personal Restraint Petition
- ○ Petition for Review (PRV)
- ○ Other: _____

Comments:

No Comments were entered.

Sender Name: Victoria Vigoren - Email: victoria@washingtonappeals.com

A copy of this document has been emailed to the following addresses:

howard@washingtonappeals.com
robert@kornfeldlaw.com
russm@metzlawfirm.com
scolgan@corrcronin.com
ken@appeal-law.com
lnims@corrcronin.com
elesnick@corrcronin.com

eharris@corrcronin.com