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CHARLEEN GROOMES
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SUPERIOR COURT OF WASHINGTON
COUNTY OF OKANOGAN

STATE OF WASHINGTON, Plaintiff, vs. JAMES FAIRE Defendant.	Case No. 15-1-00202-1 FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM OPINION GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on defendant James Faire's Motion to Dismiss filed on April 30, 2018. At the same time, separate motions to suppress evidence and in limine, based on the same arguments as the dismissal motion, were also filed. In a hearing on June 28, 2018, counsel for Mr. Faire withdrew the suppression motion. The in limine matter becomes moot with the Court's ruling in the first motion.

Mr. Stephen Pidgeon, Attorney at Law, represents Mr. Faire and Mr. Branden Platter, Prosecuting Attorney for Okanogan County, now represents the state. After considering substantial briefing and materials submitted by the parties, holding multiple hearings, a final offer of proof of the defendant and the arguments of counsel, the Court now enters findings of fact, conclusions of law and

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2 this memorandum opinion granting the motion. The Court's intention is to provide extensive and
3 detailed findings based on the record presented.

4 BACKGROUND

5 The defendant is charged in the state's first amended information with Vehicular Homicide
6 for the death of Debra Long and Vehicular Assault involving George Abrantes. The charges are from
7 allegations on or about June 18, 2015 in Okanogan County, Washington. Count 3 of the amended
8 information was previously dismissed on the state's motion based on venue being proper in Snohomish
9 County rather than Okanogan County. It appears from the record that the theft allegations in that count
10 are somewhat the basis for the confrontation that occurred in this county and resulted in the remaining
11 charges against Mr. Faire.
12
13 Over the three years that have passed, Mr. Faire has brought numerous matters to the Court
14 to seek dismissal, including failure to provide counsel, violation of his time for trial (speedy trial) right,
15 lack of probable cause, improper venue, improper or ex parte contact by the prosecutor and refusal of
16 the prosecutor to attend interviews. The record reflects the Court's various written and oral rulings
17 and/or actions to address each of those matters. That history need not be repeated further.
18
19 In his most recent motion, the defendant seeks dismissal of all charges pursuant to CrR 8.3(c)
20 and, more generally, due to "egregious breaches of constitutionally protected rights of the defendant by
21 the prosecution and for continued acts of prosecutorial misconduct." See Motion to Dismiss all Charges
22 as filed April 30, 2018. His citation to CrR 8.3(c) appears to be a typographical error as CrR 8.3(b) is
23 consistent with the quoted language of defendant's motion. That rule provides authority for dismissal
24 "due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the
25 accused which materially affect the accused's right to a fair trial." Ultimately, Mr. Faire relies on *Brady*
26 *vs Maryland,* 373 U.S. 83 (1963) and related cases in seeking dismissal for state actions related to a so-
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called smartphone or cellular (hereafter cell) phone belonging to George Abrantes. Those actions and events are the focus of the findings of fact and the Court's ruling on Mr. Faire's motion.

The Court initially heard the latest motion to dismiss on May 15, 2018 along with other motions. The Court ruled on all other matters but took dismissal under advisement. On May 30, 2018, the Court wrote both counsel to advise that testimonial evidence was necessary before rulings were possible; otherwise, defendant's claims about lost exculpatory evidence were assertions without adequate basis for the Court's consideration. The testimony of Mr. Abrantes and Detective Sloan of the Okanogan County Sheriff's office was deemed necessary so that the defense could adequately make an offer of proof in support of its motion. See Court's letter of May 30, 2018, attached hereto and incorporated herein as Exhibit A. As a result, Mr. Abrantes' video deposition was taken on June 12, 2018 and Detective Sloan testified in open court on June 28, 2018. The defendant submitted an offer of proof on June 25, 2018 in support of his motion and as requested by the Court in its May 30 letter. The offer is attached hereto and incorporated herein, as necessary, as Exhibit F.

The Court's findings and conclusions that follow are necessarily limited to those relevant to the specific motion; consequently, while detailed, they do not cover the numerous other aspects of the case--either raised or not by the state or defense.

