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STATE OF WASHINGTON

SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff.

vs.

SMITH, ALAN J.,

Defendant.

CAUSE NO. 13-1-01546-8

TRIAL BRIEF & MOTIONS IN LIMINE

I. FACTS

On February 12, 2013, officers responded to 216 240th ST SW (The Smith House) in Bothell, Everett for a welfare check. Susann Smith (Susann) had not reported to work for the past two days and her employer called law enforcement for a welfare check. When officers entered the Smith House, they found an individual, later identified as Susann, face down in the bath tub. Officers learned that Susann and Alan Smith (Alan) were in the process of getting a divorce and went to meet with Alan at work.

Text messages and emails between Alan and Susann are Relevant and Admissible

Alan and Susann moved into the Smith House sometime in 2009. They lived there until

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1 November 18, 2011. In November of 2011, Alan moved out of The Smith House and moved into
2 an apartment in Bothell. On November 18, 2011, Alan filed for divorce. By the end of June,
3 2012, both Susann and Alan hired lawyers for the divorce proceedings. Alan and Susann
4 communicated via email and text message during the divorce proceedings. Communications
5 between Alan and Susann show that they continued to spend time together with the children after
6 they separated. Some of Alan's visits with the children occurred in The Smith House, both with
7 and without Susann. The State intends to show that there was an increasing level of animosity
8 throughout the divorce proceedings. If the State admits any of the emails, texts messages,
9 conversations, or other documents as evidence of motive or animus toward Susann, then the
10 content of the text messages and emails should be admissible. ER 106. When a writing or
11 recorded statement or part thereof is introduced by a party, an adverse party may require the
12 party at that time to introduce any other part, or any other writing or recorded statement, which
13 ought in fairness to be considered contemporaneously with it. Furthermore, under the rule of
14 completeness, where one party has introduced part of a conversation, the opposing party is
15 entitled to introduce the balance of the statement to explain, modify or rebut the evidence already
16 introduced. State v. West, 70 Wn. 2d 751, 754-55 (1967). The evidence must relate to the same
17 subject matter and be relevant to the issue involved. Id. However, the evidence need not have
18 been admissible in the first place. Id. The text messages and emails put in context the nature of
19 Alan and Susann's relationship during the divorce. Allowing the State to only admit documents
20 that show tension between Alan and Susann would portray an inaccurate and one-sided picture
21 of Alan and Susann's post separation relationship.
22

23 Pictures on Susann's camera of the party at the Smith House on February 9, 2013 are
24 relevant and admissible.
25

1 Alan returned to Washington on Saturday, February 9, 2013 at 12:00 pm. He went to the
2 Smith residence to pick up the children. He arrived at the Smith residence at 2:00 pm. Susann
3 was having a Fasching (a German version of Mardi Gras) party. A number of children from the
4 neighborhood were present. While at the house, Alan went in the kitchen, two bedrooms, the
5 hallway, the bathroom and the living room. Alan went with his son to the restroom. Alan left the
6 party at 2:30 pm.

7 When police searched the Smith House, they located a camera. They viewed the pictures
8 on the camera. The pictures were of the party Susann had at the Smith House on February 9,
9 2013. The pictures show the condition of the home on February 9, 2013, including the bathroom
10 where Susann was found. These pictures are relevant and should be admissible to show the house
11 and bathroom. In addition, these pictures are time stamped and show that the date and time Alan
12 indicated he was in the house are accurate.

13
14 Susann's internet activity is relevant and admissible

15 On February 10, 2013, Susann used her time away from the children to catch up with
16 friends. She spoke to a friend from Germany on the phone. She went to Choir practice and then
17 met up with Ani Gothard-Williams to see The Music Man in Seattle. Mrs. Gothard-Williams and
18 Susann met up at the theater. After the show, Susann dropped Mrs. Gothard-Williams off at her
19 home. Susann returned to The Smith house sometime before 10:30 pm. Mr. Buckley returned
20 home with his daughter at 10:30 pm and saw Susann standing out in front of The Smith House.
21 Susann came over and started talking to Mr. Buckley. The conversation was quick and she
22 returned home.

