

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
DINO J CONSTANCE,  
Defendant.

No. 07-1-00843-8

STATE'S RESPONSE TO DEFENDANT'S  
REPLY RE CrR 7.8 MOTION

---

ARGUMENT

The defendant in his remedy section of his opening brief asks for an evidentiary hearing on the issues he raises in his CrR 7.8 motion. The State has responded by agreeing that an evidentiary hearing should be held regarding the allegations of discovery violations.

The court cited this matter on a general morning docket for a response by the State. The State certainly did not anticipate an actual hearing on the merits in a morning docket. The State submits the court should set a date for hearing for taking of testimony regarding alleged discovery violations (as defendant requested in his remedy section). The State anticipates at least six witnesses will need to give testimony for the allegations regarding Zach Brown alone. Multiple witnesses will need to testify regarding the remainder of the alleged discovery violations.

DISCOVERY

1 The State agrees that witnesses who testify at the evidentiary hearing should be subject  
2 to interview by the adverse party before giving testimony at the hearing. However, the State  
3 does not agree with the defendant's general argument that the State has some new general  
4 CrR 4.7 discovery obligation as a result of the defendant's filing the current CrR 7.8 motion.  
5 The defendant continues to fail to provide authority for this position.  
6

7  
8 OTHER ISSUES RAISED

9 The State continues to object to the defendant's attempt to raise the following in this CrR  
10 7.8 motion: Failure to litigate a *Franks* motion, failure to litigate an enhanced standard of review,  
11 double jeopardy, failure to grant mistrial, errors in jury instructions, and ineffective assistance of  
12 counsel on direct appeal. In initial response, the State submitted these issues should be  
13 transferred to the Court of Appeals as a Personal Restraint Hearing. The State further notes  
14 now that these matters are currently before the State Supreme Court. The defendant raised  
15 these same issues before the Supreme Court in his petition for review of his direct appeal. A  
16 copy of defendant's petition for review is attached as Exhibit A. The petition for review has not  
17 been stayed pending this newest CrR 7.8 motion. As the defendant has raised these same  
18 issues with the Supreme Court, they clearly should not be litigated concurrently at the trial court  
19 level.  
20

21 DATED this 16<sup>th</sup> day of November, 2010

22 Respectfully submitted,

23  
24 \_\_\_\_\_  
25 Anthony F. Golik WSBA# 25172  
26 Deputy Prosecuting Attorney  
27