FINDINGS OF FACT

1. On June 18, 2015 Okanogan County Sheriff's deputies were called to the scene of a reported homicide at 36 East Sourdough Road outside Tonasket in Okanogan County, Washington. See Statement of Arresting Officer and Preliminary Finding of Probable Cause of Detective Kreg Sloan, dated June 19, 2015, attached hereto as Exhibit B.
2. Debra Long was deceased when law enforcement arrived. *Id.*

3. At the scene, Ms. Long's body was observed lying in the driveway under a blanket with [her] cellphone ... on the ground next to her..." Police took possession of the phone believing it was hers when they processed the scene as part of their investigation. _Id._ and per sworn testimony of Detective Sloan in court on June 28, 2018.
4. At the scene, law enforcement contacted and interviewed Ruth Brooks, Michael St. Pierre and Richard Finegold. They are all friends and were in the process of leaving Mr. Finegold's property when Mr. Faire and Angelina Nobilis drove up. Mr. St. Pierre told police that Mr. Faire was the driver of the pickup, that an argument had ensued between George Abrantes and the defendant and that Mr. Faire had driven over Ms. Long and also hit Mr. Abrantes. Mr. Finegold characterized the defendant and Angelina Nobilis as squatters on his property. _Id._ Exhibit B at page 2.
5. Mr. Faire, Ms. Nobilis, Mr. Finegold, Mr. Abrantes, Ms. Brooks, Mr. St. Pierre, Ms. Long and Mr. Finegold's recently deceased girlfriend all knew each other from Snohomish County prior to June 18, 2015.
6. In addition to Vehicular Homicide and Vehicular Assault, Mr. Faire was originally charged in the state's first information with Theft 2nd Degree and Criminal Trespass in the First Degree. The trespass was effectively dismissed when it was left out of the state's first amended information filed January 23, 2018. The theft charge is also dismissed.
7. When Mr. Faire and Ms. Nobilis were arrested their cell phones or other electronic devices were seized by police. The Court cannot determine from the record before it exactly who else's devices were taken—whether cell phones or tablets—but for purposes of this motion, the Court specifically finds that some of those devices remain in the custody of law enforcement today.

8. It was not until June 23, 2015 that Detective Sloan came to believe the phone found located next to Ms. Long's body was not actually hers; rather that it could be the property of George Abrantes. Abrantes was not at the scene when law enforcement took possession of the cell phone on June 18, 2015. Mr. Abrantes contacted Detective Sloan and asked about the return of his phone. The detective told Abrantes that he would confer with the prosecutor to see whether the phone could be returned.
9. Detective Sloan contacted Karl Sloan, the Prosecuting Attorney handling the case at that time, and discussed the phone's return with him. The Prosecutor advised that the phone could be returned after all data was extracted as the state would have no further use for it as evidence. The Prosecutor instructed Detective Sloan to return the phone after a search of it.
10. The Court specifically finds the decision to return the phone was that of then-Prosecutor Karl Sloan.
11. There is no record of the prosecutor conferring with defense counsel prior to the decision to return the phone.
12. Law enforcement did not turn on or otherwise view any data or information on the cell phone until they were contacted by Mr. Abrantes. Upon learning the phone could be Mr. Abrantes' property and conferring with the prosecutor, Detective Sloan sought a search warrant. The warrant was issued and executed in order to perform a software and hardware extraction of data contained on the phone. The search warrant itself is not in question.
13. On June 24, 2015, six (6) days after the alleged homicide, the cell phone was returned to Mr. Abrantes. See Field Division Memo dated June 24, 2015, filed as Appendix A to

State's Response to Defendant's Motion to Dismiss, attached hereto as Exhibit C, and per sworn testimony of Detective Sloan on June 28, 2018. At that time, no other investigation of the phone or its contents, by either the state or defendant, had occurred. No one, other than law enforcement, had possession of the phone from the time it was seized by police at the scene on June 18, 2015 until it was returned on June 24, 2015.

14. It was not until August 12, 2015 that Detective Sloan attempted to run a report of the data (files) extracted from the Abrantes phone. In the process of running this report and to back up the data, Detective Sloan discovered his laptop computer had been corrupted by so-called ransomware such that all of the files extracted from the Abrantes phone were encrypted and unreadable. The data could not be accessed as his laptop computer locked Detective Sloan out of all but a few files unrelated to the Abrantes phone. All material from the Abrantes phone was effectively lost at that time.
15. Detective Sloan worked with Okanogan County IT personnel; however, they were not able to recover anything in terms of data or files related to the phone. Ultimately, the hard drive of the computer was wiped clean and the operating system reinstalled.
16. Detective Sloan did not ever attempt to contact Mr. Abrantes and try to regain possession of the phone. When asked why during testimony on June 28, 2018, he replied "I didn't".
17. As part of his investigation in the case, Detective Sloan searched and downloaded data from devices belonging to others involved as witnesses or suspects. But since he had not attempted to use the laptop to run reports on any of the extractions, for any of the

devices, he had no way of knowing which device, if any, the ransomware had come from. It is possible that the Abrantes phone was the infected device.

