

FILED

2014 NOV 25 PM 2:07



CL16857735

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

PLAINTIFF,

v.

ALAN J. SMITH

DEFENDANT.

No. 13-1-01546-8

STATE'S MOTION AND AFFIDAVIT
FOR ORDER TO COMPEL

COMES NOW the undersigned Deputy Prosecuting Attorney for the County of Snohomish, and moves the Court for the entry of an order TO COMPEL in the above entitled case on the grounds and for the reasons set forth in the affidavit below.


CRAIG MATHESON, 18556
Deputy Prosecuting Attorney

MOTION AND AFFIDAVIT FOR ORDER TO COMPEL

Page 1

86

1 **AFFIDAVIT BY CERTIFICATION:**

2
3 The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish
4 County, make this affidavit in that capacity, and request an ORDER TO COMPEL for the
5 following reason(s):

- 6
7 1. Defendant is currently charged with one count of First Degree Murder. The person
8 murdered was Susann Smith, defendant's estranged wife. Trial is scheduled to begin on
9 January 12, 2015. One of the witnesses endorsed by the State is Jay Dee Krull of Garmin
10 International. Mr. Krull is an expert on the Garmin GPS device that was located in
11 defendant's vehicle. The Garmin GPS device was seized and searched pursuant to search
12 warrant. Data retrieved from the Garmin GPS device pursuant to search warrant
13 demonstrates defendant's movements prior to and in the days immediately following the
14 murder of Susann Smith.
15 2. On September 29, 2014 the State was advised by legal counsel for Garmin that one of
16 defendant's attorneys and his investigator were planning on flying out to Kansas and
17 interviewing Mr. Krull the following day, September 30, 2014. This was the first that the
18 State had been aware that an interview had been scheduled. It is the State's
19 understanding that this interview did in fact occur.
20 3. To date, no information regarding the interview with Mr. Krull has been forthcoming
21 from defendant.
22
23

24 **LEGAL ARGUMENT:**

25
26 CrR 4.7(b)(2)(x) states that on upon motion of the prosecutor, the court may require the
27 defendant to "allow inspection of physical or documentary evidence in defendant's possession.
28 In State v Yates, 111 Wn2d 793 (1988), the Washington State Supreme Court evaluated a defense
29 challenge to a trial court's order compelling the defendant to disclose to the State the tape
30 recorded statements of endorsed State's witnesses. Citing CrR 4.7(b)(2)(x), the State Supreme
31 Court upheld the trial court's order as a proper exercise of its discretion. The Court grounded it's

1 holding in the principles underlying CrR 4.7:

2
3 In order to provide adequate information for informed pleas, expedite trials, minimize
4 surprise, afford opportunity for effective cross-examination, and meet the requirements of
5 due process, discovery prior to trial should be as full and free as possible consistent with
6 protections of person, effective law enforcement, the adversary system, and national
7 security.

8 Id at 797 (quoting Criminal Rules Task Force, Washington Proposed Rules of Criminal
9 Procedure, 77).

10 The Court concluded:

11 Allowing the State access to the written and recorded statements of the witnesses fosters
12 the goal of preventing surprise, which could cause trial disruption and further
13 continuances of the trial...Under modern trial practice, the possibility of the defense
14 using statements it took to ambush or 'sandbag' State's witnesses on cross examination is
15 not a valid reason to reverse the trial court's order.

16 Id at 798.

17 In regards to notes and summaries completed by either defense counsel or investigators
18 during such interviews, these are also discoverable if they are to be used for impeachment
19 purposes by the defense:

20 The notes taken during such interviews, as well as the summaries of interviews prepared
21 by defense counsel or their investigator...may, however, be subject to disclosure at trial if
22 counsel or the investigator should be called as a witness by the defense for the purpose of
23 impeaching the testimony given by the previously interviewed prosecution witness.

24 Id. at 796.


25 For the above reasons, the State would request the Court order the disclosure of any
26 existing recorded or written statements from Jay Dee Krull taken by the defense. Additionally, if
27 no such recordings or written statements exist the State would request the production of any notes
28 and/or summaries of the September 30 interview, if the defense investigator or counsel are called
29 for impeachment of Mr. Krull at trial. Further, the State would request the Court compel the
30 disclosure of any other tape recorded interviews, transcripts of such interviews, or written
31 statements taken from endorsed State's witnesses at interviews that a representative of the State

1 was not present at. Likewise, if any notes or summaries of any such interviews are to be used for
2 impeachment of any State's witness the State would request the Court to compel timely
3 disclosure.

4
5 I certify (or declare) under penalty of perjury under the laws of the State of Washington
6 that the foregoing is true and correct to the best of my knowledge.

7
8 RESPECTFULLY SUBMITTED this 25 day of November, 2014.

9
10 STATE OF WASHINGTON

11
12 
13 CRAIG MATHESON, 18556
14 Deputy Prosecuting Attorney
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31