

OCT 16 2013

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
IN AND FOR KING COUNTY

8 STATE OF WASHINGTON

11-1-06177-5 SEA
NO. ~~08-1-12186-7 SEA~~

9
10 V.

ORDER ON MOTION FOR NEW
TRIAL

11 CHRISTY DIEMOND
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14 This matter comes before the Court on the Defense Motion for A New Trial.

15 On October 4, 2013, this Court ruled on part of the Motion orally, holding that there was
16 no basis under the ineffective assistance claim for a new trial. The Court reserved on the issue of
17 the Brady Violation.

18 It is a serious matter when new evidence is discovered after a trial has concluded. As
19 noted on the record on Oct 4, the Court assumes, for this Motion, that this Court would have
20 admitted certain facts about Officer Westberg unknown at the time of trial to impeach her
21 testimony. Her alleged dishonest conduct at work likely would have been admitted. See Motion
22 for New Trial, p. 8, #3. Her theft might have been admitted, though it apparently was a diversion.
23 Her alleged drug use and offenses would not have been admissible. There's no legal theory under
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1 | which drug use can be used to impeach honesty, and there was no allegation that she was under
2 | the influence during these proceedings. In summary, the jury would have known that Westberg
3 | stole from her employer and lied to her employer.

4 | The Court also assumes that the State did not know about the material until after trial.
5 | There seems to be no dispute about that.

6 | The real question is whether there is a reasonable probability that the suppressed evidence
7 | would have produced a different verdict. In re Gentry, 137 Wn.2d 378, 396 (1999).

8 | Fairness in process should be the hallmark of our trial system. This is the real difficulty
9 | here. On the one hand, Ms. Diamond is justifiably upset and outraged that the information about
10 | Officer Westberg was not known prior to trial, because it could be used, and there's no dispute
11 | that, as the State agreed at argument, Mr. Roberson would have used it.

12 | On the other hand, this Court has struggled as to whether that the verdict would have been
13 | any different, assuming the jury concluded that Officer Westberg was completely incredible and
14 | found to have lied as to her testimony as the result of said impeachment. At the time when
15 | witnesses arrived on Ms. Diamond's property, several other people were present, either that day
16 | or the next. King County Sheriff Sgt. Bonnie Soule and Dr. Hannah Mueller were both present
17 | and presented the same information as Officer Westberg.

18 | One looks in vain at the transcripts to see any different information that Officer Westberg
19 | gave. It might be objected that Officer Westberg gave some "expert" testimony. She did profess
20 | to have some knowledge and gave several opinions. First, she testified to her observations.

1 Second, she gave a general "body score."¹ Third, she opined that the horses were not being fed
2 enough.

3 Sgt. Soule and Dr. Mueller gave statements on the appearance of the horses. Sgt. Soule
4 described them as hungry; lacking in enough water. Dr. Mueller gave far more in-depth opinions
5 on the same topic, including medical opinions after physical examinations, opinions on nutrition,
6 and other medical issues. Hers was the most complete testimony. She also had been to the
7 property and testified about conditions. All of the witnesses testified to the condition of the
8 ground, the location of the water, and feed, and the significance of bark off the trees. In summary,
9 Officer Westberg's observations and opinions were testified to by two other witnesses, with Dr.
10 Mueller being the most thorough.²

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12 On the other hand, the jury heard contrary medical opinions by a defense expert
13 veterinarian; a contrary lay view of the horses by a neighbor; and some statements by Ms.
14 Diemond, introduced through State's witnesses. Mr. Roberson cross examined all witnesses, and
15 especially Dr. Mueller on issues of bias and the basis of her opinion.
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17 For these reasons, this Court finds and concludes that had Officer Westberg been
18 impeached and found incredible, there is not a reasonable likelihood that the result would have
19 been any different, based on other evidence in the case.
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23 ¹ After cross by Mr. Roberson, it was not really very clear what the body score meant.

24 ² This Court is not addressing the issue of the sore on one of the horses, because there was no issue of its
25 existence' Ms. Diemond's information was that a former boyfriend did it; and Ms. Diemond was convicted of a
charge related to the feeding and watering of the horses.

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2 Motion for a New Trial is Denied. Sentencing will be this Friday.

3 The Court did not consider Ms. Diamond's briefs on the issue of New Trial because she
4 was represented by counsel, who submitted an extensive and thorough brief on the Motion.

5 Dated October 15, 2013

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9 Hon James E. Rogers
10 King County Superior Court
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