18. Okanogan County maintains firewall or anti-virus software programming on all computers; however, this was deemed to be a higher quality virus, perhaps of Russian origin that was capable of defeating the protections installed on county computers.
19. In late March, 2018, the defendant's current attorney, Stephen Pidgeon, met with Detective Sloan and new Prosecutor Branden Platter in Okanogan, Washington to view various items of evidence. At this time the former Prosecutor Karl Sloan was no longer involved in the case, having resigned from the position in the summer of 2017.
20. At the time of the March 2018 meeting, there was apparently no mention of any problem with the data dump from the Abrantes phone.
21. Instead, Detective Sloan told the Okanogan County prosecutor's office of the computer crash or lost data/files sometime in late April, 2018. This information came to the prosecutor after Mr. Platter checked on the evidence in question i.e. the data dump. See email from Branden Platter to Stephen Pidgeon, dated April 25, 2018, attached to State's Response to Defendant's Motion to Dismiss as Schedule B—attached hereto as Exhibit D.
22. On July 6, 2015, Mr. Faire's then attorney Nicholas Blount filed the Defendant's Omnibus Application and Order. See attached hereto as Exhibit E. Paragraphs 19, 24, 25 and 36 are relevant. The State signed (agreed to) the Order and the Court signed the application that same day ordering the materials in those paragraphs be provided.
23. Paragraph 19 requires the prosecutor to "[d]isclose all evidence within plaintiff's knowledge or in plaintiff's possession favorable to the defendant or which tends to negate defendant's guilt."

24. Paragraph 24 requires the prosecutor to "[s]upply any reports or tests of physical...examinations in the control of the prosecution."
25. Paragraph 25 requires the prosecutor to [s]upply any reports of scientific tests, experiments or comparisons...pertaining to this case."
26. Paragraph 36 requires the prosecutor to "[s]upply as soon as practical all discoverable information which subsequently comes into the hands or control of the prosecution."
27. The record does not show that attorney Mr. Blount was ever provided anything, during his representation of the defendant, to suggest a problem with the data extraction from the Abrantes phone or that the data had been lost from Detective Sloan's laptop as a result of the ransomware virus.
28. On May 15, 2018, the Court granted defendant's motion for a deposition of Mr. George Abrantes. He testified under oath in a video deposition on June 12, 2018.
29. In the deposition, Abrantes admitting to having text messages to and from Debra Long on his phone. See Deposition of George Abrantes, June 12, 2018, pages 19-21, as cited in defendant's Offer of Proof in Support of Defendant's Motion to Dismiss at pages 4-5—Exhibit F.
30. Mr. Abrantes also testified to having text messages from Michael St. Pierre and Ruth Brooks, two other persons at the scene on June 18, 2015, and to deleting them after he got the phone back. *Id.*at page 5.
31. Mr. Abrantes testified that his phone worked when he received it from Detective Sloan back in June of 2015. This included making calls, texting and taking pictures. In response to a question about any loss of functionality, he replied "to my knowledge the phone was working." *Id.*at page 12.

32. Mr. Abrantes testified that he deleted text messages from Debra Long "a while ago" and later "several weeks ago". He concluded "I went through the phone and deleted everything that was old because I had that issue with the phone." "I deleted everything that was not relevant to [sic] I deleted everything that was in the way of my phone being able to have space on the hard drive." _Id._ at page 5.
33. The Court finds text messages between Mr. Abrantes and Debra Long, Michael St. Pierre and Ruth Brooks, among other things, were on the phone at the time it was in the possession of law enforcement and after its return to Mr. Abrantes in June of 2015.
34. That data, at least in the form of text messages, and perhaps otherwise, existed on Mr. Abrantes' phone when Detective Sloan attempted to extract it on June 23, 2015 and on June 24, 2015 when he returned it. The data existed on the phone when Detective Sloan determined that due to the ransomware encryption his laptop computer was unable to process it into readable files.
35. After learning of the encryption and loss of the phone dump data, law enforcement never sought to get Mr. Abrantes' phone back in order to again attempt to download text messages from Debra Long, Michael St. Pierre or Ruth Books or any other relevant data in the form of pictures, video or otherwise.
36. Law enforcement never attempted to learn which device, if any, in this case has the ransomware virus on it.
37. It was not until April of 2018 that current defense counsel learned of the August 2015 crash of Detective Sloan's computer and loss of data from the Abrantes phone.
38. At the time of his original arraignment on June 29, 2015, Mr. Faire filed a notice of intent to claim self- defense.