23 After going inside, Susann did not go to bed immediately. Susann turned on her computer
24 and accessed the internet. She went to BECU.COM and logged on to an online banking account.
25

1 She went to GOOGLE.COM and then began searching on Netflix. At 11:35 pm Susann was still
2 accessing Netflix. Law enforcement searched Susann's laptop and other electronic equipment.
3 They discovered that Susann was actively accessing the internet after she got home on February
4 10, 2013. Her internet activity is relevant and should be admissible.

5 Dr. Jennifer Davenport's testimony is admissible

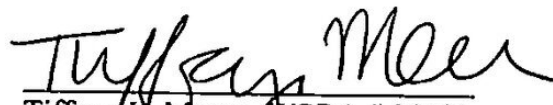
6 Law enforcement viewed various traffic cameras to look for vehicles belonging to Alan
7 on the night of February 10, 2013 or early morning of February 11, 2013. While they did not see
8 any vehicles that matched the description of Alan's vehicles, they did notice what appeared to be
9 a bike traveling in the early morning hours of February 11, 2013. In the same images that
10 showed the bike, a Pete's coffee truck was visible. Law enforcement tracked down the truck
11 driver and asked him about seeing a bicyclist. The interview took place on June 14, 2013, 4
12 months later, and was recorded. During the interview, Mr. Cain, the truck driver, said that he
13 remembered seeing a man on a bike one night in February. He did not remember the exact date,
14 but said it was a Monday. He said he only glanced at the man on the bike twice. During the June
15 14 interview, Mr. Cain described the man as wearing dark clothing with a grizzled or unkempt
16 look. Mr. Cain failed to mention any specific article of clothing or any specific features of the
17 bicyclist such as race, age, height, weight, hair color, hair lengths or style, facial hair, or shape of
18 the face, eyes, nose, or chin. On September 17, 2014, 19 months later, Mr. Cain met with
19 defense investigator, Kathy McCall. In this second interview, Mr. Cain stated that he can identify
20 the man he saw on the bike on that Monday morning in February as Alan. Mr. Cain admitted that
21 he followed the news stories in the case and had viewed pictures of Alan in the news. The
22 defense intends to call Dr. Jennifer Davenport to testify on witness identification. Dr. Davenport
23 will testify about factors that exist in this case that negatively impact eyewitness reliability.
24
25

1 Where eyewitness identification of the defendant is a key element of the State's case, the
2 trial court must carefully consider whether expert testimony on the reliability of eyewitness
3 identification would assist the jury in assessing the reliability of eyewitness testimony. State v.
4 Cheatam, 150 Wn.2D 626, 649 (2003). In making this determination the court should consider
5 the proposed testimony and the specific subjects involved in the identification to which the
6 testimony relates. Id. Identity is a factor in this case. In addition, there are several factors present
7 in Mr. Cain's identification that are known to negatively impact eyewitness reliability.
8 Specifically, Mr. Cain's viewing opportunity was very short. He described it as 2 glances. He
9 indicates he did not pay much attention to the bicyclist because he did not think it was important.
10 The lighting conditions were poor, he was not very close to the bicyclist and both individuals
11 were moving, limiting the time Mr. Cain had an unobstructed view. Finally, the length of time
12 between the viewing and the first description was lengthy. Since identity is a major factor in this
13 case and many factors affecting Mr. Cain's ability to accurately identify the bicyclist are present
14 in this case, Dr. Davenport's testimony should be admissible.
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17
18 Respectfully submitted this 12 day of January, 2015.

19
20 

21 Caroline Mann # 17790
22 Attorney for Defendant

23 
24 Tiffany L. Mecca, WSBA # 39591
25 Attorney for Defendant