39. On February 10, 2016, Mr. Faire again filed notice of his intent to claim self-defense and/or defense of others.

LAW AND ANALYSIS

The defendant's motion to dismiss cites state court criminal rules and relies on U.S. Supreme Court case law. Subsequent, more applicable, Federal and State appellate decisions lay out the standards and guidelines this Court must apply in considering the motion. There are three considerations: (1) Is there a violation of CrR 8.3(b)? (2) Is there a violation of CrR 4.7 regarding the state's on-going duty to disclose discoverable evidence, i.e. the August 2015 loss of extracted data? (3) Is there a so-called *Brady* violation for failure to provide exculpatory evidence, specifically lost text messages from Debra Long and others to George Abrantes? While these factors are all interrelated and revolve around the Abrantes phone, each must be addressed. This section of the Memorandum Opinion discusses each factor and applies case law to the findings above in order to explain the final decision of this Court.

Criminal Rule 8.3(b) violation

The state properly points out that dismissal under this rule requires two showings: (1) arbitrary action or governmental misconduct and (2) prejudice affecting the defendant's right to a fair trial. *State vs. Barry*, 184 Wn.App. 790, 797 (2014). The conduct of the prosecutor must be both "improper and prejudicial in the context of the entire record and the circumstances at trial." *State vs. Thorgerson,* 172 Wn.2d 438 (2011). Since dismissal is an extraordinary remedy, it should only be granted in "truly egregious cases of mismanagement or misconduct." *State vs. Wilson,* 149 Wn.2d 1, 9 (2003). See State's Response to Defendant's Motion at page 6. This Court must apply these standards to the facts in the record of this case.

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2 The state acted unilaterally and arbitrarily in returning the phone to Mr. Abrantes six days
3 after the alleged incident on June 24, 2015. The decision to return the phone was strictly within the
4 control of the state. No one else had the ability to decide. Nowhere in the record is there mention
5 of discussing the return with defense counsel or otherwise allowing or offering an inspection of it;
6 rather, the prosecutor and law enforcement conferred and the then prosecutor directed Detective
7 Sloan to return the phone after downloading data from it. It could be argued that the state would
8 not ordinarily confer with defense counsel before returning evidence. But the question then
9 becomes "Why won't the state return the other devices still in its possession today?" To return one
10 and not others creates a double standard and, in this case, resulted in the loss of evidence. The
11 state's choice to willfully return the phone violates the first requirement for an 8.3(b) violation.
12
13 Whether Mr. Faire's right to a fair trial is so prejudiced by the phone's return and subsequent
14 loss of evidence that it warrants dismissal is difficult to determine. The guidance of *Wilson* is helpful
15 in requiring truly egregious mismanagement or misconduct. *State vs. Wilson*, supra, at 9. Black's
16 Law Dictionary defines egregious as extremely or remarkably bad; flagrant. Applying this definition,
17 there is no question but that the decision to return the phone to Mr. Abrantes was extremely or
18 remarkably bad. One might call that decision bad now, viewed in hindsight, only because the
19 downloaded data became encrypted and unobtainable. But even if that is true, one can counter that
20 but for the decision to return the phone, it is highly unlikely that the Court would be facing this issue
21 today.
22
23 Dismissal of a criminal case is an extraordinary remedy. When possible and where
24 appropriate, courts are directed to first consider and use lesser remedies that are appropriate under
25 the circumstances. Typically, this includes limiting testimony or limiting purposes of evidence or
26 suppression of evidence. Dismissal is saved for only those cases where no other remedy adequately
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addresses the problem. Here, but for the action of returning the phone, the law enforcement could have at least attempted to remedy the ransomware encryption if a report had been attempted prior to the return of the phone to Mr. Abrantes. The problem for the state is that the report wasn't run until August 12, 2015—more than 45 days after the phone was returned—and the crash and data loss wasn't reported until April of 2018. The court cannot somehow limit testimony related to text messages between Mr. Abrantes and Ms. Long or others as a remedy nor can it suppress them. To the contrary, the defense wants the text messages to help put the jury "in the shoes" of Mr. Faire—both in terms of any relationship or association between him and the others prior *to* June 18, 2015 and to his claim of self-defense or defense of others on June 18, 2015. There is no effective lesser remedy. Dismissal is necessary. The combined effect and consequences of the state's actions prevent the defendant from having a fair trial.

Criminal Rule 4.7 violation

CrR 4.7(h)(2) addresses parties' continuing duty to disclose material *or information.* (Emphasis added) This continuing duty directs that a party (the state) shall *promptly* notify the other party or their counsel of the existence of such additional material... (Emphasis added) Findings of Fact nos. 21-23 above make clear the state's initial obligation to provide evidence from the phone dump while Finding 24 orders the continuing duty to provide information. Unfortunately, there can be no excuse for a thirty-two (32) month delay (August 12, 2015 to late April 2018) before law enforcement notified the prosecutor of the lost evidence.

To Mr. Platter's credit, since he took over the case upon Mr. Sloan's departure as prosecutor in the summer of 2017, it appears he did not know of or learn about the computer crash and subsequent lost data until he followed up with Detective Sloan in April of this year. That came after he and Mr. Pidgeon met with Detective Sloan in March of 2018. He did not violate CrR 4.7(d)

because he would not have been part of the conversation between Detective Sloan and the then Prosecuting Attorney Karl Sloan in 2015. In fact, Mr. Platter complied with 4.7(d) by attempting to cause the evidence of the phone dump to be made available to the defendant and his counsel.

The Court ordered the state to provide discovery as set forth in paragraphs 21-24 of the defendant's omnibus application on July 6, 2015. The state agreed to comply as evidenced by Mr. Sloan's signature on the omnibus application. But by then the Abrantes phone had been returned to him without any consultation with defense counsel. The record does not establish why there was a delay in running the extraction report from June 23 to August 12, 2015. Aside from the phone return, a logical and reasonable application of the omnibus order would suggest that when the report was attempted and Detective Sloan's computer crashed that information should have been provided to the defense.

This is a case where no sanction short of dismissal will remedy the problem. The Court cannot now order the information to be provided by a date certain nor will a continuance suffice to get the previously-ordered information. Pursuant to CrR 4.7(h)(7), dismissal is necessary.

Brady violation

It is well accepted that the prosecution has a duty to disclose material exculpatory evidence to the defense. *Maryland vs. Brady*, 373 U.S. 83 (1963); *State vs. Straka*, 116 Wn.2d 859, 882 (1991). To a large degree, the considerations set forth above in the context of CrR 8.3 and CrR 4.7 are contained within this last factor considered by the Court. In other words, violations of the court rules may be similarly viewed as violative of *Brady* under the circumstances in a given case. So while *Brady* does not require a prosecutor to deliver their entire file to the defense, it does require disclosure of evidence "favorable to the accused, that, if suppressed, would deprive the defendant of a fair trial." *State vs. Mullen*, 171 Wn.2d 881, 895 (2011). More specifically, where there is lost evidence, the

court is directed to "determine if a failure to preserve exculpatory evidence amounts to a denial of due process" which requires application of a standard set forth in *Arizona vs. Youngblood*, 448 U.S.51 (1988). See *State vs. Ortiz*, 119 Wn.2d 294, 301 (1992). That standard provides that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process." *Id.* at 301, 302 citing *Youngblood* at 58.

In *Ortiz*, the court stated there was nothing to indicate the state had intentionally destroyed evidence of semen samples in question nor that any attempt was made to conceal it from the defendant. *Id.* at 302. It said the state had acted reasonably and in good faith, and had made earnest efforts to preserve the samples. *Id.* Although samples were not properly preserved, the court said while it might "have been possible to preserve the evidence had it been handled more carefully, the State *dealt with the storage and transportation of the evidence in its usual manner.*" Id. (Emphasis added.) That is not the case here.

In this case the Abrantes phone was intentionally returned to Mr. Abrantes before any attempt was made to ensure the data extracted from it was retrievable. The decision to return the phone was not accidental or inadvertent; it was deliberate. By itself, this act (returning the phone) seems unusual and not normal. Indeed, other electronic devices of witnesses or the co-defendant have not been returned, even though the Court assumes similar data dumps have been executed on them. While the state may not have acted in bad faith at the outset, the net effect of the phone's arbitrary return, not running a report of the extracted data before the return, the ransomware attack and encryption of the data so that it could not be retrieved and subsequent loss of the text messages, among other possible evidence, is tantamount to bad faith in its impact on the defendant. To return the phone before ensuring the data could be retrieved necessarily means the defendant has no chance to present material evidence probative of his self-defense claim.

The evidence in this case is clear that Mr. Abrantes' phone had text messages on it between him and Ms. Long. The defense alleges it may have had other data in the form of still images and/or video taken on June 18, 2015. The defense Offer of Proof, Exhibit F, also contends that Ms. Long's phone *did not* contain any text messages between her and Mr. Abrantes or any of the others at the scene on June 18. See Exhibit F at page 6. Although this evidence is not before the Court in sworn testimony there is no reason to doubt it. Consequently, it is important that the defense be able to point out the discrepancy between Mr. Abrantes' and Ms. Longs' phones at the time of her death. The defense contention that Ms. Long, rather than law enforcement, deleted them in anticipation of confrontation between her and the defendant is at least plausible. Mr. Faire is hampered though in his efforts to show any discrepancy by the lack of actual evidence in the form of the text messages.

Next, the Court focuses on the length of time between discovery of the lost data and disclosure to the defense—some 32 months. The record offers no explanation for the delay and, more importantly, why there was no attempt to get the phone back to repeat the extraction process. It is clear by then that the chain of custody would have been broken. But under the circumstances of this case that may not be critical. The messages could not have changed in content, origin or author. Karl Teglund instructs that substantial compliance, not literal compliance, with the traditional requirement of chain of custody is sufficient for admissibility; minor gaps go to weight not admissibility. See *Washington Practice, Courtroom Handbook on Washington Evidence,* Karl Teglund, 2017-2018 Edition, at pages 544-545, citing *State vs. Campbell,* 103 Wn.2d 1 (1984). This means that once Detective Sloan learned of the data encryption and loss he could have contacted Mr. Abrantes and asked him to send back the phone. Instead, nothing happened for 32 months and the evidence was deleted by Abrantes. Given that Mr. Abrantes did not actually delete the messages until some

weeks prior to June 12, 2018, the defendant was precluded from any chance at presenting the evidence. And he has no other means of duplicating it.

Finally, it is noteworthy that if the phone was returned to law enforcement and it was learned that the ransomware existed on Mr. Abrantes phone that too may be exculpatory evidence favorable to the defense.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, relevant state court rules and case law, the Court now enters these Conclusions of Law:

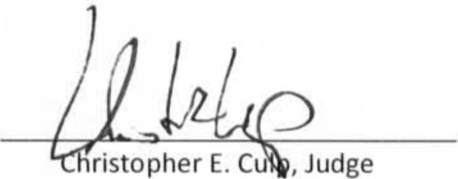
1. The state action of returning Mr. Abrantes' phone to him was arbitrary. Only the state had control over the phone and it (the prosecutor) chose to return it without any consultation with defense counsel.
2. Without ensuring that extracted data was retrievable prior to the phone being returned and then not attempting to regain possession of it was governmental misconduct so prejudicial to the defendant that he is denied the opportunity for a fair trial. This includes the 32 month delay in disclosing loss of the evidence.
3. Dismissal is appropriate given the egregious nature of the cumulative misconduct. No other remedy exists short of dismissal. The Court cannot grant a continuance to allow time for discovery of additional evidence nor is there evidence to suppress.
4. The state had a duty to preserve evidence obtained from the Abrantes phone. Given the defendant's claim of self-defense, the text messages and possible photographs and/or video on the phone are of such exculpatory value that the defendant cannot obtain other comparable evidence by reasonably available means.
5. The evidence is material.

6. The facts of *State vs. Straka,* 116 Wn.2d 859 (1991) and *Ortiz,* supra, are distinguishable from the facts of this case.
7. The cumulative effect of the government's actions, or inaction, constitutes sufficient bad faith that dismissal is required.

DECISION

For reasons set forth above and based on the Court's conclusions, it is hereby ordered that defendant's motion to dismiss is granted. Defense counsel is directed to prepare an appropriate Order. All future court dates are stricken.

Dated this 12th day of July, 2011



Christopher E. Culp, Judge